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ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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 DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of proposed rules relating to veteran's employment preference	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES RELATING TO VETERAN'S EMPLOYMENT PREFERENCE

TO: All Interested Persons.

1. On October 23, 1989, at 12:15 p.m., at the Department of Social and Rehabilitation Services Auditorium, SRS Building, 111 Sanders Street, Helena, Montana 59620, a public hearing will be held to consider the adoption of rules relating to veteran's employment preference. These rules replace references to veteran's preference rules in ARM 2.21.1410 et seq.

2. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This policy may be cited as the veteran's employment preference policy.
(Auth. 39-29-112, MCA; Imp. 39-29-101 et seq., MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana, executive, legislative, and judicial branches, the Montana university system, and covered local governments to provide preference in employment to eligible disabled veterans, other veterans and certain relatives, when using numerically scored selection procedures, as required in 39-29-101, et seq., MCA.

(2) It is the objective of this policy to establish uniform practices and procedures for the administration of the preference by all public employers covered by 39-29-101, et seq., MCA.

(3) It is not the intention of this policy to dictate selection procedures to be used but rather to explain how the point preference should be applied when a scored procedure is used.

(Auth. 39-29-112, MCA; Imp. 39-29-101 et seq., MCA)

RULE III DEFINITIONS For purposes of the subchapter, the following definitions apply:

(1) "Active duty" means, as provided in 39-29-101(1), MCA, full-time duty with military pay and allowances in the armed forces, [and does not include] training, determining physical fitness, or service in the reserve or national guard."

(2) "Armed forces" means, as provided in 39-29-101(2), MCA, "the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the veterans administration."

(3) (a) "Initial hiring" means, as provided in 39-30-103, MCA, "a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, MCA, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position."

(b) As provided in 39-30-103, MCA, "A personnel action limited to current employees of a specific public entity identified in subsection [(3) (a) of the rule], current employees in a reduction-in-force pool who have been identified in subsection [(3) (a) of this rule], or current participants in a federally-authorized employment program is not an initial hiring."

(4) "Reduction-in-work force" (RIF) means, "A management action taken for non-disciplinary reasons in which an employee is laid off from his/her present position. The RIF may take place for reasons including, but not limited to: elimination of programs; reduction in FTE's; lack of work; lack of funds; expiration of grants; or reorganization."

(5) "Scored procedure" means, as provided in 39-29-101(7), MCA, "a written test, structured oral interview, performance test, or other selection procedures or a combination of these procedures that result in a numerical score to which percentage points may be added," and does not mean non-numerical scoring of procedures. Non-numerical scoring means assessing the applicant's degree of success or failure on a selection device or combination of devices without employing a numerical score, for example, a plus (+) for superior, a check (✓) for satisfactory and a minus (-) for unsatisfactory.

(6) "Under honorable conditions" means, as provided in 39-29-101(8), MCA, "a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable."

(Auth. 39-29-112, MCA; Imp. 39-29-101 et seq., MCA)

RULE IV ELIGIBLE VETERAN (1) To be eligible to receive employment preference, a veteran, as defined in 39-29-101(9), MCA, must:

(a) be a United States citizen;

(b) score 70 or more percentage points of the total possible points that may be granted in a scored procedure;

(c) have been separated under honorable conditions from active duty in the armed forces; and

(d) have served more than 180 consecutive days on active duty in the armed forces, other than for training.

(Auth. 39-29-112, MCA; Imp. 39-29-101 and 39-29-102, MCA)

RULE V ELIGIBLE DISABLED VETERAN (1) To be eligible to receive employment preference, a disabled veteran, as defined in 39-29-101(3), MCA, must:

(a) be a United States citizen;

(b) score 70 or more percentage points of the total possible points that may be granted in a scored procedure; and

(c) have been separated under honorable conditions from active duty in the armed forces.

(2) An eligible disabled veteran must:

(a) have established the present existence of a service-connected disability or be receiving compensation, disability retirement benefits, or pension because of a law administered by the veterans administration or a military department; or

(b) have received a purple heart medal.

(Auth. 39-29-112, MCA; Imp. 39-29-101, and 39-29-102, MCA)

RULE VI ELIGIBLE RELATIVE (1) To be eligible to receive employment preference, an eligible relative, as defined in 39-29-101(4), MCA, must:

(a) be a United States citizen; and

(b) score 70 or more percentage points of the total possible points that may be granted in a scored procedure.

(2) An eligible spouse must:

(a) be the surviving spouse of a veteran or disabled veteran who has not remarried; or

(b) be the spouse of a disabled veteran who is incapable of using his employment preference because the severity of the disability prevents him from working.

(3) An eligible mother must:

(a) be the mother of a veteran who lost his life under honorable conditions while serving in the armed forces or the mother of a service-connected permanently and totally disabled veteran if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and has not remarried.

(4) In order for an eligible relative of a disabled veteran to receive employment preference, the hiring authority must obtain a signed statement from the disabled veteran that the disabled veteran is incapable of using his employment preference because the severity of the disability prevents him from working.

(Auth. 39-29-112, MCA; Imp. 39-29-101 and 39-29-102, MCA)

RULE VII EMPLOYERS COVERED AND POSITIONS COVERED (1) As provided in 39-29-101(6), MCA, public employer means:

(a) "A department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system or a vocational-technical center;

(c) a school district or community college; and

(d) a county, city, or town."

(2) As provided in 39-29-101(5), MCA, positions covered by the employment preference are "permanent, temporary, or seasonal positions as defined in 2-18-101, MCA, for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected official;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment as an independent contractor."

(Auth. 39-29-112, MCA; Imp. 39-29-101, MCA)

RULE VIII APPLYING PREFERENCE (1) As provided in 39-30-102, MCA, "whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to his score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran, as defined in 39-29-101(9), MCA; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative, as defined in 39-29-101(3) and (4), MCA.

(2) A disabled veteran who receives 10 percentage points under 39-29-102(1)(b), MCA, may not receive an additional 5 percentage points under 39-29-102(1)(a), MCA.

(3) 39-29-101, et seq., MCA does not require a public employer to use scored procedures for initial hiring of employees.

(4) An agency may use a combination of numerically scored procedures and non-numerically scored procedures to make a hiring decision.

(5) When individual scored procedures are used, percentage points must be added to each scored procedure if the individual score is used to advance or eliminate applicants. When scored selection procedures are used in combination to reach a total score, percentage points must be added to the total score. An applicant must receive a score of at least 70% of the total possible score to be eligible for the percentage point preference.

(6) An applicant has 90 calendar days from receipt of notice of a hiring decision to file a petition in district court. The public employer shall retain a record of the hiring decision for

at least 90 calendar days after the notice of the hiring decision and records may be kept longer at the agency discretion. Depending on the selection procedures used, the record may include, but is not limited to the following:

(a) a copy of the vacancy announcement or external recruitment announcement;

(b) a record of the selection procedure used to screen job applicants;

(c) a record of written and oral evaluations of applicants;

(d) a copy of applications that were considered for the specific vacancy; and

(e) a record of the notice of the hiring decision, the written request for an employer's explanation of the hiring decision by an applicant, and the employer's written explanation.

(Auth. 39-29-112, MCA; Imp. 39-29-102, MCA)

RULE IX CLAIMING PREFERENCE -- DOCUMENTATION AND VERIFICATION (1) As provided in 39-29-103, MCA, "a public employer shall, by posting or on the application form, give notice of the point preference."

(2) As provided in 39-29-103, MCA, "a job applicant who believes he is eligible to receive a point preference shall claim the preference in writing before the time for filing applications for the position involved has passed." An employer may provide a standard form for claiming employment preference. However, failure to complete such a form does not negate an applicant's claim for preference, as long as a reasonable and timely claim is made, as required by 39-29-103, MCA. "Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104, MCA, with regard to that position."

(3) At the place where applications are received, the hiring authority or other agency receiving applications shall inform applicants of requirements for documentation of eligibility for preference which the applicant may be required to provide to the hiring authority.

(4) The person claiming eligibility for employment preference is responsible for providing all information necessary to document his claim.

(5) The hiring authority must obtain documentation of eligibility for employment preference from an applicant who claims preference and who is selected for the vacancy and may require documentation from others claiming employment preference.

(6) The hiring authority shall determine when in the selection process submission of documentation of eligibility for the preference shall be provided by the applicant. This may be at the time an offer of employment is made or at an earlier time specified by the hiring authority.

(7) When appropriate, documentation will include the following or a substitute acceptable to the hiring authority:

(a) from a veteran, disabled veteran, or eligible relative, a document issued by the department of defense or equivalent certification from the U.S. veterans administration listing

military status, and discharge type, commonly form DD-214 or military discharge papers;

(b) from a disabled veteran, a document from the U.S. veteran's administration certifying that the applicant has a service-connected disability or a document from the department of defense or the veterans administration indicating the person has received the purple heart medal;

(c) from an eligible relative of a deceased veteran, a document from the department of defense or the U.S. veterans administration certifying the service-connected death of the member of the armed services;

(d) from the eligible spouse of a disabled veteran, a document from the U.S. veterans administration certifying the veteran is disabled, is unable to use the preference because of the disability, and is married to the disabled veteran in accordance with Montana law. When the veterans administration does not certify that the disabled veteran is unable to use the preference because of the disability, the hiring authority shall obtain a signed statement from the disabled veteran that he is incapable of using his employment preference because the severity of his disability prevents him from working.

(e) from an eligible mother of a deceased or disabled veteran, a document from the U.S. veterans administration certifying the service-connected death of the veteran or a document certifying the veteran has a service-connected permanent and total disability. The veteran's mother shall also certify in writing that her husband is permanently and totally disabled or that her husband is deceased and she has not remarried.

(f) a signed statement by the applicant attesting to U.S. citizenship. At the time of hire, the applicant must provide documentation of U.S. citizenship.

(8) All documentation submitted to a public employer, or to an entity designated to receive applications for a public employer, in support of the claim of preference shall be considered confidential.

(9) A public employer may release general information relating to a successful applicant's eligibility for preference upon request. The information provided should not be specific as to the nature of a disability or other personally identifying information. Examples of general information would be "a disabled veteran" or "an eligible relative."

(10) Applicants shall be notified that intentional misrepresentation of the claim for preference is cause for immediate discharge.

(Auth. 39-29-112, MCA; Imp. 39-29-103, MCA)

RULE X HIRING DECISION (1) In making a hiring decision, an agency must be prepared to show that:

(a) appropriate percentage points were added if numerically scored procedures were used; and

(b) the agency made a reasonable hiring decision.

(2) Written notice must be given to each applicant claiming preference who is actually considered by the public employer as an applicant for a specific position vacancy.

(3) As provided in 39-29-103(3), MCA, "If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference." The notice shall include whether the position was filled as the result of the application of veterans employment preference by the public employer.

(4) Public employers who maintain active application files or conduct continuous recruitment must give written notice to each person claiming preference and whose application is active in accordance with the employer's selection procedures and who is actually considered for a specific vacancy. Notice must be given at the time a position vacancy is filled or by the end of each month in which a position vacancy is filled.

(5) The public employer must maintain a record of which applicants were notified and the date the notification was sent for at least 90 calendar days after notification of the hiring decision.

(Auth. 39-29-112, MCA; Imp. 39-29-103, MCA)

RULE XI INTERNAL PROCEDURES--ENFORCEMENT OF PREFERENCE

(1) As provided in 39-29-104, MCA, "An applicant who believes he is entitled to but has not been given the point preference provided in 39-29-102, MCA, may, within 30 days of receipt of the notice of the hiring decision provided for in 39-29-103, MCA, submit to the public employer a written request for an explanation of the public employer's hiring decision."

(2) The written request for an explanation shall contain, but is not limited to, such information as is necessary to determine:

(a) the applicant's name and address;

(b) the applicant is requesting an explanation from the hiring authority regarding the hiring decision; and

(c) the position for which the person applied.

(3) As provided in 39-29-104, MCA, "Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation." The written explanation shall contain specific job-related reasons why the person claiming preference was not hired. The explanation should be dated and identify the specific position in question. The employer should safeguard the confidentiality of information he has considered in accordance with state and federal law and as provided in rule IX.

(4) All days are calendar days.

(Auth. 39-29-112, MCA; Imp. 39-29-104, MCA)

RULE XII EXTERNAL PROCEDURES--ENFORCEMENT OF PREFERENCE

(1) As provided in 39-29-104, MCA, "After following the procedure in 39-29-104, MCA, the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was

received by the public employer. The petition must state facts that on their face entitle the applicant to a point preference."

(2) External enforcement of the point preference in district court is provided for in 39-29-104, MCA.

(3) All days are calendar days.

(Auth. 39-29-112, MCA; Imp. 39-29-104, MCA)

RULE XIII RETENTION DURING REDUCTION IN FORCE (1) During a reduction in work force, a public employer shall retain over all others a veteran, a disabled veteran or an eligible relative who:

(a) has similar job duties and qualifications;

(b) has not been rated unacceptable under a performance appraisal system; and

(c) has the same or greater length of service. Length of service means continuous employment by an individual public employer as listed in rule VII.

(2) A disabled veteran with a service-connected disability of 30% or more shall be retained over other veterans, disabled veterans and eligible relatives.

(3) It will be the responsibility of the employee to claim preference in retention. An employee who claims preference in retention as a veteran, a disabled veteran, a 30% disabled veteran or an eligible relative shall document eligibility in the same manner required in rule IX for the claim of preference for initial hiring.

(4) As provided in 39-29-111(3), MCA, the preference in retention does not apply to a position covered by a collective bargaining agreement.

(Auth. 39-29-112, MCA; Imp. 39-29-111, MCA)

3. The Legislature has mandated the adoption of rules by the department of administration to administer veteran's employment preference. The rules are reasonably necessary because they will create uniform procedures for consistent administration of the preference by covered public employers. The rules are necessary to explain how to claim and document preference to eligible veterans, disabled veterans, and eligible relatives.

4. Interested parties may submit their data, views, or arguments concerning adoption of the rules in writing to: Laurie Ekanger, Administrator, State Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than October 27, 1989.

5. Lewis Smith, associate legal counsel, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendment is based on 39-29-112, MCA, and the rules implement 39-29-101 et seq., MCA.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.1415, 2.21.1416, 2.21.1426, and the amendment of ARM 2.21.1412, 2.21.1413, 2.21.1414, 2.21.1417, 2.21.1418, 2.21.1421, 2.21.1423, 2.21.1424, 2.21.1425, 2.21.1429, relating to Veteran's and Handicapped Person's Employment Preference.	NOTICE OF PUBLIC HEARING ON THE REPEAL OF ARM 2.21.1415, 2.21.1416, 2.21.1426, AND THE AMENDMENT OF ARM 2.21.1412, 2.21.1413, 2.21.1414, 2.21.1417, 2.21.1418, 2.21.1421, 2.21.1423, 2.21.1424, 2.21.1425, 2.21.1429, RELATING TO VETERAN'S AND HANDICAPPED PERSON'S EMPLOYMENT PREFERENCE

TO: All Interested Persons.

1. On October 23, 1989, at 12:15 p.m., at the Department of Social and Rehabilitation Services Auditorium, SRS Building, 111 Sanders Street, Helena, Montana 59620, a public hearing will be held on the repeal of ARM 2.21.1415, 2.21.1416, 2.21.1426, and the amendment of ARM 2.21.1412, 2.21.1413, 2.21.1414, 2.21.1417, 2.21.1418, 2.21.1421, 2.21.1423, 2.21.1424, 2.21.1425, 2.21.1429 relating to Veteran's and Handicapped Person's Employment Preference.

2. The rules to be repealed are found at pages 2-782, 2-783, and 2-792 of the Administrative Rules of Montana.

3. The proposed rule amendments provide as follows:

2.21.1412 SHORT TITLE (1) This policy may be cited as the ~~veteran's and~~ handicapped person's employment preference policy.
(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1413 POLICY AND OBJECTIVES (1) It is the policy of the State of Montana, executive, legislative and judicial branches, and covered local governments to provide preference in employment to eligible ~~disabled veterans, other veterans,~~ handicapped persons and certain spouses, when they are substantially equal in qualifications to others applying for initial appointments to positions.

(2) It is the objective of this policy to establish uniform practices and procedures for the administration of the preference by ~~all~~ public employers covered by the ~~veteran's and~~ handicapped person's employment preference act, 39-30-101, et seq., MCA.
(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1414 GENERAL ELIGIBILITY (1) ~~As provided in 39-30-202, MCA, "No veteran, disabled veteran, eligible spouse, or~~ "No handicapped person or eligible spouse is entitled to receive employment preference as provided in 39-30-201, MCA, unless:

~~(2) No veteran, disabled veteran or eligible spouse is eligible to receive employment preference solely because he is entitled to receive benefits from the U.S. veteran's administration.~~

(a) through (d) Remains the same.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1417 ELIGIBLE SPOUSE (1) Remains the same.

(2) As provided in 39-30-103, MCA, an eligible spouse is~~:~~ "the spouse of:

~~(a) "the unremarried surviving spouse of a veteran who died while on active duty or whose death resulted from a service connected disability; or~~

~~(b) the spouse of:~~

~~(i) a disabled veteran determined by the United States veterans administration to have a 100% service connected disability who is unable to use his employment preference because of his disability;~~

~~(ii) a person on active duty determined by the United States government to be missing in action or a prisoner of war; or~~

~~(iii)~~ a handicapped person determined by the United States veterans administration or department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability."

(3) The spousal relationship will be determined by the ~~United States veteran's administration or~~ department of social and rehabilitation services in accordance with Montana law.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1421 EMPLOYERS COVERED (1) Public employers covered by the ~~veteran's and~~ handicapped person's employment preference act, 39-30-101 et seq., MCA, are, as provided in 39-30-103, MCA:

(a) through (2) Remains the same.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1423 APPLYING PREFERENCE (1) Remains the same.

(2) A preference-eligible applicant who is a ~~disabled veteran or~~ handicapped person shall be hired over any other preference-eligible applicant with substantially equal qualifications when the applicant also meets the requirements of (1) (a) and (b) of this rule.

(3) through (6) Remains the same.

(7) The public employer, covered by the ~~veteran's and~~ handicapped person's employment preference act (39-30-101 et seq., MCA), has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination of the applicant's qualifications for the position and that substantially equally qualified applicants were afforded preference.

(8) Remains the same.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1424 CLAIMING PREFERENCE - DOCUMENTATION AND VERIFICATION (1) As provided in 39-30-206, MCA, "a public employer shall, by posting or on the application form, give notice of the preferences that 39-30-101, et seq., MCA, (the ~~veteran's and~~ handicapped person's employment preference act) provides in public employment." The notice shall appear at the place where applications are received.

(2) through (6) Remains the same.

(7) Where appropriate, documentation will include the following or an acceptable substitute:

~~(a) from a veteran, disabled veteran, or eligible spouse of a veteran, a document issued by the department of defense or equivalent certification from the U.S. veterans administration listing military status, dates of service, discharge type, and campaign badges, commonly form DD-214 or military discharge papers;~~

~~(b)~~ (a) from a ~~disabled veteran or~~ handicapped person, a ~~document from the U.S. veteran's administration certifying that the applicant has a service-connected disability of 30% or more or a~~ document from the department of social and rehabilitation services certifying that the applicant is eligible for preference as a handicapped person.

~~(c) from an eligible spouse of a deceased veteran, a document from the department of defense or the U.S. veterans administration certifying the service-connected death of a spouse.~~

~~(d) from an eligible spouse of a person on active duty, a document from the department of defense or the U.S. veterans administration certifying the person on active duty is listed as missing in action or a prisoner of war.~~

~~(e) from an eligible spouse of a disabled veteran, a document from the U.S. veterans administration certifying the veteran is 100% disabled, is unable to use the preference because of the disability and is married to the disabled veteran in accordance with Montana law. The spousal relationship will be certified for not more than 1 year. Where the veterans administration does not certify that the disabled veteran is unable to use the preference because of the disability, the hiring authority shall obtain a signed statement from the disabled veteran that:~~

~~(i) he is incapable of using his employment preference because of the severity of his disability; and~~

~~(ii) he will not claim employment preference with any covered employer for 1 year from the date his spouse obtains certification for the preference.~~

~~(f)~~ (b) from an eligible spouse of a handicapped person, a document from the department of social and rehabilitation services certifying the handicapped person is totally disabled, is unable to use the preference because of the disability, and is married to the eligible spouse in accordance with Montana law. The spousal relationship will be certified for not more than 1 year.

~~(g)~~ (c) a statement signed by the applicant attesting to U.S. citizenship, and Montana or local residency~~., and non-retired status. Where the hiring authority has reason to question the~~

~~validity of such statements, further evidence may be requested. For U.S. citizenship such evidence may include, but is not limited to, a birth certificate, voter registration card, or naturalization papers.~~ At the time of hire, the applicant must provide documentation of U.S. citizenship. For Montana residency, ~~such~~ evidence may include, but is not limited to, payment of state of Montana income tax, Montana driver's license, vehicle registration, or hunting and fishing license.

(8) Remains the same.

~~(9) A public employer, an entity designated to receive applications for a public employer, or the department of social and rehabilitation services shall not release personal information relating to an applicant's claim of preference to any person not directly involved in the hiring decision.~~

~~(10)~~ (9) A public employer may release general information relating to a successful applicant's eligibility for preference upon request. The information provided should not be specific as to the nature of the disability or other personally identifying information. Examples of general information would be ~~"a disabled veteran,"~~ "an eligible spouse of a totally disabled person," or "a handicapped person."

~~(11)~~ (10) Remains the same.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1425 DURATION OF PREFERENCE (1) Subject to provisions of 39-30-203, MCA, a handicapped person as described in ARM 2.21.1418, ~~or a disabled veteran as described in 2.21.1416~~ qualifies for employment preference as long as the disabling condition persists.

(2) The spouse of a 100% handicapped person as described in ARM 2.21.1417, ~~or the spouse of a 100% disabled veteran as described in 2.21.1417,~~ qualifies for employment preference as long as:

(a) the 100% handicapped person ~~or 100% disabled veteran~~ is unable to use the preference due to the severity of the disabling condition; and

(b) the spousal relationship continues. ~~Continuation of the spousal relationship must be recertified annually by the appropriate certifying agency.~~

~~(3) A veteran, as described in 2.21.1415, who is not a disabled veteran, as described in 2.21.1416, qualifies for employment preference for no longer than 15 years following separation from service or December 20, 1988, whichever is later.~~

~~(4) The surviving spouse of a veteran as described in 2.21.1417, qualifies for employment preference for as long as the spouse remains unremarried.~~

~~(5) The spouse of a person as described in 2.21.1417 qualifies for employment preference for as long as the person is missing in action or is a prisoner of war.~~

(Auth. 39-30-106, MCA; Imp. 39-30-103 and 39-30-203, MCA)

2.21.1426 - Shall be repealed.

2.21.1427 and 2.21.1428 - Remain the same.

2.21.1429 INTERNAL PROCEDURES - ENFORCEMENT OF PREFERENCE (1) As provided in 39-30-207, MCA, "an applicant who believes he has not been accorded his rights under the ~~veteran's and~~ handicapped person's employment preference act, 39-30-101, et seq., MCA, may, within 30 days of receipt of the notice of the hiring decision, submit to the public employer a written request for an explanation of the public employer's hiring decision."

(2) Remains the same.

(3) As provided in 39-30-207, MCA, "Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation." The written explanation shall contain specific job-related reasons why the person claiming preference was not hired. The explanation should be dated and identify the specific position in question. ~~The public employer should send the written explanation by certified mail. Failure to provide written explanation as required may subject the employer to reopening the selection process.~~ The employer should safeguard the confidentiality of information he has considered in accordance with the state and federal law and as provided in ARM 2.21.1424.

(4) Remains the same.

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

2.21.1430 through 2.21.1432 - Remain the same.

4. It is reasonably necessary to amend or repeal these rules because 39-30-101 et seq., MCA, has been amended to remove references to veterans and disabled veterans. The amendments or repealed rules delete similar references.

5. Interested parties may submit their data, views, or arguments concerning adoption of the new rules in writing to: Laurie Ekanger, Administrator, State Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than October 27, 1989.

5. Lewis Smith, associate legal counsel, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendment of new rules is based on 39-30-106, MCA, and the rules implement 39-30-101 et seq., MCA.

Dave Ashley

Dave Ashley, Acting Director
Department of Administration

Certified to the Secretary of State September 18, 1989.

BEFORE THE DEPARTMENT OF AGRICULTURE

OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules relating to the production of mint	))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES RELATING TO THE PRODUCTION OF MINT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 30, 1989, the Department of Agriculture proposes to adopt new rules relating to the production of mint.

2. The proposed new rules will read as follows:

RULE I. COMMITTEE ORGANIZATION

(1) The Montana mint committee hereby adopts and incorporates the organizational rules of the department of Agriculture as listed in Title 4, Chapter 1 ARM.

Auth: 2-4-201 MCA Imp: 2-4-201 MCA

RULE II. COMMITTEE PROCEDURE

(1) The Montana mint committee herein adopts and incorporates the model procedural rules with any exceptions, modifications and additions thereto, as the Committee may from time to time adopt.

Auth: 2-4-201 MCA Imp: 2-4-201 MCA

RULE III. FIELD INSPECTION

(1) Each grower must make application for field inspection on all mint grown in Montana before June 1 of each year. This application shall include:

(a) Name and complete mailing address of the grower.

(b) Field maps identifying;

(i) field by number,

(ii) acres in each field, and

(iii) type of mint grown in each field.

(c) Date of anticipated harvest.

(2) Inspection for verticillium wilt must be completed before any harvesting starts.

(3) Inspection for identification of nematode damage must be done after harvest has completed.

Auth: 80-11-403 MCA; Imp: 80-11-411 MCA

RULE IV FEE ON ALL MINT OIL PRODUCED

(1) As prescribed in 80-11-412 MCA, the assessment fee on all mint oil produced in this state from the 1989 crop shall be 10 cents a pound. As allowed by statute, the committee sets the fee at 12 cents a pound for all mint oil produced in Montana.

Auth: 80-11-403 MCA Imp: 80-11-412 MCA

RULE V RECORDS REQUIRED

(1) Each first purchaser of mint oil shall maintain an accurate record of all mint oil handled, packed, shipped or processed by him. These records shall contain the following information:

(a) Name and Address of every grower;
(b) Number of pounds of mint oil in each transaction;
(c) Date of each transaction;
(d) Type of mint oil.

Auth: 80-11-403 MCA Imp: 80-11-416 MCA

RULE VI MINT OIL PURCHASER LICENSE REQUIRED

(1) Every person acting as a first purchaser shall have obtained a license from the committee before doing any business in Montana.

(2) Failure to comply with reporting requirements as prescribed in 80-11-414 MCA, or any other requirements imposed by Title 80, Chapter 11, shall be grounds for question of good character and licensing may be withheld or revoked by the committee until such provisions are complied with.

Auth: 80-11-403 MCA Imp: 80-11-414 and 80-11-417 MCA

3. The reason for the proposed rules is to generally implement HB 360 adopted in the 1989 Montana Legislative Session, and to provide for organizational and procedural rules.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption in writing to the Department of Agriculture, Capitol Station, Helena, Montana 59620-0201, no later than October 27, 1989.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Department of Agriculture, no later than October 27, 1989.

6. If the Department receives request for a public hearing on the proposed adoption from either 10% or 25,

whichever is less, of those persons who are directly affected by the proposed adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from any association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons.

W. Ralph Peck, Deputy Director
Department of Agriculture

Certified to the Secretary of State, September 18, 1989

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE FINANCIAL DIVISION

In the matter of the proposed adoption of a new rule pertain- to investment securities	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULE I. INVESTMENT SECURITIES

TO: All Interested Persons:

1. On October 20, 1989, 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 adoption of the above-stated rule.

2. The proposed new rule will read as follows:

"I. INVESTMENT SECURITIES (1) Subject to such further policies, restrictions, and approvals as its board of directors shall set forth in its investment policy, a bank may purchase, sell, and hold investment securities which are obligations in the form of bonds, notes or debentures under the following conditions:

(a) Without limitation if such securities are:

(i) general obligations of the United States government or any state or territorial government or any agency of such governments; or

(ii) guaranteed as to principal and interest by such governments; or

(iii) if redemption of such securities is pre-funded with the proceeds therefor invested in securities which may be held without limitation;

(b) Up to forty (40) percent of the unimpaired capital and surplus of the bank if the securities are:

(i) general obligations of a single obligor domiciled within the United States which is authorized to levy taxes; or

(ii) secured by the pledge or assignment of tax receipts sufficient to pay the principal and interest of such securities as they become due; or

(iii) the revenue obligations of a political subdivision authorized to establish utility fees where such tax levies or fees are pledged to and are sufficient to pay the principal and interest of the securities as they become due;

(c) Up to twenty (20) percent of the bank's unimpaired capital and surplus if the securities issued by political subdivisions are rated in the three highest rating categories by either "fitch," "moody's," or "standard and poors".

(d) Securities (1)(a)(i) and (ii) are securities that are expressly permitted by section 32-1-433, MCA.

(2) With the exception of revenue obligations listed in paragraph (1)(b)(iii) above, where the repayment or revenue obligations is dependent upon rentals or other fees payable to a political subdivision by a nongovernmental unit, the obligor shall be deemed to be the nongovernmental unit responsible for

the payment of such rentals or other fees and guarantor of such payments.

(3) No bank having unimpaired capital and surplus of less than $5,000,000 shall underwrite or otherwise participate as principal in the marketing of securities except for the account of and upon specific instructions from its customer. Notwithstanding the limitations of section (1) of this rule, banks having an unimpaired capital and surplus of $5,000,000 or greater may underwrite or otherwise participate in the marketing of any securities which such banks could purchase for their own account provided:

(a) Accounting and other records of trading in such securities are maintained separate and apart from accounting and other records relating to purchases of securities for the bank's own account;

(b) The board of directors of the bank adopts operating policies which are reviewed at least annually regarding the types and quality of securities to be traded, holding periods for securities and inventory, limitations on the amount of securities to be carried in the name of a single obligor, and guidelines relative to disposition of securities subject to adverse market changes; and

(c) Credit memoranda or prospectus and independent audit reports covering the three years immediately preceding the date of the most recent underwriting are reviewed.

(4) A bank may hold asset-backed securities repayable in both interest and principal which are issued under:

(a) governmentally-sponsored programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent of direct obligations of the governmental entity granting the guarantee; or

(b) private programs which are fully collateralized by obligations fully guaranteed as to principal and interest by a governmental entity to the same extent as direct obligations of the governmental entity granting the guarantee; or

(c) Up to twenty (20) percent of the bank's unimpaired capital and surplus on other private bonds, notes or debentures provided any issue is in registered form and matures in not more than five (5) years. Any such private issues must be rated in the top three rating bands by "fitch," "moody's," or "standard and poors."

(d) The aggregate investment in such private issues by all issuers shall not exceed fifty (50) percent of a bank's unimpaired capital and surplus.

(5) Nothing contained herein shall permit the purchase of investments in the form of:

(a) stripped or detached interest obligations associated with any security which otherwise constitutes a permissible investment under the provisions of this rule; or

(b) futures, forwards, and option contracts; or

(c) short sales on a permissible investment; or

(d) stripped mortgage backed securities in the form of interest-only or principal-only strips; or

(e) residual interest in any asset-backed security."
Auth: Sec. 32-1-433, MCA; IMP, Sec. 32-1-433, MCA

REASON: This rule is being proposed to implement House Bill 218, which is Chapter 199, Laws of 1989. This enactment amended section 32-1-433, MCA.

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 Financial Division, 1520 East Sixth Avenue, Lee Metcalf Building, Room 50, Helena, Montana 59620, no later than October 26, 1989.

4. Annie M. Bartos, Helena, Montana, has been designated to preside over and conduct the hearing.

FINANCIAL DIVISION

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 18, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE BANKING BOARD

In the matter of the proposed adoption of a new rule pertaining to establishment of new branch banks	))))	NOTICE OF PROPOSED ADOPTION OF NEW RULE I APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION TO ESTABLISH A NEW BRANCH

TO: All Interested Persons:

1. On October 20, 1989, 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 adoption of the above-stated rule.

2. The proposed new rule will read as follows:

"I. APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION TO ESTABLISH A NEW BRANCH (1) An existing state-chartered bank shall file with the department of commerce an application to the state banking board for a certificate of authorization to establish and operate a new branch bank.

(2) The applicant shall publish notice of intent to establish a branch bank. This notice shall be published in a newspaper of general circulation in the community or communities where the main office of the bank and proposed branch bank 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 the applicant bank;

(b) the exact location of the proposed branch site, including street address (unless one has not been assigned the location);

(c) the name of the proposed managing officer, if known, with resume of qualifications, banking experience and personal history in compliance with ARM 8.87.302(1) and (2);

(d) a summary of the evidence demonstrating a persuasive showing or reasonable public necessity and demand for a banking facility at the proposed location as required by ARM 8.87.301;

(e) an estimated operating statement, deposit volume, and loan volume in the branch at the end of each of the first three years;

(f) a statement of proposed expenditures for premises, fixtures, furniture and equipment;

(g) a detailed list of banking services that will be offered the community to be served by the new branch;

(h) details concerning any involvement in the proposal by an insider (a director, an officer, or a shareholder who directly or indirectly controls 5 or more percent of the applicant's outstanding voting stock, or the associates or interests of any such person) of the bank, including any financial arrangements relating to fees, the acquisition of property, leasing of property and construction contracts;

(i) the name and address of and the date of publication in the newspaper which the required notice is published.

(4) An application fee of two thousand dollars ($2,000) shall be paid to the state of Montana at the time of application and thereafter shall not be refundable in whole or in part.

(5) In the event that 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 by showing good cause why it should be so extended. The state banking board may delay processing, including extending the comment period, for good cause. Processing will be completed no earlier than the 15th day, or generally not later than the 45th day, following the date of the last required publication.

(6) The state banking 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 form for applying for a certificate of authorization may be obtained from the 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."

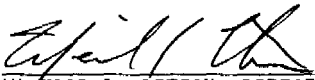
Auth: Sec. 32-1-202, 32-1-203, MCA; IMP, Sec. 32-1-203, 32-1-372, MCA

REASON: This rule is being proposed to implement House Bill 151, which is Chapter 322, Laws of 1989. This enactment amended sections 32-1-202, 32-1-203 and 32-1-372, MCA.

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 Financial Division, 1520 East Sixth Avenue, Lee Metcalf Building, Room 50, Helena, Montana 59620, no later than October 26, 1989.

4. Annie M. Bartos, Helena, Montana, 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 18, 1989.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules I through VI regarding Paddlefish Egg Donations, Marketing and Sale	))))	NOTICE OF PUBLIC HEARING

TO: All interested persons:

1. On October 23, 1989, at 7:00 o'clock p.m., a public hearing will be held in the Community Room of the Dawson County Courthouse, 207 West Bell at Glendive, Montana to consider the adoption of these rules.

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

3. The rules as proposed to be adopted provide as follows:

RULE I DEFINITIONS (1) For purposes of this section, the following definitions apply:

(a) "Roe" means paddlefish eggs removed from the fish prior to processing;

(b) "Caviar" means roe washed, screened, cooled and salted;

(c) "Processing" means the washing, screening, cooling and salting or roe.

AUTH: Section 87-4-601, MCA; Ch. 409, L. 1989
IMP: Section 87-4-601, MCA

RULE II SELECTION OF CORPORATION AND NOTICING (1) The fish and game commission will select a nonprofit corporation duly incorporated and certified under the Montana Nonprofit Corporation Act to receive paddlefish roe donations and process and market the roe as caviar. A purpose of the nonprofit corporation as stated in its articles of incorporation shall be to generate funds for use by the department for benefitting the paddlefish fishery and to fund historical, cultural, recreational and fish and wildlife projects as selected by the advisory committee appointed by the commission pursuant to section 87-4-601(3)(D)(II), MCA. The selection will be made from proposals submitted by qualified organizations according to criteria set forth in this section.

(2) A public notice of the intent and details of the paddlefish roe donation and marketing program will be issued in all local, daily and weekly newspapers within the lower Yellowstone river drainage in Montana and in the major statewide newspapers. The notice will include a request for proposals from qualified organizations, proposal due dates, selection process time frames and a list of minimum eligibility criteria as well as other criteria that should be included in proposals.

AUTH: Section 87-4-601, MCA; Ch. 409, L. 1989
IMP: Section 87-4-601, MCA

RULE III CRITERIA IN SELECTING NONPROFIT CORPORATION (1) The commission shall consider the following criteria in selecting a corporation for conducting paddlefish roe donation and marketing program:

(a) overall feasibility of the corporation's proposal;

(b) estimated resource and public benefits;

(c) capability to operate the paddlefish roe donation program including:

(i) ability to maximize resource utilization without encouraging over harvest;

(ii) knowledge of collecting, processing and marketing the roe;

(iii) ability to successfully operate during the paddlefish season and process up to 300 fish per day;

(iv) ability to distinguish legally captured fish;

(d) corporation's ideas for use of the funds generated from the sale of the paddlefish roe;

(e) impacts of the proposed operations on the resource;

(f) burden of the proposed operations on department administration and enforcement;

(g) benefits of the proposed operations to the local community;

(h) compliance with all local and state food processing and health laws; and

(i) feasibility of the corporation's plan for marketing and processing.

AUTH: Section 87-4-601, MCA; Ch. 409, L. 1989
IMP: Section 87-4-601, MCA

RULE IV OPERATING PLAN (1) A general operating plan shall be submitted with the proposals. The plan should include the following:

(a) fish and egg handling and record keeping procedures;

(b) precautions to be taken to avoid wasting the resource;

(c) the mechanism for securing eggs from only freshly caught legally taken fish;

(d) a plan for processing and marketing the roe;

(e) use and selection of subcontractors if subcontractors are to be used;

(f) details on how the corporation intends to encourage donations of roe from the paddlefishermen; and

(g) proposed times and sites and other conditions under which eggs will be collected.

AUTH: Section 87-4-601, MCA; Ch. 409, L. 1989
IMP: Section 87-4-601, MCA

RULE V RECORDS (1) The selected corporation shall be required to keep the following records which will be available for department inspection upon request.

(a) the daily total number of fish from which roe are taken;

(b) recording tag numbers and angler's names from legally taken fish;

(c) the daily total weight of roe collected;

(d) the daily total weight of roe processed;
(e) the total value of roe or caviar sold; and
(f) the daily total expenses incurred including operation costs and salaries.
AUTH: Section 87-4-601, MCA; Ch. 409, L. 1989
IMP: Section 87-4-601, MCA

RULE VI PERMIT (1) The organization submitting the best proposal as determined by the commission will be issued a permit from the department to operate the paddlefish roe donation program. The permit will be conditioned to require operation as proposed and as required by these rules. The permit shall terminate June 30, 1993. If the statutory authority is extended to allow for continuation of the program, the department may extend the permit or initiate the selection process again.
(2) The commission may revoke the permit if it determines that:
(a) permit conditions have been violated;
(b) corporate assets are being misapplied or wasted; or
(c) that the corporation is unable to carryout its purposes.
AUTH: Section 87-4-601, MCA; Ch. 409, L. 1989
IMP: Section 87-4-601, MCA

4. Section 87-4-601, MCA as amended by Chapter 409, L.1989 directs the Department to develop rules for the paddlefish egg donation, marketing and sales program.

5. Interested parties may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Fred Robinson, Staff Attorney, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than October 31, 1989.

6. Fred Robinson, Staff Attorney, has been designated to preside over and conduct the hearing.

7. The authority of the agency to adopt the proposed rule is based on section 87-4-601, MCA, and the rule implements section 87-4-601, MCA.

K. L. Cool, Director
Montana Department of
Fish, Wildlife and Parks

Certified to the Secretary of State September 18, 1989.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption) of Rules for Upland Game Bird) Habitat Enhancement Program) NOTICE OF PUBLIC HEARING

TO: All interested persons

1. On the following dates, at the locations given, the Department of Fish, Wildlife and Parks will hold public hearings to consider the adoption of proposed new rules I through VI.

(1) Monday, October 23, 1989 at 7:00 o'clock p.m., at Department Headquarters, 3201 Spurgin Road, Missoula, Montana.

(2) Tuesday, October 24, 1989, 7:00 o'clock p.m., at the new Department Headquarters, 2300 Lake Elmo Drive, Billings, Montana.

(3) Wednesday, October 25, 1989, at 7:00 o'clock p.m., at Department Headquarters, 4600 Giant Springs Road, Great Falls, Montana.

(4) Thursday, October 26, 1989, at 7:00 o'clock p.m., at Glasgow Elk's Lodge, 309 2nd Avenue S., Glasgow, Montana.

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

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

RULE I PROJECT APPLICATIONS (1) The department may authorize organizations or individuals to participate in the Upland Game Bird Habitat Enhancement Program following submission of a written application describing the proposed project on forms provided by the department and a review of that application. All applications must include and/or be accompanied by the following information:

(a) name of the organization or individual applying;

(b) name of the person in charge of the organization's proposed upland game bird habitat enhancement project;

(c) the applicant's current mailing address;

(d) the applicant's current telephone number;

(e) the legal description of the project site;

(f) clear evidence of either ownership of the project site or landowner's permission if the project site is not owned by the applicant;

(g) a habitat map specifying percentages of nesting cover, winter cover and feeding areas or a (Soil Conservation Service) Conservation Plan covering the land on which the project would occur;

(h) the number of acres included in the proposed enhancement project;

(i) description of the proposed enhancement project including: agricultural activities, grazing management, tree and shrub plantings, seed mixtures and fencing; and

(j) any other information deemed relevant by the department and requested on the project application form.

AUTH: 87-1-249, MCA IMP: 87-1-248

RULE II PROJECT REQUIREMENTS (1) Projects must meet the following requirements before the department may authorize participation in the program:

(a) projects must be designed to establish or improve nesting cover, winter cover and feeding areas;

(b) projects must be designed to provide at least 10% winter cover, 10% suitable nesting cover and 25% food sources;

(c) projects must be located within a minimum of 100 contiguous acres under the ownership of the applicant or the person authorizing the project. Projects within smaller parcels will be considered on a case-by-case basis and may be authorized if the acreage involved is critical habitat or if adjacent lands can be combined to increase the effective area of habitat improvements;

(d) all projects must be implemented through lease, conservation easement or by department cost-sharing with the landowner, project sponsor, or a federal cost share program;

(e) projects which require the department to purchase fee title to lands will not be considered; and

(f) all projects on private lands must be open to public hunting for the duration of the project. Reasonable use limitations may be allowed; however, user fees may not be changed. Projects located within a leased or commercial hunting operation will not be considered.

AUTH: 87-1-249, MCA IMP: 87-1-248

RULE III PROJECT REVIEW AND APPROVAL (1) Enhancement activities will be reviewed and prioritized based on current species distribution and the potential to increase numbers of upland game birds.

(2) Priority will be given to projects on private lands; however, activities on public land will be considered for cooperative cost-share projects.

(3) Approved projects will be funded on a first come, first served basis.

(4) Projects may not interfere with or duplicate other state or federal assistance programs. However, projects specific to the matching portion of other state or federal assistance programs will be considered.

AUTH: 87-1-249, MCA IMP: 87-1-248

RULE IV REPORTING REQUIREMENTS (1) Any person or organization authorized to implement an upland game bird habitat enhancement project must, within 60 days of completion of all authorized activities, file a written report with the department on forms provided by the department. All reports must include the following:

(a) The number of acres enhanced;

(b) Specific enhancement activities accomplished;

(c) Species of plantings used;

(d) Costs by activity;

(e) Any other information deemed relevant by the department and requested on the project report form; and

(f) Verification of on-site inspection by Department personnel.

(2) The department will assist with preparation of reports.

AUTH: 87-1-249, MCA IMP: 87-1-248

RULE V PAYMENT BY DEPARTMENT (1) The department will compensate individuals or organizations by cost sharing the actual costs incurred for completed upland game bird habitat enhancement projects as set forth on a contract. The department's share, not to exceed 100%, will be negotiated on an individual project basis for cost-sharing projects. On cost-share projects, the department will not pay for federal costs received from such programs. The department will reimburse the landowner for up to 100% of his share of the Agricultural Stabilization and Conservation Service (ASCS) cost-share programs.

(2) The department may compensate individuals or organizations for upland game bird habitat enhancement activities accomplished through a lease, up to the fair market value of the lease. The organization or individual will be compensated only if the organization or individual holds title to the specified property.

(3) The department may compensate individuals or organizations for upland game bird habitat enhancement accomplished through a conservation easement, up to the fair market value of the easement. The organization or individual will be compensated only if the organization or individual holds title to the specified property.

(4) For qualified upland game bird habitat enhancement projects sponsored by individuals or organizations, the department may reimburse the sponsor for up to three-fourths of the cost of the project.

AUTH: 87-1-249, MCA IMP: 87-1-248

RULE VI EFFECT OF RULE VIOLATIONS (1) Any person or organization found in violation of any of the upland game bird enhancement rules will be disqualified from further participation in the program and will be required to reimburse the department for compensation received.

AUTH: 87-1-249, MCA IMP: 87-1-248

4. Section 87-1-249, MCA as amended by Chapter 232, L.1989 directs the Department to develop rules for the administration of the upland game bird enhancement program.

5. Interested persons may present their data, views or arguments either orally or in writing, at the hearings. Written data, views or arguments may also be submitted to Don Childress, Administrator, Wildlife Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than October 31, 1989.

6. Bob Martinka, Don Childress and Eileen Shore have been designated to preside over and conduct the hearings.

R. L. Cool, Director
Montana Department of Fish,
Wildlife, and Parks

Certified to the Secretary of State September 18, 1989.

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

In the matter of the repeal of rule 16.10.606 concerning the temporary licensing of tourist homes during the Montana Centennial Cattle Drive	NOTICE OF PROPOSED REPEAL OF RULE 16.10.606 NO PUBLIC HEARING CONTEMPLATED (Food and Consumer Safety)

To: All Interested Persons

1. On October 28, 1989, the department proposes to repeal rule 16.10.606, a temporary rule concerning the licensing of tourist homes during the Montana Centennial Cattle Drive.

2. The repeal of rule 16.10.606 is necessary because the rule is temporary and applies to a one-time event, the Montana Centennial Cattle Drive, which occurred on September 4-9, 1989.

3. The rule proposed to be repealed can be found on pages 720-721 of the Montana Administrative Register.

4. If persons directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 27, 1989.

5. Interested persons may submit their written data, views, or arguments concerning the proposed repeal to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 27, 1989.

6. The authority of the department to repeal 16.20.606 is found at 50-51-103, MCA.

DONALD E. PIZZINI, Director

Certified to the Secretary of State September 18, 1989.

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

In the matter of the amendment of the Montana Pollutant Discharge Elimination System rules, repealing sections 16.20.901 through 16.20.919 and adopting new rules I through LIII	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL - 16.20.901 THROUGH 16.20.919 AND ADOPTION OF NEW RULES I THROUGH.LIII MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM. (Water Quality)

To: All Interested Persons

1. On November 17, 1989 at 9:30 a.m. the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The proposed changes will repeal present rules 16.20.901 through 16.20.919 which are found on pages 16-983 through 16-1001 of the Administrative Rules of Montana. The proposed rules I through LIII will update the Montana Pollutant Discharge Elimination System rules to conform with federal law and regulations.

3. The rules proposed to be adopted provide as follows:

RULE I PURPOSE AND SCOPE (1) The purpose of this subchapter is to establish effluent limitations, treatment standards, and other requirements for point sources discharging wastes into state waters. These requirements, together with the rules in subchapters 13 and 14, are adopted to discharge the responsibilities of the board and department under Title 75, chapter 5, parts 3 & 4, Montana Code Annotated, the Montana Water Quality Act, to adopt effluent standards and treatment requirements and to require compliance with such standards in permits issued to point sources discharging into state waters. These requirements are adopted in a manner the National Pollutant Discharge Elimination System (NPDES) established and administered for the EPA under the federal Clean Water Act.
AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE II DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Board" means the Montana board of health and environmental sciences established by section 2-15-2104, MCA.

(2) "Department" means the Montana department of health and environmental sciences established by section 2-15-2101, MCA.

(3) "EPA" means the United States environmental protection agency.

(4) "Federal Clean Water Act" means the federal legislation at 33 U.S.C. 1251, et seq.

(5) "MPDES" means the Montana pollutant discharge elimination system developed by the board and department of health

and environmental sciences for issuing permits for the discharge of pollutants from point sources into state waters.
AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE III TOXIC POLLUTANT EFFLUENT STANDARDS (1) The board hereby adopts and incorporates herein by reference 40 CFR Part 129 which is a series of federal agency rules setting forth standards and prohibitions applicable to owners and operators of specified point source dischargers discharging into state waters. Copies of 40 CFR Part 129 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(2) The toxic pollutant effluent standards and prohibitions incorporated and adopted herein may be incorporated in any MPDES permit, modification, or renewal thereof issued in accordance with ARM Title 16, chapter 20, subchapters 13 or 14.
AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE IV EFFLUENT LIMITATIONS AND STANDARDS OF PERFORMANCE (1) The board hereby adopts and incorporates herein by reference 40 CFR Subpart N (except 40 CFR Part 403), which is a series of federal agency rules setting forth effluent limitations for existing point source dischargers and standards of performance for new point source dischargers discharging into state waters. Copies of 40 CFR Subpart N (except 40 CFR Part 403) may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(2) The effluent limitations and standards of performance adopted and incorporated herein may be incorporated in any MPDES permit, modification, or renewal thereof issued in accordance with ARM Title 16, chapter 20, subchapters 13 or 14.

(3) 40 CFR Part 403, which is excluded from this incorporation by reference, sets forth general pretreatment requirements for new and existing sources of pollution. Montana pretreatment requirements appear in ARM Title 16, chapter 20, subchapter 14.
AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE V HAZARDOUS SUBSTANCES (1) The board hereby adopts and incorporates herein by reference 40 CFR Part 116, which is a series of federal agency rules setting forth U.S. EPA designations of hazardous substances under section 311(b)(2)(A) of the federal Clean Water Act. Copies of 40 CFR Part 116 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(2) The hazardous substance designations incorporated and adopted herein may be applicable to and incorporated in any MPDES permit, modification, or renewal thereof issued in accordance with ARM Title 16, chapter 20, subchapters 13 or 14.
AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE VI CRITERIA AND STANDARDS FOR MPDES (1) The board hereby adopts and incorporates herein by reference 40 CFR Part 125, which is a series of federal agency rules setting forth criteria and standards for the imposition of technology-based treatment requirements in MPDES permits. Copies of 40 CFR Part 125 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(2) The criteria and standards incorporated and adopted herein may be incorporated in any MPDES permit, modification, or renewal thereof issued in accordance with ARM Title 16, chapter 20, subchapters 13 or 14.

AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE VII SECONDARY TREATMENT (1) The board hereby adopts and incorporates by reference herein 40 CFR Part 133 which is a series of federal agency rules setting forth minimum treatment requirements for secondary treatment or the equivalent for publicly owned treatment works (POTW's) and for certain industrial categories. Copies of 40 CFR Part 133 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(2) The minimum treatment requirements set forth in 40 CFR Part 133 may be incorporated into a wastewater discharge permit for a publicly owned treatment works.

AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE VIII PURPOSE AND SCOPE (1) The purpose of this subchapter, taken together with subchapter 14, is to establish and implement one common system for issuing permits for point sources discharging pollutants into state waters, and is intended to allow the board and department to administer a pollutant discharge permit system which is compatible with the National Pollutant Discharge Elimination System as established by the U. S. Environmental Protection Agency pursuant to section 402 of the federal Clean Water Act, 33 U.S.C. 1251, et seq.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE IX CONFLICTING PROVISIONS; SEVERABILITY (1) The provisions of the MPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

(2) In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining MPDES rules shall not be affected or diminished thereby.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE X INCORPORATIONS BY REFERENCE (1) In accordance with the federal Clean Water Act, this subchapter of Title 16, chapter 20, establishes a permit system (MPDES) which is essen-

tially the equivalent of the federal permit system (NPDES) administered by the EPA.

(2) In view of the federal Clean Water Act's requirement of equivalence with the federal permit system, and in order to simplify the rulemaking process and make the rules less cumbersome, the department has relied heavily upon incorporation and adoption by reference of federal requirements as set forth in Title 40 of the Code of Federal Regulations (CFR) and in the federal Clean Water Act, 33 U.S.C. 1251, et seq.

(3) Where the department has adopted a federal regulation or statute by reference, the following shall apply:

(a) References in the federal regulations to "Administrator", "Regional Administrator", or "U.S. Environmental Protection Agency", or the like, should be read to mean "department".

(b) Where the department incorporates by reference a subpart of a federal regulation, both the subpart and its constituent sections and subsections are also incorporated by reference.

(4) All of the incorporations by reference of federal agency regulations listed in the table in (7) below shall refer to federal agency regulations as they have been codified in the July 1, 1986, edition of Title 40 of the Code of Federal Regulations (CFR).

(5) For persons applying for an MPDES permit, the department will furnish a full text of all rules in this subchapter, including all tables and appendices.

(6) All material which is incorporated by reference may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(7) The list of incorporations by reference follows:

ARM 16.20....	33 CFR . . .	Description of Regulation
1305	153.101 et seq.	Control of pollution by oil, and hazardous substances, discharge removal.

ARM 16.20....	40 CFR . . .	Description of Regulation
1305	Part 300	The National Oil and Hazardous Substances Pollution Contingency Plan.
1310	125.102	Requirements for best management practices for dischargers who use, manufacture, store, handle, or discharge any hazardous or toxic pollutant.

1310	Part 136	Guidelines establishing test procedures for the analysis of pollutants.
1310	Appendix A to Part 122	List of primary industrial categories.
1310	Tables I, II, and III of Appendix D to Part 122	List of, respectively, testing requirements for organic toxic pollutants by industry category for existing dischargers; organic toxic pollutants in each of 4 fractions in analysis by gas chromatography/mass spectroscopy (GC/MS); and other toxic pollutants (metals and cyanide) and total phenols.
1310	Tables IV and V of Appendix D to Part 122	List of, respectively, conventional and nonconventional pollutants; and toxic pollutants and hazardous substances required to be identified by existing dischargers if expected to be present.
1310	Part 125	Criteria and standards for the NPDES, specifically including criteria for extending compliance dates for facilities installing innovative technology (Subpart C), criteria for determining the availability of a variance based on fundamentally different factors (FDF) (Subpart D), and criteria for extending compliance dates for achieving effluent limitations.
1312	Appendix B of Part 122	Criteria for determining whether a facility or operation merits classification as a concentrated animal feeding operation.
1313	Appendix C of Part 122	Criteria for determining whether a facility or operation merits classification as a concentrated aquatic animal production facility.

1316	Part 125.3	Technology-based treatment requirements for point source dischargers.
1317	122.28	Criteria for selecting categories of point sources appropriate for general permitting.
1317	124.10(d)(1)	Minimum contents of public notices.
1317	122.26(c)(2)	Criteria for determining when a point source is considered a "significant contributor of pollution".
1318	Part 136	Guidelines establishing test procedures for the analysis of pollutants.
1318	122.44(g)	Requirement of 24-hour notice of any violation of maximum daily discharge limits.
1319	122.44(f)	"Notification levels" for discharges of certain pollutants that may be inserted in a permit upon a petition from the permittee or upon the initiative of the department.
1320	122.44	Additional permit conditions which may be applicable to a point source. Such conditions include technology-based and water-quality-based standards, toxic and pretreatment standards, reopener clause, reporting and monitoring requirements, permit duration and reissuance, test methods, best management practices, conditions concerning sewage sludge, privately owned treatment works, and conditions imposed in EPA grants to POTW's.
1320	Chapter 1, Subchapter N	Effluent limitations and standards and new source performance standards.

1321	122.44(j)(2)	Requirement for the submittal by a publicly owned treatment work (POTW) of a local pretreatment program.
1321	122.45(b)(2)(ii)(A)	Availability of alternate permit limitations, standards, or prohibitions based on varying production levels.
1321	Part 136	Guidelines for testing procedures for the analysis of pollutants.
1321	125.3	Technology-based treatment requirements for point source dischargers.
1321	Chapter 1, Subchapter N	Effluent guidelines and standards for point source dischargers.
1321	122.44(i)	Monitoring requirements for point source dischargers.
1325	Part 125, Subpart D	Criteria and standards for determining eligibility for a variance from effluent limitations based on fundamentally different factors (FDF).
1327	Part 133	Requirements for the level of effluent quality available through the application of secondary (or equivalent) treatment.
1327	125.3(c)	Methods of imposing technology-based treatment requirements in permits.
1343	124.64	Procedures for appealing variance determinations.

ARM 16.20....	U.S. Code (U.S.C.)	Description of Fed. Statute
1317	Sec. 1132	Wilderness area designations.
1317	Sec. 1274	Wild and scenic river designations.

ARM 16.20....	Clean Water Act	Description of Fed. Statute
1322	Sec. 301(b)(2)(A), (C), (E), and (F)	Deadlines for achieving effluent limitations and treatment of toxic pollutants.
1323	Sec. 301(b)(2)(A), (C), (E), and (F)	Deadlines for achieving effluent limitations and treatment of toxic pollutants.
1327	Sec. 301(c), (g), (i), and (k)	Provisions allowing for modifying or extending dates for achieving effluent limitations.
1327	Sec. 316(a)	Provision allowing a variance from an applicable effluent limitation based on fundamentally different factors (FDF).
1327	Sec. 402(b)(3)	Requirement that states administering the NPDES program notify other states whose waters may be affected by a proposed discharge.
1343	Sec. 301(c), (i), and (k); and Sec. 316(a)	Provisions for extension of compliance dates with effluent limitations based on, respectively, the economic capability of the permit applicant, delay in completion of POTW's, the use of innovative technology, and specific limits for thermal components of a discharge.
1343	Sec. 301(g)	Provisions for modifying effluent limitations for ammonia, chlorine, color, iron and total phenols.
1343	Sec. 302(b)(2)	Provision for modifying effluent limitations based on a "no reasonable relationship to costs" demonstration.

AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE XI DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those

definitions contained in section 75-5-103, MCA.

(1) "Act" means the Montana Water Quality Act, Title 75, chapter 5, MCA.

(2) "Administrator" means the administrator of the United States environmental protection agency.

(3)(a) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(ii) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two or more animal feeding operations under common ownership are considered, for the purposes of these rules, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(4) "Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the federal Clean Water Act, including "effluent limitations", water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices", and pretreatment standards.

(5) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants or animals.

(6) "Aquatic animal production facility" means a hatchery, fish farm, or similar operation.

(7) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(8) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(9) "Best management practices" ("BMP's") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. BMP's also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(10) "Board" means the Montana board of health and environmental sciences established by section 2-15-2104, MCA.

(11) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(12) "Continuous discharge" means a discharge which oc-

curs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(13) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(14) "Department" means the Montana department of health and environmental sciences established by section 2-15-2101, MCA.

(15) "Direct discharge" means the discharge of a pollutant.

(16) "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant or combination of pollutants to state waters from any point source. This definition includes additions of pollutants into water of the state from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works. This term does not include an addition of pollutants by any "indirect discharger".

(17) "Discharge Monitoring Report" ("DMR") means the department uniform form for the reporting of self-monitoring results by permittees.

(18) "Draft permit" means a document prepared under RULE XXXVII indicating the department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in RULE XXXVIII, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in RULE XXXVI is not a draft permit. A proposed permit is not a draft permit.

(19) "Effluent limitations guidelines" means a regulation published by the administrator under 40 CFR chapter 1, subchapter N, pursuant to section 304(b) of the federal Clean Water Act to adopt or revise effluent limitations.

(20) "Effluent standards" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into state waters.

(21) "EPA" means the United States environmental protection agency.

(22) "Existing source" means any source which is not a new source or a new discharger.

(23) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such

value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(24) "Facility or activity" means any MPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the MPDES program.

(25) "Federal Clean Water Act" means the federal legislation at 33 U.S.C. 1251, et seq.

(26) "General permit" means an MPDES permit issued under RULE XXIV authorizing a category of discharges under the Act within a geographical area.

(27) "Hazardous substance" means any substance designated under 40 CFR Part 116 pursuant to section 311 of the federal Clean Water Act.

(28) "Indirect discharger" means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

(29) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or round wood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

(30) "Major facility" means any MPDES facility or activity classified as such by the department in conjunction with the Regional Administrator.

(31) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(32) "Montana Pollutant Discharge Elimination System" (MPDES) means the system developed by the board and department for issuing permits for the discharge of pollutants from point sources into state waters. The MPDES is specifically designed to be compatible with the federal NPDES program established and administered by the EPA.

(33) "MPDES form" means any issued MPDES permit and any uniform form developed for use in the MPDES and prescribed in rules adopted by the board, including MPDES forms, MPDES permit applications, and MPDES reporting forms.

(34) "Municipality" means a city, town, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over discharge of pollutants or a designated and approved management agency under section 1288 of the federal Clean Water Act.

(35) "National Pollutant Discharge Elimination System" (NPDES) means national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the federal Clean Water Act. The term includes "approved program".

(36) "New discharger" means any building structure, facility, or installation:

(a) from which there is or may be a discharge of pollu-

tants;

(b) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(c) which is not a new source; and

(d) which has never received a finally effective MPDES permit for discharges at that site. This definition includes an indirect discharger which commences discharging into state waters after August 13, 1979.

(37) "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of the federal Clean Water Act which are applicable to such source;

(b) After proposal of standards of performance in accordance with section 306 of the federal Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal; or

(c) After the publication of proposed pretreatment standards under section 307(c) of the federal Clean Water Act which will be applicable to such source if such standards are thereafter promulgated with that section, provided that:

(i) The building, structure, facility or installation is constructed at a site at which no other source is located;

(ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(d) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of sections (c)(ii) or (c)(iii) of this rule but otherwise alters, replaces, or adds to existing process or production equipment.

(e) Construction of a new source as defined under this section has commenced if the owner or operator has:

(i) begun, or caused to begin as part of a continuous on-site construction program;

(A) any placement, assembly, or installation of facilities or equipment; or

(B) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be

used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this section.

(38) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source.

(39) "Permit" means an authorization or license issued by EPA or an "approved State" to implement the requirements of this rule and 40 CFR Parts 123 and 124. "Permit" includes an NPDES "general permit" (RULE XXIV). Permit does not include any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit".

(40) "Person" means any individual, partnership, firm, association, state, interstate body, municipality, public or private corporation, subdivision, or agency of the state, trust, estate, federal agency, or any other legal entity; or an agent or employee thereof.

(41) "Point source" means any discernible, confined, or discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

(42) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural wastes discharged into water. The terms "sewage," "industrial waste," and "other wastes" as defined in section 75-5-103, MCA, are interpreted as having the same meaning as pollutant.

(43) "Pretreatment standards" means the standards promulgated by the EPA and set forth in 40 CFR Part 403 and 40 CFR chapter 1, subchapter N.

(44) "Primary industry category" means any industry category listed in Appendix A of 40 CFR Part 122.

(45) "Privately owned treatment works" means any device or system which is:

(a) used to treat wastes from any facility whose operator is not the operator of the treatment works; and

(b) not a publicly owned treatment works.

(46) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(47) "Proposed permit" means an MPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing) which is sent to the department for review before final issuance by the department. A proposed permit is not a draft permit.

(48) "Publicly owned treatment works" (POTW) means any

device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(49) "Recommencing discharger" means a source which recommences discharge after terminating operations.

(50) "Regional administrator" means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.

(51) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(52) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act and requirements thereunder.

(53) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(54) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

(55) "Sewage system" means any device for collecting or conducting sewage, industrial wastes or other wastes to an ultimate disposal point.

(56) "Silvicultural point source" means any discernible, confined and discrete conveyance related to (a) rock crushing and gravel washing (defined in (51) above), or (b) log sorting or log storage facilities (defined in (29) above) which is operated in connection with silvicultural activities and from which pollutants are discharged into state waters. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a section 404 permit under the federal Clean Water Act.

(57) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(58) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pol-

lutants.

(59) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground. This subchapter does not apply to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters.

(60) "Storm water point source" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which:

(a) is located at an urbanized area as designated by the Bureau of the Census according to the criteria in 39 Federal Register 15202 (May 1, 1974); or

(b) discharges from lands or facilities used for industrial or commercial activities; or

(c) is designated under RULE XXI(4). Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain MPDES permits, but are not storm water point sources.

(61) "Storm water discharge, Group I" means any storm water point source which is:

(a) subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards;

(b) designated under RULE XXI(4); or

(c) located at an industrial plant or in plant associated areas. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, and material or products loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots.

(62) "Storm water discharge, Group II" means any storm water point source not included in (61) above. (See RULE XVII (7)(j)(i) for exemption from certain application requirements.)

(63) "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

(64) "Toxic pollutant" means any pollutant listed as toxic pursuant to section 1317(a)(1) of the federal Clean Water Act and set forth in 40 CFR Part 129.

(65) "Treatment works" means any works installed for treating or holding sewage, industrial wastes, or other wastes.

(66) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XII EXCLUSIONS The following discharges do not re-

quire MPDES permits:

(1) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of the federal Clean Water Act.

(2) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to state waters are eliminated (see also RULE XXX (2)). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

(3) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 et seq. (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR Parts 153-157 (Pollution by Oil and Hazardous Substances).

(4) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in RULE XI(3), discharges from concentrated aquatic animal production facilities as defined in RULE XI(7), discharges to aquaculture projects as defined in RULE XI(6), and discharges from silvicultural point sources as defined in RULE XI(58).

(5) Return flows from irrigated agriculture.

(6) Discharges into a privately owned treatment works, except as the department may otherwise require under RULE XXVII.

(7) The board hereby adopts and incorporates herein by reference 40 CFR Part 1510 and 33 CFR 153.10 which are federal agency rules setting forth requirements concerning releases of hazardous wastes or petroleum products. See RULE X for complete information about all materials incorporated by reference.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XIII PROHIBITIONS No permit may be issued:

(1) when the conditions of the permit do not provide for compliance with the applicable requirements of the Act, or rules adopted under the Act;

(2) when the applicant is required to obtain a state or other appropriate certification under section 401 of the federal Clean Water Act and that certification has not been obtained or waived;

(3) by the department where the Regional Administrator has objected to issuance of the permit under 40 CFR 123.44;

(4) when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;

(5) for the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) for any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the federal Clean Water Act;

(7) to a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by RULE I and RULE VI, and for which the state or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, shall demonstrate, before the close of the public comment period, that:

(a) there are sufficient remaining pollutant load allocations to allow for the discharge; and

(b) the existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XIV EFFECT OF PERMIT (1) Except for any toxic effluent standards and prohibitions applicable under RULE III, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with all applicable effluent standards. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in RULE XXXIV and RULE XXXVI.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XV CONTINUATION OF EXPIRING PERMITS (1) The conditions of an expired permit continue in force until the effective date of a new permit if:

(a) the permittee has submitted a timely application under RULE XVI, which is a complete application for a new permit;

(b) the department, through no fault of the permittee, does not issue a new permit with an effective date under RULE XLVII on or before the expiration date of the previous permit.

(2) Permits continued under this rule remain fully effective and enforceable until the effective date of a new permit.

(3) When the permittee is not in compliance with the conditions of the expiring or expired permit the department may choose to do any or all of the following:

(a) initiate enforcement action based upon the permit which has been continued;

(b) issue a notice of intent to deny the new permit under

RULE XXXIX(2);

(c) issue a new permit under RULE XXXIX with appropriate conditions; or

(d) take other actions authorized by the MPDES rules.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XVI CONFIDENTIALITY OF INFORMATION (1) In accordance with section 75-5-105, MCA, any information concerning sources of pollution that is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use, provided that trade secrets may be maintained or be confidential if so determined by a court of competent jurisdiction.

(2) Claims of confidentiality for the following information must be denied:

(a) the name and address of any permit applicant or permittee; and

(b) permit applications, permits, and effluent data.

(3) Subject to section (1) above, information required by MPDES application forms provided by the department under RULE XVII may not be claimed confidential, including information submitted on the forms themselves and any attachments used to supply information required by the forms.

AUTH: 75-5-201, 75-5-105, MCA; IMP: 75-5-401, MCA

RULE XVII APPLICATION FOR A PERMIT (1) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under RULE XXIV, excluded under RULE XII, or a user of a privately owned treatment works unless the department requires otherwise under RULE XXVII, shall submit a complete application (which must include a BMP program if necessary under 40 CFR 125.102) to the department in accordance with this rule and RULES XXXVII through RULE XLIX.

(2) When a facility or activity is owned by one person, it is the operator's duty to obtain a permit.

(3) Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the department. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180-day requirement to avoid delay. See also section (11) of this rule requiring time frames where a variance may be available.

(4)(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the department. (The department may not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires except that:

(i) The department may grant permission to submit an

application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.

(5) The department may not issue a permit before receiving a complete application for a permit except for MPDES general permits. An application for a permit is complete when the department receives an application form and any supplemental information which are completed to the department's satisfaction. The completeness of any application for a permit must be judged independently of the status of any other permit application or permit for the same facility or activity.

(6) All applicants for MPDES permits shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in sections (7) through (12) of this rule):

(a) The activities conducted by the applicant which require it to obtain an MPDES permit;

(b) Name, mailing address, and location of the facility for which the application is submitted;

(c) Up to four standard industrial category (SIC) codes which best reflect the principal products or services provided by the facility;

(d) The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

(e) Whether the facility is located on Indian lands;

(f) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) hazardous waste management program under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, et seq.) (RCRA);

(ii) underground injection control (UIC) program under the federal Safe Drinking Water Act (SDWA);

(iii) MPDES program under the federal Clean Water Act;

(iv) prevention of significant deterioration (PSD) program under the Montana Clean Air Act;

(v) nonattainment program under the Montana Clean Air Act;

(vi) national emission standards for hazardous pollutants (NESHAPS) preconstruction approval under the Montana Clean Air Act;

(vii) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(viii) dredge or fill permits under section 404 of the federal Clean Water Act; and

(ix) other relevant state or federal environmental permits;

(g) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water

wells listed in public records or otherwise known to the applicant in the map area (group II storm water discharges, as defined in RULE XI(64), are exempt from the requirements of this subsection);

(h) A brief description of the nature of the business; and

(i) For Group II storm water dischargers (as defined in RULE XI(64) only, a brief narrative description of:

(i) the drainage area, including an estimate of the size and nature of the area;

(ii) the receiving water; and

(iii) any treatment applied to the discharge.

(7) Existing manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits shall provide the following information to the department, using application forms provided by the department:

(a) The latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

(b) A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subsection (c) below. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures;

(c) A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, "dye-making reactor," "distillation tower"). For a privately owned treatment works, this information must include the identity of each user of the treatment works;

(d) If any of the discharges described in subsection (c) above are intermittent or seasonal, a description of the frequency, duration, and flow rate of each discharge occurrence (except for stormwater runoff, spillage, or leaks);

(e) If an effluent guideline adopted under RULE IV applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by RULE XXVIII;

(f) If the applicant is subject to any present require-

ments or compliance schedules for construction, upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates;

(g) Information on the discharge of pollutants specified in this subsection. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the department may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in subsections (7)(g)(iii)(A), (7)(g)(iii)(B), and (7)(g)(iv) of this rule that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours, and a minimum of 1 to 4 grab samples may be taken for storm water discharges depending on the duration of the discharge. One grab sample must be taken in the first hour (or less) of discharge with one additional grab sample taken in each succeeding hour of discharge up to a minimum of 4 grab samples for discharges lasting 4 or more hours. In addition, the department may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of 4 grab samples will be a representative sample of the effluent being discharged. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(i)(A) Every applicant must report quantitative data for every outfall for the following pollutants:

biochemical oxygen demand (BOD_5)
chemical oxygen demand
total organic carbon
total suspended solids
ammonia (as N)
temperature (both winter and summer)
pH

(B) The department may waive the reporting requirements for individual point sources or for a particular industry cate-

gory for one or more of the pollutants listed in the above subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(ii) Each applicant with processes in one or more primary industry category (see Appendix A to 40 CFR Part 122) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in Table I of Appendix D of 40 CFR Part 122 for the applicant's industrial category or categories unless the applicant qualifies as a small business under subsection (7)(h) of this rule. Table II of Appendix D of 40 CFR Part 122 lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(B) The pollutants listed in Table III of Appendix D of 40 CFR Part 122 (the toxic metals, cyanide, and total phenols);

(iii)(A) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix D of 40 CFR Part 122 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of Appendix D of 40 CFR Part 122 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subsection (7)(g)(ii) of this rule, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater, the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl 4,6-dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl 4,6-dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subsection (7)(h) of this rule is not required to analyze for pollutants

listed in Table II of Appendix D of 40 CFR Part 122 (the organic toxic pollutants).

(iv) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix D of 40 CFR Part 122 (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(v) Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(B) knows or has reason to believe that TCDD is or may be present in an effluent.

(h) An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subsection (7)(g)(ii)(A) or (7)(g)(iii)(A) of this rule to submit quantitative data for the pollutants listed in Table II of Appendix D of 40 CFR Part 122 (the organic toxic pollutants):

(i) for coal mines, a probable total annual production of less than 100,000 tons per year;

(ii) for all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

(i) A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The department may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the department has adequate information to issue the permit.

(j)(i) An applicant that qualifies as a Group II storm water discharger under RULE XI(64) and RULE XXI is exempt from the requirements of subsections (6)(g) and (7) of this rule, unless the department requests such information;

(ii) for the purpose of subsection (7)(c) of this rule, storm water point sources may estimate the average flow of their discharge and must indicate the rainfall event and the method of estimation that the estimate is based on;

(iii) the department may require additional information under subsection (7)(m) of this rule, and may request any Group II storm water dischargers to comply with section (7) of this rule.

(k) An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicant's dischar-

ges or on a receiving water in relation to a discharge.

(l) If a contract laboratory or consulting firm performed any of the analyses required by subsection (7)(g) of this rule, the identity of each laboratory or firm and the analyses performed.

(m) In addition to the information reported on the application form, applicants shall provide to the department, at its request, such other information as the department may reasonably require to assess the discharges of the facility and to determine whether to issue an MPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

(8) Except for stormwater discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department, using application forms provided by the department:

(a) outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

(b) date of expected commencement of discharge (for new dischargers);

(c) an identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water; an identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

(d)(i) Quantitative data for the pollutants or parameters listed below, unless testing is waived by the department. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(A) biochemical oxygen demand (BOD_5);

(B) total suspended solids (TSS);

(C) fecal coliform (if believed present or if sanitary waste is or will be discharged;

(D) total residual chlorine (if chlorine is used);

(E) oil and grease;

(F) chemical oxygen demand (COD) (if non-contact cooling water is or will be discharged);

(G) total organic carbon (TOC) (if non-contact cooling water is or will be discharged);
(H) ammonia (as N);
(I) discharge flow;
(J) pH; and
(K) temperature (winter and summer).

(ii) The department may waive the testing and reporting requirements for any of the pollutants or flow listed in (d)(i) above if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

(iii) If the applicant is a new discharger, he must complete forms provided by the department by providing quantitative data in accordance with (8)(d) above no later than 2 years after commencement of discharge. However, the applicant need not complete those portions of the forms requiring tests which he has already performed and reported under the discharge monitoring requirements of his MPDES permit.

(iv) The requirements of (i) and (iii) above, that an applicant must provide quantitative data or estimates of certain pollutants, do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of RULE XXVIII(9) are met.

(e) A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm-water runoff, leaks, or spills);

(f) A brief description of any system used or to be used;

(g) Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining "net" credits pursuant to RULE XXVIII(9); and

(h) The signature of the certifying official under RULE XVIII.

(9) New and existing concentrated animal feeding operations (defined in RULE XI(3)) and concentrated aquatic animal production facilities (defined in RULE XI(7)) shall provide the following information to the department, using the application form provided by the department:

(a) for concentrated animal feeding operations:

(i) the type and number of animals in open confinement and housed under roof;

(ii) the number of acres used for confinement feeding; and

(iii) the design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor;

(b) for concentrated aquatic animal production facilities:

(i) the maximum daily and average monthly flow from each outfall;

(ii) the number of ponds, raceways, and similar struc-

tures;

(iii) the name of the receiving water and the source of intake water;

(iv) for each species of aquatic animals, the total yearly and maximum harvestable weight; and

(v) the calendar month of maximum feeding and the total mass of food fed during that month.

(10) New manufacturing, commercial, mining, and silvicultural dischargers applying for MPDES permits (except for new discharges of stormwater runoff or facilities subject to the requirements of RULE XVII(10) shall provide the following information to the department, using application forms provided by the department:

(a) the latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

(b) the expected date of commencement of discharge;

(c)(i) description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

(ii) a line drawing of the water flow through the facility with a water balance as described in RULE XVII(9)(b);

(iii) if any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence (except for stormwater runoff, spillage, or leaks);

(d) if a new source performance standard promulgated under section 306 of the federal Clean Water Act or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by RULE XXVIII (2)(b) for each of the first 3 years. Alternative estimates may also be submitted if production is likely to vary;

(e) the requirements in subsections (8)(d)(i), (ii), and (iii) of this rule that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of RULE XXVIII(9) are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass;

(i) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The department may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

(A) biochemical oxygen demand (BOD);
(B) chemical oxygen demand (COD);
(C) total organic carbon (TOC);
(D) total suspended solids (TSS);
(E) flow;
(F) ammonia (as N);
(G) temperature (winter and summer); and
(H) pH.

(ii) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of Appendix D of 40 CFR Part 122 (certain conventional and nonconventional pollutants).

(iii) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(A) the pollutants listed in Table III of Appendix D of 40 CFR Part 122 (the toxic metals, in the discharge from any outfall: total cyanide and total phenols); and

(B) the organic toxic pollutants in Table II of Appendix D of 40 CFR Part 122 (except bis (chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(iv) The applicant is required to report that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(A) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(B) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(C) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(D) O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(E) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(F) hexachlorophene (HCP) (CAS #70-30-4).

(v) Each applicant must report any pollutants listed in Table V of Appendix D of 40 CFR Part 122 (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(vi) No later than 2 years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit forms prescribed by the department.

However, the applicant need not complete those portions of the forms requiring tests which he has already performed and reported under the discharge monitoring requirements of his MPDES permit.

(f) each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

(g) any optional information the permittee wishes to have considered; and

(h) the signature of the certifying official under RULE XVIII.

(i) for a request from best practicable control technology currently available (BPT), by the close of the public comment period under RULE XLI;

(ii) for a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(A) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations; or

(B) 180 days after the date on which an effluent limitation guideline is published in the federal register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

(iii) the request shall explain how the requirements of the applicable regulatory and/or statutory criteria have been met.

(11) A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified below:

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based;

(b) A request for a variance from the best available technology (BAT) requirements for federal Clean Water Act section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of the federal Clean Water Act because of the economic capability of the owner or operator, or pursuant to section 301(g) of the federal Clean Water Act because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

(i) submitting an initial request to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a federal Clean Water Act section 301(c) or section 301(g) modification or both. This request must have been filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(ii) submitting a completed request no later than the close of the public comment period under RULE XLI demonstrating that the requirements of RULE XLIV and the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under section 301(g) of the federal Clean Water Act shall be filed before the department must make a decision;

(iii) requests for variance from effluent limitations not based on effluent limitations guidelines need only comply with subsection (11)(b)(ii) of this rule and need not be preceded by an initial request under subsection (11)(b)(i) of this rule.

(c) An extension under federal Clean Water Act section 301(i)(2) of the statutory deadlines in section 301(b)(1)(A) or (b)(1)(C) of the federal Clean Water Act based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant POTW requested an extension under subsection (12)(b) of this rule, whichever is later, but in no event may this date have been later than January 30, 1988. The request must explain how the requirements of 40 CFR Part 125, subpart J, have been met.

(d) An extension under federal Clean Water Act section 301(k) from the statutory deadline of 301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period under RULE XLI for the discharger's initial permit requiring compliance with section 301(b)(2)(A). The request must demonstrate that the requirements of RULE XLIV and 40 CFR Part 125, subpart C, have been met.

(e) A modification under the federal Clean Water Act section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under RULE XLI on the permit from which the modification is sought.

(f) A variance under the federal Clean Water Act section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this subchapter, except that if thermal effluent limitations are established under federal Clean Water Act section 402(A)(1) or are based on water quality standards the request for a variance may be filed by the close of the public comment period under RULE XLI.

(12) A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under either of the following statutory provisions as specified below:

(a) an extension under federal Clean Water Act section 301(i)(1) of the statutory deadlines in federal Clean Water Act section 301(b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before August 3, 1987; or

(b) a modification under federal Clean Water Act section

302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations must be requested no later than the close of the public comment period under RULE XLI on the permit from which the modification is sought.

(13)(a) Notwithstanding the time requirements in sections (11) and (12) of this rule, the department may notify a permit applicant before a draft permit is issued under RULE XXXIX that the draft permit will likely contain limitations which are eligible for variances. In the notice the department may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(b) A discharger who cannot file a timely complete request required under subsection (11)(b)(ii) or (11)(b)(iii) of this rule may request an extension. The extension may be granted or denied at the discretion of the department. Extensions shall be no more than 6 months in duration.

(14) Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this subchapter for a period of at least 3 years from the date the application is signed.

(15) The board hereby adopts and incorporates herein by reference (see RULE X for complete information about all materials incorporated by reference):

(a) 40 CFR 125.102, which is a federal agency rule setting forth requirements for best management practices for dischargers who use, manufacture, store, handle, or discharge any hazardous or toxic pollutant;

(b) 40 CFR Part 136, which is a series of federal agency rules setting forth guidelines establishing test procedures for the analysis of pollutants;

(c) Appendix A to 40 CFR Part 122, which is an appendix to a series of federal agency rules and sets forth a list of primary industrial categories;

(d) Tables I, II, and III of Appendix D to 40 CFR Part 122, which are part of appendices of federal agency rules and list, respectively, testing requirements for organic toxic pollutants by industry category for existing dischargers, organic toxic pollutants in each of 4 fractions in analysis by gas chromatography/mass spectroscopy (GC/MS), and other toxic pollutants (metals and cyanide) and total phenols;

(e) Tables IV and V of Appendix D to 40 CFR Part 122, which are lists appended to a federal agency rule setting forth, respectively, conventional and nonconventional pollutants, and toxic pollutants and hazardous substances required to be identified by existing dischargers if expected to be present; and

(f) 40 CFR Part 125, which is a series of federal agency rules setting forth criteria and standards for the national

pollutant discharge elimination system (NPDES), specifically including criteria for extending compliance dates for facilities installing innovative technology (Subpart C), criteria for determining the availability of a variance based on fundamentally different factors (FDF) (Subpart D), and criteria for extending compliance dates for achieving effluent limitations. AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XVIII SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(1) All permit applications must be signed as follows:

(a) for a corporation, by a responsible corporate officer. A responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) for a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(c) for a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes:

(i) the chief executive officer of the agency; or

(ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) All reports required by permits, other information requested by the department, and all permit applications submitted for Group II storm water discharges under RULE XXI must be signed by a person described in section (1) of this rule or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) the authorization is made in writing by a person described in section (1) of this rule;

(b) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position);

(c) the written authorization is submitted to the department.

(3) If an authorization under section (2) of this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a

new authorization satisfying the requirements of section (2) of this rule must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Any person signing a document under sections (1) or (2) of this rule shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XIX CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria in Appendix B of 40 CFR Part 122, or which the department designates under section (3) of this rule.

(2) Concentrated animal feeding operations are point sources subject to the MPDES permit program.

(3) On a case-by-case basis, the department may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to state waters. In making this designation the department shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching state waters;

(b) The location of the animal feeding operation relative to state waters;

(c) The means of conveyance of animal wastes and process waste waters into state waters;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters; and

(e) Other relevant factors.

(4) No animal feeding operation with less than the numbers of animals set forth in Appendix B of 40 CFR Part 122 may be designated as a concentrated animal feeding operation unless:

(a) Pollutants are discharged into state waters through a manmade ditch, flushing system, or other similar manmade device; or

(b) Pollutants are discharged directly into state waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(5) A permit application is not required from a concentrated animal feeding operation designated under this rule

until the department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

(6) The board hereby adopts and incorporates herein Appendix B of 40 CFR Part 122 which is an appendix to a federal agency rule setting forth criteria for determining whether a facility or operation merits classification as a concentrated animal feeding operation. See RULE X for complete information about all materials incorporated by reference.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XX CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES AND AQUACULTURE PROJECTS (1) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Appendix C of 40 CFR Part 122, or which the department designates under section (3) of this rule.

(2) Concentrated aquatic animal production facilities, as defined in this rule, are point sources subject to the MPDES permit program.

(3) On a case-by-case basis, the department may designate any warm or cold water aquatic animal production facility as a concentrated animal production facility upon determining that it is a significant contributor of pollution to state waters. In making this designation the department shall consider the following factors:

(a) the location and quality of the receiving state waters;

(b) the holding, feeding, and production capacities of the facility;

(c) the quantity and nature of the pollutants reaching state waters; and

(d) other relevant factors.

(4) A permit application is not required from a concentrated aquatic animal production facility designated under this rule until the department has conducted an on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

(5) Discharges into aquaculture projects, as defined in RULE XI(6), are subject to the MPDES permit program through section 318 of the federal Clean Water Act, and in accordance with 40 CFR Part 125, subpart B.

(a) "Designated project area" means the portions of the waters of Montana within which the permittee or permit applicant plans to confine the cultivated species, using a method, plan, or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(6) The board hereby adopts and incorporates herein by reference Appendix C of 40 CFR Part 122 which is an appendix to a federal agency rule setting forth criteria for determining

whether a facility or operation merits classification as a concentrated aquatic animal production facility. See RULE X for complete information about all materials incorporated by reference.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXI STORM WATER DISCHARGES (1)(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

(i) a discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) a discharge associated with industrial activity;

(iii) a discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(iv) a discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000; or

(v) a discharge which the administrator or the state, as the case may be, determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(b) Permits for discharges from municipal separate storm sewers may be issued on a system or jurisdiction-wide basis.

(c) The administrator shall not require a permit under this section, nor shall the administrator directly or indirectly require any state to require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXII SILVICULTURAL ACTIVITIES (1) Silvicultural point sources, as defined in RULE XI(58), are point sources subject to the MPDES permit program.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXIII NEW SOURCES AND NEW DISCHARGERS (1) Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in RULE XI(39), and

(a) it is constructed at a site at which no other source is located; or

(b) it totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(c) its processes are substantially independent of an existing source at the same site. In determining whether these

processes are substantially independent, the department shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of subsections (1)(a), (b), or (c) of this rule is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. (See RULE XI(38).)

(3) Construction on a site at which an existing source is located results in a modification subject to RULE XXXIV rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsections (1)(b) or (c) of this rule but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under RULE XI(39) has commenced if the owner or operator has:

(a) begun, or caused to begin as part of a continuous on-site construction program:

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(b) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this rule.

(5) Except as provided in section (6) of this rule, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under RULE IV for the soonest ending of the following periods:

(a) ten years from the date that construction is completed;

(b) ten years from the date the source begins to discharge process or other non-construction related wastewater; or

(c) the period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

(6) The protection from more stringent standards of performance afforded by section (5) of this rule does not apply to:

(a) additional or more stringent permit conditions which are not technology based; for example, conditions based on

water quality standards, or toxic effluent standards or prohibitions under RULE III; or

(b) additional permit conditions in accordance with 40 CFR 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(7) When an MPDES permit issued to a source with a "protection period" under section (5) of this rule expires on or after the expiration of the protection period, that permit must require the owner or operator of the source to comply with the requirements of section 301 of the federal Clean Water Act and any other then-applicable requirements of the Act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

(8) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger, shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator shall meet all permit conditions. The requirements of this rule do not apply if the owner or operator is issued a permit containing a compliance schedule under RULE XXX(1)(b).

(9) After the effective date of new source performance standards, it is unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

(10) The board hereby adopts and incorporates herein by reference 40 CFR 125.3, which is a federal agency rule setting forth technology-based treatment requirements for point source dischargers. See RULE X for complete information about all materials incorporated by reference.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXIV GENERAL PERMITS (currently 16.20.914) (1) The department may issue general permits for the following categories of point sources which the board has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.28:

(a) cofferdams or other construction dewatering discharges;

(b) groundwater pump test discharges;

(c) fish farms;

(d) placer mining operations;

(e) suction dredge operations using suction intakes no larger than 4" in diameter;

(f) oil well produced water discharges for beneficial use;

(g) animal feedlots;

(h) common facultative sewage lagoons;

(i) sand and gravel mining and processing operations; and

(j) groundwater discharges from mobile oil and gas drilling wastewater treatment units.

(2) Although general MPDES permits may be issued for a category of point sources located throughout the state, they may also be restricted to more limited geographical areas.

(3) Prior to issuing a general MPDES permit, the department shall prepare a public notice which includes the equivalent of information listed in RULE XLI(6) and shall publish the same as follows:

(a) prior to publication, notice to the U.S. Environmental Protection Agency;

(b) direct mailing of notice to the Water Pollution Control Advisory Council and to any persons who may be affected by the proposed general permit;

(c) publication of notice in a daily newspaper in Helena and in other daily newspapers of general circulation in the state or affected area;

(d) after publication, a hearing must be held and a 30-day comment period allowed as provided in RULES XLI through XLVI and RULE XLIX.

(4) A person owning or proposing to operate a point source who wishes to operate under a general MPDES permit shall complete a standard MPDES application form available from the department. The department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the general MPDES permit, or shall notify the applicant that the source does not qualify for authorization under a general MPDES permit, citing one or more of the following reasons as the basis for denial:

(a) the specific source applying for authorization appears unable to comply with the following requirements:

(i) effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards;

(ii) water quality standards established pursuant to section 75-5-301, MCA;

(iii) prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(iv) prohibition of any discharge which the secretary of the army acting through the chief of engineers finds would substantially impair anchorage and navigation;

(v) prohibition of any discharges to which the regional administrator has objected in writing;

(vi) prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the act; and

(vii) any additional requirements that the department determines are necessary to carry out the provisions of section

75-5-101, MCA, et seq.

(b) The discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the general MPDES permit;

(c) An MPDES permit or authorization for the same operation has previously been denied or revoked.

(d) The discharge sought to be authorized under a general MPDES permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA;

(e) the point source will be located in an area of unique ecological or recreational significance. Such determination must be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 U.S.C. 1132 or of wild and scenic rivers under 16 U.S.C. 1274.

(5) Where authorization to operate under a general MPDES permit is denied, the department shall proceed, unless the application is withdrawn, to process the application as an individual MPDES permit under this subchapter.

(6) Every general MPDES permit must have a fixed term not to exceed 5 years. Except as provided in section (10) of this rule, every authorization to operate under a general MPDES permit expires at the same time the general MPDES permit expires.

(7) Where authorization to operate under a general MPDES permit is issued to a point source covered by an individual MPDES permit, the department shall, upon issuance of the authorization to operate under the general MPDES permit, terminate the individual MPDES permit for that point source.

(8) Any person authorized or eligible to operate under a general MPDES permit may at any time apply for an individual MPDES permit according to the procedures in this subchapter. Upon issuance of the individual MPDES permit, the department shall terminate any general MPDES permit authorization held by such person.

(9) The department, on its own initiative or upon the petition of any interested person, may modify, suspend, or revoke in whole or in part a general MPDES permit or an authorization to operate under a general MPDES permit during its term in accordance with the provisions of RULE XXXIV for any cause listed in RULE XXXIV or for any of the following causes:

(a) The approval of a water quality management plan containing requirements applicable to point sources covered in the general MPDES permit;

(b) Determination by the department that the discharge from any authorized source is a significant contributor to pollution as determined by the factors set forth in 40 CFR 122.26(c)(2); or

(c) A change in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to a source or to a category of sources;

(d) Occurrence of one or more of the following circumstances:

(i) violation of any conditions of the permit; or

(ii) obtaining an MPDES permit by misrepresentation or failure to disclose fully all relevant facts;

(iii) a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; or

(iv) A failure or refusal by the permittee to comply with the requirements of section 75-5-602, MCA.

(10) The department may reissue an authorization to operate under a general MPDES permit provided that the requirements for reissuance of MPDES permits specified in RULE XVII.

(11) The department shall maintain and make available to the public a register of all sources and activities authorized to operate under each general MPDES permit including the location of such sources and activities, and shall provide copies of such registers upon request.

(12) For purposes of this rule, the board hereby adopts and incorporates by reference (see RULE X for complete information about all materials incorporated by reference):

(a) 40 CFR 122.28 which sets forth criteria for selecting categories of point sources appropriate for general permitting;

(b) 40 CFR 124.10(d)(1) which sets forth minimum contents of public notices;

(c) 40 CFR 122.26(c)(2) which sets forth criteria for determining when a point source is considered a "significant contributor of pollution";

(d) 16 U.S.C. 1132 (wilderness area designations); and

(e) 16 U.S.C. 1274 (wild and scenic river designations).

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXV CONDITIONS APPLICABLE TO ALL PERMITS The following conditions apply to all MPDES permits. Additional conditions applicable to MPDES permits are set forth in RULE XXVI. All conditions applicable to MPDES permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit.

(1) The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(a) The permittee shall comply with effluent standards or prohibitions established under RULE III for toxic pollutants within the time provided in the rules that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(b) The Act provides that any person who violates a permit condition is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or negligently violates a permit condition is subject to a fine not to exceed $25,000 per day of violation or imprisonment for not more than 1 year, or both.

(2) If the permittee wishes to continue an activity regu-

lated by this permit after the expiration date of this permit, the permittee shall first apply for and obtain a new permit.

(3) It may not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(7) This permit does not convey any property rights of any sort, or any exclusive privilege.

(8) The permittee shall furnish to the department, within a reasonable time, any information which the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the department upon request, copies of records required to be kept by this permit.

(9) The permittee shall allow the department, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(b) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

(10)(a) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this

permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the department at any time.

(c) Records of monitoring information must include:

(i) the date, exact place, and time of sampling or measurements;

(ii) the individual(s) who performed the sampling or measurements;

(iii) the date(s) analyses were performed;

(iv) the individual(s) who performed the analyses;

(v) the analytical techniques or methods used; and

(vi) the results of such analyses.

(d) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(11) All applications, reports, or information submitted to the department must be signed and certified. (See RULE XVIII.)

(12)(a) The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in RULE XXIII(2); or

(ii) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under RULE XXVI(1)(a).

(b) The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) This permit is not transferable to any person except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See RULE XXXIII; in some cases, modification or revocation and reissuance is mandatory.)

(d) Monitoring results must be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a discharge monitoring report (DMR).

(ii) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the DMR.

(iii) Calculations for all limitations which require averaging of measurements must utilize an arithmetic mean unless

otherwise specified by the department in the permit.

(e) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

(f)(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following must be included as information which must be reported within 24 hours under this rule:

(A) any unanticipated bypass which exceeds any effluent limitation in the permit (see RULE XXV(7));

(B) any upset which exceeds any effluent limitation in the permit; and

(C) violation of a maximum daily discharge limitation for any of the pollutants listed by the department in the permit to be reported within 24 hours (see RULE XXVII and 40 CFR 122.44(g)).

(iii) The department may waive the written report on a case-by-case basis for reports under subsection (12)(f)(ii) of this rule if the oral report has been received within 24 hours.

(g) The permittee shall report all instances of noncompliance not reported under subsections 12(d), (e), and (f) of this rule, at the time monitoring reports are submitted. The reports must contain the information listed in subsection (12)(f) of this rule.

(h) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

(13)(a) The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (13)(c) and (d) of this rule.

(b) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. The permittee shall submit notice of an unanticipated bypass as required in subsection (12)(f) of this rule (24-hour notice).

(c) Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:

(i) bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(iii) the permittee submitted notices as required under subsection (13)(c) of this rule.

(d) The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed above in subsection (13)(d)(i) of this rule.

(14)(a) An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of subsection (14)(b) of this rule are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(b) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) an upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) the permitted facility was at the time being properly operated;

(iii) the permittee submitted notice of the upset as required in subsection (12)(f)(ii)(B) of this rule (24-hour notice); and

(iv) the permittee complied with any remedial measures required under section (4) of this rule.

(c) In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) The board hereby adopts and incorporates herein by reference (see RULE X for complete information about all materials incorporated by reference):

(a) 40 CFR Part 136, which is a series of federal agency rules setting forth guidelines establishing test procedures for the analysis of pollutants; and

(b) 40 CFR 122.44(g), which is a federal agency rule requiring 24-hour notice of any violation of maximum daily discharge limits.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXVI ADDITIONAL CONDITIONS APPLICABLE TO SPECIFIC CATEGORIES OF MPDES PERMITS The following conditions, in addition to those set forth in RULE XXV, apply to all MPDES permits within the categories specified below:

(1) All existing manufacturing, commercial, mining, and silvicultural dischargers, in addition to the reporting re-

quirements under RULE XXV(12), shall notify the department as soon as they know or have reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) one hundred micrograms per liter;

(ii) two hundred micrograms per liter for acrolein and acrylonitrile; five hundred micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter for antimony;

(iii) five times the maximum concentration value reported for that pollutant in the permit application in accordance with RULE XVII(7)(g); or

(iv) the level established by the department in accordance with RULE XXVII(6).

(b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) five hundred micrograms per liter;

(ii) one milligram per liter for antimony;

(iii) ten times the maximum concentration value reported for that pollutant in the permit application in accordance with RULE XVII(7)(g); or

(iv) the level established by the department in RULE XXVII, in accordance with 40 CFR 122.44(f).

(2) All POTW's shall provide adequate notice to the department of the following:

(a) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to the effluent limits or standards of performance adopted and set forth in ARM 16.20.1202 if it were directly discharging those pollutants; and

(b) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(c) For purposes of this rule, adequate notice must include information on:

(i) the quality and quantity of effluent introduced into the POTW; and

(ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(3) The board hereby adopts and incorporates herein by reference 40 CFR 122.44(f), which is a federal agency rule setting forth "notification levels" for dischargers of pollutants that may be inserted in a permit upon a petition from the permittee or upon the initiative of the department. See RULE X for complete information about all materials incorporated by reference.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXVII ESTABLISHING LIMITATIONS, STANDARDS, AND OTHER PERMIT CONDITIONS (1) In addition to the conditions established under RULES XXV, XXVI, XXIX, and XXX, each MPDES permit must include conditions meeting the requirements of 40 CFR 122.44.

(2) The board hereby adopts and incorporates herein by reference (see RULE X for complete information about all materials incorporated by reference):

(a) 40 CFR 122.44 which is a federal agency rule setting forth additional permit conditions which may be applicable to a point source. Such conditions include technology-based and water-quality-based standards, toxic and pretreatment standards, reopener clause, reporting and monitoring requirements, permit duration and reissuance, test methods, best management practices, conditions concerning sewage sludge, privately owned treatment works, and conditions imposed in EPA grants to POTW's.

(b) 40 CFR chapter 1, subchapter N, which sets forth federal effluent limitations and standards and new source performance standards.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXVIII CALCULATING MPDES PERMIT CONDITIONS (1) All permit effluent limitations, standards, and prohibitions must be established for each outfall or discharge point of the permitted facility, except as otherwise provided under RULE XXVII (40 CFR 122.44(k)) (BMP's where limitations are infeasible) and section (9) of this rule (limitations on internal waste streams).

(2)(a) In the case of POTW's, permit limitations, standards, or prohibitions must be calculated based on design flow.

(b)(i) Except in the case of POTW's, or as provided in section (3) of this rule, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) must be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production must be estimated using projected production. The time period of the measure of production must correspond to the time period of the calculated permit limitations; for example, monthly production must be used to calculate average monthly discharge limitations.

(3) The department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(4) If the department establishes permit conditions under section (3):

(a) The permit must require the permittee to notify the department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice must specify the anticipated level and the period during which

the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice must specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(b) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the department under subsection (4)(a) of this rule, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(c) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(5) All permit effluent limitations, standards, or prohibitions for a metal must be expressed in terms of "acid soluble metal" as defined in 40 CFR Part 136 unless:

(a) an applicable effluent standard or limitation has been promulgated under the Act and specifies the limitation for the metal in the dissolved or valent or total form; or

(b) in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the Act; or

(c) all approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(6) For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, must unless impracticable be stated as:

(a) maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) average weekly and average monthly discharge limitations for POTW's.

(7) Discharges which are not continuous, as defined in RULE XI(13), must be particularly described and limited, considering the following factors, as appropriate:

(a) frequency (for example, a batch discharge must not occur more than once every three weeks);

(b) total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(c) maximum rate of discharge of pollutants during the discharge (for example, not to exceed two kilograms of zinc per minute); and

(d) prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, must not contain at any time more than 0.1 mg/l zinc or more

than 250 grams (b kilogram) of zinc in any discharge).

(8)(a) All pollutants limited in permits must have limitations, standards, or prohibitions expressed in terms of mass except:

(i) for pH, temperature, radiation, or other pollutants which cannot appropriately by expressed by mass;

(ii) when applicable standards and limitations are expressed in terms of other units of measurement; or

(iii) if in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot b› related to a measure of operation (for example, discharges of total suspended solids (TSS) from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit must require the permittee to comply with both limitations.

(9)(a) Upon request of the discharger, technology-based effluent limitations or standards must be adjusted to reflect credit for pollutants in the discharger's intake water if:

(i) the applicable effluent limitations and standards contained in 40 CFR chapter 1, subchapter N, specifically provide that they must be applied on a net basis; or

(ii) the discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit may be granted only to the extent necessary to meet the applicable limitation or standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit may be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The department may waive this requirement if it finds that no environmental degradation will result.

(e) This rule does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(10)(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instan-

ces, the monitoring required by RULE XXVII, in accordance with 40 CFR 122.44(i), must also be applied to the internal waste streams.

(b) Limits on internal waste streams may be imposed only when the fact sheet under RULE XL sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under ten meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(11) Permit limitations and standards concerning disposal of pollutants into wells, POTW's, or by land application must be calculated as provided in RULE XXXII.

(12) The board hereby adopts and incorporates herein by reference (see RULE X for complete information about all materials incorporated by reference):

(a) 40 CFR 122.44(j)(2), which is a federal agency rule setting forth a requirement for the submittal by a publicly owned treatment work (POTW) of a local pretreatment program;

(b) 40 CFR 122.45(b)(2)(ii)(A) which is a federal agency rule setting forth the availability of alternate permit limitations, standards, or prohibitions based on varying production levels;

(c) 40 CFR 136, which is a series of federal agency rules setting forth guidelines for testing procedures for the analysis of pollutants;

(d) 40 CFR 125.3, which is a federal agency rule setting forth technology-based treatment requirements for point source dischargers;

(e) 40 CFR chapter 1, subchapter N, which is a series of federal agency rules setting forth effluent guidelines and standards for point source dischargers; and

(f) 40 CFR 122.44(i), which is a federal agency rule setting forth monitoring requirements for point source dischargers.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXIX DURATION OF PERMITS (1) MPDES permits are effective for a fixed term not to exceed five years.

(2) Except as provided in RULE XV, the term of a permit may not be extended by modification beyond the maximum duration specified in this rule.

(3) The department may issue any permit for a duration that is less than the full allowable term under this rule.

(4) A permit may be issued to expire on or after the statutory deadline set forth in section 301(b)(2)(A), (C), and (E) of the federal Clean Water Act (July 1, 1984), if the permit includes effluent limitations to meet the requirements of sections 301(b)(2)(A), (C), (D), (E), and (F) of the federal Clean Water Act, whether or not applicable effluent limitations guidelines have been promulgated or approved.

(5) A determination that a particular discharger falls within a given industrial category for purposes of setting a

permit expiration date under section (4) of this rule is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

(6) The board hereby adopts and incorporates herein by reference sections 301(b)(2)(A), (C), (E), and (F) of the federal Clean Water Act, 33 U.S.C. 1251, et seq., which set forth deadlines for achieving effluent limitations and treatment of toxic pollutants. See RULE X for complete information about all materials incorporated by reference.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXX SCHEDULES OF COMPLIANCE (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Act and rules adopted thereunder, specifically including any applicable requirements under ARM Title 16, chapter 20, subchapter 9.

(a) Any schedules of compliance under this rule must require compliance as soon as possible, but not later than the applicable statutory deadline under the Act or under sections 301(b)(2)(A), (C), (D), (E), and (F) of the federal Clean Water Act.

(b) The first MPDES permit issued to a new source or a new discharger must contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance must be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(c) Except as provided in subsection (2)(a)(ii) of this rule, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule must set forth interim requirements and the dates for their achievement.

(i) The time between interim dates may not exceed one year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit must specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) The permit must be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subsection (1)(c)(ii) of this rule is applicable.

(2) An MPDES permit applicant or permittee may cease conducting regulated activities (by terminating of direct dis-

charge for MPDES sources) rather than continuing to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term includes the termination date, the permit must contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the department may issue or modify a permit to contain two schedules as follows:

(i) both schedules must contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) one schedule must lead to timely compliance with applicable requirements, no later than the statutory deadline;

(iii) the second schedule must lead to cessation of regulated activities by a date which ensures timely compliance with applicable requirements no later than the statutory deadline;

(iv) each permit containing two schedules must include a requirement that after the permittee has made a final decision under subsection (2)(c)(i) of this rule it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities must be evidenced by a firm public commitment satisfactory to the department, such as a resolution of the board of directors of a corporation.

(3) The board hereby adopts and incorporates herein by reference sections 301(b)(2)(A), (C), (E), and (F) of the federal Clean Water Act, 33 U.S.C. 1251, et seq., which set forth deadlines for achieving effluent limitations and treatment of toxic pollutants. See RULE X for complete information about all materials incorporated by reference.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXXI REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS All permits must specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in RULE XXVII. Reporting may be no less frequent than specified in that rule.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXXII DISPOSAL OF POLLUTANTS INTO WELLS, INTO PUBLICLY OWNED TREATMENT WORKS, OR BY LAND APPLICATION

(1) When part of a discharger's process wastewater is not being discharged into state waters or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into state waters, applicable effluent standards and limitations for the discharge in an MPDES permit must be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit must be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into state waters, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process must be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in subsection (1)(a) of this rule, effluent limitations must be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into state waters, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125, subpart D, to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to state waters, and T is the total wastewater flow.

(2) Section (1) of this rule does not apply to the extent that promulgated effluent limitations guidelines:

(a) control concentrations of pollutants discharged but not mass; or

(b) specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTW's.

(3) Section (1) of this rule does not alter a discharger's obligation to meet any more stringent requirements established under RULES XXV, XXVI, and XXVII.

(4) The board hereby adopts and incorporates herein by reference 40 CFR Part 125, subpart D, which is a series of federal agency rules setting forth criteria and standards for determining eligibility for a variance from effluent limitations based on fundamentally different factors (FDF). See RULE X for complete information about all materials incorporated by reference.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXXIII TRANSFER OF PERMITS (1) Except as provided in section (2) of this rule, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under RULE XXXIV(2)(b)), or a minor modification made (under RULE XXXV(4)), to identify the new permittee and incorporate such other requirements as may be necessary under the Act.

(2) As an alternative to transfers under section (1) of this rule, any MPDES permit may be automatically transferred to a new permittee if:

(a) the current permittee notifies the department at least 30 days in advance of the proposed transfer date in subsection (2)(b) of this rule;

(b) the notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(c) the department does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this rule may also be a minor modification under RULE XXXV. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subsection (2)(b) of this rule.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXXIV MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS When the department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see RULE XXV), receives a request for modification or revocation and reissuance under RULE XXXVIII, or conducts a review of the permit file) it may determine whether or not one or more of the causes listed in sections (1) and (2) of this rule for modification or revocation and reissuance or both exist. If cause exists, the department may modify or revoke and reissue the permit accordingly, subject to the limitations of RULE XXXVIII(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See RULE XXXVIII(4)(b). If cause does not exist under this rule or RULE XXXV, the department may not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in RULE XXXV for "minor modifica-

tions" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in RULES XXXVII through L followed.

(1) The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees:

(a) There are material and substantial alteration or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit (certain reconstruction activities may cause the new source provisions of RULE XXIII to be applicable);

(b) The department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For MPDES general permits (RULE XXIV) this cause includes any information indicating that cumulative effects on the environment are unacceptable.

(c) The standards or requirements on which the permit was based have been changed by amendment or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or requirements, when:

(A) the permit condition requested to be modified was based on a duly adopted effluent limitation guideline, water quality standards, or the secondary treatment regulations under 40 CFR Part 133; and

(B) the board has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or changed a water quality standard on which the permit condition was based; and

(C) a permittee requests modification in accordance with RULE XXXVIII within 90 days of the final action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed board rules or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with RULE XXXVIII within 90 days of judicial remand.

(d) The department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an MPDES compliance schedule be modified to extend beyond an applicable statutory deadline. See also RULE XXXV(3) (minor modifications) and subsection (1)(n) of this rule (MPDES innovative technology);

(e) When the permittee has filed a request for a variance under the federal Clean Water Act, sections 301(c), (g), (h),

(i), (k), or 316(a), or for "fundamentally different factors" within the time specified in RULE XVII or 40 CFR 125.27(a);

(f) When required to incorporate an applicable federal Clean Water Act section 307(a) toxic effluent standard or prohibition (see RULE XXVII(2));

(g) When required by the "reopener" conditions in a permit, which are established in the permit under RULE XXVII(2) (toxic effluent limitations) or under any pretreatment requirements in the permit;

(h)(i) Upon request of a permittee who qualifies for effluent limitations on a net basis under RULE XXVIII(12);

(ii) when a discharger is no longer eligible for net limitations, as provided in RULE XXVIII(12);

(i) As necessary under PRETREATMENT RULE VII (compliance schedule for development of pretreatment program);

(j) Upon failure of an approved state to notify, as required by section 402(b)(3) of the federal Clean Water Act, another state whose waters may be affected by a discharge from the approved state;

(k) When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c);

(l) To establish a "notification level" as provided in RULE XXVII(6);

(m) To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of the federal Clean Water Act for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2) of the federal Clean Water Act. In no case may the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance;

(n) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions;

(o) When the discharger has installed the treatment technology considered by the department in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but may not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(2) The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) cause exists for termination under RULE XXXIV, and the department determines that modification or revocation and reissuance is appropriate;

(b) the department has received notification (as required in the permit, see RULE XXV(12)(c)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (RULE

XXXIII(2)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) The board hereby adopts and incorporates herein by reference (see RULE X for complete information about all materials incorporated by reference):

(a) 40 CFR Part 133, which is a series of federal agency rules setting forth requirements for the level of effluent quality available through the application of secondary (or equivalent) treatment;

(b) Sections 301(c), (g), (i), and (k) of the federal Clean Water Act, which are federal statutory provisions allowing for modifying or extending dates for achieving effluent limitations;

(c) Section 316(a) of the federal Clean Water Act, which is a federal statutory provision allowing a variance from an applicable effluent limitation based on fundamentally different factors (FDF);

(d) Section 402(b)(3) of the federal Clean Water Act, which is a federal statutory provision requiring that states administering the NPDES program notify other states whose waters may be affected by a proposed discharge; and

(e) 40 CFR 125.3(c), which is a federal agency rule setting forth methods of imposing technology-based treatment requirements in permits.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXXV MINOR MODIFICATIONS OF PERMITS Upon the consent of the permittee, the department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this rule, without following the procedures of RULES XXXVII through L. Any permit modification not processed as a minor modification under this rule must be made for cause and with a draft permit (RULE XXXIX) and public notice as required in RULE XXXVII through L. Minor modifications may only:

(1) correct typographical errors;

(2) require more frequent monitoring or reporting by the permittee;

(3) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(4) allow for a change in ownership or operational control of a facility where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department.

(5)(a) change the construction schedule for a discharger which is a new source. No such change may affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under RULE XXIII;

(b) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

(6) when the permit becomes final and effective on or after March 9, 1982, conform to changes respecting RULE XXV(5), (12), (13)(c)(ii), (14)(b)(i), and RULE XXVI(1);

(7) incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in PRETREATMENT RULE IX (or a modification thereto that has been approved in accordance with the procedures in PRETREATMENT RULE XV) as enforceable conditions of the POTW's permits.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXXVI TERMINATION OF PERMITS (1) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(a) noncompliance by the permittee with any condition of the permit;

(b) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(c) a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

(2) The department shall follow the applicable procedures in RULES XXXVII through L in terminating any MPDES permit under this rule.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXXVII APPLICATION PROCESSING PROCEDURES (1)(a) Any person who requires a permit under the MPDES program shall complete, sign, and submit to the department an application for each permit required under RULE VIII. Application procedures for authorizations under MPDES general permits are set forth at RULE XXIV.

(b) The department may not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See RULE XVII.

(c) Permit applications must comply with the signature and certification requirements of RULE XVIII.

(2) The department shall review for completeness every application for a permit. Each application for a permit submitted by a new source or new discharger should be reviewed for completeness by the department within 30 days of its receipt. Each application for a permit submitted by an existing source should be reviewed for completeness within 60 days of receipt. If the application is incomplete, the department shall advise the applicant of the information necessary to make the applica-

tion complete. When the application is for an existing source, the department shall specify in the notice of deficiency a date for submitting the necessary information. After the application is complete, the department may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information do not render an application incomplete.

(3) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken by the department.

(4) If the department decides that a site visit is necessary for any reason in conjunction with the processing of an application, it shall notify the applicant and schedule a date.

(5) The effective date of an application is the date on which the department determines that the application is complete as provided in section (3) of this rule.

(6) For each application from a major MPDES new source or major MPDES new discharger, the department shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule must specify target dates by which the department intends to:

(a) prepare a draft permit;

(b) give public notice;

(c) complete the public comment period, including any public hearing; and

(d) issue a final permit.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXXVIII MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS (1) During their term, permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee). However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in RULE XXXIV or XXXVI. All requests must be in writing and must contain facts or reasons supporting the request.

(2) If the department decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the department may be appealed to the board by a petition or letter setting forth the relevant facts. The board, after hearing, may affirm the department's action or may direct the department to begin modification, revocation and reissuance, or termination proceedings under section (3) of this rule.

(3) During their term, permits may be modified, revoked and reissued, or terminated upon the initiative of the department. However, such action may only be taken for one or more of the reasons specified in RULE XXXIV or XXXVI. If the department modifies, revokes and reissues, or terminates a permit, the department shall give written notice of its action to the holder who may file a written request within 30 days for a

hearing before the board in the manner stated in section 75-5-611, MCA. Such hearing must be held within 30 days after the board receives written request. If the holder does not request a hearing, a modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a board hearing, no order modifying his permit may be effective until 20 days after the holder has received notice of the board's action. The effective date of a termination or suspension of a permit by the department or board must be in accordance with section 75-5-404, MCA.

(4)(a) If the department tentatively decides to modify or revoke and reissue a permit under RULE XXXIV, it shall prepare a draft permit under RULE XXXIX incorporating the proposed changes. The department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the department shall require the submission of a new application.

(b) In a permit modification under this rule, only those conditions to be modified may be reopened when a new draft permit is prepared. All other aspects of the existing permit remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this rule, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(c) Minor modifications as defined in RULE XXXV are not subject to the requirements of this rule.

(5) If the department tentatively decides to terminate a permit under RULE XXXVI, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under RULE XXXIX.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XXXIX DRAFT PERMITS (1) Once an application is complete, the department shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the department tentatively decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this rule. See section (5) below. If the department's final decision (RULE XLVII) is that the tentative decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under section (3) of this rule.

(3) If the department decides to prepare a draft permit, it shall prepare a draft permit that contains the following information:

(a) all conditions under RULE XXV;

(b) all compliance schedules under RULE XXX;

(c) all monitoring requirements under RULE XXXI; and

(d) effluent limitations, standards, prohibitions and conditions under RULES XXV and XXVI.

(4) All draft permits prepared by the department under this rule must be accompanied by a fact sheet, if required by RULE XL, and must be publicly noticed (RULE XLI) and made available for public comment (RULE XLII). The department shall give notice of opportunity for a public hearing (RULE XLIII), issue a final decision (RULE XLVII), and respond to comments (RULE XLVI). An appeal may be taken in accordance with section 75-5-403, MCA. The applicant must submit a written request for hearing within 30 days of receiving the department's final decision.

(5) A statement of basis must be prepared for every draft permit for which a fact sheet is not prepared. The statement of basis must briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis must be sent to the applicant and, on request, to any other person.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XL FACT SHEET (1) A fact sheet must be prepared for every draft permit for a major facility or activity, and for every draft permit which the department finds is the subject of widespread public interest or raises major issues. The fact sheet must briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The department shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet must include, when applicable:

(a) a brief description of the type of facility or activity which is the subject of the draft permit;

(b) the type and quantity of wastes, fluids, or pollutants which are proposed to be discharged.

(c) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) a description of the procedures for reaching a final decision on the draft permit including:

(i) the beginning and ending dates of the comment period under RULE XLI and the address where comments will be received;

(ii) procedures for requesting a hearing and the nature of that hearing; and

(iii) any other procedures by which the public may participate in the final decision; and

(f) name and telephone number of a person to contact for additional information.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XLI PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD (1) The department shall give public notice that the following actions have occurred:

(a) a permit application has been tentatively denied under RULE XXXIX(2);

(b) a draft permit has been prepared under RULE XXXIX(4);

(c) a hearing has been scheduled under RULE XLIII;

(d) an MPDES new source determination has been made under RULE XXIII.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under RULE XXXVIII(2). Written notice of that denial must be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(4) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under section (1) of this rule must allow at least 30 days for public comment. If the department determines that an environmental impact statement (EIS) must be prepared for a new source, public notice of the draft permit may not be given until after a draft EIS is issued. Public notice of a public hearing must be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(5) Public notice of activities described in subsection (1)(a) of this rule must be given by the following methods:

(a) by mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this rule may waive his or her rights to receive notice for any classes and categories of permits):

(i) the applicant;

(ii) federal and state agencies with jurisdiction over fish and wildlife resources and other appropriate government authorities, including any affected states;

(iii) any state agency responsible for plan development under federal Clean Water Act section 208(b)(2), 208(b)(4), or 303(e), and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

(iv) any user identified in the permit application of a privately owned treatment works;

(v) persons on a mailing list developed by:

(A) including those who request in writing to be on the list;

(B) soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals (the department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name

of any person who fails to respond to such a request);

(vi)(A) to any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(B) to each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) for major permits and MPDES general permits, a notice published in a daily or weekly newspaper within the area affected by the facility or activity;

(c) in any other manner constituting legal notice to the public under state law; and

(d) any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(6) All public notices issued under this rule must contain the following minimum information:

(a) name and address of the office processing the permit action for which notice is being given;

(b) name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) a brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(d) name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit as the case may be, statement of basis or fact sheet, and the application;

(e) a brief description of the comment procedures required by RULES XLII and XLIII and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

(f) a general description of the location of each existing or proposed discharge point and the name of the receiving water.

(7) In addition to the general public notice described in subsection (6)(a) of this rule, the public notice of a hearing under RULE XLIII must contain the following information:

(a) reference to the date of previous public notices relating to the permit;

(b) date, time, and place of the hearing; and

(c) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(8) In addition to the general public notice described in subsection (4)(a) of this rule, all persons identified in subsections (5)(a)(i), (ii), (iii), and (iv) of this rule must be afforded an opportunity to request a copy of the fact sheet, the permit application (if any), and the draft permit (if any).

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XLII PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS (1) During the public comment period provided under RULE XLI, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised in the hearing. All comments must be considered in making the final decision and must be answered as provided in RULE XLVI.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XLIII PUBLIC HEARINGS (1)(a) The department shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit(s);

(b) The department may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision;

(c) Public notice of the hearing must be given as specified in RULE XLI.

(2) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under RULE XLI must automatically be extended to the close of any public hearing under this rule. The hearing officer may also extend the comment period by so stating at the hearing.

(3) A tape recording or written transcript of the hearing must be made available to the public.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XLIV OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION (1) All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the department's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under RULE XLI.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XLV REOPENING OF THE PUBLIC COMMENT PERIOD If any data, information or arguments submitted during the public comment period, including information or arguments required under RULE XLIV, appear to raise substantial new questions concerning a permit, the department may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under RULE XXXIX;

(2) Prepare a revised fact sheet under RULE XL, and reopen the comment period under RULE XLV; or

(3) Reopen or extend the comment period under RULE XXXIX

to give interested persons an opportunity to comment on the information or arguments submitted.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XLVI RESPONSE TO COMMENTS At the time that any final permit decision is issued under RULE XLVII, the department shall issue a response to comments. This response must:

(1) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XLVII ISSUANCE AND EFFECTIVE DATE OF PERMIT

(1) After the close of the public comment period under RULE XLI, the department will issue a final permit decision. The department will notify the applicant and each person who has submitted written comments or requested notice of that decision for contesting the decision. The notice must include reference to the procedures for appealing the decision. For the purpose of this rule, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision is effective 30 days after the service of notice of the decision under subsection (1) unless:

(a) a later effective date is specified in the decision, or an appeal is filed pursuant to these rules;

(b) a stay is granted pursuant to RULE XLVIII; or

(c) no comments requested a change in the draft permit, in which case the permit is effective immediately upon issuance.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XLVIII STAYS OF CONTESTED PERMIT CONDITIONS (1) If a request to the department for review of an MPDES permit is granted, the effect of the contested permit conditions must be stayed and may not be subject to judicial review pending final action by the department. If the permit involves a new source, new discharger, or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, source, or discharger pending final action by the department.

(2) Uncontested conditions which are not severable from those contested must be stayed together with the contested conditions. Stayed provisions of permits for existing facilities and sources must be identified by the department. All other provisions of the permit for the existing facility or source must remain fully effective and enforceable.
AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE XLIX CONDITIONS REQUESTED BY GOVERNMENT AGENCIES

(1) If during the comment period the U.S. Fish and Wild-

life Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, or wildlife resources, the department may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of RULE XXX and of the Act.

(2) In appropriate cases the department may consult with one or more of the agencies referred to in this rule before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

AUTH: 75-5-201, 75-5-401, MCA; IMP: 75-5-401, MCA

RULE L DISPOSAL WELLS Disposal of pollutants into wells that affect state waters is prohibited, except:

(1) as provided in the terms and conditions of an MPDES permit; or

(2) water, gas or other material which is injected into a well to facilitate production of oil or gas or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved under ARM 36.22.1226 through ARM 36.22.1234 and it has been determined that such injection or disposal will not result in the degradation of ground or surface water resources.

AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE LI AGENCY MEMBERSHIP RESTRICTIONS (1) Any body which approves MPDES permit applications or portions thereof may not include as a member any person who receives, or has during the previous 2 years received a significant portion of his income directly or indirectly from permit holders or applicants for a permit.

(2) For the purposes of this rule, the term "body" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(3) For the purposes of this rule, the term "significant portion of his income" means 10 percent of gross personal income for a calendar year, except that it means 50 percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement.

(4) For the purposes of this rule, the term "permit holders or applicants for a permit" does not include any department or agency of a state government, such as a department of parks or a department of fish and game.

(5) For the purposes of this rule, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(6) For the purposes of this rule, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from

other diversified investments over which the recipient does not know the identity of the primary sources of income.
AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE LII STATE AND EPA COORDINATION (1) The department shall enter into formal agreements with the regional administrator concerning procedures for the following actions:

(a) Transmittal to the regional administrator copies of completed MPDES permit applications, tentative determinations and related documents concerning issuance or denial of MPDES permits;

(b) Consideration by the department of all comments of the regional administrator concerning tentative determinations to issue or deny an MPDES permit;

(c) Transmittal to the regional administrator copies of issued MPDES permits and related documents;

(d) Transmittal to the department of all Refuse Act of 1899 (33 U.S.C. 401-413) applications and issued permits, NPDES applications, and issued permits, and all other relevant data collected by the regional administrator;

(e) Consideration of confidentiality of information submitted by applicants in connection with MPDES, NPDES, or Refuse Act of 1899 (33 U.S.C. 401-413) permit applications or which may be furnished by the permittee in connection with required periodic reports; and

(f) Specifications of additional monitoring, recording, and reporting procedures, if necessary to insure compliance with the federal regulations contained in or subsequent revisions to 40 CFR 124, Subpart G.

(2) On the last day of the months of February, May, August, and November, the department shall transmit to the regional administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the department of compliance or noncompliance with each interim or final requirement of a schedule of compliance. Such list must be available to the public for inspection and copying and must contain at least the following information with respect to each instance of noncompliance:

(a) name and address of each noncomplying permittee;

(b) a short description of each instance of noncompliance;

(c) a short description of any actions or proposed actions by the permittee or the department to comply or enforce compliance with the interim or final requirement; and

(d) any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.
AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

RULE LIII SMALL CONFINEMENT FACILITIES FOR ANIMALS (1) Unless considered necessary by the department, the procedural requirements of RULES XXXIX through XLVI and the requirements for state-EPA coordinators in RULE LII do not apply to small confinement facilities for animals.

AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA

4. These amendments are necessary in order to bring the Montana Water Pollution Control Program and Montana Water Pollution Discharge Elimination System Program into conformance with federal criteria. Under the Clean Water Act and its regulations, Montana maintains its regulatory program for water pollution control only if that program meets or exceeds federal standards. The federal regulations describing the National Pollutant Discharge Elimination System have changed dramatically since the State of Montana promulgated ARM 16.20.901 through 16.20.919. As a result, the State regulations are no longer in conformance with the federal standards. The amendments which are proposed closely parallel the federal standards, and in most cases are identical to the federal standards.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, MT 59620, no later than November 17, 1989.

HOWARD TOOLE, Chairman
BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

by _____
Donald E. Pizzini, Director

Certified to the Secretary of State September 18, 1989 .

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

In the matter of the adoption of rules I through XV establishing pretreatment standards for discharges into publicly operated treatment works	NOTICE OF THE PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULES I THROUGH XV FOR PRETREATMENT STANDARDS FOR DISCHARGES INTO PUBLICLY OPERATED TREATMENT WORKS (Water Quality)

To: All Interested Persons

1. On November 17, 1989 at 10:00 a.m. the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rules.

2. The rules, as proposed to be adopted, appear as follows:

RULE I APPLICABILITY (1) This subchapter applies to the following:

(a) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTW's;

(b) POTW's which receive wastewater from sources subject to national pretreatment standards; and

(c) Any new or existing source subject to national pretreatment standards.

(2) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE II DEFINITIONS The definitions contained in ARM Title 16, chapter 10, subchapter 13 are hereby incorporated by reference in this subchapter. The following definitions pertain to indirect dischargers and POTW's subject to pretreatment standards and the MPDES program:

(1) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in section (8) of this rule and which has been approved by the department in accordance with RULE IX.

(2) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the MPDES program.

(3) "Industrial user" or "user" means a source of indirect discharge.

(4) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(a) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) therefore is a cause of a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): section 405 of the Clean Water Act (CWA), the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

(5) "National pretreatment standard" or "pretreatment standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the CWA, which applies to industrial users. This includes prohibitive discharge limits established pursuant to section (4) of this rule.

(6) "Pass through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's MPDES permit (including an increase in the magnitude or duration of a violation).

(7) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(8) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

(9) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than the national pretreatment standard, imposed on an industrial user.

(10) "Regional administrator" means the administrator of Region VIII of the EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.

(11) "Submission" means either a request by a POTW for

approval of a pretreatment program to the department, or a request by a POTW for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.
AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE III LOCAL LAW (1) Nothing in this subchapter is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in state or national pretreatment standards, or any other requirements or prohibitions established by the department or by the EPA.
AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE IV NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES (1) A user may not introduce into a POTW any pollutants which cause pass through or interference. These general prohibitions and the specific prohibitions in section (2) of this rule apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other national pretreatment standards or any national, state, or local pretreatment requirements.

(2) In addition, the following pollutants may not be introduced into a POTW:

(a) pollutants which create a fire or explosion hazard in the POTW;

(b) pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

(c) solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

(d) any pollutant, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;

(e) heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40°C (104°F) unless the department, upon request of the POTW, approves alternative temperature limits.

(3)(a) POTW's developing POTW pretreatment programs must develop and enforce specific limits to implement the prohibitions listed in sections (1) and (2) of this rule;

(b) All other POTW's shall, in cases where pollutants contributed by user(s) result in interference or pass-through, and such violation is likely to recur, develop and enforce specific effluent limits for industrial user(s), and all other users, as appropriate, which together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's MPDES permit or sludge use or disposal practices;

(c) Specific effluent limits may not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(4) Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with section (3) of this rule, such limits are deemed pretreatment standards for purposes of section 75-5-304, MCA, of the Montana Water Quality Act.

(5) If, within 30 days after notice of an interference or pass-through violation has been sent by the department to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the department may take appropriate enforcement action.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE V NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS (1) In addition to the general prohibitions in RULE IV(1), all indirect dischargers must comply with national pretreatment standards promulgated by the EPA and codified in 40 CFR Chapter 1, subchapter N. Compliance is required within the time specified in the appropriate subpart of subchapter N.

(2) Industrial users may request the department to provide written certification on whether an industrial user falls within a particular subcategory. The department will act upon that request in accordance with the procedures in 40 CFR 403.6.

(3) Limitations for industrial users will be imposed in accordance with 40 CFR 403.6(c)-(e).

(4) The department hereby incorporates by reference herein 40 CFR Chapter 1, Subchapter N (Effluent Guidelines and Standards), and 40 CFR 403.6 (National Pretreatment Standards: Categorical Standards); revised as of July 1, 1985. Copies of these materials are available from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE VI REMOVAL CREDITS (1) POTW's may revise pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW. Revisions must be made in accordance with the provisions of 40 CFR 403.7. The department hereby incorporates by reference herein 40 CFR 403.7, which concerns removal credits. A copy of 40 CFR 403.7 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE VII PRETREATMENT PROGRAMS: DEVELOPMENT BY POTW (1) Any POTW, or combination of POTW's operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards,

are required to establish a POTW pretreatment program. The department may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances so warrant in order to prevent interference or pass-through.

(2) A POTW which meets the criteria of this rule shall receive approval of a POTW pretreatment program no later than 3 years after the reissuance or modification of its MPDES permit. POTWs identified after July 1, 1983, as being required to develop a POTW pretreatment program under section (1) of this rule shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the department of such identification. The POTW pretreatment program shall meet the criteria set forth in section (6) of this rule and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in section (2) of this rule. The POTW's MPDES permit will be reissued or modified to incorporate the approved program conditions as enforceable conditions of the permit.

(4) If the POTW does not have an approved pretreatment program at the time the POTW's existing permit is reissued or modified, the reissued or modified permit must contain the shortest reasonable compliance schedule, not to exceed 3 years, for the approval of the legal authority, procedures, and funding required by section (6) of this rule.

(5) The department may modify or revoke and reissue a POTW's permit in order to:

(a) put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(b) coordinate the issuance of a CWA section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

(c) incorporate an approved POTW pretreatment program in the POTW permit;

(d) incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit;

(e) incorporate a modification of the permit approved under sections 301(h) or 301(i) of the CWA; or

(f) incorporate the removal credits established under RULE VI.

(6) A POTW pretreatment program must meet the following requirements:

(a) The POTW shall operate pursuant to legal authority enforceable in federal, state, or local courts which authorizes or enables the POTW to apply and to enforce the requirements of

this rule. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority enables the POTW to:

(i) deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its MPDES permit;

(ii) require compliance with applicable pretreatment standards and requirements by industrial users;

(iii) control, through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements;

(iv) require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; including but not limited to the reports required in RULE X;

(v) require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements;

(vi) carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under RULE X to assure compliance with pretreatment standards. Such authority must be at least as extensive as the authority provided under CWA section 308;

(vii) obtain remedies for noncompliance by industrial users with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. A POTW shall seek and assess civil and criminal penalties as authorized by law;

(viii) pretreatment requirements enforced through the remedies set forth in subsection (6)(a)(vii) of this rule include, but are not limited to, the duty to allow or carry out inspection entry or monitoring activities; any rules, regulations or orders issued by the POTW; or any reporting requirements imposed by the POTW or this subchapter. The POTW shall have authority and procedures to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures to halt or prevent any discharge to the POTW which presents or may present danger to environment or which threatens to interfere with the

operation of the POTW. The department has authority to seek enforcement for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the department finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief are governed by applicable state or federal law and not by this provision, and must comply with the confidentiality requirements set forth in RULE XI.

(b) The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures must enable the POTW to:

(i) identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index, or inventory of industrial users made under this rule must be made available to the department upon request;

(ii) identify the character and volume of pollutants contributed to the POTW by the industrial user identified under section (1) of this rule. This information must be made available to the department upon request;

(iii) notify industrial users identified under section (1) of this rule of applicable pretreatment standards and any other applicable requirements under sections 204(b) and 405 of the CWA and subtitles C and D of the Resource Conservation and Recovery Act (RCRA);

(iv) receive and analyze self-monitoring reports in accordance with the requirements of RULE X;

(v) randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. The results of these activities must be made available to the department upon request;

(vi) investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by RULE X, or indicated by analysis, inspection, and surveillance activities. Sample-taking and analysis and the collection of other information must be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

(vii) comply with all applicable public participation requirements of 40 CFR 25. These procedures include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, during the previous 12 months, were significantly violating applicable pretreatment standards or other pretreatment requirements. For the purposes of this provision, a significant violation is a violation which remains uncorrected 45 days after notification of noncompliance, or which resulted in the POTW exercising its emergency authority; and

(c) The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel

may be delayed by the department when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

(7) POTWs shall develop local limits as required in RULE IV(3)(a), or demonstrate that they are not necessary.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE VIII POTW PRETREATMENT PROGRAMS AND AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL (1) A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in section (2) of this rule. This description must be submitted to the department who will make a determination on the request for program approval in accordance with the procedure described in RULE IX.

(2)(a) The program submission must contain a statement from the city attorney or a city official acting in comparable capacity or the attorney for those POTW's which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in RULE VII. This statement must:

(i) identify the provision of the legal authority under RULE VII(6)(a) which provides the basis for each procedure under RULE VII(6)(b);

(ii) identify the manner in which the POTW will implement the program requirements set forth in RULE VII, including the means by which pretreatment standards will be applied to individual industrial users; and

(iii) identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

(b) The program submission must contain a copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission must include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

(c) The program submission must contain a brief description, including organization charges, of the POTW organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program, the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth.

(d) The program description must contain a description of the funding levels and full and part-time manpower available to implement the program.

(3) The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval must meet the requirements of section (2) of this rule except that the requirements of this rule may be

relaxed if the submission demonstrates that:

(a) a limited aspect of the program does not need to be implemented immediately;

(b) the POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

(c) funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the department will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(4) The request for authority to revise categorical pretreatment standards must contain the information required in 40 CFR 403.7 (adopted by reference in RULE VI).

(5) A POTW requesting POTW pretreatment program approval shall submit to the department 3 copies of the submission described in section (2) and, if appropriate, section (4), of this rule. Within 60 days after receiving the submission, the department shall make a determination of whether the submission meets the requirements of section (2) and, if appropriate, section (4) of this rule. Upon a preliminary determination that the submission meets the requirements of this rule, the department will:

(a) notify the POTW that the submission has been received and is under review; and

(b) commence the public notice and evaluation activities set forth in RULE IX.

(6) If, after review of the submission as provided for in section (5) of this rule, the department determines that the submission does not comply with the requirements of sections (2), (3), and, if appropriate, (4) of this rule, the department will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification must identify any defects in the submission and advise of the means by which the POTW can comply with the applicable requirements of sections (2), (3), and, if appropriate, (4) of this rule.

(7)(a) In order to be approved, the POTW pretreatment program must be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130 and 131, when the CWA section 208 plan includes management agency designations and addresses pretreatment in a manner consistent with this subchapter. In order to assure such consistency, the department will solicit the review and comment of the appropriate CWA section 208 planning agency during the public comment period provided for in RULE IX(2)(a)(ii) prior to approval or disapproval of the program.

(b) Where no 208 plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent

with this subchapter, the department will solicit the review and comment of the appropriate 208 planning agency.
AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE IX APPROVAL PROCEDURES FOR POTW PRETREATMENT PROGRAMS AND POTW GRANTING OF REMOVAL CREDITS The following procedure is adopted in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization.

(1) The department has 90 days from the date of public notice of a submission complying with the requirements of RULE VIII(2), and where removal credit authorization is sought with the requirements of RULE VI and RULE VIII(4), to review the submission. The department shall review the submission to determine compliance with the requirements of RULE VII(2) and (6), and where removal credit is sought, with RULE VI. The department may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in section (2) of this rule is extended beyond 30 days or if a public hearing is held as provided for in subsection (2)(a)(ii) of this rule. In no event, however, may the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.

(2) Upon receipt of a submission, the department will commence its review. Within 20 days after making a determination that a submission meets the requirements of RULE VIII(2), and when a removal credit authorization is sought with RULE VI(4), the department will:

(a) Issue a public notice of request for approval of the submission:

(i) This public notice is circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice include mailing notices of the request for approval of the submission to designated CWA section 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

(ii) The public notice provides a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission.

(iii) All written comments submitted during the 30-day comment period are retained by the department and are considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the department.

(b) Provide an opportunity for the applicant, any affected state, or any interested state or federal agency, person, or group of persons to request a public hearing with respect to the submission:

(i) This request for public hearing must be filed within the 30-day or extended comment period described in subsection (2)(a)(ii) of this rule, and must indicate the interest of the person filing such a request and the reasons why a hearing is warranted.

(ii) The department will hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt are resolved in favor of holding the hearing.

(iii) Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and right to participate is published in the same newspaper as the notice of the original request. In addition, notice of the hearing is sent to those persons requesting individual notice.

(3) At the end of the 30-day or extended comment period and within the 90-day or extended period provided for in section (1) of this rule, the department will approve or deny the submission based upon the evaluation in section (1) of this rule and taking into consideration comments submitted during the comment period and the record of the public hearing, the department will so notify the POTW and each person who has requested individual notice. This notification includes suggested modification, and the department may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) No POTW pretreatment program or authorization to grant removal allowances may be approved by the department if following the 30-day or extended evaluation period provided for in subsection (2)(a)(ii) of this rule and any public hearing held pursuant to this rule, the Regional Administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the Regional Administrator's objections is provided to the applicant and to each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(5) The department will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the department will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The department will identify any authorization to modify categorical pretreatment standards which the POTW may make for removal of pollutants subject to the pretreatment standards.

(6) The department will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE X REPORTING REQUIREMENTS FOR POTW'S AND INDUSTRIAL USERS (1) "Control authority" as it is used in this rule means the POTW, if the POTW's submission for its pretreatment program has been approved, or the department if the submission has not been approved.

(2) Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final administrative decision made upon a category determination submission under RULE V, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW must submit to the control authority a report which contains the information listed in subsections (2)(a) through (g) of this rule. Where reports containing this information have already been submitted to the department, the industrial user is not required to submit this information again. At least 90 days prior to commencement of the discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard must submit to the control authority a report which contains the information listed in subsections (2)(a) through (g) of this rule. New sources must also include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources must give estimates of the information requested in section 2(d) and (e) of this rule. The user shall:

(a) submit the name and address of the facility, including the name of the operator and owners;

(b) submit a list of any environmental control permits held by or for the facility;

(c) submit a brief description of the nature, average rate of production, and standard industrial classification of the operation carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated process;

(d) submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following: regulated process streams and other streams as necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e). The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations;

(e)(i) identify the pretreatment standards applicable to each regulated process;

(ii) submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the control authority. Both daily maximum and average concentration or mass, where required, must be reported. The sample must be representative of daily operations;

(iii) a minimum of four (4) grab samples must be used for

pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The control authority may waive flow-proportional composite sampling for any industrial user that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged;

(iv) the user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this section;

(v) take samples immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e) in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula of 40 CFR 403.6(e), this adjusted limit along with supporting data must be submitted to the control authority;

(vi) perform sampling and analysis in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. When 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or when the department determines that the 40 CFR sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis must be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the department;

(vii) if the department allows it, submit a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures. The baseline report must indicate the time, date, and place of sampling, and methods of analysis, and must certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW;

(f) submit a statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements; and

(g) if additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, submit the shortest schedule by which the industrial user will provide

such additional pretreatment and/or operation and maintenance. The completion date in this schedule must not be later than the compliance date established for the applicable pretreatment standard.

(i) When the industrial user's categorical pretreatment standard has been modified by a removal allowance under RULE VI or the combined wastestream formula at the time the user submits the report required by section (2) of this rule, the information required by subsections (2)(f) and (g) of this rule must pertain to the modified limits.

(ii) If the categorical pretreatment standard is modified by a removal allowance under RULE VI after the user submits the report required by section (2) of this rule, any necessary amendments to the information requested by subsections (2)(f) and (g) of this rule must be submitted by the user to the control authority within 60 days after the modified limit is approved.

(3) The following conditions apply to the schedule required by subsection (2)(g) of this rule:

(a) The schedule must contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards;

(b) No increment referred to in subsection (a) of this rule may exceed 9 months;

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event may more than 9 months elapse between such progress reports to the control authority.

(4) Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in sections (2)(a)-(f) of this rule. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR § 403.6(c), this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

(5)(a) Any industrial user subject to a categorical pretreatment standard after the compliance date of such pretreat-

ment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report must include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subsection (2)(d) of this rule except that the control authority may require more detailed reporting of flows. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

(b) When the control authority has imposed mass limitations on industrial users as provided by RULE V, the report required by subsection (5)(a) of this rule must indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR § 403.6(c), the report required by section (5)(a) shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by section (5)(a) shall include the user's actual average production rate for the reporting period.

(6) The industrial user shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loading, as defined by RULE IV, by the industrial user.

(7) The reports required in subsection (2)(e) and sections (4) and (5) of this rule must contain the results of sampling and analysis of the discharge, including the flow, the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards.

(a) This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under RULE X(2)(f) and 40 CFR § 403.12(d). In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(b) If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of

the repeat analysis to the control authority within 30 days after becoming aware of the violation, except the industrial user is not required to resample if:

(i) The control authority performs sampling at the industrial user at a frequency of at least once per month, or

(ii) The control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(8) The reports required in section (5) of this rule shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(9) All analysis shall be performed in accordance with procedures established by the administrator pursuant to section 304(h) of the Clean Water Act and contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by the administrator. (See 40 CFR §§ 136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the administrator. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

(10) If an industrial user subject to the reporting requirement in section (5) of this rule monitors any pollutant more frequently than required by the control authority, using the procedures prescribed in section (9) of this rule, the results of this monitoring shall be included in the report.

(11) The control authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards.

(12) POTWs with approved pretreatment programs shall provide the approval authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:

(a) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which indus-

trial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements;

(b) A summary of the status of industrial user compliance over the reporting period;

(c) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and

(d) Any other relevant information requested by the approval authority.

(13) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge.

(14) The reports required by sections (2), (4), and (5) of this rule shall include the certification statement as set forth in 40 CFR § 403.6(a)(2)(ii), and shall be signed as follows:

(a) By a responsible corporate officer, if the industrial user submitting the reports required by sections (2), (4), and (5) of this rule is a corporation. For the purpose of this section, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(ii) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports required by sections (2), (4), and (5) of this rule is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in sections (1)(a) or (1)(b) of this rule if:

(i) the authorization is made in writing by the individual described in sections (1)(a) or (1)(b);

(ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(iii) the written authorization is submitted to the control authority.

(d) If an authorization under section (15)(c) of this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters

for the company, a new authorization satisfying the requirements of section (15)(c) of this rule must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

(15) The reports required by sections (2), (4), (5), (8), (9), and (10) of this rule are subject to the Montana Water Quality Act as amended and all other state and federal laws pertaining to fraud and false statements.

(16)(a) Any industrial user and POTW subject to the reporting requirements established in this rule shall maintain records of all information resulting from any monitoring activities required by this subchapter. Such records must include for all samples:

(i) the date, exact place, method, and time of sampling, and the names of the person or persons taking the samples;

(ii) the dates analyses were performed;

(iii) who performed the analyses;

(iv) the analytical techniques or methods use; and

(v) the results of the analyses.

(b) Any industrial user or POTW subject to these reporting requirements established shall retain for a minimum of 3 years any records of monitoring activities and results, whether or not such monitoring activities are required by this subchapter, and shall make such records available for inspection and copying by the department and by the POTW in the case of an industrial user. This period of retention is extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the department.

(c) A POTW to which reports are submitted by an industrial user pursuant to sections (2), (4), and (5) of this rule shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the department. This period of retention is extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the department.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE XI CONFIDENTIALITY OF INFORMATION (1) In accordance with section 75-5-105, MCA, any information concerning sources of pollution that is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use, provided that trade secrets may be maintained or be confidential if so determined by a court of competent jurisdiction.

(2) Claims of confidentiality for the following information must be denied:

(a) the name and address of any permit applicant or permittee; and

(b) permit applications, permits, and effluent data.

(3) Subject to section (1) above, information required by MPDES application forms provided by the department under MPDES RULE XVII may not be claimed confidential, including informa-

tion submitted on the forms themselves and any attachments used to supply information required by the forms.
AUTH: 75-5-201, 75-5-105, MCA; IMP: 75-5-401, MCA

RULE XII NET/GROSS CALCULATION (1) Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with 40 CFR 403.15, revised as of July 1, 1985. The department hereby incorporates herein 40 CFR 403.15, which is a federal regulation relating to net/gross calculation. A copy of 40 CFR 403.15 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station Helena, Montana 59620.
AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE XIII UPSET PROVISION (1) "Upset" as used in this rule means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of section (3) of this rule are met.

(3) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(a) an upset occurred and the industrial user can identify the cause of the upset;

(b) the facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) the industrial user has submitted the following information to the POTW and control authority within 24 hours of becoming aware of the upset, or if this information is provided orally, a written submission within 5 days:

(i) a description of the indirect discharge and cause of noncompliance;

(ii) the period of noncompliance, including exact dates and times, or if not corrected, the anticipated time the noncompliance is expected to continue;

(iii) steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance;

(iv) in any enforcement proceeding the industrial user seeking to establish the occurrence of an upset has the burden of proof;

(v) in the usual exercise of prosecutorial discretion, state enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the

course of the review constitute final agency action subject to judicial review. Industrial users have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards;

(vi) the industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE XIV BYPASS (1)(a) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of sections (3) and (4) of this rule.

(3)(a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible at least ten days before the date of the bypass.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4)(a) Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass, unless:

(i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) There was no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of

untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(iii) The industrial user submitted notices as required under section (c) of this rule.

(5) The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three conditions listed in section (4)(a) of this rule.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

RULE XV MODIFICATION OF POTW PRETREATMENT PROGRAMS

(1) Either the approval authority or a POTW with an approved POTW pretreatment program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under RULE IX.

(2) POTW pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications, as defined in section (3) of this rule:

(i) The POTW shall submit to the approval authority a statement of the basis for the desired modification, a modified program description (see RULE VIII(2)), or such other documents the approval authority determines to be necessary under the circumstances.

(ii) The approval authority shall approve or disapprove the modification based on the requirements of RULE VII(6) following the procedures in RULE IX(2) - (6).

(iii) The modification shall be incorporated into the POTW's NPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with MPDES RULE XXXIV(7).

(iv) The modification shall become effective upon approval by the approval authority. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification under RULE IX(2)(a)(i).

(b) The POTW shall notify the approval authority of any other (i.e., non-substantial) modifications to its pretreatment program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in section (2)(a)(i) of this rule. Such non-substantial program modifications shall be deemed to be approved by the approval authority, unless the approval authority determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the approval authority, such modifications shall be incorporated into the POTW's permit in accor-

dance with MPDES RULE XXXIV(7). If the approval authority determines that a modification reported by a POTW in its statement is in fact a substantial modification, the approval authority shall notify the POTW and initiate the procedures in section (4)(a) of this rule.

(3) Substantial modifications.

(a) The following are substantial modifications for purposes of this rule:

(i) changes to the POTW's legal authorities;

(ii) changes to local limits, which result in less stringent local limits;

(iii) changes to the POTW's control mechanism, as described in RULE VII(6)(a)(iii);

(iv) changes to the POTW's method for implementing categorical pretreatment standards (e.g., incorporation by reference, separate promulgation, etc.);

(v) a decrease in the frequency of self-monitoring or reporting required of industrial users;

(vi) a decrease in the frequency of industrial user inspections or sampling by the POTW;

(vii) changes to the POTW's confidentiality procedures;

(viii) significant reductions in the POTW's pretreatment program resources (including personnel commitments, equipment, and funding levels); and

(ix) changes in the POTW's sludge disposal and management practices.

(b) The approval authority may designate other specific modifications, in addition to those listed in section (3)(a) of this rule, as substantial modifications.

(c) A modification that is not included in section (3)(a) of this rule is nonetheless a substantial modification for purposes of this rule if the modification:

(i) would have a significant impact on the operation of the POTW's pretreatment program;

(ii) would result in an increase in pollutant loadings at the POTW; or

(iii) would result in less stringent requirements being imposed on industrial users of the POTW.

AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA

3. The adoption of these rules is necessary in order to keep Montana's Water Pollution Control Program in conformance with federal requirements. The ability of the State of Montana to maintain its own water pollution control program is contingent upon its program being at least as stringent as the federal program. The federal standards require pretreatment standards for dischargers into publicly owned treatment works. To date the State of Montana has not adopted such pretreatment requirements. Failure to adopt pretreatment standards may jeopardize the standing of Montana's Water Pollution Control Program.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption, either orally or in writing, at the hearing. Written data, views, or arguments

may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, MT 59620, no later than November 17, 1989.

HOWARD TOOLE, Chairman
BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

by 
Donald E. Pizzini, Director

Certified to the Secretary of State September 18, 1989 .

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

In the matter of the adoption of a rule governing access of funeral directors or morticians to copies of death certificates	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE GOVERNING ACCESS TO DEATH CERTIFICATES

(Records & Statistics)

To: All Interested Persons

1. On October 24, 1989, at 10:00 a.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rule, which establishes a procedure through which funeral directors or morticians may obtain a copy of a death certificate.

2. The proposed amendments would adopt changes proposed to the department through a rulemaking petition proposed by the Montana Funeral Directors Association, Inc. ("Funeral Directors").

3. The petitioner, Funeral Directors, asserts as rationale for the rule that "the procurement of death certificate copies by funeral homes has become a valuable privilege" and that the reasons for adopting a rule are that the 1989 legislature enacted Senate Bill 398, approved as Chapter 456, which establishes a "new policy in favor of recognizing the funeral homes' right of access to death certificates and to obtain copies of certificates."

4. The rule, as proposed, appears as follows:

RULE I ACCESS TO DEATH CERTIFICATES BY MORTICIANS OR FUNERAL DIRECTORS (1) The department interprets section 50-15-112, MCA, to govern the request of a funeral director or mortician licensed by the Montana board of morticians for a copy of a death certificate as follows:

(a) The only prerequisites to issuance of a copy of a death certificate to a mortician or funeral director are:

(i) payment of the fee generally charged for such copies;

(ii) evidence of current licensure of the requestor by the Montana board of morticians, if the requestor is not known to the registrar; and

(iii) the requestor's representation, which may be oral or written, that the copy or copies are necessary for the determination of personal or property rights of the family of the deceased.

AUTHORITY: 50-15-102, MCA
IMPLEMENTING: 50-15-112, MCA

5. The Department is proposing this rule in order to

fulfill the requirements of section 2-4-315 of the Administrative Procedure Act which pertains to the filing of a petition for rulemaking by an interested party. The department does not necessarily agree with the proposed changes in the rule and reserves the right to provide substantive comments for consideration at the time of hearing.

6. Interested persons may submit their data, views, or arguments concerning the proposed rule, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 26, 1989.

7. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.

DONALD E. PIZZINI, Director

Certified to the Secretary of State September 18, 1989.

BEFORE THE DEPARTMENT OF AGRICULTURE

OF THE STATE OF MONTANA

In the matter of the amendment of rule pertaining to the bond schedule for itinerant merchants	NOTICE OF AMENDMENT OF RULE 4.12.2618

TO: All Interested Persons

1. On August 17, 1989, the Department of Agriculture proposed to amend the above stated rule at page 1037, 1989 Montana Administrative Register, issue no. 15 relating to the bond schedule for itinerant merchants.

2. The Department amended the rule exactly as proposed.

3. No comments or testimony were received

W. Ralph Peck, Deputy Director
Department of Agriculture

Certified to the Secretary of State September 18, 1989

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ATHLETICS

In the matter of the amendment of a rule pertaining to prohibitions) CORRECTED NOTICE OF AMENDMENT) OF 8.8.2803 PROHIBITIONS)

TO: All Interested Persons:

1. On May 25, 1989, the Board of Athletics published a notice of proposed amendment of the above-stated rule in issue number 10, 1989 Montana Administrative Register. The Board adopted the amendment, as proposed, on page 967, issue number 14, published on July 27, 1989.

2. Subsection (5) was renumbered (d) in the original notice but contained text that was amended in 1986. The amendment of (5) was shown as follows:

"8.8.2803 PROHIBITIONS ...

~~(5)~~ (d) Wrestling in mud, polyurethene or synthetic substances ~~is prohibited~~."

3. The amendment of subsection (5) should have appeared as follows:

"8.8.2803 PROHIBITIONS ...

~~(5)~~ (d) Any exotic form of activity which is advertised as a form of wrestling and which involves recognition, a prize, or a purse, or a purse at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, will be interpreted by the board of athletics as a form of wrestling subject to regulation by the state and requiring that the participants be licensed."

4. The text of this subsection would not have been amended if it had appeared in the original notice. Replacement pages are being submitted to the Secretary of State for the September 30 deadline as if they were noticed correctly in the original notice.

BOARD OF ATHLETICS
JOHN R. HALSETH, M.D., CHAIRMAN

BY: 
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State September 18, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA LOTTERY COMMISSION

In the matter of the amendment of rules pertaining to the organizational rule and retailer commissions	))))	NOTICE OF AMENDMENT OF 8.127.101 ORGANIZATIONAL RULE AND 8.127.407 RETAILER COMMISSION

TO: All Interested Persons:

1. On July 27, 1989, the Montana Lottery Commission published a notice of proposed amendment of the above-stated rules at page 954, 1989 Montana Administrative Register, issue number 14.

2. The Commission adopted the rules as proposed but more specifically stated sections 23-5-1006 and 23-5-1011, MCA, as implementing sections for ARM 8.127.101.

3. One comment was received from the staff of the Administrative Code Committee in regard to the implementing sections for ARM 8.127.101. The Commission concurred with staff of the ACC and has changed the implementing sections as shown above.

4. No other comments or testimony were received.

MONTANA STATE LOTTERY
SPENCER HEGSTAD, CHAIRMAN

BY: 
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 18, 1989.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Adoption of Emergency Rules on Gambling	)))	NOTICE OF ADOPTION OF EMERGENCY RULES ON GAMBLING

TO: All Interested Persons.

1. On October 1, 1989, ch. 642, L. 1989 becomes effective. The Legislature considered that bill necessary to protect the welfare of the citizens of Montana (§ 1(e)). Several new types of gambling regulation are included in the bill: licensing of gambling operators and card dealers (§§ 11 and 28), revised video gambling machine specifications (§ 49), specific descriptions of authorized card games (§ 26), standards for the conduct of sports pools (§ 58), standards for the temporary replacement of a video gambling machine that needs repair (§ 45), and standards for the play of successive games of keno (§ 39). The Department has recently discovered that the time consumed by prior steps necessary to the implementation of this act have not left sufficient time to follow the standard rulemaking procedure and have the vital rules in the areas described above in place by October 1, 1989. Therefore, the Department intends to adopt the following rules without public hearing (the Department has had informal consultations with representatives of both the gambling industry and law enforcement) as of the date of this publication. The rules as adopted will be made available to all those affected thereby, and were discussed by the Gaming Advisory Council at its first meeting on August 31, 1989.

2. A standard rulemaking procedure will be undertaken with a full public hearing prior to the expiration of these emergency rules.

3. The text of the proposed rules is as follows:

RULE I DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) "Applicant" means a person who has applied for a license issued by the department under Title 23, chapter 5, MCA.

(2) "Dealer" means a person who:

(a) deals playing cards in a card game; and

(b) may accept wagers and dispense winnings in a card game.

(3) "Department" means the department of justice unless otherwise specifically stated.

(4) "Gambling license" means any license issued by the department pursuant to Title 23, chapter 5, MCA.

(5) "Licensed" means that a person has been granted a dealer, operator, manufacturer/distributor, or manufacturer of illegal gambling devices license by the department.

(6) "Manufacturer/distributor" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind for use as a gambling device; or

(b) purchases or obtains from another person equipment of any kind for use in gambling activities and sells, leases, or otherwise furnishes this equipment to another person.

(7) "Manufacturer of illegal gambling devices" means a person who assembles from raw materials or subparts a completed or uncompleted piece of equipment intended for use as a gambling device which is not specifically authorized in Montana by statute or department rule.

(8) "Operator" means a person who operates or controls for use in public a gambling device or gambling enterprise.

(9) "Person" means both natural and artificial persons, and includes all partnerships, corporations, associations, clubs, fraternal orders, religious organizations, or charitable organizations.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-112, MCA.

RULE II APPLICATION FOR GAMBLING LICENSE - LICENSE FEE (1) Every person working as a dealer, operator, manufacturer/distributor, or manufacturer of illegal gambling devices as defined by Title 23, chapter 5, MCA, and by these rules must have a valid license issued by the department.

(2) An application for a gambling license must be submitted to the department of justice, gambling control division, on forms prescribed by the department and described herein. The application is not complete unless it is signed and dated by the applicant and contains all information, statements, documentation, and fees required by the department.

(3) The application must contain a document authorizing the disclosure of confidential information which must be signed and dated by the applicant whose signature must be attested to before a notary public for the state of Montana.

(4) Any first year license fee required by Title 23, chapter 5, MCA, must accompany each application.

(5) Applicants for specific types of gambling licenses issued by the department must comply with any special requirements contained in rules applicable to those licenses.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

RULE III INVESTIGATION OF APPLICANTS, FINGERPRINTS MAY BE REQUIRED (1) An applicant for a gambling license must make full disclosure of all information required by the department, these rules, and Title 23, chapter 5, MCA.

(2) The department may, at its discretion, require additional information, documentation, or disclosure from an applicant for a gambling license. This information may include fingerprints.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308, MCA.

RULE IV PROCESSING OF GAMBLING LICENSE APPLICATION (1) Upon receipt of an application for a gambling license, the department must make a thorough investigation as to the qualifications of the applicant for licensure. If, upon conclusion of such investigation, the applicant appears qualified under the law, a license must be issued if all requirements of the law and these rules are fulfilled.

(2) The department may consider the same matters, conditions, and qualifications for renewal of a gambling license as for the original application.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

RULE V GROUNDS FOR DENIAL OF GAMBLING LICENSE (1) The department may deny initial issuance or renewal of a gambling license or, if issued, suspend or revoke such license when it can be demonstrated an applicant or holder of such license has:

(a) concealed, failed to disclose, or otherwise attempted to mislead the department with respect to any material fact contained in the application or investigation for a gambling license or license renewal application; or

(b) purposely or knowingly failed to comply with Title 23, chapter 5, MCA, or these rules; or

(c) been convicted of committing, conspiring, or attempting to commit any felony, gambling-related misdemeanor, or other crime which is contrary to the declared policy of the state of Montana with regard to gambling; or

(d) been placed and remains in actual or constructive custody of any federal, state, or local law enforcement authority or court for any felony, gambling-related misdemeanor, or other crime which is contrary to the declared policy of the state of Montana with regard to gambling; or

(e) purposely or knowingly possessed or permitted to remain in or upon any premise licensed for gambling activity any device designed for the purpose of cheating or manipulating the outcome of any gambling activity or gambling enterprise authorized by Title 23, chapter 5, MCA; or

(f) purposely or knowingly committed, attempted, or conspired to commit theft or embezzlement against a gambling licensee or gambling enterprise; or

(g) been convicted in any jurisdiction of any offense involving or relating to gambling; or

(h) been prohibited by a governmental authority from being present upon the premises of any gambling establishment or gambling enterprise or any establishment where pari-mutual wagering is conducted for any reason relating to improper gambling activities or any illegal act; or

(i) failed to cooperate with any legislative investigative committee or other officially constituted body acting on behalf of the United States or any state, county, or municipality which seeks to investigate crimes relating to gambling, corruption of public officials, or any organized criminal activities.

(2) A person whose gambling license application has been denied for other than technical defects in the application may not reapply for a license for a period of one year from the date of denial.

(3) A person whose gambling license has been revoked may not reapply for a license for a period of one year from the date of the revocation.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

RULE VI RECOURSE IN CASES OF DENIAL OR NON-RENEWAL OF GAMBLING LICENSE - HEARING, JUDICIAL REVIEW (1) When the department denies an application for a gambling license or renewal of said license, the applicant may request a hearing. Upon the department's receipt of a written request, a hearing must be scheduled and conducted in accordance with the provisions of the Montana Administrative Procedure Act.

(2) Administrative hearings conducted by the department are subject to judicial review in accordance with the provisions of the Montana Administrative Procedure Act.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

RULE VII RENEWAL OF GAMBLING LICENSE (1) Renewal of an existing gambling license must be accomplished by submitting a renewal application on forms prescribed by the department. A renewal application is not complete unless it is signed and dated by the applicant and contains all information, statements, and documentation required by the department.

(2) The renewal license fee required by Title 23, chapter 5, MCA, must accompany each renewal application.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

RULE VIII INSPECTION OF LICENSED PREMISES, RECORDS, AND DEVICES (1) Any premises wherein any gambling-related activity which is licensed by the department is conducted, or any premises in any way connected physically or otherwise with a licensed gambling-related activity, shall at all times be open to inspection by the department or its authorized representatives. At any time during which a licensed gambling activity is being operated upon a premises, the commission, and any authorized representative of the commission, may enter upon the premises without advance notice and:

(a) Inspect any of the other records of the licensed operator, or of any member that directly participates in the management, operation or promotion of a licensed activity, or of any employee of the licensed operator.

(b) Inspect, including the dismantling of, all pieces of equipment or parts thereof, or devices of any nature, which are being used to conduct the licensed activity.

(c) In the case of a live bingo or keno game, make a count of all monies received during the operation of the

licensed activity located on the premises, inspect all receipts for income issued by the licensed operator, and inspect all receipts for prizes which have been awarded by the licensed operator.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

RULE IX APPLICATION FOR DEALER LICENSE (1) The application for a dealer license must contain a temporary dealer license form which, when accompanied by a receipt for certified mail, will serve as a temporary dealer license pending the issuance of an annual dealer license.

(2) Applications for dealer licenses are available only at driver examination stations. At the time an application for a dealer license is obtained by an applicant, the applicant must appear in person and present photographic verification of his identity to an authorized representative of the driver services bureau. The authorized representative of the driver services bureau must:

(a) record the verified identity of the applicant on the temporary dealer license form portion of the application and sign and date said form;

(b) assign an identification number to the applicant and record this number in the proper locations on the application; and

(c) obtain a photograph of the applicant utilizing the assigned identification number in a manner which will identify the applicant for future issuance of an annual dealer license as described by these rules.

(3) The first year license fee required by Title 23, chapter 5, MCA, must accompany each application.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308, MCA.

RULE X DEALER LICENSE (1) A dealer license issued by the department must be in the form of a laminated identification card and must contain the following information:

(a) on the front of the license:

(i) a photograph of the person to whom the license is issued;

(ii) the first name, middle initial, and last name of the person to whom the license is issued; and

(iii) the assigned license number and expiration date specific to the person to whom the license is issued.

(b) on the back of the license:

(i) the home address, height, weight, eye color, hair color, date of birth, sex, and social security number of the person to whom the license was issued.

(2) Every dealer license expires annually on the licensee's birthday, and in no case less than 12 months from the date of issuance.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308, MCA.

RULE XI TEMPORARY DEALER LICENSE (1) A temporary dealer license obtained by an applicant pursuant to these rules is valid only when attached to a receipt for certified mail which has been postmarked by the United States Postal Service at the time the application for dealer license is sent to the department.

(2) The temporary dealer license expires at midnight on the 90th day following the date of the postmark displayed on the receipt for certified mail.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

RULE XII PROCESSING OF DEALER LICENSE APPLICATION RENEWAL, OR REPLACEMENT (1) In every case in which application is made to the department for a dealer license, the department will, within ninety (90) days:

(a) issue a dealer license to the applicant; or

(b) deny a dealer license to the applicant.

(2) An application to renew a gambling license must be received by the department prior to the expiration date of the license. An application not postmarked by the date of expiration will result in expiration of the gambling license and will require the expired license holder to reapply for a new original license in the manner required by these rules.

(3) Replacement of a gambling license is accomplished by following the new license procedure and including a $10 fee.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

RULE XIII CONFISCATION OF TEMPORARY DEALER LICENSE (1) A temporary dealer license may be immediately confiscated by authorized representatives of the department when the following conditions can be demonstrated:

(a) The holder of such license has been placed or remains in actual or constructive custody as a result of any felony or gambling-related misdemeanor and is awaiting trial on such criminal charges; or

(b) The holder of such license has not affixed the certified mail receipt to the license as required by these rules; or

(c) A certified mail receipt is affixed to such license but displays no postmark as required by these rules; or

(d) The license has expired; or

(e) The department has denied a dealer license to the holder of such a license; or

(f) The department has returned an incomplete dealer license application and the applicant has not acted within 15 days of mailing by the department to correct the deficiency.

(2) An applicant whose temporary dealer license has been confiscated under these rules may appeal the confiscation

through the provision of the Montana Administrative Procedure Act.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

RULE XIV POSSESSION OF DEALER LICENSE (1) A temporary dealer license must be carried on the licensee's person while on duty in a gambling premise.

(2) Every person in possession of a dealer license must surrender such license to any peace officer of the state of Montana upon request for the purpose of inspecting said license and identifying the license.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

RULE XV DEALER LICENSE SPECIFIC TO THE PERSON NAMED THEREON (1) A dealer license is specific to the person named on the face of the license and must not be displayed by anyone other than the licensee.

(2) A dealer license displayed by anyone except the licensee is subject to confiscation by federal, state, or local law enforcement office charged with the responsibility of investigating gambling activities.

(a) Any confiscated dealer license must be sent to the department along with a report detailing the circumstances of the seizure.

(b) Upon receipt of a confiscated dealer license and the accompanying report, the department must immediately begin an investigation into the circumstances for the purposes of determining whether a violation of Title 23, chapter 5, MCA, or these rules occurred.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

RULE XVI DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) "Applicant" means a person who has applied for an operator license issued by the department under Title 23, chapter 5, MCA.

(2) "Department" means the department of justice unless otherwise specifically stated.

(3) "Provisional operator license" means a license issued provisionally by the department to make available to the public for play a gambling device or gambling enterprise.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176 & 177, MCA.

RULE XVII APPLICATION FOR OPERATOR LICENSE (1) All applicants for operator licenses issued by the department must submit the following information:

(a) name(s), addresses, telephone numbers, and social security numbers; history of gambling licensure with any federal, state, or local agency; civil and criminal record; and

record of residence and employment of the business owners for the last 15 years.

(b) the applicant's most recent financial statements with the application form. Statements submitted to state and federal income tax agencies as part of the most recent tax returns are acceptable;

(c) the amounts and sources of all business financing, along with the terms of each loan agreement;

(d) the following ownership/management information, as applicable:

(i) if the business is a sole proprietorship, the above-cited information must be submitted on the proprietor; or

(ii) if the business is a partnership, the information must be submitted on each general and limited partner; or

(iii) if the business is a closely-held or subchapter s corporation, the information on each shareholder, and each officer and director if not the same; or

(iv) if the business is a publicly-traded corporation, the names of each shareholder owning 5 percent or more of the company stock and the corporate officers and board of directors; or

(v) if the applicant is a nonprofit corporation or association, the information must be submitted on the applicable managing body, i.e., board of directors or steering committee; or

(vi) if the owner(s) acquires the services of a gaming manager or management firm, the information must not only be submitted on the owner but the manager or firm as well; and

(e) the following information regarding employees and business associates:

(i) the full name and address of every person employed by the applicant in a gambling-related activity in Montana on a salary or commission basis;

(ii) every person who has any right to share in the profits of the gambling operation including assignees, landlords, or otherwise, to whom any interest or share of profits has been pledged as security for a debt or deposited as security for the performance of any act or to secure the performance of a contract of sale;

(iii) a list of those with options to purchase a share of the business.

(3) Operator licenses must be renewed annually by completing forms prescribed by the department.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176 & 177, MCA.

RULE XVIII INVESTIGATION OF APPLICANTS, ADDITIONAL INFORMATION MAY BE REQUIRED (1) The department may require access to all of the applicant's financial records to evaluate statements and support documentation supplied with the background application form.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176 & 177, MCA.

RULE XIX PROVISIONAL OPERATOR LICENSE (1) The department may issue to an applicant for an operator license a provisional license pending the results of the investigation of the applicant's suitability for licensure. A provisional license will be revoked upon a determination that the applicant does not qualify for licensure. Upon a final determination that the applicant does qualify for licensure the department will issue a final order removing the license from provisional status.

(2) A person granted a provisional operator license by the department must comply with all laws of the State of Montana and rules of the department.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176 & 177, MCA.

RULE XX CHANGES IN OWNERSHIP REPORTING (1) With the exception of subsection (2) a new application for licensure must be submitted with each change in ownership.

(2) With regard to publicly traded corporations, changes are subject to the limitations contained in these rules.

(3) All new officers and directors must be reported to the department within 30 days of the date of change.

(4) As defined in Rule XVII, all new owners, officers, and directors are subject to the same background information requirements specified previously in this subsection. Applications are subject to license denial if the changes in ownership do not meet with department approval.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176 & 177, MCA.

RULE XXI DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) "Ante" means the amount of money each player places into the pot before the first deal of each game.

(2) "Authority reference" means Official Poker Rulebook, copyright 1988, Las Vegas Hilton, except for sections E, F, and H and Scarnes' Encyclopedia of Card Games by John Scarne, pages 18-276. These books will be used by the department as the authority on how to play authorized card games. The sections of the books cited as authority will not apply where there is a conflict with state law or rule.

(3) "Banking game" means a game where there is a fund against which everyone has the right to bet, the bank taking all that is lost by the bettors and paying all that is won. The test of such a game is whether the banker pays winnings and suffers losses. The game is not a banking game where the players bet against each other and settle with each other. Games in which any portion of the games includes betting against a fund are considered banking games.

(4) "Blind bet" means the money a player places into the pot before looking at his or her cards.

(5) "To burn a card" means to discard a card from the top of the deck and place it face down on the table according to house rules.

(6) "Cap card" means a blank card placed on the bottom of the deck.

(7) "Card table" or "live card game table" means a table licensed by the department.

(8) "Cutting card" means a blank card inserted by a player at the point where the player wishes the dealer to make a cut.

(9) "Dead card or hand" means a card or hand ruled out of play and ineligible to win any part of the pot.

(10) "Fouled hand" means a hand that either has an improper number of cards or has come in contact with discards.

(11) "Operator" means an individual licensed to conduct public gambling pursuant to Title 23, chapter 5, MCA.

(12) "Player" means a natural person participating in a live card game specifically authorized in Title 23, chapter 5, MCA, and described by these rules.

(13) "Poker" means a card game played by at least two players who bet against each other and settle with each other and not against the house. Poker is dealt by one dealer on a card table. A player bets on the cards (hand) the player holds. There may be an initial ante round and/or blind bet by the players. After the players receive their starting cards, there are one or more betting rounds. After all the dealing of cards and betting has occurred for a pot and there are two or more players still in contention, there is a showdown based on a maximum of five cards. The object of the game is for a player to win the pot either by making a bet no other player is willing to match or by having the best hand as described in these rules.

(14) "Pot" means all the bets placed by the players collected together.

(15) "Rake" means a set fee or percentage of the pot assessed by an operator for providing the services of a dealer, table, and location for public play.

(16) "Showdown" means the hands shown by all players remaining in the game.

(17) "Table stakes" means the amount of chips or cash in front of the player prior to the beginning of a hand.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXII TYPES OF CARD GAMES AUTHORIZED The following card games are authorized by law and must be played only in the manner set out for that game in the applicable authority reference.

(1) General poker rules, practices, and the games of Texas Hold'em, Draw Poker, Omaha, Seven Card Stud, and their variations according to Office Poker Rulebook, Copyright 1988, Las Vegas Hilton, except for sections E, F, and H.

(2) Other poker variations, Bridge, Cribbage, Hearts, Panguingue, Pinochle, Pitch, Rummy, Solo, and Whist, according to Scarnes' Encyclopedia of Games by John Scarnes, page 18-276.

(3) Card games not specifically authorized herein are prohibited.

(4) The department may approve other proposed variations of card games authorized by Title 23, chapter 5, MCA. Persons submitting card games for approval must provide the following information to the department:

(a) A complete description of the play of game, including but not limited to, the ranking of cards, betting procedures, number of cards in the showdown, and role of the house in the game; and

(b) The history of game.

(5) The department may require an actual demonstration of any game submitted for approval.

(6) No variations other than those authorized by the department may be played prior to department approval.

(7) Each licensed operator may establish rules of conduct for the card players on its premises.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXIII RANKING OF POKER CARDS AND HANDS (1) The cards in poker are ranked ace, king, queen, jack, ten, nine, eight, seven, six, five, four, three, deuce. The ace is the highest ranked card in high poker and is ranked lower than a deuce in low poker.

(2) The hands in poker are ranked and defined as follows from highest to lowest:

(a) Five of a kind - four cards of the same rank and a wild card.

(b) Straight flush - five cards of the same suit in sequence. An ace high straight flush is a "royal flush."

(c) Four of a kind - four cards of the same rank.

(d) Full house - three cards of the same rank and two cards of any other rank.

(e) Flush - five cards of the same suit.

(f) Straight - five cards in sequence.

(g) Three of a kind - three cards of the same rank.

(h) Two pair - two cards of the same rank and two cards of any other rank.

(i) One pair - two cards of the same rank.

(j) Highest card - the highest ranking card in the hand of five unmatched cards.

(3) If two or more hands are tied in the ranking, the hand with the highest rank matched card or cards wins. Otherwise the tie must be broken by the rank of the unmatched cards in the hand.

(4) In the event hands are identical in all aspects except for the suit, players shall evenly divide the pot.

(5) Wild cards may be used in poker.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXIV POKER CARDS - PHYSICAL CHARACTERISTICS (1) The cards used in the game of poker must be one complete standard deck of 52 cards plus joker(s).

(2) The design on the backs of each card in the deck must be identical and no card may contain any marking, symbol, or design that will enable a player to know the identity of any element printed on the face of the card or that will in any way differentiate the back of that card from any other card in the deck. The backs of the cards may contain a logo.

(3) No operator or dealer may use cards that are taped, defaced, bent, crimped, or deformed in any manner.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXV POKER CHIPS - VALUE AND PHYSICAL CHARACTERISTICS (1) Each poker chip used must be either clearly and permanently impressed, engraved, or imprinted on one side with a specific value of the chip or colored so as to clearly denote the value of the chip. At the operator's discretion, the other side of the chip may have the operator's name represented by a related design, symbol, abbreviation, or other identification which would differentiate the operator's chips from those being used by every other operator.

(2) Each denomination of poker chip must have a different primary color from the other denominations of chips. Each operator may, at its discretion, utilize contrasting secondary colors for any inlays on each denomination of poker chip.

(3) The value and colors of the poker chips must be conspicuously posted within sight of the card table.

(4) Poker chips must be sold for cash only and no credit of any nature may be extended to a person purchasing chips.

(5) The operator must redeem on demand its own chips for cash at the value for which they were sold.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXVI WAGERS TO BE MADE WITH POKER CHIPS OR CASH ONLY All wagers must be made with poker chips or cash.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXVII PERSONS NOT TO BRING THEIR OWN CARDS OR POKER CHIPS No person may bring to the card table or introduce into a poker game any playing card or cards or any poker chip or chips other than those obtained from the operator.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXVIII PROCEDURE FOR ACCEPTING CASH AT THE POKER TABLE Each dealer who receives currency from a player at a poker table for exchange for poker chips shall observe the following procedures and requirements:

(1) The currency must be spread on the top of the poker table by the dealer accepting it, in full view of the player who presented it.

(2) The amount of currency must be verbalized by the dealer accepting it.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXIX PLAYER RESTRICTIONS (1) There must be at least two players.

(2) No player in a poker game may play other than the player's own hand.

(3) A player shall only play one hand and the player shall make all decisions without advice from any person.

(4) No player may provide any information to any person regarding the player's live or folded hand. No person may provide any information to any other person regarding a player's live or folded hand.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXX USE OF DEVICE PROHIBITED It is unlawful for any player to use any device to assist in keeping track of the cards played.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXI SPECIAL POLICIES Each operator may establish rules of conduct for the players and spectators on its licensed premise as long as the operator's rules do not conflict with state law or administrative rule.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXII DEALER RESTRICTIONS Dealers shall have no financial interest, directly or indirectly, in the outcome of any game which they deal.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXIII SHILLS The operator or dealer must identify house players, shills, employees, or other representatives of the operator at a player's request.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXIV DECKS - SHUFFLE AND CUT OF THE CARDS (1) The operator must have two separate decks of cards available at each table. The color of the backs of the cards of the two

decks must be a different predominant color. Any player may request that the dealer change decks. If such a request is made, the dealer must switch the use of decks at the end of that hand.

(2) Immediately prior to commencement of play of each game, the dealer must, in front of the players, shuffle all cards so that they are randomly intermixed.

(3) The dealer must cut the cards. The dealer must restack the cards with the former bottom part of the deck on top. Then the dealer must place a cutting card or cap card on the bottom of the deck to conceal the last card.

(4) The dealer at least once per shift must count cards in the deck and sort them on the table to verify the deck is complete.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXV ANTE, BLIND BET (1) A player may ante for each hand by placing a bet on the table in front of him or her before the first card of the game is dealt. Then, the dealer shall sweep the antes and place them in the pot. Once the first card has been dealt, the ante may not be altered.

(2) For a blind bet to be part of any game, it must be announced prior to beginning the deal. A blind bet may be used in addition to an ante.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXVI RAKE (1) The rake may be a percentage of the pot or a set fee established by the house and must be clearly posted.

(2) A rake must be pulled from the pot in an obvious manner following the completion of each betting round. The rake must be placed in a designated rake area and must remain in the designated rake area until the pot is awarded. After the pot is awarded, the rake must then be placed in a segregated area near the dealer.

(3) The designated rake area must be clearly visible to all players and must be on the table where it is near the dealer.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-312, MCA.

RULE XXXVII OPERATION OF THE GAMES (1) Play must always proceed in a clockwise direction, with each player's turn to act following the person on the player's immediate right.

(2) The operator may set a minimum buy-in for each game. The operator must announce the length of time a player may leave the game and still be considered part of the same playing session.

(3) The dealer must advise each new player of rules of the game being played prior to the ante.

(4) A player may not remove any of his or her chips from the table until the player quits the game. However, a player may use chips to pay for other goods or services in the premises.

(5) Players may only purchase additional chips between hands.

(6) Concealed chips may not be used in play for a game.

(7) Only poker chips and/or cash on the table (table stakes) at the start of a hand may be in play for that pot.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXVIII FOULED HANDS (1) A player is responsible for taking reasonable steps to protect his/her hand by holding on to it or by placing one or more chips on it. A player who fails to take reasonable steps to protect his or her hand shall have no relief if that hand is "fouled" as defined in this subsection, or is accidentally taken in by the dealer. A fouled hand or a hand accidentally taken by the dealer is a "dead hand," as defined in this subsection.

(2) A protected hand may not be ruled fouled by accidental contact with discards unless it is impossible to completely reconstruct. A player who has a protected hand taken in by the dealer or fouled by discards through no fault of the player is entitled to be refunded from the pot all the chips the player put in the pot on that game. In disputed cases, the dealer's decision is final.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXIX THE DEAL (1) Each card dealt must be the top card of the deck. The order of future ownership of cards that will be in play is not to be disturbed at any time during the deal of a game.

(2) When the dealer burns a card, it must be placed facedown on the table before dealing any round of cards. Burned cards must be kept separate from the discards throughout the hand.

(3) A player facing a bet who announces a fold shall have a dead hand.

(4) All pots must be awarded by the dealer only. When the dealer has awarded the pot and it has been taken in by that player without a claim made against it, the award stands. No player may make an agreement with any other player regarding the pot. Each game must be played to conclusion and the pot awarded to the actual winning player.

(5) The dealer may place a maximum time limit on players during which time a player must act on his or her hand. At the lapse of the time limit, if there has not been a bet to the player, the player must check; if there has been a bet to the player, the player's hand is dead. However, the dealer shall

provide a reasonable warning to the player prior to the application of this subsection.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XL BETTING (1) A player who unintentionally puts less chips into the pot than are needed to call a bet must either complete the call or withdraw his or her chips and fold.

(2) If an improper number of chips are bet by a player and the dealer puts the player's chips into the pot without making an immediate objection, it must be considered a bet by the player.

(3) A player must place his entire bet in front of the player at one time. Unless a player has failed to place the necessary amount of chips to call a bet or to signify a raise, the player may not place additional chips into the pot (no string bets).

(4) A player confronted by a bet larger than the player's table stakes may "call" with the amount of chips in front of the player ("all in" bet). The excess part of the bet is either returned to the bettor(s) or used to form a side pot with another player or players by matching the amount called.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XLI IMPROPER DEAL (1) A card improperly dealt faceup, flashed as it is dealt so a player might know its identity, a joker dealt when the joker is not being used in the game, or a downcard dealt off the table is considered an exposed card. A card exposed by a player is not an exposed card. An exposed card must be replaced.

(2) A misdeal shall cause all the cards to be returned to the dealer for a redeal.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XLII POSTING OF RULES (1) At least the following rules must be posted in a clear, legible manner at each card table or in such a conspicuous location that the player at a card table can readily read such rules.

(a) Games to be played.
(b) Betting limits of the games.
(c) Ante or blind bets (if any).
(d) Number of raises.
(e) Minimum buy-in.
(f) $300 pot limit.
(g) Rake percentage or set fee.
(h) Check and raise (yes or no).
(i) Designated wild card(s).
(j) No side bets (except in cases of all-in bets).
(k) No credit, no passing chips.
(l) Maximum number of players.

(m) Players must be 18 years old.

(n) Players may request that house players (shills) be identified.

(2) When the operator chooses to make a general house rule, that house rule shall be posted on the premises where it can be clearly seen by players in the card game to which it applies.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-313, MCA.

RULE XLIII PLAY OF SUCCESSIVE KENO GAMES (1) A player may play successive keno games by paying for the games in advance only if he or she remains on the licensed premises. A player requesting to play multiple and successive keno is limited to the number of successive games allowed by the house. All games must be paid for in advance and any and all prizes won must be personally claimed by the player after the last game paid for and before the next game begins. Failure to personally claim prizes won by the player after the multiple games played will result in forfeiture of any prizes won.

(2) Any licensee allowing play of successive keno games must clearly post the house limits as to the number of successive games allowed, the requirement for payment in advance for the number of games to be played, the requirement to remain on the licensed premises while the games are played, and the requirement to personally claim any prizes before leaving the premises.

(3) In no case may prizes won on previous games be automatically carried forward to extend play for games beyond the number indicated when the player paid the caller.

(4) Recordkeeping for the play of successive games must be in accordance with these rules.

RULE XLIV DEFINITIONS (1) "Master square" means that portion of the sports pool card divided into smaller squares or spaces representing the chances purchased by the participants.

(2) "Sports event" means a game, race, or athletic contest, not including elementary or high school contests.

(3) "Sports pool" means a gambling activity using a card with a master square with the names or initials of the participants in the pool written within each square or space. Consideration, in money, is paid for each square or space by the participant for the chance to win money or other item of value on any sports event wherein the contestants in such event are natural persons or animals.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-503, MCA.

RULE XLV SPORTS POOL CARD (1) The master square of the card must be divided into smaller squares arranged in horizontal rows and vertical columns.

(a) There may be no more than one sports event per master square.

(b) The numbers for each horizontal row and vertical column must be randomly assigned after all squares have been sold and prior to the beginning of the sports event.

(c) Each square or space must be represented by a number from both the horizontal row and vertical column.

(2) The card shall, in advance of any sale of any chance, clearly indicate:

(a) The name of the sports event covered by the card.

(b) The total number of chances that must be sold in order to fill in all the squares or spaces.

(c) The cost to the participant for each chance to participate in the sports pool.

(d) The total amount to be paid to each winner.

(e) The intervals that a pay-out will be made and the amount of each pay-out.

(f) The name of the person conducting the sports pool.

(g) The value of each individual prize and the total value of all prizes.

(3) After each prize is awarded, the names of the winners of each prize must be prominently displayed on each card.

(4) After the card is prominently and visibly displayed for the sale of a chance to play, it must not be removed from the premises conducting the sports pool for 30 days after the event.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-503, MCA.

RULE XLVI SALE OF CHANCES (1) The total cost of a chance to participate shall not exceed five dollars ($5) per chance and must be paid in cash at time the square or chance is selected.

(2) If, at the time of the event, all chances on the sports pool card are not sold, the persons who have paid for a chance to play shall be entitled to a full refund or must be allowed to transfer the chance to another sports pool currently advertised on the same premise where they purchased the chance on the uncompleted sports pool. If a participant cannot be located for a refund or transfer of the chance to another sports pool card prior to the event, the full purchase price of the chances purchased shall be retained by the premise for refund to the participant.

(3) The sports pool shall not be conducted if any chance remains unsold at the time the sports event is commenced.

(4) The sports event must not be changed to another sports event in order to allow the sale of all available chances.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-503, MCA.

RULE XLVII PRIZES (1) The prizes awarded to the winner or winners of a sports pool may be cash or merchandise but must not exceed a total value of $500.

(a) Where the prize awarded is merchandise, the purchase price paid for the item(s) of the merchandise prize is considered to be the value of the prize. Proof of the purchase price of the item(s) of the merchandise prize shall be retained for a period of 30 days from the event.

(b) Subject to subsection (2), if the value of the merchandise prize is less than the amount of money paid by all participants for the chance to participate, the person conducting the sports pool shall award the balance to the winner(s).

(2) A nonprofit organization may retain up to 50 percent of the value of a sports pool; however, the nonprofit organization must maintain and open to inspection upon reasonable demand records to verify that the retained portion of the sports pool is used to support charitable activities.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-503, MCA.

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

5. Interested persons are encouraged to submit their comments during the standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Gambling Control Division, Montana Department of Justice, 2687 Airport Road, Helena, Montana 59620.

By: Marc Racicot
MARC RACICOT
Attorney General

Certified to the Secretary of State September 18, 1989.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the emergency amendment of Rules 8.124.102, 8.124.201, and 8.124.202, video gambling machine rules	))))	NOTICE OF EMERGENCY AMENDMENT OF RULES 8.124.102, 8.124.201, and 8.124.202, VIDEO GAMBLING MACHINE RULES

To: All Interested Persons.

1. On October 1, 1989, ch. 642, L. 1989 becomes effective. The Legislature considered that bill necessary to protect the welfare of the citizens of Montana (§ 1(e)). The bill requires extensive revision of video gambling machine specifications (§ 49). Those rules, 8.124.101 through 8.124.229, ARM, are currently administrative rules of the department of commerce, to which the department of justice has succeeded, pursuant to section 8-15-133, MCA. The Department has recently discovered that the time consumed by prior steps necessary to the implementation of this act have not left sufficient time to follow the standard rulemaking procedure and have the vital video gambling machine rules in place by October 1, 1989. Therefore, the Department intends to amend the following rules without public hearing (the Department has had informal consultations with representatives of both the gambling industry and law enforcement) as of the date of this publication. The rules as amended will be made available to all those affected thereby, and were discussed by the Gaming Advisory Council at its first meeting on August 31, 1989.

2. A standard rulemaking procedure will be undertaken with a full public hearing prior to the expiration of these emergency rules.

3. Rule 8.124.102, ARM, is amended to include the following definition: 8.124.102 DEFINITIONS

"Audit copy" means the exact copy of all printing created by the printing mechanism in a video gambling machine. This copy is to be retained in the machine until removed by the operator. The audit copy will record the electronic meter readings, accounting summaries, valid ticket vouchers, and any other record created by this mechanism.

The balance of the rule is unchanged.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-621, MCA.

4. Rule 8.124.201, ARM, is amended as follows:

8.124.201 GENERAL SPECIFICATIONS OF VIDEO ~~GAMING~~ GAMBLING MACHINES (1) Detailed specifications for video ~~gaming~~ gambling machines are required by the department in ~~23-5-615~~ Title 23, chapter 5, MCA. Such specifications are required to ensure the legal operation and integrity of each machine and provide the department with methods to monitor the machines.

(2) Each video gambling machine model must:

(a) be inspected in the state for approval and licensure by the department. The department may inspect any machine sold or operated in the state. Any approval granted by the department to a person is not transferable. The department must be allowed immediate access to each machine. Keys to allow access to a machine for purposes of inspection may be provided to the department or must be immediately available at the premise.

(b) be operated by the players in the manner specified by this part.

(c) not have any switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game. The machine may not have any functions or parameters adjustable by and through any separate video display or input codes except for the adjustment of features that are wholly cosmetic. This is to include devices known as "knockoff switches."

(d) offer only those games defined as video gambling in Title 23, chapter 5, MCA, and operate in the following manner:

(i) The number of cards must be generated by use of a random number generator and frozen prior to the start of each game.

(ii) In the case of poker, after the first five cards have been dealt, the player may be allowed to raise his wager up to the amount of his initial ante, but the player may not exceed the overall statutory bet limit.

(iii) The game must display the combinations for which credits will be awarded and the number of credits awarded for each combination.

(iv) One credit may not exceed twenty-five cents in value.

(v) The machine must have locked doors to two separate areas, one containing the logic board and software for the game and the other housing the cash. Game EPROMS contained on the logic board must be readily accessible from the front of the machine. Access from one area to another must not be allowed.

(vi) (A) The machines may have two mechanisms that accept coins, hereinafter referred to as "mechanism 1" and "mechanism 2." These mechanisms must have devices referred to as "lockouts" which prohibit the machine from accepting coins during periods when the machine is inoperable.

(B) The machine may have a machine manufacturer mechanism that accepts cash in the form of bills that do not exceed $5.

(vii) In the case of poker each machine must use a color display with images of cards that closely resemble the standard poker playing cards.

(viii) The machine must be capable of printing a ticket voucher for all credits owed the player at the completion of each game. A valid ticket must contain the following in a format prescribed by the department:

(A) the name of the licensed establishment;

(B) the name of the city, town, or county in which the licensed establishment is located;

(C) the machine serial number;
(D) The time of day in hours and minutes in a 24-hour format;
(E) the current date;
(F) the program name and revision;
(G) the value of the prize in numbers;
(H) the value of the prize in words;
(I) the sequential number of the ticket voucher;
(ix) The printing mechanism must be located in a locked area of the machine to insure the safekeeping of the audit copy. The logic board shall be mounted within the logic area so it is not visible upon opening the logic area door. The printing mechanism must have a paper sensing device that upon sensing a "low paper" condition will allow the machine to finish printing the ticket and prevent further play. The machine must recognize a printer power loss occurrence and cease play until power has been restored to the printer and the machine is capable of producing a valid ticket.
(x) The machine must have nonresettable mechanical meters housed in a readily accessible locked machine area. These meters must be in a configuration prescribed by the department. The mechanical meters must be manufactured in such a way as to prevent access to the internal parts without destroying the meter. Meters must be hardwired (no quick connects will be allowed in the meter wiring system). The department may require and provide a validating identification sticker to attach to the mechanical meters to verify the meters are assigned to a specific licensed machine. The meters must keep a permanent record of:
(A) total credits accepted by the coin acceptor mechanism(s), and bill acceptor (if applicable);
(B) total credits played;
(C) total credits won;
(D) total credits paid;
(xi) The machine must contain electronic metering, using meters that record and display the following on the video screen in a format prescribed by the department:
(A) total credits in mechanism(s) 1 and 2 (if applicable).
(B) total credits through the bill acceptor (if applicable);
(C) total credits, total credits played, total credits won, and total credits paid;
(D) in the case of poker, total hands of poker played and total hands of poker won; total winning hands, consisting of a pair, two pair, three of a kind, a straight, a flush, a full house, four of a kind, a straight flush,, and five of a kind (if applicable);
(E) in the case of keno, total games of keno played and total games of keno won;
(F) in the case of bingo, total games of bingo played and the total games of bingo won.

(xii) The machine must issue by activation of an external key switch, an accounting ticket containing a performance synopsis of the machine. The printing of all totals from the electronic meters shall occur automatically by means of a switch attached to the door or the lock for that door each time access occurs to either the logic compartment or any compartment where cash is collected. Each machine must produce a full accounting ticket whenever electronic meters are reset. The ticket must be in the format prescribed by the department and contain:

(A) the name of the licensed establishment;

(B) the name of city, town, or county in which the licensed establishment is located;

(C) the serial number of the machine;

(D) the time of day, in hours and minutes in a 24-hour format;

(E) the current date;

(F) the program name and revision number; and

(G) the electronic meter readings required by the department.

(xiii) The machine must have an identification tag permanently affixed to the machine by the manufacturer. The tag must be on the right-hand side, upper left corner of the machine and must include the following information:

(A) manufacturer;

(B) serial number;

(C) model;

(D) date of manufacture; and

(E) any other information required by the department.

(F) The face of the machine must be clearly labeled so as to inform the public that no person under the age of 18 years is allowed to play.

(G) No machine may offer for play more than one pay table per program.

(H) Each machine must pass a static test that is determined by the department.

(I) The owner of a gambling machine that is capable of producing an audit ticket, must produce, in each machine owned an audit ticket at least every seven days.

(J) A machine shall be equipped with a surge protector that will feed all A.C. electrical current to the machine and a battery backup power supply capable of maintaining for a 30-day period the accuracy of all electronic meters, date, and time during power fluctuations and loss. The battery must be in a state of charge during normal operation of the machine. Manufacturers incorporating either the use of E2 proms or a lithium battery for memory retention will be considered to meet this requirement.

~~(2)~~ (3) ~~All hardware and software~~ Any and all modifications made to a ~~licensed~~ an approved video ~~gaming~~ gambling machine must be submitted to the department for approval prior to installation.

~~(3)~~ (4) The department may suspend, or revoke a license, or revoke approval of a machine at any time when it finds that any machine or machine component does not comply with statutes and rules governing electronic video ~~gaming~~ gambling machines. The department may also suspend, or revoke the licenses, or revoke approval of other similar model machines or machine components in use in the state.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-621, MCA.

5. Rule 8.124.202, ARM, is amended as follows:

8.124.202 HARDWARE SAFETY SPECIFICATIONS A video ~~gaming~~ gambling machine must include the following hardware specifications:

(1) All electrical and mechanical parts and design principles shall follow acceptable industrial codes and standards in both design and manufacture.

(2) A video ~~gaming~~ gambling machine shall be designed to ensure that the player will not be subjected to any physical, electrical, or mechanical hazards.

~~(3) A machine shall be equipped with a surge protector that will feed all A.C. electrical current to the machine and a battery backup power supply capable of maintaining for a 30 day period the accuracy of all electronic meters, date, and time during power fluctuations and loss. The battery must be in a state of charge during normal operation of the machine.~~

~~(4) The design of a machine shall ensure there are no readily accessible game function related points which would allow any input and that there is no access to input or output circuits unless it is necessary for the proper operation of the machine. No switches or other controlling devices may be added to the machine that would prohibit a player from operating a machine in the manner in which it was designed to play (to include devices known as knockoff switches).~~

~~(5) The nonresetable mechanical meters required by the act must:~~

~~(a) be placed in any readily accessible, locked machine area. Immediate access to the locked area where the meters are located must be provided. Keys to this area may be provided to the department or must be immediately available at the premise.~~

~~(b) be situated in a left to right or top to bottom configuration according to function and visibly labeled as follows:~~

~~(i) credits in bill acceptor, if applicable;~~
~~(ii) coins in;~~
~~(iii) credits played;~~
~~(iv) credits won;~~
~~(v) credits paid; and~~

~~(c) the mechanical meters shall be manufactured in such a way as to prevent access to the internal parts without destroying the meter. These meters must be hard wired (no quick connects will be allowed in the meter wiring system).~~

~~(6) The department may require and provide a validating identification sticker to be attached to the mechanical meters to verify the meters are assigned to a specific licensed machine.~~

~~(7) A machine must have a separate and locked area for the logic board and software as provided by 23-5-606(4)(g), MCA. The department must be allowed immediate access to this locked area. Access may be provided by retaining a key for the locked area immediately available at the licensed premises.~~

~~(8) The ticket printing mechanism provided in 23-5-606(4)(j), MCA, must be located in the locked logic area to ensure the safekeeping of the audit copy provided by 23-5-606(4)(k), MCA. The printing mechanism must produce a printed original and duplicate that will remain legible throughout the retention period required by these rules. Upon cash out by a player, the ticket printing mechanism must record the full value of the credits due the player in dollars and cents, as well as all information required by 23-5-606(4)(j), MCA.~~

~~(9) The logic and printer interface boards shall be mounted within the logic area so they are not visible upon opening the logic area door.~~

~~(10) A machine must have a nonremovable identification device externally attached to the machine which shall include the following information about the machine:~~

~~(a) manufacturer;~~

~~(b) serial number;~~

~~(c) model or make; and~~

~~(d) any other information required by the department.~~

~~(11) The logic board must have a unique serial number that may be used to identify the board for approval and inspection purposes.~~

~~(12) Each machine must have the electronic meters that meet the requirements specified in the applicable software section of the rules.~~

~~(13) Printing of all totals from the electronic meters shall occur automatically, by means of a switch attached to either the door or the lock for that door each time access to either the logic compartment or the cash area occurs. If the machine has a bill acceptor device and it collects the bills in an area separate from the cash compartment this area must be located and it must have a switch that records cash compartment accesses made to this area and prints an audit ticket each time an access occurs.~~

~~(14) Each machine must produce a full accounting ticket whenever electronic meters are reset. This ticket must be printed before and after the meters are reset. This audit ticket must print the identity of the program contained in the game to include program and revision number.~~

~~(15) The face of each machine shall be clearly labelled so as to inform the public that no one under the age of 18 years is allowed to play.~~

~~(16) The printer mechanism shall have a paper sensing device that upon sensing a "paper low" condition will allow the machine to finish printing the ticket and then prevent further play.~~

~~(17) No machine may offer for play more than one pay table per program.~~

~~(18) Each machine must recognize a printer power loss occurrence and cease play until power has been restored to the printer and the machine is capable of producing a valid ticket.~~

~~(19) Each machine must pass a static discharge test that is determined by the department.~~

~~(20) The owner of a gaming machine that is capable of printing an audit ticket, must produce in each machine owned an audit ticket at least every seven days.~~

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-621, MCA.

6. A new rule is inserted in chapter 124, subchapter 2 as follows:

RULE I USE OF TEMPORARY REPLACEMENT OR LOANER MACHINES - PERMIT REQUIRED - REPORTING (1) The use of a temporary replacement or loaner machine is authorized only in cases where it is being used to replace a machine that has been removed from service for repair.

(2) Any operator placing a temporary replacement machine in service must notify the department on a form prescribed by the department.

(3) The temporary replacement machine must have an identification number issued by the department. The identification number must be issued in advance of the machine being placed into service, and must be issued to a holder of a manufacturer/distributor or an operator license. The identification number must be affixed to the machine.

(4) The operator is responsible for filing all quarterly tax reports for the temporary replacement machine.

(5) In no case may the number of machines authorized by the number of permits issued the operator be exceeded by the use of temporary replacement machines. A temporary replacement machine may not be used for more than ninety (90) days.

AUTH: Sec. 23-5-603(2), MCA. IMP: Sec. 23-5-603(2), MCA.

6. The rationale for the emergency amendments is set forth in the statement of reasons for emergency.

7. Interested persons are encouraged to submit their comments during the standard rulemaking process. If interested persons wish to bepersonally notified of that rulemaking process, they should submit their names and addresses to the Gambling Control Division, Montana Department of Justice, 2687 Airport Road, Helena, Montana 59620.

By: Marc Racicot
MARC RACICOT
Attorney General

Certified to the Secretary of State September 18, 1989.

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE EMERGENCY) AMENDMENT OF ARM 36.22.601 AND) 36.22.604(1) REQUIRING PUBLIC) NOTICE AND OPPORTUNITY TO BE) HEARD BEFORE DRILLING PERMITS) MAY BE ISSUED.)	NOTICE OF EMERGENCY AMENDMENT OF ARM 36.22.601 AND 36.22.604(1) PERTAINING TO FILING NOTICES OF INTENTION TO DRILL OIL OR GAS WELLS

TO: All Interested Persons:

1. The Board's present rules, which treated the issuance of drilling permits as a ministerial action requiring neither notice or hearing, were invalidated by the Eleventh Judicial District Court in Cause No. DV-89-412(B), dated August 18, 1989 and amended August 24, 1989. It is essential that amended emergency rules, allowing the issuance of permits in a timely manner while giving the opportunity for public participation, be put into effect immediately because this is the active season for drilling in Montana. With winter approaching, the delay of only a week or two may in reality defer drilling until next spring in many areas of this state. The board finds that such a delay would be an imminent peril to the public welfare.

Therefore, the board adopts the following amended rules on an emergency basis effective September 19, 1989.

2. The text of the amended rules is as follows:

36.22.601 NOTICE OF INTENTION AND PERMIT TO DRILL (1) No person shall commence the drilling of an oil or gas well or stratigraphic test well or core hole without: ~~first-giving-to the-board--written-notice--of-intention--to-drill-on-Form-No.-2 and-obtaining~~

(a) Filing an Application for Permit to Drill on Form 2 with the board.

If the proposed well or hole is not located within the boundaries of a delineated field for which, after public hearing, an order has been entered by the board that drilling permits may issue for locations within that field without further public hearing, the applicant must:

(1) At its own expense, cause publication of Form 2A in one issue of a newspaper in general circulation in the county where the proposed well or hole is located; and

(2) File proof of such publication in the form of an affidavit of the publisher promptly with the board.

(b) Obtaining a drilling permit from the board.

(i) Prior to the commencement of recompletion operations

on any oil or gas well, ~~notice shall likewise be delivered to the board of such intention, and~~ approval shall be obtained.

(2) When a permit is sought for a 320 acre drilling or spacing unit, ~~the notice~~ Form No. 2 as filed with the board shall include a description of the lands to be included.

(3) ~~If the staff determines that a person applying for a drilling permit or approval of recompletion operations is not in substantial compliance with the board's rules governing any of the applicant's operations in Montana, the staff may refer the request for a permit to the board which shall then, after notice and hearing, determine if the permit should be granted and, if so, under what conditions.~~ The staff of the board shall refer the Application for Permit to Drill to the board for notice and public hearing if:

(a) An interested person shall, as to any application for Permit to Drill for which Form 2A is required, file in the form hereinafter set forth a written demand for an opportunity to be heard concerning such application; or

(b) The staff determines that a person applying for a drilling permit or approval of recompletion operations is not in substantial compliance with the Board's rules governing any of the applicant's operations in Montana; or

(c) The planned drilling or recompletion operations require further review in accordance with the board's Programmatic Environmental Statement.

(i) In those instances where such requests for a Permit to Drill have been the subject of notice and public hearing, the board shall, after such hearing, either:

(a) Enter its order granting such permit under such conditions as the board shall find proper and necessary; or

(b) Enter its order denying the application for the Permit.

(ii) A demand for opportunity to be heard concerning any Application for Permit to Drill for which Form 2A is required must:

(a) Be in writing; and

(b) Set forth the name, address, and telephone number of each party making the demand, and their ownership interest if any in the lands surrounding the drill site; and

(c) Set forth the specific reasons why the party requests a hearing regarding the issuance of the proposed drilling permit; and

(d) Be received by the board at its Helena office no later than seven (7) days after the date of publication of Form 2A. Service of such demand may be made on the board personally, by mail, or by FAX transmission; and

(e) Be simultaneously served upon the applicant for the permit by written copy mailed or FAX transmitted to the address or number set forth on Form 2A. A certificate of such service must accompany the demand as filed with the board.

(i) Surface owner concerns which are subject to the provisions of MCA Sec. 82-10-504 (Surface Damage and Disruption Payments) will not be the subject of a public hearing before

the board.

AUTH: Sec. 82-11-111, MCA
IMP: Sec. 82-11-122, 2-3-101 through 2-3-221, 2-4-303, and 2-4-601 through 2-4-631, MCA

36.22.604 PERMIT ISSUANCE - EXPIRATION - EXTENSION (1) If ~~the notice~~ no written demand for hearing has been filed within seven (7) days following the date of publication of Form 2A, the planned drilling or recompletion operations do not require further review in accordance with the board's Programmatic Environmental Statement, and the application complies in all respects with the applicable rules of the board, a permit shall be issued promptly by the Petroleum Engineer or his authorized agent.

Subsections (2), (3), and (4) remain the same.

AUTH: Sec. 82-11-111, MCA
IMP: Sec. 82-11-122, 82-11-134, 2-3-101 through 2-3-221, 2-4-303, and 2-4-601 through 2-4-631, MCA

3. The rationale for the emergency amendments to the rules is as set forth in paragraph 1.

4. The Board will hold a public hearing on adoption of the emergency rules as proposed permanent rules at its regularly scheduled meeting in Billings, Montana on November 30, 1989. Timely notice of that hearing and the proposed permanent rules will be given as provided by law.

The emergency action is effective September 19, 1989.

Dee Rickman

Dee Rickman, Executive Secretary
Board of Oil and Gas
Conservation

Certified to the Secretary of State, September 19, 1989.

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

In the Matter of Adoption of New Rules Establishing Certain Minimum Standards for the Adequacy of Telecommunications Services and Repeal and Re-enactment of ARM 38.5.2717.	NOTICE OF ADOPTION OF NEW RULES ESTABLISHING CERTAIN MINIMUM STANDARDS FOR THE ADEQUACY OF TELECOMMUNICATIONS SERVICES AND REPEAL AND REENACTMENT OF ARM 38.5.2717

TO: All Interested Persons

1. On March 30, 1989 the Department of Public Service Regulation published notice of public hearing and proposed adoption of new rules regarding Telecommunications Services at pages 377-393 of the 1989 Montana Administrative Register Issue Number 6.

2. The Commission has repealed rule 38.5.2717 as proposed and has adopted the following new rules as proposed:

Rule I. 38.5.3301 PURPOSE

Rule VIII. 38.5.3334 CUSTOMER DEPOSITS FOR TELECOMMUNICATIONS SERVICES

Rule IX. 38.5.3335 COMPLAINTS AND APPEALS

Rule XII. 38.5.3338 AUTOMATIC DIALING - ANNOUNCING DEVICES

Rule XIV. 38.5.3340 ALTERNATIVE OPERATOR SERVICES

Rule XV. 38.5.3350 CONSTRUCTION

Rule XVI. 38.5.3351 EMERGENCY OPERATION

Rule XVII. 38.5.3352 CONSTRUCTION WORK NEAR EXCHANGE CARRIER FACILITIES

Rule XIX. 38.5.3360 CUSTOMER TROUBLE REPORTS

Rule XX. 38.5.3361 INSPECTIONS AND TESTS

Rule XXI. 38.5.3362 SERVICE INTERRUPTIONS

Rule XXII. 38.5.3370 GENERAL

Rule XXIII. 38.5.3371 SERVICE OBJECTIVES AND SURVEILLANCE LEVELS

3. The Commission has adopted the new rules with the following changes:

Rule II. 38.5.3302 DEFINITIONS (1) (a), (b), (2), (3) No changes.

(4) "Central office" means a ~~an--independent~~ switching unit which may provide local access lines in a telecommunications system providing service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only. There may be more than one central office in a building.

(5) through (21) No changes.

Rule III. 38.5.3320 DATA TO BE FILED WITH THE COMMISSION

(1), (2) No changes.

(3) Service disruption reports. Each carrier must report promptly to the commission, and to a local radio station or other local news media any specific occurrence or development which disrupts the ~~local--and/or--toll~~ service of a substantial number of its customers (the smaller of 25 percent or 100 customers ~~of--the--exchange's--local--access--lines~~) for a time period in excess of two hours. This rule shall not apply to interexchange carriers in the case of an outage affecting local service.

Rule IV. 38.5.3330 RATE AND SPECIAL CHARGES INFORMATION

(1) (a) No changes.

(2) The carrier must give an applicant a written estimate of special charges for services not established by ~~an--exchange--carrier's~~ tariff such as construction charges which are levied on an actual cost basis.

Rule V. 38.5.3331 BUSINESS OFFICES (1) Each carrier must have at least one business office to provide customers and others with access to personnel who can provide information on services and rates, accept and process service applications, explain customers' bills, adjust errors, and generally represent the carrier. If one business office serves several exchanges or states, toll-free calling to that office must be provided and the office must be staffed during Montana business hours. Local exchange companies shall also provide a ~~the~~ toll-free number for other carriers, on bills rendered on behalf of the ARM 38.5.3340 carriers, and interexchange carriers, and upon request of callers.

Rule VI. 38.5.3332 CUSTOMER BILLING (1) (a), (b), (i), (ii), (iii) No changes.

(iv) a statement that regulated services may not be disconnected for nonpayment of ~~detariffed--or~~ unregulated services;

~~(v)-----a-statement-of-which-services-are-optional;~~

(v~~i~~) the address and telephone number of the commission.

(c) If an exchange carrier bills and collects for any interexchange carrier, including itself, all toll calls must be itemized showing the date, the time, the length in minutes,

discounts if applicable, and the destination of the call. For collect and/or third party calls the point of origin and the telephone number of origin must be stated. ~~The bill must state the interexchange carrier telephone number to call for resolving disputes with the interexchange carrier.~~

(d), (e), (2) No changes.

~~(3) Past due bill. A carrier shall not consider a customer's bill past due unless it remains unpaid for a period of 20 calendar days after the billing date printed on the bill.~~

~~(4)~~ (3) Service interruption. If a customer's service is interrupted for any reason other than the customer's negligence or willful act and service remains out for more than 24 hours after being reported, appropriate adjustments shall be ~~automatically~~ made to the customer's bill upon determination of the outage. For the purpose of administering this rule, every month is considered to have 30 days.

~~(5)~~ (4) Billing dispute. The carrier may require the customer to pay the undisputed portion of the bill to avoid discontinuance of service for nonpayment. The carrier must investigate the dispute and report the result to the customer. If the billing dispute is not resolved, the carrier must advise the customer that the commission is available for review and disposition of the matter.

~~(6)~~ (5) Billing. Telecommunications service regulated by the Montana public service commission cannot be denied or terminated because of nonpayment of services deregulated by the Montana Telecommunications Act. A telecommunications provider's bill to its customer shall clearly indicate regulated service and distinguish between tariffed and detariffed service. Regulated and not regulated service may appear on the same bill but must be presented as separate line items.

(a) No change.

Rule VII. 38.5.3333 PUBLIC INFORMATION (1) No change.

(a) All its tariffs ~~associated with the serving carrier~~.

(b), (c), (d) No changes.

Rule X. 38.5.3336 DIRECTORIES (1) An exchange carrier must provide its customers telephone directories at regular intervals (not to exceed 18 months), listing all customers' names, addresses and telephone numbers, except public telephones, addresses and telephone service not ~~non~~published at the customer's request.

(2) No change.

(3) Upon issuance, a copy of each directory shall be distributed free to all customers served by that directory and ~~a copy of each directory must be provided~~ to the commission. ~~and to each public library in the state in the exchange carrier's service area and~~ Free copies shall also be made available to any public library in the state requesting a directory. In the case of hotels, motels and other multi-line loca-

tions, one directory per access line ~~will be provided~~ or up to two directories for each installed station will be provided at no charge, upon request.

(4) through (8) No changes.

(9) If a customer's telephone number is changed after a directory is published, the exchange carrier must offer to intercept all calls to the former number for a reasonable period of time and give the calling party the new number unless the customer directs otherwise.

(10) No change.

Rule XI. 38.5.3337 PAY TELEPHONES (1), (2), (3) No changes.

(a) Each exchange carrier shall file an annual report with the commission, listing the pay telephones within its jurisdiction which are not in compliance with applicable tariff requirements on file with the commission. Concurrently with the filing of the annual report, each exchange carrier shall serve notification of noncompliance and potential termination upon each owner of such pay telephones. If the pay telephones on the annual report are not brought into full compliance within thirty (30) days following notification of the owners of said pay telephones, the exchange carrier shall immediately terminate service thereto. The provisions of this rule and applicable tariffs shall be included in the notice sent to the pay telephone owners.

Rule XIII. 38.5.3339 TERMINATION OF SERVICE (1) through (5) No changes.

(a) Written notice of termination must be sent at least ~~ten~~ seven days prior to service disconnection and must contain the following:

(i), (ii), (iii), (iv), (b) No changes.

Rule XVIII. 38.5.3353 NETWORK INTERFACE (1), (2), (3) No changes.

(4) For simple one- and two-line business and residence service, all wiring on the customer's premises shall connect to the telephone network through ~~an~~ a NID ~~which can be locked by the customer but able to be opened by the exchange carrier when necessary~~.

(5) ~~An~~ A NID shall be installed on all new services when a visit to the customer premises is necessary to establish service. For party line services a selective ringing module will be installed.

(6) Work load permitting, ~~an~~ a NID, and selective ringing module where appropriate, shall be installed on all maintenance visits to a customer premises.

4. Comments: Hot Springs Telephone Co. filed a general objection to the proposed rules and wondered if exemptions would be considered for small companies.

Response: The Commission believes that a set of uniform quality standards regarding telecommunications services is probably long overdue for Montana and notes that other parties expressed general support for the rules. Rule I permits a carrier or a customer to apply for a waiver of any rule pursuant to ARM 38.2.305.

Rule II (Comments by subsection): (3) GTE Northwest (GTE) suggests that the definition of carrier should explicitly include "resellers."

Response: In some situations the definitions of "exchange carrier" (9) and/or "interexchange carrier" (12) may be interpreted to include "resellers." However, an explicit reference is inappropriate since the Montana Telecommunications Act specifically deregulates the "resale of telecommunications services" as defined in § 69-3-803(4), MCA.

(4) GTE suggests that a "remote switching unit" be explicitly added to the definition of "central office."

Response: The word "independent" has been deleted. As amended, the Commission interprets the rule to include a remote switching unit.

(7) International Telecharge, Inc. (ITI) and GTE comment that all reports from a customer regarding the same case of trouble should count as one report. ITI also suggests that the definition could be construed to include a simple question concerning the identity of the carrier.

Response: Duplicate reports concerning the same case of trouble are also indicative of the quality of service provided. If desired, a utility may log "initial" and "duplicate" reports separately.

The definition's language clearly would not include an inquiry regarding solely the identity of the carrier.

(12) GTE suggests that the definition should explicitly state that a local exchange carrier may be an "interexchange carrier."

Response: The current language plainly includes a local exchange carrier, if it also carries interexchange traffic. Some companies are both exchange carriers and interexchange carriers.

Rule III (3): MCI comments that this rule should only apply to exchange carriers, due to lack of information and to prevent duplicate reports of the same service interruption.

GTE opposes MCI's position but would not object to some modification of the threshold requirement.

Response: The rule has been clarified to address these concerns.

Rule IV: MCI points out that subsection (2) appears to be inconsistent with subsection (1) in the use of "carrier" and "exchange carrier." GTE opposes the catalog requirement on the grounds that not all of the services listed in the catalog will be available to all customers. Northwestern Telephone Systems, Inc. (NWTS) requests clarification of the term "catalog."

Response: Subsection (2) has been amended to clearly apply to both exchange carriers and interexchange carriers. Subsection (1) only applies to exchange carriers.

Subsection (1) requires a "commission approved catalog of available services and prices." The exact nature and contents of the catalog are subject to the Commission approval process, and will necessarily vary by utility and other pertinent circumstances. The catalog may be tailored to address GTE's concerns, for example, with a simple notation that not all services are available in all areas. The Commission finds that the advantages of providing greater information to consumers far outweigh GTE's concerns.

Rule V: US West Communications (USWC) and the Montana Telephone Association (MTA) state that the last sentence of subsection (1) is confusing. USWC, MTA, NWTS and GTE also generally oppose a requirement that other carriers' telephone numbers appear on bills, on the grounds that present practices (numbers available on request) are satisfactory and most billing and collection contracts provide for the local exchange carrier to be the first point of customer contact for billing inquiries. GTE requests the business hour requirement be modified to accommodate the fact that their business offices are located in a different time zone. ITI supports the rule as proposed.

Response: The last sentence of subsection (1) has been amended to clearly require that bills rendered on behalf of other carriers must contain a toll-free number to reach those other carriers. The Commission agrees that the local exchange carrier may be the most appropriate first contact by a customer, but considers it important that appropriate alternative information also be included on the customer's bill. The Commission does not agree that present practices are satisfactory.

In response to GTE's comments concerning business hours, its unique situation could be remedied by a change in company practices or a waiver application.

Rule VI (comments by subsection): (1)(a) AT&T objects to the monthly bill requirement, and suggests that an optional quarterly billing cycle be available for low-volume users, to reduce billing costs without adversely affecting customers.

Response: The Commission believes that even infrequent or low-volume customers should receive a monthly bill and the incremental cost does not outweigh the service value to the customer.

(1)(b) GTE objects to the requirement that bills be itemized by tariff element, suggesting that it would add to customer confusion and billing expense.

Response: Itemization of bills by tariff element will provide customers with more complete and accurate information with which to assess their telephone service, and will prove more helpful during billing disputes.

(1)(b)(iv) AT&T states that this statement could encourage nonpayment for unregulated services. USWC believes that this is an unnecessary message for the majority of customers who pay their bills on time. USWC and AT&T both believe that

this should more appropriately be included on delinquency notices. NWTS states that this will add confusion to the bill. MCI states that this requirement should be deleted or applicable only to exchange carriers, since resellers do not have the capability to disconnect a customer for nonpayment of unregulated service. MCI also comments that customers would not understand the statement, and printing space on bills is very limited. AT&T and USWC comment that "detariffed" should be deleted to be consistent with subsection (6) and because detariffed services continue to be regulated.

Response: The Commission disagrees that the appearance of this statement on the bill will encourage nonpayment of unregulated services. The informational value to consumers outweighs any potential adverse affects. In response to MCI and NWTS, the possibility of confusion or lack of understanding is insufficient grounds to withhold information. MCI's additional concern may be valid based upon current technology, but the lack of disconnection capability at the present time is insufficient to justify exclusion of such information from the bill. In addition, there is no reason to believe that the majority of customers are aware of this inability to disconnect by resellers. The incremental cost of adding this statement to present bills will be relatively insignificant. The Commission agrees that this statement should also appear on delinquency notices.

In response to AT&T and USWC's comments, "detariffed" has been deleted from (1)(b)(iv).

(1)(b)(v) USWC objects to this requirement on the grounds of billing system problems and customer confusion.

Response: This subsection has been deleted.

(1)(b)(vi) MCI and NWTS object to the Commission's name and address appearing on bills, on the grounds of confusion, expense, and that the utility should be the first contact for customer complaints.

Response: The Commission agrees that the utility should be the first contact, but maintains that this information should appear on bills so that customers will be more fully informed of Commission availability. A utility could add a statement requesting customers to contact it initially with complaints.

(1)(c) MTA, GTE and NWTS object to the interexchange carrier's telephone number appearing on the bill. (See Rule V comments.) ITI supports this rule.

Response: In view of the revisions made to Rule V, the last sentence of (1)(c) would be repetitious, and has therefore been deleted. Reference is made to the Rule V response.

(1)(d) AT&T and MCI comment that since only local exchange companies provide billing and collection functions for interexchange carriers, the term "carrier" should be replaced by "exchange carrier" in the first and third sentences.

Response: The suggested changes are unnecessary, since the rule only applies to carriers which bill for other entities. If AT&T and MCI do not bill for other entities, the rule would not apply to them.

(3) GTE and NWTS state that this requirement will present some administrative and practical problems.

Response: The Commission has deleted this subsection in recognition of the comments, but continues to express support for the general spirit of the proposed rule. Utilities are encouraged to review their tariffs and conform to the spirit of this proposal while also accommodating their own particular needs and problems.

(4) NWTS states that it cannot "automatically" credit customers for outages, and although its planned new system will accommodate the proposed requirement more effectively, NWTS states that it cannot comply with the rule today. MCI notes that it is not always aware of an outage and it is sometimes incumbent upon the customer to call and inform MCI of a service interruption.

Response: The word "automatically" has been deleted in response to NWTS's comment. However, the Commission emphasizes that it is a utility's obligation to credit a customer's bill following such an outage, in the most timely and efficient manner possible.

A customer should not normally have to request such an adjustment, but the Commission understands MCI's comment that every carrier may not be aware of every outage affecting its customers.

(6) (Second sentence) USWC states that the distinction between tariffed and detariffed service should be deleted because both are regulated. MCI interprets this section to mean only that services must be individually listed on the bill.

Response: The Commission recognizes that detariffed services remain regulated, but nevertheless believes a distinction is appropriate on the bill, because of the different applicable degrees of regulatory control. MCI's interpretation of this rule is incorrect. The rule's intent is that bills must clearly indicate which specific services are deregulated, and which are detariffed.

(6) (First sentence) GTE objects to this rule on the grounds that disconnection of regulated service for nonpayment of unregulated service is "consistent with customer's expectations" and makes GTE's billing and collection service more attractive to deregulated service providers. GTE states that it prefers to "continue" this practice.

(6)(a) GTE and NWTS state that their current system will not accommodate this requirement.

Response (6), (6)(a): NWTS and GTE's comments are quite surprising, since these rules have been in effect since 1986, and are simply being moved to an appropriate location within the new rules. The Commission simply references the responses made at the time these rules were originally adopted. 1986 MAR p. 805, Eff. 5/16/86.

Rule VII (1)(a): GTE comments that this subsection is confusing and suggests a clarifying amendment.

Response: The suggested amendment has been made.

Rule VIII: GTE opposes the application of ARM 38.5.1101 (1)(c) and (1)(d) to telecommunications service, on the grounds that these facts are difficult to verify.

Response: These requirements have proven to be reasonable and workable in the gas and electric areas, and the Commission sees no reason not to apply uniform standards to telecommunications.

Rule IX (3): ITI suggests that the five day response period be extended to ten days.

Response: The Commission notes that the rule only requires an initial response to the Commission within five working days. It is acknowledged that all complaints cannot be resolved within five days. The Commission intends to encourage the resolution of customer complaints in the timeliest manner possible.

Rule X: (1) GTE comments that the rule fails to distinguish between "nonpublished" and "unlisted" telephone numbers.

(2) USWC suggests an allowance for mailing days.

(3) GTE requests clarification of whether the proposed rule would require companies to provide a directory to libraries outside its service area at no charge. NWTS suggests that "up to" be inserted in the second sentence before "two directories."

The Montana State Library appeared at the hearing and generally supported the rule, but urged its application to utilities outside of Montana, and for libraries outside of a utility's service area.

(4) NWTS objects to the emergency number requirement on the grounds that with multi-city and multi-county directories, a "designated line and space" meets the needs of its customers better than a long list of numbers.

(6) USWC comments that it would bring this provision to the attention of its directory publisher, but that it "is in no position ... to require that provision be made for this information ..."

(8) USWC comments that 119 of its 132 offices "can only provide the message that the called number is not working or has been disconnected."

(9) USWC comments that the rule defines "New Number Referral Service" a tariffed USWC service, and the general body of ratepayers should not be forced to bear the costs of providing this service. NWTS comments that it presently complies "when the capability exists." NWTS also interprets this rule to only apply to company dictated number changes.

Response: (1) The word "nonpublished" has been changed to "not published" to address GTE's concerns. The Commission's intent is consistent with GTE's comment -- that directories not include the name, address or telephone numbers of customers subscribing to unlisted or unpublished services.

(2) In response to USWC's comment, the second sentence of subsection (2) allows sufficient additional time if directory assistance is provided by another company.

(3) NWTS' suggestion has been incorporated, and the rule has been amended to address GTE's concern. The Commission believes these changes represent a reasonable compromise between the positions taken by the parties and in recognition of the limits of the PSC's jurisdiction. This rule obviously cannot be binding upon utilities outside Montana without Montana customers. By "made available" in the second sentence, the Commission intends that a library outside a utility's service area would have to pay the postage for delivery of a free directory.

(4) The Commission disagrees with NWTS' comment and suggests that including a list and a designated space would best serve customers in such areas.

(6) The Commission strongly disagrees with the premise of USWC's comment and reminds USWC that it is obligated to publish and distribute directories, consistent with any and all Commission rules, as a necessary and integral part of its monopoly service.

(8) The Commission does not understand the reason for the technical limitation described by USWC, but believes the rule should remain as drafted. If implementation would impose an unreasonable hardship upon USWC, a waiver application may be appropriate. No other party opposed this rule.

(9) The rule does not require the service be provided free of charge, although obviously any proposed charge would have to be submitted to the Commission for review. The Commission does not agree with NWTS' narrow interpretation. The Commission intends this rule to apply to any number change, regardless of the reason. The words "offer to" have been inserted to clarify the Commission's intent.

Rule XI: GTE and USWC oppose this rule on the grounds that it would require them to "police their competition" in the pay telephone market.

Response: Upon consideration of the written and oral comments received, the Commission continues to support the intent of this rule. Language has been added clarifying that the notification must be served at the same time as the filing of the annual report with the Commission. It is both the utility and the Commission's obligation to enforce tariff requirements, but the primary responsibility is imposed upon the utility by this rule.

Rule XII: GTE comments that "notice" in subsection (3) is ambiguous.

USWC suggests that this rule's application be limited to devices used for sale or solicitation purposes, since it utilizes such a device for collection purposes. USWC also notes that it would lack the capability of blocking interstate calls of such nature.

Response: In response to GTE, the proper recipient of notice would depend upon the circumstances. If the exchange carrier provides originating service to the device owner, notice should be sent directly to him. If not (such as the interstate situation described by USWC) the only feasible notice may be to the appropriate carrier.

The Commission does not believe the limitation suggested by USWC should be adopted, since these are basic minimum standards which should apply to all such devices, regardless of their purpose. Such distinctions may be appropriate when further rulemaking is considered in this area.

Rule XIII: (3)(a) USWC comments that this subsection appears to conflict with §40-2-106, MCA.

Response: USWC failed to cite any supporting legal authority for its interpretation of § 40-2-106, MCA, and there is no Montana case law defining "necessities" in that statute as including telecommunications services. It is therefore unclear whether § 40-2-106, MCA, would limit the application of this rule. Furthermore, the rule has applications beyond a husband/wife situation.

(5)(a) GTE, MTA and USWC oppose the ten day written notice requirement. USWC and MTA note the potential uncollectible toll charges during the intervening period and suggest that the period should not exceed seven days. GTE favors five days. NWTS states that its present billing system is incapable of compliance with subsection (5)(a)(iv), although an improved system is being developed.

Response: The Commission believes that adequate time must be allowed for receipt by mail and follow-up efforts by a customer in the event of a dispute; and therefore adopts seven days as a reasonable compromise. In response to NWTS, the Commission believes reconnection costs and deposit requirements are important information for a customer receiving such a notice. If it is impossible to comply, NWTS should consider a waiver application pending the installation of its new system.

(5)(b) MTA opposes the oral notification requirement on the grounds that the minimal additional consumer protection is unjustified by the significant cost. No other party opposed this subsection.

NWTS requests that its auto-dialing recorded message be incorporated into the rules. AT&T suggests that "or its billing agent" be inserted following "carrier representative," to insure that interexchange carriers with billing and collection agreements with local exchange carriers do not have to duplicate such contacts.

Response: The subsection only requires a "reasonable effort" to personally contact the customer, therefore, utilities may satisfy the intent of this rule with relatively insignificant additional costs. The Commission feels that the public benefit exceeds those costs.

This rule would not prohibit the continued use of NWTS' recorded message device, however the contents of the recorded message fails to include the information required by this rule.

The Commission agrees with the spirit of AT&T's comment, but feels that a change is unnecessary. The Commission interprets the term "carrier representative" to include a "billing agent" as described in AT&T's comment.

Rule XIV: ITI objects to the term "alternative operator services" (AOS) and prefers the term "operator service provid-

er." ITI urges application of the rule to all providers of operator service, including dominant carriers such as AT&T. AT&T urges the adoption of a definition of "alternative operator services company" to clearly exclude traditional regulated operator service providers such as USWC and AT&T. AT&T argues that if the rule is applicable to traditional providers also, it would necessitate the labeling of all telephone instruments in the state of Montana. USWC supports AT&T's comments.

MCI urges the adoption of an AOS definition also excluding companies such as MCI, on the grounds that it is a full service telecommunications company primarily engaged in providing interexchange toll service. MCI opposes AT&T's proposal, but agrees that companies which only offer operator services should be subject to stricter Commission oversight than companies which also provide other services.

USWC's reply comments oppose application of the branding requirement to companies providing operator services under Commission approved tariffs, on the basis that Commission review provides sufficient consumer protection, and the proposed rule is intended to assist customers to make an informed choice when there is no direct Commission oversight.

ITI's reply comments contend that the FCC requirements contained in FCC Order No. 89-237 are sufficient, and the Commission should monitor compliance under the FCC order for two years before adopting any AOS rules.

Response: In view of the wide ranging comments received and the rapid technological and legal developments in this area, the Commission declines to adopt any specific AOS definition at this time. Subsection (1) currently delineates the applicability of the rule with respect to customer owned coin telephones, and certain private systems. It may be inferred from the use of the term "alternative," that the Commission intends to exclude local exchange carriers and the dominant regulated interexchange carrier. However, even USWC and AT&T should find it beneficial to comply with most if not all of the provisions of this rule. The Commission does not fully agree with MCI's reasoning distinguishing between MCI and other operator service providers -- for example, MCI's rates are not currently on file with the Commission. The Commission finds merit in the reply comments of USWC, but also believes this rule should be liberally interpreted to protect all consumers' interests. In response to ITI's reply comments, the Commission notes that the FCC Order's application is limited to interstate calls and to the four defendants named in that proceeding. The need for a rule with broader application is therefore apparent.

(1): MCI notes that AOS companies cannot guaranty compliance since pay phone owners themselves are responsible for their equipment, and urges an amendment requiring only that an AOS company use reasonable efforts to ensure compliance. USWC believes that subsection (1)(b) is contrary to Montana's public policy favoring competition in telecommunications, and that some of the provisions may not be available with existing

technology. AT&T suggests two additional provisions: 1) to prohibit "splashing" by AOS companies and 2) to assure the availability of alternatives to customers obtaining operator services from AOS companies. GTE also suggests the adoption of a rule regarding splashing. At the hearing several parties suggested the addition of rules regarding "splashing" and call blocking, similar to the FCC's proposal. ITI supports (1)(a)(i), (b), (c), (d) and (e). With respect to (1)(a)(ii) - (iv), ITI believes that an instruction to simply dial "0" for assistance would be least confusing.

Response: The Commission acknowledges that companies will not be able to guarantee compliance with this rule in situations beyond their control, but rejects MCI's suggested change to encourage diligent compliance efforts. In response to USWC's comment regarding competition, the Commission notes its support for the legislatively declared public policy of the state, but also acknowledges the consumer protection pitfalls and other considerations which hinder a rapid progression toward a fully competitive environment. At this time, consumer interests are best served by the rule as proposed. With respect to technological feasibility, the Commission has determined that these rules constitute appropriate statewide minimum standards, but would consider waiver applications on a case-by-case basis. In response to the various suggestions that additional provisions be included in this rule, the Commission finds merit in some of the proposals, but will decline enactment at this time in recognition of the fact that the proposed additions have not been published in the Montana Administrative Register pursuant to § 2-4-302, MCA. The Commission may reconsider such additions in the future pursuant to § 2-4-314 or 2-4-315, MCA. The Commission agrees with ITI that dialing instructions should not be confusing to customers, and simply dialing "0" may in some cases provide the customer the needed service. However, the Commission sees no need to alter the proposed rule, since the required instructions may vary depending upon location and other circumstances.

(2): USWC, MCI, GTE and MTA request clarification of the notice and enforcement provisions of this subsection. USWC and MCI suggest that the Commission send the noncompliance notice. MTA notes that local exchange carriers are not necessarily in a position to detect noncompliance.

Response: The Commission's intent is that the carrier providing originating service has the responsibility to notify the AOS subscriber of noncompliance prior to termination. Although more detailed rules may be appropriate in the future, companies may exercise reasonable discretion in the exact procedures utilized to implement this rule.

Rule XV: GTE suggest that subsection (2) should only apply to one party service; and subsection (4) should only apply where equal access is available.

Response: The Commission expresses no opinion on the comments at this time, but will await the filing of the progress reports before considering waivers or amendments as may be appropriate.

Rule XVIII: (2) NWTS comments that if located inside, the exchange carrier must have 24 hour access.

(4) GTE and NWTS express concerns regarding installation of a lockable NID, and suggest amendments.

(5) GTE and NWTS state that a selective ringing module for party line service will add substantial installation costs, and instead encourage movement toward one party service.

(6) GTE suggests NID replacement only when needed in the normal course of business, or installation where one does not exist already.

Response: (2) A customer with a service request or problem obviously should permit access to a NID located inside his premises. A company certainly cannot be faulted for service inadequacy if a customer refuses such access. With this understanding, the Commission feels that it is unnecessary to adopt a 24 hour access requirement.

(4) The requirement that NIDs be lockable has been deleted.

(5) The Commission believes that a selective ringing module for party line service is an appropriate minimum service standard. In adopting this rule, however, the Commission certainly does not wish to discourage the further availability of one party service.

(6) GTE's comments are consistent with the Commission's intent.

Rule XXIII: (3)(b) NWTS comments that 30 days is insufficient time to complete a service order requiring construction, and suggests 45 days instead.

(4)(b) USWC states that this standard is impossible for step-by-step offices.

Response: Subsection (3)(b) does not require completion in all cases within 30 days (see second sentence).

(4)(b) In response to USWC's comments, the Commission believes this is an appropriate statewide minimum standard, but may entertain a waiver application by USWC.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE September 12, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.14.112) relating to Allocation of Accommodation Tax.	NOTICE OF THE ADOPTION of Rule I (42.14.112) relating to Allocation of Accommodation Tax.

TO: All Interested Persons:

1. On August 17, 1989, the Department published notice of the proposed adoption of Rule I (42.14.112) relating to Allocation of Accommodation Tax at page 1164 of the 1989 Montana Administrative Register, issue no. 15.

2. No comments were received.

3. The Department adopts Rule I (42.14.112) as proposed.

STEVE BENDER, Interim Director
Department of Revenue

Certified to Secretary of State September 18, 1989.

VOLUME NO. 43 OPINION NO. 31

CEMETERY DISTRICTS - Authority of cemetery board of trustees to sell headstones;
COUNTY GOVERNMENT - Authority of cemetery board of trustees to sell headstones;
LOCAL GOVERNMENT - Authority of cemetery board of trustees to sell headstones;
MONTANA CODE ANNOTATED - Sections 7-35-2101 to 7-35-2125, 7-35-2109;
MONTANA CONSTITUTION - Article XI, section 4;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 17 (1983).

HELD: The board of trustees of a cemetery district has the authority to sell headstones and grave markers at the cemetery for use in the cemetery, so long as the profits are used in furtherance of the purposes of the cemetery district.

September 7, 1989

Larry Nistler
Lake County Attorney
Lake County Courthouse
Polson MT 59860

Dear Mr. Nistler:

You have requested my opinion on the following question:

> May the board of trustees of a cemetery district organized pursuant to section 7-35-2101, MCA, advertise and sell grave markers and headstones at the cemetery site for use in the cemetery?

Cemetery districts are organized and created upon petition and election by landowners within the district for the purpose of acquiring, operating, and maintaining a cemetery or cemeteries. §§ 7-35-2101 to 2150, MCA. The powers of the board of trustees, as set forth in section 7-35-2109, are to:

(1) maintain a cemetery or cemeteries within said district;

(2) hold title to property by grant, gift, devise, lease, or any other method; and

(3) perform all acts necessary or proper for the carrying out of the purposes of 7-35-2101 through 7-35-2125, including the selling or leasing of burial lots.

The powers of local government units are to be liberally construed, and include powers expressly or impliedly granted by statute. Mont. Const. Art. XI, § 4. See also 40 Op. Att'y Gen. No. 17 at 63 (1983). Thus, the issue is whether the authority to sell headstones or grave markers may be fairly implied from the powers granted the trustees by section 7-35-2109, MCA. The two courts which have addressed this question have reached opposite conclusions. Inch Memorials v. City of Pontiac, 286 N.W.2d 903 (Mich. Ct. App. 1979); Morrison v. City of Portland, 286 A.2d 334 (Me. 1972). The Michigan court followed a state constitutional directive to liberally construe grants of authority to home-rule municipalities, and held that the legislature's grant of authority to the municipality to acquire, maintain, develop, and operate cemeteries and to provide for the costs and expenses thereof reasonably included by implication the authority to sell grave markers and headstones in and for use in the municipality's own cemeteries. On the other hand, the Maine court's conservative construction resulted in the denial of authorization for the sale of monuments or markers. Consistent with the Montana Constitution, which directs liberal construction of powers granted to local government units, I adopt the reasoning in Inch Memorials v. City of Pontiac, supra, and conclude that a board of trustees of a cemetery district has the authority to sell headstones and grave markers for use in the cemetery or cemeteries operated by the board, with the caveat that the proceeds must be used in furtherance of the purposes of the cemetery district.

THEREFORE, IT IS MY OPINION:

The board of trustees of a cemetery district has the authority, to sell headstones and grave markers at the cemetery for use in the cemetery, so long as the profits are used in furtherance of the purposes of the cemetery district.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

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

* * * * *

IN THE MATTER of the Complaint of Conoco, Complainant, vs. Montana-Dakota Utilities Co., et al., Defendants.	UTILITY DIVISION DOCKET NO. 88.7.20 ORDER AND RESPONSE TO PETITION FOR DECLARATORY RULING

Introduction

On or about July 15, 1988 the Public Service Commission (Commission) received a Complaint from Conoco, Inc. (Conoco) against Montana-Dakota Utilities Company (MDU). The Complaint involves a dispute between Conoco and MDU concerning the applicability of certain tariff provisions to service provided Conoco by MDU during the period from December 6, 1987 through March, 1988. On November 4, 1988 the Commission granted MDU an indefinite extension of time within which to file an answer or other responsive pleading. In granting the extension the Commission indicated its understanding that the parties were attempting to negotiate a settlement of the dispute which would be submitted to the Commission for its review.

On July 10, 1989 the Commission received a Petition for Declaratory Ruling from MDU, along with an agreement by MDU and Conoco to settle the dispute that produced the Complaint. The facts presented by MDU as the basis for its Petition are summarized below:

Factual Background and Questions Presented

Prior to Commission Order No. 5379 entered on November 18, 1988, there were two MDU rates for transportation of natural gas for industrial customers in Montana, Rates 82 and 97. Conoco qualified for Rate 97 because it entered into a transportation agreement with Williston Basin Interstate Pipeline Company (WBIP) under WBIP's S-2/T-3 program prior to April 1, 1985. Conoco's agreement with WBIP commenced on December 5, 1983, and contemplated a four year duration. The agreement between MDU and Conoco pursuant to Rate 97 included the billing of the first 300 mcf per day at Rate 85, MDU's industrial sales rate, and the remainder at Rate 97.

In the fall of 1987 WBIP proposed that S-2/T-3 service to Conoco be extended from December 5, 1987 to May 24, 1988. Consequently, on November 24, 1987, MDU entered into a letter agreement with Conoco to extend Rate 97 service to May 24,

1988. On December 22, 1987 the Federal Energy Regulatory Commission (FERC) ruled that WBIP could not extend service to Conoco under the S-2/T-3 program past December 5, 1987. Conoco immediately began transportation of gas to its Billings plant under a Chevron S-2/T-3 agreement, which, since it was consummated after April 1, 1985, required Conoco to use MDU Rate 82.

Despite the FERC ruling, MDU continued to bill Conoco transportation volumes pursuant to Rate 97 (including the 300 mcf/day base volumes provision) through February of 1988. When it realized its mistake, MDU, on March 8, 1988, rebilled Conoco for transportation during the period December 6, 1987 through February, 1988, at Rate 82, retaining the 300 mcf/day base volumes billed at Rate 85. MDU threatened to terminate gas service when Conoco refused to pay the back bill. Conoco responded by paying a lesser amount and instituting a complaint proceeding at the Commission.

MDU and Conoco have entered into an agreement to settle this dispute. The effectiveness of the agreement is conditioned upon a favorable Commission ruling on this Petition. The two specific questions presented by MDU for ruling are 1) whether the settlement agreement between MDU and Conoco is just and reasonable, and 2) whether the settlement agreement is a violation of Section 69-3-305, MCA. MDU requests a declaration that the settlement is just and reasonable, and not a violation of Section 69-3-305, MCA.

Discussion

The Commission will not issue a declaratory ruling as MDU requests. The settlement agreement does not provide sufficient information for the Commission to determine whether the settlement is just and reasonable, or, to state that same issue differently, whether the settlement is a violation of 69-3-305, MCA. Section 69-3-305, MCA, reads in relevant part as follows:

> Deviations from scheduled rates, tolls, and charges. (1) It shall be unlawful for any public utility to:
> (a) charge, demand, collect, or receive a greater or less compensation for any utility service performed by it within the state or for any service in connection therewith than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force;
> (b) demand, collect, or receive any rate, toll, or charge not specified in such schedules; or
> (c) grant any rebate, concession, or special privilege to any consumer or user, which, directly or indirectly, shall or

> may have the effect of changing the rates, tolls, charges, or payments.
>
> (2) The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed, as provided in this chapter.

Thus, it is clear that a just and reasonable settlement of a billing dispute over the provision of regulated utility service is a settlement that calls for the payment of the scheduled (or tariffed) rate for the utility service provided. No settlement of such a dispute that calls for a deviation from the payment of the scheduled rate can be just and reasonable as a matter of law.

The Commission's role in a utility billing dispute is to determine what service was provided, and what rate schedule is applicable to such service. There may on occasion be a genuine dispute over matters of this kind. But once the Commission makes a determination on these issues, then a just and reasonable resolution of the billing dispute is simply a matter of multiplying the quantity of service provided by the appropriate rate.

It has been nearly 14 months since Conoco filed its complaint in this Docket. It has been more than 10 months since the Commission granted an indefinite extension of time to file a responsive pleading. To hasten the resolution of this dispute the Commission establishes the following deadline: within sixty (60) days of the service date of this order MDU will either 1) answer the complaint of Conoco (or otherwise demonstrate that the complaint has been satisfied), or 2) present another settlement agreement with Conoco that contains sufficient information for the Commission to determine whether such settlement is just and reasonable.

Conclusions of Law

1. Petitioner, Montana-Dakota Utilities Company, furnishes natural gas service to consumers in Montana, and is a "public utility" under the regulatory jurisdiction of the Montana Public Service Commission. Section 69-3-101, MCA.

2. The Commission properly exercises jurisdiction over the Petitioner's rates and operations. Section 69-3-102, MCA and Title 69, Chapter 3, Part 3, MCA.

3. The Commission may receive, process, and rule on complaints of interested persons against certain actions of public utilities. Section 69-3-321, MCA.

4. The Commission may issue declaratory rulings. Section 2-4-501, MCA.

Order

Now Therefore it is Ordered that the Commission will not rule as requested by Petitioner, Montana-Dakota Utilities Com-

pany. MDU is directed to respond to the Commission within 60 days in conformance with this order.

Done and Dated this 11th day of September, 1989 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

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 Subject Matter

1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which 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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