MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed amendment of a rule pertaining to sales staff incentive plan) NOTICE OF PROPOSED AMENDMENT OF 8.127.1007 SALES STAFF INCENTIVE PLAN

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 20, 1994, the Montana Lottery Commission proposes to amend the above-stated rule.

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

"8.127.1007 SALES STAFF INCENTIVE PLAN (1) and (1)(a) will remain the same.

(b) Field sales staff, the sales ~~manager~~ supervisor, the key accounts manager, the marketing accounts manager and tel-sell assistants will receive incentive pay, up to 8% of their annual salaries based on incremental increases in ticket sales. In situations where an employee is performing more than one function which qualifies for incentive pay, the employee will receive incentive pay for whichever individual function generates the highest sales increases for the sales period.

(i) The sales period will be calendar quarters. For the field sales staff, each employee's individual base will be calculated by totalling the retailer bases within his respective sales regions. The sales ~~manager~~ supervisor's base will be the total of all retailer bases within the state. The marketing accounts manager and tel-sell assistants' bases will be the combined total of all retailer bases assigned to each. The key accounts manager's base will be the total of all key account bases as identified and assigned.

(ii) through (c) will remain the same."

Auth: Sec. 23-7-202, MCA; IMP, Sec. 23-7-202, MCA

REASON: The proposed amendment incorporates changes made to the organizational structure of the Lottery's marketing department and provides for the award of incentive pay on a quarterly basis.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Lottery Commission, 2525 North Montana, Helena, Montana 59620, to be received no later than 5:00 p.m., August 18, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Montana Lottery Commission, 2525 North

Montana, Helena, Montana 59620, to be received no later than 5:00 p.m., August 18, 1994.

5. If the Lottery Commission receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 80 based on the 797 licensees in Montana.

MONTANA LOTTERY COMMISSION
BECKY ERICKSON, CHAIRMAN

ANNIE M. BARTOS
RULE REVIEWER

BY: ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 11, 1994.

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

In the matter of the proposed adoption of rules related to the workers' compensation data base system	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES I THROUGH XI

TO ALL INTERESTED PERSONS:

1. On August 12, 1994, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the adoption of new rules concerning the workers' compensation data base established by 39-71-225, MCA.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., August 8, 1994, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Mr. John Weida, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-4661; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Weida.

2. The Department of Labor and Industry proposes to adopt the new rules as follows:

RULE I PURPOSE (1) In 1993, the legislature enacted 39-71-225, MCA, requiring the department to develop a workers' compensation data base to provide management information about Montana's workers' compensation system to the legislative and executive branches. The department has developed a data base system that is designed to be compatible with the currently developing standards for electronic submission of data. The use of standardized electronic reporting will increase the timely entry of information into the data base system, and is expected to reduce the costs of such reporting for insurers and the department.

(2) The department is participating in the international association of industrial accident boards and commissions' (IAIABC) efforts to nationally standardize reporting of workers' compensation data, known as electronic data interchange (EDI). The department anticipates the eventual use of IAIABC standards for insurance coverage, medical, adjudication and rehabilitation information.

(3) The department anticipates that over time it will receive a majority of the reports required by these rules via electronic reporting. Although electronic reporting presently

is voluntary, reporting parties should consider the likelihood of a future requirement for mandatory electronic reporting when planning their future information systems needs.
AUTH: 39-71-203 MCA IMP: 39-71-225 MCA

RULE II DEFINITIONS For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) "All insurers" means every Plan 1 self-insurer, every Plan 2 private insurer and the state fund.

(2) "Closed" or "closed claim" means a claim on which all medical and compensation benefits have been paid, and there is no expectation of future liability.

(3) "Compensation benefits" means any payment made directly to the worker (or the worker's beneficiaries), other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging.

(4) "Data base system" means the data base system established by 39-71-225, MCA.

(5) "Department" means the department of labor and industry.

(6) "Designated reporting office" means the location which the insurer chooses as the place from which these reporting requirements are fulfilled.

(7) "Indemnity claim" means a workers' compensation or occupational disease claim where compensation benefits in addition to medical benefits are being paid or are likely to be paid in the future.

(8) "Plan 1" or "Plan 1 self-insurer" means an employer that has been properly bound by the provisions of Title 39, Chapter 71, Part 21.

(9) "Plan 2" or "Plan 2 private insurer" means an insurer that provides workers compensation insurance pursuant to the provisions of Title 39, Chapter 71, Part 22.

(10) "Plan 3" or "state fund" means the state compensation insurance fund, established by 39-71-2313, MCA.

(11) "Reporting parties" means any person, firm, corporation, or any other type of entity, including an insurer, that is required by rule to report information to the data base system.

(12) "UEF" means the uninsured employers' fund, established by 39-71-502, MCA.
AUTH: 39-71-203 MCA IMP: 39-71-225 MCA

RULE III CLAIM FILE RECORDS MAINTENANCE AND RETENTION

(1) All insurers shall maintain their respective claim files. Upon request by the department, insurers shall provide to the department, in whole or part according to the request, a copy of the claim file, other than documents protected by the attorney-client privilege or attorney work-product doctrine. The copies must be provided at no cost to the department. If

information is maintained by computer, "hard copy" information must be available upon request. Insurers shall submit requested copies of file information within 30 days of the department's request. Insurers shall submit requested copies of claim files for mediation conferences prior to the date of the conference.

(2) All insurers shall retain complete copies of the claim file for the life of the claim or as long as liability or potential liability exists for the claim. The department will not keep a duplicate of any document pertaining to a claim. The department recommends that an insurer retain a closed claim file a minimum of 5 years.

(3) Claim files must include, but need not be limited to, all of the following which exist in relation to the claim:

(a) first report of injury;
(b) medical bills, or an electronic data record thereof;
(c) benefit rate calculations, if applicable;
(d) correspondence relating to the claim;
(e) supplemental reports;
(f) medical reports;
(g) vocational rehabilitation reports;
(h) payment record; and
(i) official orders, whether those orders are from the department or a court.

(4) For the purposes of this rule, an insurer may maintain claim file documents either as an "original" or as a "duplicate", as those terms are used in the Montana Rules of Evidence. However, nothing in this rule affects the legal standards concerning the admissibility of an original versus a duplicate.

AUTH: 39-71-203 MCA IMP: 39-71-225 MCA

RULE IV FORMS USED FOR REPORTING (1) The department will design forms used for hard copy reporting of the information required by these rules. Reporting parties may print their own supply of the approved form or may request a supply of the form from the department. The department will determine the cost of the printing and mailing of the forms and bill the ordering office directly for its order.

AUTH: 39-71-203 MCA IMP: 39-71-205, -208, and -225 MCA

RULE V ELECTRONIC REPORTING (1) Reporting parties are encouraged to report electronically to the department. Reporting parties may contact the department to request information about electronic reporting. Reporting parties may not report electronically without prior approval from the department.

(2) Reporting parties wishing to report electronically shall sign a written information sharing agreement with the department. The information sharing agreement will provide the effective date to send and receive the electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent agreements between the parties. The information sharing agreement must be signed

by the insurer and approved by the department prior to initial data submission.

(3) Electronic reporting for the first report of injury and the subsequent report may be done pursuant to the IAIABC flat file format, the American national standards institute (ANSI) electronic reporting standards X.12 format, or the proprietary "Claimix" format. The department will not accept electronic reports submitted in any other formats.

(4) The department has not yet established a format for electronic reporting of information other than the first report of injury and the subsequent report. Until such time as an appropriate format is established by the department for other information, the department will not accept electronic reporting of other information.

AUTH: 39-71-203 MCA IMP: 39-71-225 MCA

RULE VI REPORTS PRODUCED BY THE DEPARTMENT (1) The department will produce and distribute at regular time intervals as it sees fit, but at least annually, certain reports concerning workers' compensation and occupational disease claims. These reports will be used to monitor regularly-collected data and will be available to the public upon request.

(2) In addition to regularly produced reports, the department may prepare special reports.

(a) Special reports may be done at the request of the Governor or the Legislature. These reports, once generated, will be given to the requesting party and further distribution will be at the discretion of that party.

(b) Executive branch agencies and other interested parties may request that a special report be prepared by the department. At the department's discretion, it may prepare special reports for the agency or interested party. The department's decision whether to honor the request will depend on a variety of factors, including, but not limited to the following considerations:

(i) the priority of reports already scheduled;

(ii) the ability to generate the requested report via the data base system;

(iii) the availability of resources to generate the requested report;

(iv) the availability and validity of relevant data in the data base system; and

(v) the recommendations of the department's data base system technical advisory committee, if any.

(3) The department may determine the cost of printing and mailing of reports and charge an appropriate fee for copies of reports.

AUTH: 39-71-203 MCA IMP: 39-71-205, -209, and -225 MCA

RULE VII INSURER REPORTING REQUIREMENTS - ADJUSTER INFORMATION (1) Plan 1 and Plan 2 insurers are required to report to the department the information required by this rule for Montana workers' compensation claims, within the following time periods:

(a) Plan 1 self-insurers, upon approval to self-insure; and

(b) Plan 2 private insurers, within 10 days of a request from the department.

(2) Insurers shall report the name(s) and address(s) of the office(s) responsible for the following:

(a) adjustment of claims;

(b) payment of medical and/or wage loss benefits;

(c) discussion concerning the claim;

(d) settlement of the claim;

(e) maintenance and retention of the claim records; and

(f) reporting required information to the database.

(3) In the event that responsibility for a particular claim is transferred from the adjuster initially identified by the insurer, the insurer shall notify the department of that change within 10 days. That notice must update any information required in (2) that has changed as a result of the transfer.

(4) Nothing in this rule supersedes the requirements contained in ARM 24.29.804 [Adjusters in Montana].

AUTH: 39-71-203 MCA IMP: 39-71-225 MCA

RULE VIII IMPLEMENTATION DATES FOR ADJUSTER INFORMATION REPORTING REQUIREMENTS (1) Although these rules become effective October 1, 1994, in order that insurers have adequate time to prepare for compliance with these rules, initial reporting of the information required by [RULE VII] is not required until January 1, 1995.

AUTH: 39-71-203 MCA IMP: 39-71-225 MCA

RULE IX INSURER REPORTING REQUIREMENTS - INJURIES AND OCCUPATIONAL DISEASES (1) All insurers and the UEF are required to submit the first report of injury/occupational disease to the department by the designated reporting office within 30 days of the report to the insurer of the accident or of an occupational disease. A first report of injury must be submitted for every injury or occupational disease.

(2) All insurers and the UEF are required to submit to the department a subsequent report for every indemnity claim. The designated reporting office shall submit a subsequent report for every indemnity claim whenever there is a triggering event:

(a) the initial payment of compensation benefits or the reopening of a closed claim;

(b) each 6 month anniversary of the injury or occupational disease, while the claim is open;

(c) the closure of the claim; or

(d) a request by the department for a report.

(3) Subsequent reports are to be submitted within 10 days following the triggering event.

(4) Although this rule becomes effective October 1, 1994, in order that insurers have adequate time to prepare for compliance with these rules, reporting is not required until January 1, 1995.

AUTH: 39-71-203 MCA IMP: 39-71-225 MCA

RULE X TRANSITIONAL RULE FOR INJURY AND OCCUPATIONAL DISEASE INFORMATION REPORTING REQUIREMENTS (1) Reports must be filed on every indemnity claim that is not closed prior to January 1, 1995. The triggering event for reporting on those claims is the same as in [RULE IX].

(2) First reports of injury do not have to be resubmitted for indemnity claims if the first report of injury was filed with the department before January 1, 1995. Subsequent reports that would have been due prior to January 1, 1995, do not need to be submitted.

(3) Claims filed before January 1, 1995, that do not involve compensation benefits, the so-called "medical only" claims, are not subject to the subsequent report reporting requirements unless and until compensation benefits are paid on the claim.

AUTH: 39-71-203 MCA IMP: 39-71-225 MCA

RULE XI AUDITS AND ADDITIONAL INFORMATION (1) To ensure the accuracy of the data reported, the department may make periodic audits of the designated reporting office's source documents used in the preparation and reporting of the reports required by [RULE IX]. Documents protected by the attorney-client privilege or attorney work-product doctrine are not subject to audit. At least 14 days advance notice of the time and place of the audit will be given to the insurer and designated reporting office. The insurer is responsible for full cooperation with an audit by the department.

(2) All insurers are required to respond to requests by the department for information regarding claims or to resolve discrepancies in data collection within 30 days of the request from the department.

(3) The department may request insurers provide periodic information for the purpose of producing a study of a specific workers' compensation subject. Insurers will be asked to participate in the collection of the necessary data and will be given sufficient time to respond to the request.

AUTH: 39-71-203 MCA IMP: 39-71-203, -304, -225 MCA

REASON: These rules are reasonably necessary to implement the new workers' compensation data base created by Chapter 512, Laws of 1993, so as to meet the statutory requirement that the data base system be fully operational by July 1, 1995.

3. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

John W. Weida, Bureau Chief
Workers' Compensation Claims Assistance Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., August 19, 1994.

4. The Department proposes to make these new rules effective October 1, 1994. The Department reserves the right to adopt only portions of these proposed rules, or to adopt some or all of the proposed rules at a later date.

5. The Hearing Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 11, 1994.

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

In the matter of the adoption of new Rules I through XXV, the repeal of ARM 26.4.101, and the amendment of ARM 26.4.102, 26.4.103, 26.4.104, and 26.4.105, all pertaining to regulation of hard rock mining or exploration.	)))))))	NOTICE OF HEARING

TO: All Interested Persons

1. On September 7, 1994, at 7:00 p.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, to consider the adoption of new Rules I through XXV, amendment of ARM 26.4.102, 26.4.103, 26.4.104, and 26.4.105, and the repeal of ARM 26.4.101, all pertaining to regulation of hard rock mining or exploration.

2. The proposed new rules provide as follows:

RULE I PERMIT CONDITIONS (1) The following conditions accompany the issuance of each permit:

(a) The permittee shall conduct all operations as described:

(i) in the plan of operations; and

(ii) in any express conditions which the department places on the permit to ensure compliance with the act or this subchapter promulgated pursuant thereto.

(b) If the department issued the permit because the applicant was maintaining a good faith direct appeal in accordance with 83-4-335, MCA, the permittee will immediately submit proof upon resolution of the appeal that the violation has been or is being corrected to the satisfaction of the regulatory agency or the permittee will cease operations.

(c) Except as provided in [Rules XIX(6) and XXI(2)], the permittee shall maintain in effect at all times a bond in the amount established by the department. Upon failure of the permittee to maintain such bond coverage because of expiration or cancellation of bond, the permit is suspended and the permittee shall cease mining operations until substitute bond is filed with and approved by the department.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-335, 336, and 351, MCA

RULE II ANNUAL REPORT (1) Each operator shall file copies of an annual report with the department within a time period specified in 82-4-339, MCA, until such time as full bond is released. No less than 30 days prior to the permit anniversary date for the annual report, the department shall notify the permittee in writing that an annual report is due.

(2) The annual report must include the information outlined under 82-4-339, MCA. In addition, beginning with the first full permit year after the effective date of these rules, the annual report must include:

(a) the number of acres of land affected by the operation during the preceding year and cumulatively;

(b) the extent of backfilling and grading performed during the preceding year and cumulatively; and

(c) maps showing the information required in (a) and (b) above.

(3) Each annual report must include a status report on revegetation, pursuant to 82-4-339(1)(f)(iv) and (vi), which includes the extent of reclamation (seeding or planting) performed during the preceding year (in narrative and map form), including:

(a) the area of land planted;

(b) the type of planting or seeding;

(c) the mixtures and amounts seeded;

(d) the species, location, and method of planting for site or species specific plantings;

(e) the date of seeding or planting;

(f) cumulative acres reseeded to date; and

(g) cumulative acres of completed reclamation and the date each increment was completed.

(4) Each annual report must include an inventory of soils volumes which includes:

(a) cubic yards salvaged in the preceding year and cumulatively;

(b) cubic yards to be salvaged in the coming year;

(c) cumulative volume of soils contained in stockpiles; and

(d) replaced soil depths and volumes.

(5) Each annual report for those operations using cyanide or having the potential to generate acid must provide a narrative summary of water balance conditions during the preceding year and identify excess water holding capacity at the time of the annual report.

(6) When incremental bond has been approved, additional bond must be submitted, in the amount required, with the annual report and the status of incremental bonding must be described.

(7) If changes in facilities have occurred in the preceding year, the annual report must, pursuant to 82-4-339(1)(f), update the permit map required under ARM 26.4.106. The updated map must depict all approved surface features, as required by the department, in or associated with the permit area, reproduced at a scale applicable for field use.

(8) If cultural resource mitigations identified in the permit will be ongoing through the life of the operation, the annual report must include an updated cultural resource management table, including a list of sites mitigated and disturbed in the preceding year and sites to be mitigated and disturbed in the coming year.

(9) If comprehensive water monitoring is required by the permit, each annual report must include an evaluation of water

monitoring reports submitted during the preceding year. The evaluation must include trend analyses for those key site-specific parameters required by the department in the permit.

(10) If site-specific geologic conditions identified in the permit indicate the need for geologic monitoring, each annual report must include monitoring results and must report materials balances as required in the permit.

(11) If site-specific closure requirements identified in the permit include monitoring for cyanide neutralization, acid rock drainage development, or similar occurrences, the annual report must include an evaluation of monitoring and testing data required in the permit for closure under 82-4-335, MCA.

(12) Each annual report must include any other relevant information required by the permit.

(13) The department shall, by certified mail, notify a permittee, who fails to file an annual report as required by this rule that, if the report is not filed within 30 days of receipt of the notice, the permit must be suspended.

(14) If a permittee fails to file an annual report within 30 days of receipt of a notice pursuant to (12), the department shall suspend the permit.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-335, 336, 337, 338, 339, and 362, MCA

RULE III PERMIT AMENDMENTS (1) An application for a major amendment that is not a revision must:

(a) contain a summary of changes in disturbances, in resources affected, and in construction, operating, reclamation, monitoring, and contingency plans;

(b) provide dated replacement or supplemental resource data, plans, and maps as outlined in ARM 26.4.106, or cross reference applicable data, plans, or maps in the previously permitted plan of operation, in order to identify the existing environment and resources affected, as well as changes in permit boundaries, in total disturbances, and in construction, operating, reclamation, monitoring, and contingency plans;

(c) provide replacement pages in the approved plan of operations necessary to provide adequate cross referencing to supplemental designs or plans;

(d) identify any additional resource data necessary to the evaluation of the proposed amendment;

(e) provide an updated or comprehensive facilities map; and

(f) clearly indicate on the facilities map all bonding areas subject to pre-July 1, 1974, bonding levels. No action under this subsection affects a bond in effect under pre-July 1, 1974, bonding levels.

(2) For an application for a major amendment that is not a revision, the department shall implement the application, notice and hearing requirements for new permits pursuant to 82-4-337 and 353, MCA, and prepare necessary environmental analyses pursuant to the Montana Environmental Policy Act.

(3) An application for minor amendment that is not a revision must:

(a) contain a summary of proposed changes in sufficient detail for the department to determine whether further environmental analysis under Title 75, Chapter 1, MCA, is required;

(b) contain dated replacement pages and necessary supplemental resource data and plans, and maps in order to identify changes in permit boundaries, total disturbances, and plans;

(c) contain an updated or comprehensive facilities map;

(d) contain a statement of the applicant's rationale for asserting non-significance pursuant to 82-4-337(7), MCA;

(e) identify previous environmental analyses relevant to the amendment; and

(f) clearly indicate on the facilities map all bonding areas subject to pre-July 1, 1974, bonding levels. No action under this subsection affects a bond in effect under pre-July 1, 1974, bonding levels.

(4) For a minor amendment that is a not a revision, the department shall not implement the application, notice and hearing requirements for new permits pursuant to 82-4-337 and 353, MCA. The department shall provide the permittee with a notice of decision on the adequacy of the minor amendment application within 30 days of receipt of the application.

AUTH: Secs. 82-4-321, 337, and 342, MCA
IMP: Secs. 82-4-337, 342, MCA

RULE IV PERMIT REVISIONS (1) An application for revision must include:

(a) a general summary explaining the revision;

(b) a statement of the applicant's rationale for asserting non-significance pursuant to 82-4-337(7), MCA;

(c) identification of previous environmental analyses relevant to the revision;

(d) a reference to prior commitments to topsoil salvage, sediment control, reclamation, and other previously approved plans or standards that are applicable to the revision;

(e) documentation of the adequacy of existing bonding, if appropriate;

(f) updated replacement pages and permit map for the permitted plan of operations;

(g) any necessary construction, operating, reclamation, monitoring, and contingency plans; and

(h) an updated or comprehensive facilities map that clearly indicates all areas subject to pre-July 1, 1974, bonding levels. No action under this subsection affects a bond in effect under pre-July 1, 1974, bonding levels.

(2) The department shall provide the permittee with a notice of adequacy of proposed revisions within 30 days of receipt of the application.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-337, and 342, MCA

RULE V PERMIT REVIEWS (1) At any time during the life of an operation, the department may review an operating permit.

(2) If the department determines that the modification of the reclamation plan is authorized under 82-4-337, MCA, it may

require such modification under the procedures of (3) through (6).

(3) The department shall send an explanation of the need for modification and a conceptual plan for modification to the permittee, by certified mail, and provide opportunity for hearing, pursuant to Title 2, Chapter 4, part 6, MCA.

(4) The permittee shall respond to the department with a request for hearing or a proposed schedule for modification or revision, not to exceed one year, within 30 days of receipt of a letter from the department.

(5) The department may extend the one-year time frame or the time for hearing request for good cause documented by the permittee in writing.

(6) A modification must be submitted in the form of an amendment and the department shall process the applicant's submittal in accordance with [Rule III or Rule IV].

AUTH: Sec. 82-4-321, MCA
IMP: Sec. 82-4-337, MCA

RULE VI PERMIT ASSIGNMENT (1) The department may approve the assignment of a permit if the requirements of (2) and (3) are met.

(2) The permittee shall:

(a) provide the department with a completed application on a form, provided by the department, which includes:

(i) the name and address of the proposed assignee and the name and address of that person's resident agent, if any; and

(ii) the same information as is required in 82-4-335(4), (8), and (9) MCA, for applications for new permits.

(3) The assignee shall:

(a) commit in writing to conduct the operations in full compliance with the terms and conditions of the permit; and

(b) provide sufficient bond to guarantee performance of the act, this subchapter and the permit.

AUTH: Sec. 82-4-321, MCA
IMP: Sec. 82-4-335, MCA

RULE VII PERMIT CONSOLIDATION (1) In order to facilitate management or multiple permits for a contiguous area, a permittee may, with department approval, consolidate permits.

(2) In order to obtain permit consolidation, the permittee must submit an application containing the following information:

(a) an explanation of the purpose of the consolidation and a summary of cumulative disturbances;

(b) a single map showing the entire proposed permitted area;

(c) a table showing the consolidated acreage of permitted areas, total permitted disturbance, and total acreage reclaimed to date;

(d) an updated facilities map showing all facilities modifications that have occurred since the issuance of the individual permits. This map may be combined with the permit area map required under (b) if there is no loss in legibility;

(e) a consolidated bonding map showing what areas, if any,

are subject to pre-July 1, 1974, bonding levels and showing which bonds cover which areas; and

(f) a consolidated operating and reclamation plan and supporting maps, showing, as appropriate, the area to which each plan applies.

No action under this subsection affects a bond in effect under pre-July 1, 1974, bonding levels.

(3) Following consolidation, annual reports must be submitted on the renewal date of the oldest of the permits to be consolidated.

AUTH: Sec. 82-4-321, MCA
IMP: Sec. 82-4-335, MCA

RULE VIII INSPECTIONS: FREQUENCY, METHOD, AND REPORTING

(1) The department shall conduct an inspection:

(a) at least once per calendar year for each permitted operation; and

(b) at least once per quarter for each active operation that:

(i) uses cyanide;

(ii) has a permit requirement to monitor for potential acid rock drainage; or

(iii) exceeds 1000 acres in permit area.

(2) The department shall provide copies of operating permit inspection reports to the department of health and environmental sciences and any appropriate state or federal land managing agency, if requested by the agency.

(3) The department shall provide a copy of each report to the operator.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-337 and 339, MCA

RULE IX INSPECTIONS: RESPONSE TO CITIZEN COMPLAINTS

(1) Any person may request an inspection of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the Act, the rules adopted pursuant thereto, or the permit or that there exists a condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The statement must identify the basis for the allegation or provide corroborating evidence. The statement must be placed in the permittee's file and becomes a part of the permanent record. The identity of the person supplying information to the department must remain confidential with the department, if requested by that person.

(2) If the report provides the information required above and the department determines the request to present sufficient evidence to warrant a special inspection, the department shall conduct an inspection to determine whether the condition, practice, or violation exists or existed.

(3) Within 30 days of receipt of the requestor's written statement, the department shall send the requestor and the

alleged violator a written response which includes the following:

(a) if an inspection was made, a description of the enforcement action taken, or, if no enforcement action was taken, an explanation of why no enforcement action was taken;

(b) if no inspection was made, an explanation of the reason why.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-337 and 354, MCA; Article II Sec. 9, MONT CONST

RULE X ENFORCEMENT: PROCESSING OF VIOLATIONS AND PENALTIES (1) The department shall issue a notice of noncompliance, by certified mail, if a violation of the Act, this chapter, or the permit, license, or exclusion is identified as a result of any inspection. The notice shall state that:

(a) the alleged violator, may, by filing a response within 30 days of receipt of the notice, provide facts to be considered in further assessing whether a violation occurred and in assessing the penalty; and

(b) by filing a written request within 30 days of receipt of the notice, the alleged violator may obtain an informal conference on the issues of whether the alleged violation occurred or whether the abatement is reasonable, or both.

(2) Within 60 days after issuance of the notice of noncompliance, the department shall serve a notice of proposed penalty, notice of waiver of penalty, or notice of vacation of the notice of noncompliance. Failure to serve the notice of proposed penalty within 60 days is not grounds for dismissal of the penalty unless the person against whom the penalty is assessed demonstrates actual prejudice resulting from the delay. If the notice of proposed penalty is tendered by mail at the address of the person, as set forth in the permit in case of a permittee, and he or she refuses to accept delivery of or to collect such mail, service is completed upon such tender.

(3) The person may, within 30 days, respond to the notice of proposed penalty and may request an informal conference.

(4) The department may not institute suit to collect the penalty until it has:

(a) considered the response to the proposed penalty, if one is submitted within 30 days; and

(b) held an informal conference if one is requested within 30 days.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-337 and 339, MCA

RULE XI ENFORCEMENT: ABATEMENT OF VIOLATIONS (1) Except when the violation has already been abated, the department shall issue an abatement order with a notice of noncompliance and a suspension order.

(2) The abatement order shall require mitigation of the effects of the activity for which the notice or order was issued.

(3) Each abatement order shall identify a time frame for completion and may be extended only if the permittee documents good cause for extension.

(4) Within 30 days of notification by a permittee that an abatement order has been satisfied, the department shall inspect or review the abatement and determine whether or not the abatement order has been satisfied. The department shall notify the permittee of its determination.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-357, 361, and 362, MCA

RULE XII ENFORCEMENT: ASSESSMENT AND WAIVER OF PENALTIES

(1) The department shall determine the proposed penalty for each violation based upon the following criteria:

(a) History of recent noncompliances. Fifty dollars must be assessed for each noncompliance issued in the last 3 years. Two hundred and fifty dollars must be assessed for each suspension order issued in the last 3 years. A violation for which the notice of noncompliance or suspension order has been vacated must not be counted. A noncompliance or suspension order that is not resolved must not be counted.

(b) Seriousness. The assessment for seriousness must be based on either:

(i) harm to public health, public safety or environment. If the violation created a situation in which the public health, public safety, or environment could have been harmed, and the violated law, rule, order, or permit term or condition was designed to prevent such harm, up to $1,000 may be assessed, depending upon the severity of the probable or actual harm which the violated standard was designed to prevent; or

(ii) impairment of administration. If the violation was of an administrative requirement but did not impair the administration of the Act, rules, or permit, the department may assign no penalty under this paragraph. In the case of a violation of an administrative requirement that causes impairment of administration, up to $1,000 may be assessed, depending on the severity of the impairment. An administrative requirement, such as the keeping of records and filing of reports, is one that does not directly affect public health, safety, or the environment.

(c) Negligence. If a violation has occurred through no negligence on the part of the permittee, it must not be assessed under this category. A violation involving negligence may be assessed, up to $1,000, depending upon the degree of negligence.

(d) Good faith. If the person abates the violation in an adequate manner upon being notified of the violation or if the violation requires no abatement, no credit may be assigned. If the violator takes extraordinary measures to achieve compliance before the time set in the abatement order or to minimize harm, up to $200 may be deducted from the total penalty. However, reduction of a penalty due to good faith does not allow waiver of an otherwise unwaivable penalty.

(e) The total proposed penalty must not exceed $1000 per day.

(f) A noncompliance resulting from a one time occurrence

must be assessed a penalty for one day. A noncompliance resulting from an ongoing action of the permittee must be assessed for each day it is demonstrated that the violator took an action which contributed to the harm or impairment assessed. The total civil penalty assessed under (1) is the penalty for the initial day of violation. The penalty for additional days of violation must be assessed at the same rate as the first day of violation.

(2) The department may waive or modify the penalty if it finds the penalty demonstrably unjust or demonstrably inadequate as a deterrent. The department shall set forth the basis for waiver or modification in writing. The department may not waive or reduce the penalty for the sole reason that a reduction in the penalty could be used to offset the costs of abatement.

(3) The department may also waive or reduce a proposed penalty based on the following criteria:

(a) The penalty may be waived if it receives no assessment for seriousness and a total of $500 per day or less before reduction for good faith.

(b) The abatement is completed, the environmental damage is minimal, the violator has demonstrated a bona fide inability to pay, and the violator is not proposing to continue operation.

(4) When a suspension order is issued for failure to comply with an abatement order and the order is under appeal, the department may not assess a penalty for failure to comply until the appeal is resolved.

AUTH: Secs. 82-4-321 and 361, MCA
IMP: Sec. 82-4-361, MCA

RULE XIII NOTICES AND ORDERS: ISSUANCE AND SERVICE

(1) The commissioner shall immediately issue an order suspending the license or permit for each violation of the act, this subchapter, or the permit, that is creating an imminent danger to the health or safety of the persons outside the permit area.

(2) The commissioner may, after opportunity for an informal conference, suspend a permit or license for a violation of the act, this subchapter, or the permit that:

(a) may reasonably be expected to create a danger to the health or safety of the persons outside the permit area;

(b) may reasonably be expected to cause significant environmental harm to land, air, or water resources; or

(c) remains unabated subsequent to the deadline for abatement contained in an abatement order.

(3) A notice of noncompliance, statement of proposed penalty, or an abatement, suspension, or revocation order, an order to reclaim, and other orders issued pursuant to the Act must be served upon the person to whom it is directed promptly after issuance by:

(a) tendering a copy of the notice or order in person to the permittee; or

(b) sending a copy of the notice or order by certified mail to the permittee at the address on the application for a permit.

(4) Service is complete upon tender of the document and is

not incomplete because of refusal to accept.
AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-341, 357, 361, and 362, MCA

RULE XIV NOTICES AND ORDERS: EFFECT (1) Reclamation operations and other activities intended to protect public health and safety and the environment must continue during the period of any suspension order unless otherwise provided in the order.

(2) If a suspension order will not completely abate the imminent danger to the health or safety of persons outside the permit area in the most expeditious manner physically possible, the commissioner or his authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order must specify the time by which abatement must be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(3) A notice or order may not be vacated because of inability to comply.

(4) If a permit or license has been suspended or revoked, the operator or licensee may not conduct any operations or prospecting on the permit area and shall:

(a) if the permit or license is revoked, complete reclamation within the time specified in the order;

(b) if the permit or license is suspended, abate all conditions, practices, or violations, as specified in the order.
AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-361 and 362, MCA

RULE XV BONDING: DETERMINATION OF BOND AMOUNT (1) The department shall require submission of bond in the amount of the estimated cost to the department if it had to perform the reclamation, contingency procedures and associated monitoring activities required of a permittee under the Act, the rules adopted thereunder, and the permit. This amount is based on the approved permit and shall include:

(a) costs estimated by using current machinery production handbooks and publications or other documented costs acceptable to the department;

(b) the additional estimated costs to the department which may arise from additional design work, applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee; and

(c) an additional amount based on factors of cost changes during the preceding 5 years for the types of activities associated with the reclamation to be performed.

(2) The total bond amount calculated by the department must be in place and accepted by the department prior to issuance of the permit, license, or exclusion unless:

(a) the applicable plan identifies phases or increments of disturbance which may be individually identified and for which individual, incremental bonds may be calculated. The plan must

provide for bonding increments to be submitted with the annual report and must expressly state that the operator, licensee or small miner may not proceed to the next phase or increment until the bond is in place and has been approved in writing by the department; or

(b) mining will proceed through a progression of contiguous pits and the plan provides for concurrent backfill. In this case, the bond must include the amount necessary to backfill the largest volume pit.

(3) An incremental bond proposal must not be accepted if the permittee has received a bonding noncompliance, notice of noncompliance for exceeding the small miner or other acreage limitations, or a notice of noncompliance for conducting activities outside the permit area. This prohibition does not apply if the noncompliance is vacated or if a court feels that a violation did not occur.

(4) A permittee may submit bond higher than the amount required by the department. The extra amount remains unobligated to any disturbance until applied against disturbances which result from additional activities approved under an operating permit, license, or exemption.

(5) Bond released from completed activities may not be applied to subsequent activities or increments until the department has inspected the site, provided public notice and opportunity for comment on the release, and approved the request for release in compliance with 82-4-338, MCA.

AUTH: Sec. 82-4-321, MCA
IMP: Sec. 82-4-338, MCA

RULE XVI BONDING; ADJUSTMENT OF AMOUNT OF BOND (1) The amount of the performance bond must be reviewed for possible adjustment as the disturbed acreage is revised, methods of mining operation change, standards of reclamation change or when contingency procedures or monitoring change. The amount must also be reviewed at least every 5 years.

(2) If, at the time of an amendment under [Rule III], a comprehensive bond review is completed, the next comprehensive bond review must occur not more than 5 years after the issuance of the amendment.

(3) The department shall notify the permittee of any proposed bond adjustment and provide the operator, licensee, or small miner an opportunity for an informal conference on the adjustment.

(4) For bond reduction requests by the permittee for release of undisturbed land, the permittee shall submit a map of the area in question, revise the appropriate active permit maps and document that the area has not been disturbed as a result of previously permitted activities. The department shall then conduct an inspection of the proposed area before responding to the request.

(5) A permittee or interested party may request an adjustment of the required performance bond amount upon submission of evidence to the department demonstrating that the method of operation or other circumstances will change the estimated cost

to the department to complete the reclamation, contingency procedures, or monitoring activities and therefore warrant a change in the bond amount.
AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-338 and 342, MCA

RULE XVII BONDING: REPLACEMENT OF BOND (1) The department may allow a permittee to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability that has accrued against the permittee on the operating permit area, exploration site or small mine is transferred to such replacement bonds.

(2) The department may not release an existing performance bond until the permittee has submitted and the department has approved acceptable replacement performance bond. A replacement of performance bond pursuant to this rule does not constitute a release of bond under 82-4-338, MCA.
AUTH: Sec. 82-4-321, MCA
IMP: Sec. 82-4-338, MCA

RULE XVIII BONDING: FORM OF BOND (1) The form for the performance bond must be as provided by the department. The department shall allow for a surety bond or a collateral bond.

(2) Liability under any bond, including separate bond increments and indemnity agreements applicable to a single operation, must extend to the entire permit area.
AUTH: Sec. 82-4-321, MCA
IMP: Sec. 82-4-338, MCA

RULE XIX BONDING: SURETY BONDS (1) In addition to the requirements of 82-4-338, MCA, surety bonds are subject to the following requirements:

(a) The department may not accept a surety bond in excess of 10 percent of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(b) The department may not accept a surety bond from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided in (1)(a) of this rule.

(c) The department may not accept a surety bond from a surety company for any person, on all permits held by that person, unless that surety is registered with the state auditor and is listed in the United States Department of the Treasury Circular 570 as revised.

(d) A power of attorney must be attached to the surety bond.

(e) The surety bond must provide a mechanism for the surety company to give prompt notice to the department and the permittee of:

(i) any action alleging bankruptcy or insolvency of the surety or violation that would result in suspension or revocation of the license of the surety;

(ii) cancellation by the permittee; and

(iii) cancellation or pending cancellation by the surety.

(f) Upon incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage and shall promptly notify the department in the manner described in the bond. The department, upon notification, shall, in writing, notify the operator of a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease mineral extraction and shall comply with the provisions of 82-4-336(1), MCA, and shall immediately commence reclamation in accordance with the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted.

(g) Whenever operations are abandoned concurrent with cancellation of the bond, the department must reclaim the site and forfeit the bond within 7 years, consistent with 82-4-341, MCA, for any reclamation obligation incurred in the reclamation of the site.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-338, 341, and 360, MCA

RULE XX BONDING: CERTIFICATES OF DEPOSIT (1) The department may accept as bond an assignment of a certificate of deposit in a denomination not in excess of $100,000, or the maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C, whichever is less. The department may not accept a combination of certificates of deposit for one permittee on one institution in excess of that limit.

(2) The department may accept only automatically renewable certificates of deposit from a United States bank.

(3) The department shall require the applicant to deposit sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required pursuant to [Rules XV and XVI].

(4) The department shall require that each certificate of deposit be made payable to or assigned to the department, both in writing and in the records of the bank issuing the certificate. The department shall require banks issuing these certificates to waive all rights of setoff or liens against these certificates.

AUTH: Sec. 82-4-321, MCA
IMP: Sec. 82-4-338, MCA

RULE XXI BONDING: LETTERS OF CREDIT (1) The department may accept as a bond a letter of credit subject to the following conditions:

(a) The letter must be issued by a bank organized or authorized to do business in the United States.

(b) The letter must be irrevocable prior to a release by the department pursuant to 82-4-338, MCA.

(c) The letter must be payable to the department in part or in full upon demand and receipt from the department of a

notice of forfeiture issued pursuant to 82-4-341, MCA.

(d) The letter of credit must provide that, upon expiration, if the department has not notified the bank in writing that substitute bond has been provided or is not required, the bank will immediately pay the department the full amount of the letter less any previous drafts.

(e) The letter must not be for an amount in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(f) The department may not accept a letter of credit from a bank for any person, on all permits, licenses, or exemptions held by that person, in excess of three times the company's maximum single obligation as provided in (e).

(2) If the department determines that the bank has become unable to fulfill its obligations under the letter of credit, the department shall, in writing, notify the permittee and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease mineral extraction and shall comply with the provisions of 82-4-341, MCA, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-338, 341, and 360, MCA

RULE XXII GENERAL PROVISIONS (1) The Act and this subchapter provide that no person may engage in exploration for mining of minerals on or below the surface of the earth, engage in ore processing, reprocessing of mine waste rock or tailings, construct or operate a hard rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of any of these activities without first obtaining the appropriate license or permit from the department. Prior to receipt of an exploration license or operating permit the applicant, other than a public or governmental agency, shall deposit with the department a reclamation performance bond in a form and amount as determined by the department in accordance with 82-4-338, MCA. The license or permit may be issued following receipt and acceptance of the reclamation performance bond, and, at such time, operations may commence.

(2) The mining of certain substances is excluded from the Act and this subchapter. See definition of "mineral" in Rule XXIII, below.

(3) A small miner who signs an agreement described in 82-4-305, MCA, is excluded from the other requirements of the Act as they relate to mining, except as noted in 82-4-305(3) through (8). See definition of "small miner" in Rule XXIII. All exploration operations, regardless of size, must comply with the requirements of 82-4-331 and 82-4-332, MCA and ARM 26.4.102 through 26.4.105. See definitions of "exploration" and "mining" in Rule XXIII.

(4) The act is not applicable to any person or persons

collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding $100 per year.

(5) Subject to the exclusions set forth in the act and pursuant to the definitions of "surface mining", "mining", "exploration" and "mineral" in the Act, placer or dredge mining, rock quarrying, peat and topsoil mining operations are included in the application of the act.

(6) The act covers the permittee's or licensee's employees as well as subcontractors and the subcontractor's employees. The permittee or licensee is liable for violations of the act by its employees and subcontractors (drilling, construction, maintenance or otherwise) and the subcontractor's employees when they are working on the project for which the permit or license was issued.

(7) Common use pits and quarries on federal land which are available to the general public for noncommercial procurement of salable minerals and which are administered by the responsible federal agency under appropriate regulations are not subject to these rules, pursuant to 82-4-309, MCA.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-305, 309, 320, 331, 332, 335, 361 and 362, MCA

RULE XXIII DEFINITIONS As used in the Act and this subchapter, the following definitions apply.

(1) "Act" means Title 82, Chapter 4, Part 3 MCA.

(2) "Alternate Reclamation" means the return of lands disturbed by mining or mining-related activities to a postmining land use other than that which existed prior to mining. Alternate reclamation must be stable, must have utility and must comply with Title 75 Chapter 2, 5, and 6.

(3) "Amendment" is defined in 82-4-303(2), MCA, and means, for the purposes of this subchapter, a change in an approved plan of operations.

(4) "Board" means the board of land commissioners, as provided for in Article X, section 4, of the Montana Constitution, or an agency or state employee that may succeed to its powers and duties under the act.

(5) "Bulkhead" means a door, fence or other construction which allows periodic entry to an adit or shaft, adequately secured and locked so that animals and unauthorized persons are denied entry.

(6) "Beneficial use" means use of water as defined in 85-2-102, MCA.

(7) "Collateral bond" means an indemnity agreement for a fixed amount, payable to the Department, executed by the permittee and supported by the deposit with the department of cash, negotiable bonds of the United States (not Treasury certificates), state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States.

(8) "Disturbed and unreclaimed surface" means, as used in the definition of "small miner," land affected by mining activities, including reprocessing of tailing or waste material, that

has not been restored to a continuing productive use, with proper grading and revegetative procedures to assure:

(a) slope stability;

(b) minimal erosion;

(c) adequate vegetative ground cover (if in keeping with reclaimed use);

(d) that no mine discharge water, groundwater or surface water passing through a disturbed area will pollute or contaminate any state waters.

(9) "Exploration" means all activities conducted on or beneath the surface resulting in material disturbance of the surface, for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, except as noted in 82-4-310, MCA. Included in this definition are roads constructed for the purpose of facilitating exploration and pilot ore processing plants or sites and associated facilities constructed for the sole purpose of metallurgical or physical testing of ore materials, not to exceed 10,000 short tons, to aid in determining the development potential of an ore body.

(10) "Major amendment," as defined in 82-4-303(2), MCA, means an amendment that may have significant impact on the human environment.

(11) "Mineral" means any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, leaching, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement or smelting.

(12) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of 10,000 short tons.

(13) "Minor amendment," as defined in 82-4-303(2), MCA, means an amendment that will not significantly affect the human environment.

(14) "Permit area" is the disturbed land as defined in 82-4-303, MCA, and a minimal area delineated around a disturbance area for the purposes of providing a buffer adjacent to all disturbances, and for the purposes of controlling public access to areas permitted under 82-4-335, MCA. Monitoring wells are not required to be within a contiguous permit boundary, but must be permitted. Other activities are to be included within the permit boundary as follows:

(a) Access roads must be included within the permit area from the point of departure with a public road to the mine site.

(b) Utilities are required to be permitted only within the permit area.

(c) Work camps are not required to be permitted. (However, they are regulated under the Water Quality Act.)

(15) "Person" means any person, corporation, firm, asso-

ciation, partnership or other legal entity engaged in exploration or mining of minerals on or below the surface of the earth, reprocessing of tailing or waste materials, or operation of a hard rock mill.

(16) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons. This definition includes, but is not limited to, mining by hydraulic giant, ground sluice, rocker or sluice box methods, the use of a dry land dredge, trommel or washing plant, and bucket type floating dredges, all as referred to in Mining Methods and Equipment Illustrated, Montana Bureau of Mines and Geology, Bulletin 63, 1967.

(17) "Plan of operations" means the plans required under 82-4-335, 336, and 337, MCA, including the reclamation plan defined in 82-4-303, in an application for an operating permit.

(18) "Pollute or contaminate any stream" means, as used in 82-4-305, MCA, to conduct any mining or reprocessing of tailing or waste in a manner that will result in deterioration of water quality as specified by standards listed in the Administrative Rules of Montana, Title 16, Chapter 20 et seq., pursuant to the Montana Water Quality Act, Title 75, Chapter 5 et seq. MCA. Any future revisions of these standards adopted in accordance with the provisions of the Montana Water Act, as amended, apply to this definition.

(19) "Reclamation" means the return of lands disturbed by mining or mining-related activities to an approved postmining land use which has stability and utility comparable to that of the premining landscape except for rock faces and open pits which may not be feasible to reclaim to this standard. The term "reclamation" does not mean restoring the landscape to its premining condition. Reclamation, where appropriate, may include but is not limited to neutralizing cyanide or other processing chemicals; closure activities for heaps, waste rock dumps, and tailing impoundments; closure activities for surface openings; grading, soiling and revegetating disturbed lands; salvage of buildings; other steps necessary to assure long-term compliance with Title 75, Chapter 2 and 5; and other steps necessary to protect public health and safety at closure.

(20) "Revision" means:

(a) a major amendment that:

(i) does not add acreage to the permit area; and

(ii) will not have significant environmental impact that was not previously and substantially evaluated in an environmental impact statement; or

(b) a minor amendment that:

(i) is subject to categorical exclusion under 82-4-342, MCA;

(ii) removes undisturbed acreage from the permit area; or

(iii) changes a plan of operations without adding new acreage to the permit area.

(21) "Significantly affect the human environment" means an affect on the human environment that meets the criteria of ARM 26.2.644.

(22) "Small miner" means any person, firm, or corporation engaged in the business of mining or reprocessing tailing or waste material that:

(a) does not remove from the earth during any calendar year material in excess of 36,500 short tons in the aggregate, and conducts:

(i) a mining operation resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed;

(ii) two mining operations which disturb and leave unreclaimed less than 5 acres per operation, providing the respective mining properties are the only operations engaged in by the person, firm, or corporation, at least one mile apart at their closest point, and not operated simultaneously except during seasonal transitional periods not to exceed 30 days; and

(b) does not hold an operating permit under 82-4-335, MCA except for a permit issued under 82-4-335(2), MCA.

(23) "Surety bond" means an surety agreement for a fixed amount, payable to the department, executed by a corporation licensed to do business as a surety in Montana, and guaranteeing performance of the obligations of the act, the rules and the appropriate permit, exclusion or license.

(24) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including, but not limited to, open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining shall not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate or uranium nor excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-303, 305, 309, 310, and 331(2), MCA

RULE XXIV EXPLORATION DRILL HOLE PLUGGING (1) Except as provided in (3), all exploration drill holes must be plugged at the surface 5 to 10 feet with cement.

(2) Except as provided in (3), exploration drill holes must be plugged with bentonite or a similar compound from the bottom of the hole to within 5 to 10' of the surface, and with cement from the top of the bentonite to the surface if one or more of the following conditions apply:

(a) two aquifers are intercepted;

(b) one aquifer is intercepted and an existing or potential beneficial use (domestic, agricultural or fish/wildlife water supply) exists;

(c) one or more artesian aquifers are intercepted causing either surface flow or significant water rise in the hole; or

(d) the potential exists for downward water loss from an aquifer (cascade effect) as determined by the department.

(3) Exceptions to (1) and (2) may be granted by the department if:

(a) shallow placer holes are drilled using a churn or

percussion drill or similar equipment in alluvium in which the holes will be obliterated as the drill stem is withdrawn, leaving no evidence of the hole;

(b) the drill hole contained no water, is not geologically likely to contain water and the hole is to be destroyed during mining or mining related disturbances;

(c) the drill hole is developed into a water well, monitoring well, or piezometer with the written agreement of the land owner and to the specifications of the appropriate state agency; or

(d) other site-specific hydrogeological and topographic situations necessitate exceptions.

(4) All flowing or artesian drill holes must be plugged prior to removing the drill rig from a hole unless removing the drill rig is necessary to the hole plugging operation. If the flow is not completely stopped, after exhaustion of all methods, the operator must:

(a) obtain a discharge permit from the department of health and environmental sciences; or

(b) develop a water well in compliance with the requirements of other applicable local, state and federal statutes, including water rights. In addition, the land owner must concur, the amount and use of flow must be compatible with the approved postmining land use, and the water quality must meet standards set under the Water Quality Act.

(5) In areas and geological formations of known artesian well potential, bonding for drill sites must be adequate to ensure artesian hole plugging.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-302, 332, and 355(2)(b) MCA

RULE XXV EXPLORATION RECLAMATION DEFERRED (1) The department may defer the reclamation requirements of acreage disturbed under an exploration license if that acreage is proposed for incorporation into a complete plan of operation that is being prepared or has already been submitted as part of an application for an operating permit.

(2) The licensee shall comply with the following conditions of a reclamation deferral:

(a) a current exploration license shall be maintained;

(b) a current and adequate bond shall be maintained;

(c) the licensee shall be actively pursuing an operating permit; and

(d) the licensee shall observe any interim monitoring or reclamation requirements as may be reasonably required by the department.

(3) The department shall cancel the deferral and issue an order to reclaim if the license fails to meet any of the conditions outlined in (2) of this rule, listed above.

AUTH: Sec. 82-4-321 MCA
IMP: Secs. 82-4-331, 332(4), and 338 MCA

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

26.4.102 EXPLORATION LICENSE--APPLICATION AND CONDITIONS

(1) To secure an exploration license a person ~~the applicant~~ shall:

(a) pay a filing fee of $5 to the ~~board~~ department;

(b) submit an application for an exploration license, complete with a notarized signature, in duplicate to the department upon forms prepared and furnished by it;

(c) submit an exploration plan of operations and a map or sketch in sufficient detail to locate the area to be explored as well as the actual proposed disturbances, and to allow the department to adequately determine whether significant environmental problems would be encountered. The applicant shall state in the plan of operations what type of exploration techniques would be employed in disturbing the land. The application shall also include a reclamation plan in sufficient detail to allow the department to determine whether the specific reclamation and performance requirements of ARM 26.4.103-105 would be satisfied;

~~(b)~~ (d) agree to reclaim any surface area ~~damaged~~ disturbed by the applicant during exploration operations, all as may be reasonably required by the ~~board~~ department, unless the applicant shall have applied for and been issued an ~~development or~~ operating permit for the lands so ~~damaged~~ disturbed;

(e) submit a reclamation performance bond with the department in a form and amount determined adequate by the department in accordance with 82-4-338 MCA; and

~~(c)~~ (f) not be in default of any other reclamation obligation ~~under this law~~ mandated by the act or rules and implementing the act.

(2) On approval by the ~~board~~ department, the applicant will be issued an exploration license renewable annually on application and payment of the renewal fee. The license ~~will~~ must not be renewed if the applicant is held by the ~~board~~ department to be in any violation of the act or rules and regulations promulgated by the ~~board~~ department. ~~As per the provisions of sections 82-4-353 MCA, an aggrieved applicant, licensee or permittee may appeal, the decision of the appeals board being subject to judicial review.~~

(~~2~~3) An exploration licensee is subject to and must agree to the ~~following minimal~~ provisions of ARM 26.4.103-105 for reclamation of surface areas ~~damaged~~ disturbed by exploration operations. Because of ~~Recognising~~ the inherent difficulties of promulgating regulations of state-wide applicability, the ~~board~~ department will allow variance from the following provisions of this rule, if a written request submitted prior to commencement of the subject disturbance is accompanied by the landowner's or land administrator's written consent to the variance and is sufficient to convince the ~~board~~ department that the public interest and the intent of the act are best served by allowing such variance.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, the licensee may not depart from an approved plan without previously obtaining from the department verbal or written approval of the proposed change.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-302, 331, 332, 336, and 338 MCA

26.4.103 EXPLORATION (TEMPORARY) ROADS (1) Insofar as possible, all roads must ~~shall~~ be located on benches, ridge tops and flatter slopes to minimize disturbance and enhance stability.

(2) Road widths may not exceed a ~~fourteen (14)~~ 14 foot single lane standard. Turn-outs may be constructed according to the licensee's needs, but the turn-out area may not exceed 30 feet in total width.

(3) No road may be constructed up a stream channel proper or so close that material will ~~be spilling~~ spill into the channel. Minor alterations and relocations of streams may be permitted if the stream will not be blocked and if no damage is done to the stream or adjoining landowners. No alteration which affects more than one hundred (100) linear feet of the channel of a flowing stream may be approved by the ~~board~~ department without advice from the ~~Montana State Fish and Game~~ Department of fish, wildlife & parks. The department of health & environmental sciences must also be consulted regarding stream channel alterations to ensure compliance with the Montana Water Quality Act (Title 75, Chapter 5, MCA) as amended.

(4) Road gradients must be kept low except for short pitches to take advantage of topography. Maximum sustained grades may not exceed 8 percent. Pitch maximum may not exceed 12 percent and may not be over 300 feet in length.

(5) Insofar as possible, the licensee must keep road cuts reasonably steep to minimize surface disturbances. Cut slopes may not be steeper than 1:1 in soil, sand, gravel, or colluvium; ¼:1 in lake silts, or more than 0:1 in rock. Where necessary to prevent significant sloughing or slumping, the top of road cuts must be rounded back to a more gentle slope. In selecting a slope angle, to prevent slope failure the licensee should consider at least the following factors: the nature of the material, compaction, slope height and moisture conditions.

(6) A ditch must be provided on both sides of a throughcut and, with the exception of outsloping roads, on the inside shoulder of a cut-fill section, with ditch relief cross drains (water bars) being spaced according to grade. Water must be intercepted before reaching a switchback or large fill, and be ~~led off. Water on a fill or switchback must be~~ routed and released below the fill or switchback, not over it.

(7) Streams must ~~shall~~ be crossed at or near right angles unless contouring down to the stream bed will result in less potential stream bank erosion. Structure or ford entrances and exits must be constructed to prevent water from flowing down the roadway.

(8) Culverts must be installed at prominent drainage ways ~~way~~, small creeks and springs. Upon abandonment of the road, culverts must be removed and the drainage way reopened. Such culverts must be sufficient to handle runoff expected from a statistical five-year storm and, where necessary, the area adjoining the culvert must be protected from erosion by ade-

quate, inert rock riprap.

(9) Trees and vegetation may be cleared for only the essential width necessary to maintain soil stability and to serve traffic needs. Trees must be felled prior to road construction. When sideslopes are 15 percent (8.5 degrees) or less, trees and other vegetative debris from clearing operations must be completely disposed of or stockpiled at specified areas. When sideslopes are steeper than 15 percent (8.5 degrees), trees and vegetative debris shall be piled neatly below and parallel to the toe of the fill.

(10) Drainage facilities (such as culverts and water bars) must be installed as road construction progresses.

(11) Adequate diagonal drainage barriers (i.e. water bars)~~, open tops of Kelly dips~~ must be placed at the following specified intervals:

Grade--Percent(%)	Maximum Spacing (feet)
0 - 2	200
3 - 8	150
9 -12	80

(12) When sideslopes are 15 percent or less, vegetative debris from clearing operations must be completely disposed of or stockpiled at specific areas. On sideslopes steeper than 15 percent such vegetative debris must be piled neatly parallel to and below the toe of the fill.

(13) Roads must be outsloped whenever possible. If roads are to be used during snow season, insloping with proper drainage consideration is acceptable for vehicle safety reasons.

(14) Snowplowing must be done in such a manner that ~~run-off~~ runoff water will not be trapped between the snow berms and ~~run~~ flow down the road.

(15) Materials which slough or slump onto the road bed or into the roadside drainage ditch before the licensee ~~abandons the area~~ completes the exploration project must be disposed of ~~in~~ on the road bed or on the ~~side hill~~ fill material in a manner that will not obstruct any of the drainage facilities ~~heretofore~~ previously described.

(16) All fill and cut slopes, with the exception of rock faces, must be seeded or planted or both during the first appropriate season following construction of the road.

(17) The department may waive any of the criteria in this section if the applicant proposes methods or technologies that achieve the same or better environmental protection than that expected under the given criteria.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-302, 332, and 336, MCA

26.4.104 CONDUCT OF EXPLORATION OPERATIONS (1) All suitable practically salvaged soil and soil material must be salvaged prior to any other site disturbance, and either stockpiled or used for immediate reclamation.

(2) Except for samples, drilling mud, water and other fluids as well as waste cuttings from drilling operations must ~~shall~~ be ~~permanently~~ confined to the drill site by the use of storage tanks or sumps or must be disposed of in accordance with

a plan approved by the department.

~~(2)~~ (3) Drill sites must ~~may~~ not be constructed in natural flowing streams.

~~(3)~~ (4) Areas disturbed by removal of vegetation or grading must be kept to the minimum size necessary to accommodate the ~~for drilling~~ exploration operation.

~~(4)~~ (5) Insofar as possible, trenches, discovery pits ~~or~~ and other excavations must be located out of natural flowing streams.

~~(5)~~ (6) Spoil from ~~the~~ pits, trenches, shafts, adits, or other excavations must ~~may~~ not be located in drainage ways. The lower edge of the spoil bank must be at least 5 vertical feet above high ~~flood~~ flow level. Exceptions may be made when it is not physically practical to place spoil at least 5 vertical feet above the high flow level. ~~Spoil piles must be neatly sloped and rounded to allow vegetation to be re-established.~~

~~(6) Exploration excavations, such as shafts and (vertical or inclined), tunnels or adits, which involve the removal of rock, mineral or soil material in excess of 50 cubic yards in the aggregate shall be reclaimed in keeping with the standards described in sections 82-4-303(9) and 336 and ARM 26.4.107.~~

~~(7) When such action will not physically hinder further development of the claim, all land surfaces disturbed by assessment work (that may be properly considered exploration) must be graded promptly to facilitate revegetation and to prevent excessive erosion.~~

~~(8) All refuse connected with exploration activities shall be collected, removed and disposed of in proper disposal sites.~~

(7) If an artesian aquifer is intercepted during a drilling operation, the drill hole must be plugged at depth (top to bottom) prior to removal of the drill rig.

(8) Oil, grease, hydraulic fluid and other petroleum products must not be released on the exploration site. If a release occurs, the contaminated material must be removed immediately and disposed of at a proper disposal site.

(9) Exploration adits, shafts, and other excavations must be secured from unauthorized entry throughout the life of the operation to ensure public safety .

(10) Pilot ore processing plants or sites, as defined in ARM 26.4.101B and permitted under an exploration license, are subject to all applicable requirements of 82-4-335 through 82-4-337, MCA.

(11) The department may require interim revegetation for the purposes of erosion control on all exploration disturbance areas.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-302, 332, and 355(2)(b), MCA

26.4.105 ~~REVEGETATION~~ RECLAMATION REQUIREMENTS -- EXPLORATION (1) ~~The first objective in revegetation is to stabilize the area as quickly as possible after it has been disturbed. Plants that will give a quick, protective cover or those that will enrich the soil shall be given priority. Plants reestablished must be in keeping with the intended reclaimed use of the~~

~~land.~~ Upon completion of the drilling operation, drill cuttings or core must be removed from the site, disposed of down the hole, or buried. Drilling mud and other non-toxic lubricants must be removed from the site or allowed to percolate into the ground prior to backfilling the sump.

(2) Unless the hole is completed under 26.4.104A(3)(c), collar pipe or casing must be removed or cut off below ground level.

(3) Access roads constructed by the licensee to accommodate the exploration project must be returned to a stable slope that approximates the original contour to the extent possible. Where this is not possible (as determined by the department), compacted surfaces must be ripped or otherwise loosened, drainage structures must be installed in accordance with ARM 26.4.103(11), and the roads must be closed to access by use of locked gates, Kelly humps/dips, or other effective method. Exceptions may be made in accordance with the provisions of ARM 26.4.102(2). This requirement may be waived by the department if the landowner requests in writing that the access road be left in place for an identified, alternative, feasible and practicable purpose.

(4) Drill sites constructed by the licensee must be returned to the original contour to the extent possible. Where the department determines that this is not possible, compacted surfaces must be ripped or otherwise loosened and appropriate drainage must be provided. This requirement may be waived by the department if the landowner requests in writing that the drill site be left in place for an identified, feasible and practicable purpose.

(5) When such actions will not obscure significant evidence relating to the possible presence of an ore deposit or physically hinder further development of the claim, all trenches, bulk sample or discovery pits, and other excavations must be backfilled with the excavated spoil material. If, following a site investigation and discussions with the licensee, the department confirms the necessity for the excavation to remain open, backfilling requirements may be postponed providing the licensee remains in compliance with 82-4-331, and 82-4-332, MCA, and ARM 26.4.102, 26.4.104, 26.4.109, and 26.4.111.

(6) Upon termination of the exploration project, the first 25 feet of all adits must be backfilled with waste rock or riprap which will not contribute to the degradation of any discharge water. Shafts must also be backfilled or otherwise securely sealed upon project termination. If, following a site investigation and discussions with the licensee, the department confirms the necessity for an adit or shaft to remain accessible for possible future exploration or development, the adit or shaft must be secured with a steel bulkhead or other equally effective method to prevent unauthorized entry and ensure public safety.

(7) All refuse, buildings, railroad track, and other facilities associated with the exploration project must be removed and disposed of in proper disposal sites. Exceptions may be made by the department if the licensee desires to mine

the area and is in compliance with 82-4-332(4) MCA. This requirement may also be waived by the department if the landowner requests in writing that specific facilities be left in place for an identified, alternative, feasible and practicable purpose.

(8) All compacted surfaces associated with exploration adits, shafts, pits and associated facilities shall be ripped or otherwise loosened prior to soil replacement.

(9) Unless other reclamation practices are approved by the department, waste dumps associated with new adits excavated for the purposes of underground exploration must be contoured to allow for soil replacement and successful vegetation establishment. When existing, caved (sloughed) adits are reopened for the purposes of exploration and the caved material can be confined to the existing portal pad or waste dump without requiring expansion, contouring is not required. However, the licensee shall provide for appropriate drainage in the portal area, and the portal pad and waste dump must be stabilized with vegetation or by employing other stabilization methods determined acceptable by the department.

(10) Where feasible, soil and soil materials salvaged during construction must be reapplied over all disturbance areas.

(11) Where feasible, all disturbed areas must be revegetated with a seed mixture that is approved by the department.

~~(3)~~ (12) Appropriate revegetation must ~~shall~~ be accomplished as soon after necessary grading as possible; however, revegetation must be performed in the proper season in accordance with accepted agricultural and reforestation practices.

~~(4) All drill sites and spoils from discovery pits or other excavations must likewise be seeded or planted or both, if feasible, in the first appropriate season following completion of the work. Exceptions may be made if such revegetation would hide or obscure significant evidence relating to the possible presence of an ore deposit.~~

~~(5) Upon abandonment, and closure, the exploration road itself must be adequately prepared for suitable revegetation; such revegetation must be undertaken in the first appropriate season following abandonment, closure, and soil preparation.~~

~~(6)~~ (13) In the event that any of the above revegetation efforts are unsuccessful, the licensee must seek the advice of the ~~board~~ department and make a second attempt, incorporating such changes and additional procedures as may be expected to provide satisfactory revegetation.

AUTH: Sec. 82-4-321, MCA
IMP: Secs. 82-4-302, 332, 355(2)(b) and 75-5-605, MCA

4. ARM 26.4.101, the rule proposed to be repealed, is on pages 26-375 through 26-377 of the Administrative Rules of Montana.

AUTH: Sec. 82-4-321, MCA
IMP: Title 82, Chapter 4, Part 3, MCA

5. The rules are being proposed for adoption, amendment,

or repeal for the following reasons:

Rules I, II, and VII are necessary to allow the agency to properly monitor and enforce permits. A number of hard rock operations have in recent years become large and involve complex technical environmental issues. This size and complexity requires permit stipulations and closer monitoring of operations. Often permit consolidations are necessary to provide efficient administration. These rules facilitate those processes.

Chapters 472 and 598, Laws of 1993, require passage of rules for submission and processing of permit amendment and revision applications. Rule III and IV are proposed to comply with this mandate.

Rule V provides a procedure for review and modification of permits. Section 82-4-337(3), MCA, which the rule implements, does not provide a procedure. A standard procedure is necessary to provide for the orderly and systematic processing of these reviews. The rule has become necessary at this time because recent advances in reclamation science and technology have resulted in a systematic effort by the Department to review older permits.

Rule VI is necessary because the Department has begun receiving more inquiries regarding and requests for assignment. Adoption of a procedure will eliminate the uncertainty that has been expressed by many permittees regarding the proper procedure for completing an assignment.

Rules VIII through XIV codify procedures for inspection of permit areas and enforcement of the Act, rules, and permits. Rules VIII and IX are being proposed in response to requests from the public that the Department commit to an inspection schedule and provide a procedure to accept and follow through on citizen complaints. Rules X through XIV are proposed to provide procedures for penalty assessment and for abatement and suspension of permits. These rules are being proposed at this time because the number of enforcement actions per year has increased recently and because Chapter 598, Laws of 1993, has given the Department authority to immediately suspend permits and to order abatement. Adoption of these rules allows the public to comment on the Department's proposed procedure, notifies the public of the procedures, and guarantees that due process is provided to alleged violators. Finally, Chapter 93, Laws of 1989, requires the Department to adopt procedures for waiver of civil penalty. These procedures are contained in Rule XI.

Rules XV through XXI provide bonding procedures and criteria. They are being adopted in response to recent public requests that Department procedures be spelled out and made binding because of concerns regarding failure of bonding at a large mine near Summitville, Colorado. The Department has received applications for similarly large hard rock mines in Montana.

Rules XXII and XXIII are necessary to implement the other rules proposed in this notice. They replace existing ARM

26.4.101.

Finally, Rules XXIV and XIV and the amendments to ARM 26.4.102, 26.4.103, and 26.3.104 are being adopted because there is a need to update exploration operating and reclamation requirements to conform with advancements in reclamation and environmental protection science and technology.

6. Interested parties may submit their data, views, or arguments concerning the proposed adoption, amendment, and repeal, in writing, to Bud Clinch, Commissioner, Department of State Lands, P.O. Box 201601, 1625 Eleventh Avenue, Helena, Montana 59620-1601. To guarantee consideration, comments must be received or postmarked no later than September 9, 1994.

7. Sandra J. Olsen, Chief, Hard Rock Bureau, Department of State Lands, P.O. Box 201601, 1625 Eleventh Avenue, Helena, Montana 59620-1601, has been designated to preside over and conduct the hearing.

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State July 11, 1994.

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

In the matter of the amendment of rules 46.13.303, 46.13.304, 46.13.401 and 46.13.502 pertaining to low-income energy assistance program	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.13.303, 46.13.304, 46.13.401 AND 46.13.502 PERTAINING TO LOW-INCOME ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. On August 10, 1994, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.13.303, 46.13.304, 46.13.401 and 46.13.502 pertaining to low-income energy assistance program.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on August 1, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.13.303 TABLES OF INCOME STANDARDS (1) The income standards in the table in subsection (2) below are the ~~1993~~ 1994 U.S. government office of management and budget poverty levels for households of different sizes. This table applies to all households, including self-employed households.

(a) Households with annual gross income at or below 125% of the ~~1993~~ 1994 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the ~~1993~~ 1994 poverty level are ineligible for low income energy assistance.

(2) Annual income standards for all households:

Family Size	Poverty Guideline		125 Percent		150 Percent	
One	$ ~~6,970~~	7,360	$ ~~8,713~~	9,200	~~$10,455~~	11,040
Two	~~9,430~~	9,840	~~11,788~~	12,300	~~14,145~~	14,760
Three	~~11,890~~	12,320	~~14,863~~	15,400	~~17,835~~	18,480
Four	~~14,350~~	14,800	~~17,938~~	18,500	~~21,525~~	22,200
Five	~~16,810~~	17,280	~~21,013~~	21,600	~~25,215~~	25,920
Six	~~19,270~~	19,760	~~24,088~~	24,700	~~28,905~~	29,640
Additional member add	~~2,460~~	2,480	~~3,075~~	3,100	~~3,690~~	3,720

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

46.13.304 CALCULATING INCOME Subsections (1) through (2) remain the same.

(a) the household's annual gross income is between 125% and 150% of the ~~1993~~ 1994 U.S. government office of management and budget poverty level for the particular household size;

Subsections (2)(b) through (3) remain the same.

(a) the household's annual gross income is between 125% and 150% of the ~~1993~~ 1994 U.S. government office of management and budget poverty level for the particular household size;

Subsections (3)(b) through (3)(x) remain the same.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

46.13.401 BENEFIT AWARD MATRICES Subsections (1) through (2)(c) remain the same.

(d) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL GAS		ELECTRIC		PROPANE		FUEL OIL		WOOD		COAL	
ONE	~~$264~~	254	~~$372~~	350	~~$408~~	352	~~$318~~	283	~~$248~~	230	~~$227~~	210
TWO	~~$384~~	369	~~$541~~	508	~~$594~~	511	~~$463~~	411	~~$361~~	334	~~$330~~	305
THREE	~~$523~~	502	~~$737~~	692	~~$809~~	697	~~$630~~	561	~~$492~~	455	~~$450~~	415
FOUR	~~$720~~	691	~~$1,014~~	953	~~$1,113~~	958	~~$867~~	771	~~$677~~	626	~~$618~~	571

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	~~$333~~ 215	~~$316~~ 296	~~$345~~ 297	~~$330~~ 301	~~$210~~ 194	~~$193~~ 177
TWO	~~$336~~ 323	~~$474~~ 445	~~$520~~ 448	~~$509~~ 453	~~$316~~ 292	~~$289~~ 267
THREE	~~$493~~ 474	~~$696~~ 653	~~$763~~ 657	~~$747~~ 665	~~$464~~ 428	~~$424~~ 391
FOUR	~~$576~~ 554	~~$812~~ 763	~~$892~~ 768	~~$873~~ 776	~~$542~~ 501	~~$495~~ 457

(iii) MOBILE HOME

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	~~$322~~ 214	~~$313~~ 295	~~$344~~ 296	~~$281~~ 250	~~$209~~ 193	~~$191~~ 177
TWO	~~$335~~ 312	~~$458~~ 431	~~$503~~ 433	~~$411~~ 365	~~$306~~ 283	~~$280~~ 258
THREE	~~$431~~ 414	~~$608~~ 571	~~$667~~ 574	~~$545~~ 484	~~$406~~ 375	~~$371~~ 342
FOUR	~~$481~~ 462	~~$678~~ 637	~~$745~~ 641	~~$608~~ 541	~~$453~~ 418	~~$414~~ 382

Subsection (2)(e) remains the same.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

46.13.502 SUPPLEMENTAL ASSISTANCE (1) To the extent funds are available, one-time supplemental assistance for the amount of the outstanding heat bill for costs incurred between October 1 and April 30 of the current heating season, not to exceed $150.00 is available to LIEAP households at or below 100% of Office of Management and Budget (OMB) poverty standards, as listed in ARM 46.13.303, who have paid at least 5% of their income, as defined in ARM 46.13.304, toward their home heating costs for the 12 months previous to the date ~~of application for~~ supplemental assistance is requested by the LIEAP client or fuel vendor. Requests for supplemental assistance and documentation of the amount of an outstanding fuel bill must be submitted by June 15.

(a) ~~Application~~ Request for supplemental assistance is voluntary. All documentation necessary to process the request for supplemental assistance, including proof of client payment and amount of the outstanding heat bill, is the responsibility of the ~~client~~ fuel vendor and/or LIEAP client.

~~(b) If they have not already done so, applicants for supplemental assistance must apply for the low income home weatherization assistance program at the time of application for supplemental assistance.~~

Subsections (2) through (2)(c) remain the same.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

3. The amendment of ARM 46.13.303 and ARM 46.13.304 is necessary to provide that the 1994 U.S. Office of Management and Budget poverty levels are to be used rather than the 1993 poverty levels to determine eligibility for the Low Income Energy Assistance Program (LIEAP). In ARM 46.13.401 the amendment of figures in the benefit award matrices is necessary to reflect Department of Energy cost projections for 1994-95 as well as budget reductions.

In ARM 46.13.502 several changes are being made which do not change departmental policy but are intended to state more clearly the present policy. Thus the term "application for supplemental assistance" is being changed to "request for supplemental assistance" to reflect the fact that there is no formal written application form. Similarly subsection (b) of ARM 46.13.502(1), which states that applicants for supplemental assistance must apply for weatherization assistance at the same time, is being deleted because a request for supplemental assistance automatically serves as a request for weatherization assistance as well.

Additionally, changes have been made to ARM 46.13.502 to clarify that requests for supplemental assistance with necessary documentation must be submitted by June 15 and that supplemental assistance is only available for costs incurred during the current heating season between October 1 and April 30, not during previous years. The language of ARM 46.13.502 is also being changed to indicate that either a fuel vendor or a potential LIEAP recipient may make a request for assistance and that both are responsible for providing documentation necessary to process the request for assistance.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than August 18, 1994.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

Dana Silva
Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, July 11, 1994.

DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the amendment of ARM 4.2.102 relating to exceptions and additions and repeal of ARM 4.2.103	NOTICE OF AMENDMENT TO ARM 4.2.102 AND REPEAL OF ARM 4.2.103.

TO: All Interested Persons

1. On June 9, 1994, the Department of Agriculture proposed to repeal and amend the above stated rules at page 1501 of the 1994 Montana Administrative Register, issue no. 11.

2. ARM 4.2.103 will be repealed and ARM 4.2.102 amended as proposed with the exception of the following catchphrase incorrectly shown in the proposed notice:

4.2.102 EXCEPTIONS AND ADDITIONS FOR ~~ENVIRONMENTAL MANAGEMENT DIVISION AGRICULTURAL AND BIOLOGICAL SCIENCES DIVISION~~ AGRICULTURAL SCIENCES DIVISION

3. No comments were received.

LEO A. GIACOMETTO, DIRECTOR
DEPARTMENT OF AGRICULTURE

TIMOTHY J. MELOY, ATTORNEY
RULE REVIEWER

7/8/94

Certified to the Secretary of State July 11, 1994

DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the adoption of new rules I through VIII pertaining to rinsing and disposal of pesticide containers.	NOTICE OF ADOPTION OF NEW RULES I (4.10.801) THROUGH VIII (4.10.808)

TO: All Interested Persons

1. On May 26, 1994 the Department of Agriculture published a notice of proposed adoption of the above-stated rules at page 1317 of the 1994 Montana Administrative Register, issue no. 10.

2. The department has adopted the new rules as proposed.

3. No comments were received.

MONTANA DEPARTMENT OF AGRICULTURE

LEO A. GIACOMETTO
DIRECTOR

TIMOTHY J. MELOY
RULE REVIEWER

7/8/94
DATE

Certified to the secretary of state July 11, 1994

DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the repeal of rules relating to fees and mediation scheduling and agreement procedures	NOTICE OF REPEAL OF ARM 4.15.101 AND ARM 4.15.201

TO: All Interested Persons

1. On June 9, 1994, the Department of Agriculture published a notice of proposed repeal of the above-stated rules at page 1499 of the 1994 Montana Administrative Register, issue no. 11.

2. The department has repealed the rules as proposed.

3. No comments were received.

LEO A. GIACOMETTO, DIRECTOR
DEPARTMENT OF AGRICULTURE

7/5/94
TIMOTHY J. MELOY, ATTORNEY
RULE REVIEWER

Certified to the Secretary of State, July 11, 1994

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

In the matter of the adoption of new rules regarding small employer health benefit plans	)))	CORRECTED NOTICE OF ADOPTION

To: All Interested Persons.

1. On June 9, 1994, the department published a notice at page 1528 of the Montana Administrative Register, Issue No. 11, of the adoption of the above-captioned rules regarding small employer health benefit plans.

2. The notice of adoption incorrectly used the word "insured" instead of the word "insurer" in the definition of "Deductible." The corrected rule amendment reads as follows:

6.6.5001 DEFINITIONS For the purposes of this sub-chapter, the following terms have the following definitions:

(1) through (6) Same as original rule.

(7) "Deductible" means the dollar amount of eligible charges which the insured must pay in an annual benefit period before any benefits are payable by the insurer.

(8) through (14) Same as original rule.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1802, 33-22-1803, and 33-22-1812, MCA

3. Under 6.6.5012, Covered Preventive Care and Health Maintenance Services of Policies Under Standard Plan, the notice incorrectly stated that "(1) remains the same." The notice should have changed the term "coinsurance allowances" to "copayment requirements." The corrected rule amendment reads as follows:

6.6.5012 COVERED PREVENTIVE CARE AND HEALTH MAINTENANCE SERVICES OF POLICIES UNDER STANDARD PLAN (1) Policies of insurance offered under the standard health benefit plan contemplated by 33-22-1812, MCA, must provide full coverage of all costs of the following preventive care services, provided that no charges for such services may be subject to deductible or ~~coinsurance allowances~~copayment requirements:

(1)(a) through (2) Same as original rule.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1802 and 33-22-1812, MCA

4. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State for the June 30, 1994, publication.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By 

Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 11th day of July, 1994.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to fees and supervision	)	NOTICE OF AMENDMENT OF 8.62.413 FEES AND 8.62.502 SCHEDULE OF SUPERVISION - CONTENTS

TO: All Interested Persons:

1. On May 26, 1994, the Board of Speech-Language Pathologists and Audiologists published a notice of proposed amendment of the above-stated rules at page 1327, 1994 Montana Administrative Register, issue number 10.

2. The Board has amended the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
JANE HUDSON, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 11, 1994.

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

In the matter of the amendment of rules pertaining to applications and the adoption of a new rule pertaining to infectious waste	)	NOTICE OF AMENDMENT OF 8.64.802 APPLICATIONS FOR CERTIFICATION - QUALIFICATION AND THE ADOPTION OF NEW RULE I (8.64.406) MANAGEMENT OF INFECTIOUS WASTES

TO: All Interested Persons:

1. On May 26, 1994, the Board of Veterinary Medicine published a notice of proposed amendment and adoption of the above-stated rules at page 1329, 1994 Montana Administrative Register, issue number 10.

2. The Board has amended and adopted the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF VETERINARY MEDICINE
MINOTT PRUYN, D.V.M., PRESIDENT

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 11, 1994.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to the uniform building code	))))	NOTICE OF AMENDMENT OF 8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE

TO: All Interested Persons:

1. On May 26, 1994, the Building Codes Bureau published a notice of proposed amendment of the above-stated rule at page 1331, 1994 Montana Administrative Register, issue number 10.

2. The Bureau has amended the rule exactly as proposed.

3. No comments or testimony were received.

BUILDING CODES BUREAU
JAMES F. BROWN, BUREAU CHIEF

BY: _____
JON NOEL, DIRECTOR
DEPARTMENT OF COMMERCE

_____
ROBERT P. VERDON, RULE REVIEWER

Certified to the Secretary of State, July 11, 1994.

BEFORE THE MONTANA LOTTERY COMMISSION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE OF 8.127.
of a rule pertaining to retailer) 407 RETAILER COMMISSION
commission)

TO: All Interested Persons:

1. On April 28, 1994, the Montana Lottery Commission published a notice of proposed amendment of the above-stated rule at page 1002, 1994 Montana Administrative Register, issue number 8. On July 7, 1994, the Lottery Commission published a notice of adoption at page 1823, 1994 Montana Administrative Register, issue number 13.

2. The Commission inadvertently omitted noting that the amendments to ARM 8.127.407 would be effective January 1, 1995 and, by this corrected notice, is notifying the public of that effective date.

3. The authority and implementing sections which were cited in the original proposal remain the same.

MONTANA LOTTERY COMMISSION
BECKY ERICKSON, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 11, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I and Rule II pertaining to placement of children with out-of-state providers.	NOTICE OF ADOPTION OF RULE I AND RULE II PERTAINING TO PLACEMENT OF CHILDREN WITH OUT-OF-STATE PROVIDERS.

TO: All Interested Persons

1. On May 26, 1994, the Department of Family Services published notice of public hearing on adoption of Rule I [11.7.701] and Rule II [11.7.703] pertaining to placement of children with out-of-state providers at page 1338 of the 1994 Montana Administrative Register, issue number 10.

2. On June 22, 1994 a public hearing was held in the second floor conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana, to consider the adoption of the Rules. No verbal or written comment was received at the hearing.

3. The department has adopted the rules as proposed. The department has thoroughly considered the comment which was received:

COMMENT: The definition of "out-of-state provider" should be changed. The rule as it is currently written may lead to misunderstanding among providers who may assume that the use of the term "residential treatment program," followed by the listing of other types of care, means that the other types are subcategories of residential treatment centers.

RESPONSE: The department disagrees. The definition reads: "Out-of-state provider means a residential treatment program that is an approved Montana medicaid provider or a program . . ." The use of the term "or", as a matter of construction of the rule, clarifies that the levels of care listed thereafter are not subcategories.

In using the term "residential treatment program," the department intends to define for the purposes of Rule I and Rule II, those medicaid-enrolled facilities providing residential treatment services under ARM 46.12.590. This practice is in accord with the memorandum of understanding, and Department of Corrections and Human Services policy under Managing Resources Montana.

The department considered using the term "residential treatment centers," which would further clarify the definition in regard to out-of-state programs enrolled to provide residential treatment services under ARM 46.12.590. In-state providers of services under the rule are licensed by the Montana Department of Health and Environmental Sciences as "residential treatment centers."

(Such providers may also be licensed by DFS as "child care agencies".) However, providers in other states may not be designated by their licensing authority as "residential treatment centers," even though they are enrolled to provide residential treatment services under ARM 46.12.590. Thus the use of the word "programs."

COMMENT: In adopting and incorporating the memorandum of understanding, the department should consider inserting language providing that subsequent amendments of the agreement are also adopted and incorporated.

RESPONSE: This practice has been considered, and found to be prohibited by the Montana Administrative Procedure Act.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, July 11, 1994.

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

In the matter of the amendment of rules 16.10.1311 and 16.10.1529 dealing with swimming pool inspections	NOTICE OF AMENDMENT OF RULES (Swimming Pool Inspections)

To: All Interested Persons

1. On June 9, 1994, the department published notice at page 1513 of the Montana Administrative Register, Issue No. 11, to consider the amendment of the above-caption rules.

2. The department adopted the rules as proposed with no changes.

3. There were no comments received on these proposed rules.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State July 11, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Amendment of Rules 23.15.102-103, 201-203, 302, 304, 306, 308, the Repeal of 23.15.104, and the Adoption of Rule I (23.15.205) regarding Crime Victims Compensation	)))))	NOTICE OF AMENDMENT, ADOPTION AND REPEAL OF RULES

TO: All Interested Persons:

1. On May 26, 1994, the Board of Crime Control published notice to adopt the following rules concerning crime victim compensation, at page 1381 of the 1994 Montana Administrative Register, issue number 10.

2. The rule proposed for repeal (23.15.104) was repealed as proposed. The rules proposed for amendment were adopted with the following changes to clarify language and definitions, to improve grammar, and to elaborate on procedures:

23.15.102 GENERAL DEFINITIONS (1) through (5) remain the same.

(6) "A law enforcement officer" ~~includes personnel in youth court probation and child protective services.~~ means a peace officer as defined in 46-1-202, MCA, or an employee of a youth court probation or child protective services agency.

23.15.103 GOOD CAUSE EXTENSIONS TO CLAIM FILING AND REPORTING TO LAW ENFORCEMENT LIMITS (1) Factors considered when determining whether "good cause" exists for extending the one-year time limit for filing a claim, or for extending the 72 hour deadline to report criminally injurious conduct to law enforcement after its occurrence include, but are not limited to the following: ~~reporting criminally injurious conduct to law enforcement within 72 hours after its occurrence include, but are not limited to the following:~~

(1)(a) through (2) remain the same.

23.15.306 MENTAL HEALTH THERAPISTS (1) The rules governing physicians apply to mental health therapists, subject to restrictions in this rule.

(2) A mental health therapist must be one of the following to receive payment from the crime victims fund:

(a) medical doctor;

(b) licensed clinical psychologist;

(c) licensed social worker;

(d) licensed professional counselor;

(e) mental health center for services of any of the therapists listed in this section.

(3) Payment for mental health counseling is limited to 12 consecutive months or $2000.00 billable services, whichever limit is reached first. Extension of the time or money limit may be requested by the claimant. An extension may be granted after review of the entire course of treatment, including but not limited to case notes and treatment plans. Claimants retain the right to request a hearing under 23.15.202. The reviewer will be a qualified professional therapist chosen by the crime victims unit who will make recommendations to deny or grant any extension of treatment and the length of the extension.

23.15.308 CONTRIBUTION (1) Under Section 53-9-125, MCA, a ~~A~~ victim contributed to the infliction of death or bodily injury with respect to which a claim is made if the victim's actions are causally connected to the resulting injuries and such injuries were reasonably foreseeable at the time of his or her contributing actions.

3. The new rule proposed for adoption was adopted with a clarification of the language within it as follows.

23.15.205 RECONSIDERATION UNDER 53-9-130, MCA (1) The division may reconsider a claim at the request of the claimant when no informal hearing under 53-9-122, MCA, was held, and when the time for requesting such hearing has expired.

(2) A claimant may request a reconsideration only upon presentation of newly discovered evidence which could not have been previously discovered with reasonable diligence.

(3) A claimant's request for a reconsideration must:

(a) be in writing;

(b) state the reason why the division's prior decision should be reconsidered; and

(c) explain why an informal hearing under 53-9-122, MCA, was not requested or held.

(4) The unit's administrative officer will review the request and all relevant evidence provided by the claimant and recommend whether the request should be granted or denied.

(5) The recommendation will be reviewed by the division administrator who may concur, reject or modify the recommendation.

(6) A reconsideration may be done at any time if requested by the crime victims unit. The request will be reviewed by the division administrator who may grant, deny, or modify the determination requested as provided in (5).

4. Comments were received by several interested parties. In general, the Division incorporated the suggestions into the rules. There were, however, comments which could not be addressed in rule as the issues require legislative changes, and comments which were not incorporated for reasons explained below.

The comments that would require legislative change were:

1. Asking that property damage be allowed for compensation. Legislation limits compensation to criminally injurious conduct to persons and not property under 53-9-103, MCA.

2. Asking that emotional injury be allowed for compensation. Legislation defines that which is allowable for compensation in 53-9-103, MCA.

3. Improving the notice of the compensation program provided to victims. Law enforcement is currently required to give notice to victims in the Montana Victims and Witnesses Treatment Act. The Division will explore means to make that notice more effective and memorable.

4. Seeking assurance that records are protected from public review. Records remain confidential under 53-9-107, MCA.

5. Seeking amendment to the requirement that victims cooperate fully with law enforcement. This is a requirement of 53-9-125, MCA.

Comments not incorporated into the rules were:

1. Suggesting a time limit in 23.15.201. This was not incorporated because the Division established a policy manual based on an outside efficiency study of claims processing. Time limits are set within that policy and are too complex to put into rule.

2. Expressing concern that victims of domestic violence may be prohibited from seeking compensation in the contribution rule 23.15.308. This was not incorporated as victims of domestic violence are eligible recipients and that contribution is only used if the victim played a role in the resultant injury. Moreover, the injuries must be "reasonably foreseeable". That is taken to mean reasonable within the context of a domestic violence situation. Each case is considered individually.

BOARD OF CRIME CONTROL
CATHY KENDALL, Acting Executive Director

By: Cathy Kendall
CATHY KENDALL, Acting Executive Director
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Rule Reviewer

Certified to the Secretary of State, July 11, 1994

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

In the matter of the adoption of new rules and amendment of 26.3.186 and 26.3.193 authorizing and regulating enrollment of state lands in block management areas.	NOTICE OF ADOPTION AND AMENDMENT

1. On April 28, 1994, the Board of Land Commissioners and the Department of State Lands published notice of proposed adoption of new Rules I through VI and amendment of ARM 26.3.186 and 26.3.193 concerning enrollment of state lands administered by the Department of State Lands in block management areas established under the Department of Fish, Wildlife and Parks' Block Management Program at page 1071 of the 1994 Montana Administrative Register, Issue No. 8.

2. The agency has adopted Rule I (26.3.199), Rule II (26.3.199A), Rule IV (26.3.199C), as proposed.

3. The agency has amended ARM 26.3.186 and 26.3.193 as proposed.

4. The agency has adopted Rules III and V with the following modifications:

RULE III (26.3.199B) BLOCK MANAGEMENT AREAS: CRITERIA FOR INCLUSION OF STATE LANDS

(1) The department may include state land in a block management area only if it finds that:

(a) inclusion is in the best interests of the public and the trust;

(b) the block management agreement does not conflict with rights of holders of leases, licenses, and easements; ~~and~~

(c) inclusion would not result in damage to the land~~.~~; and

(d) the block management area contains private land; and

(e) the state land is contiguous to federal or private land that is within the block management area.

AUTH: 77-1-804, MCA; IMP: 77-1-804, MCA.

RULE V (26.3.199D) BLOCK MANAGEMENT AREAS: RENEWAL OF AGREEMENT

(1) A block management agreement that contains state lands may be renewed.

(2)(a) Subject to (b), renewal of a block management agreement that meets the criteria of Rule II(2) may be subject to the review procedures contained in Rule II(3) only if:

(i) during the term of the agreement, the department or department of fish, wildlife and parks have received public comments or complaints tending to:

(A) raise significant concerns regarding compliance with the agreement;

(B) indicate that continued enrollment in the block management program may not be in the best interests of the public or the trust; or

(ii) there will be changes in the agreement that impose more stringent restrictions than those contained in the existing agreement.

(b) If the department or department of fish, wildlife and parks has received complaints under the department of fish, wildlife and parks' complaint resolution system regarding a block management area that is being considered for renewal and those complaints have not been resolved ~~to the department's satisfaction~~, the commissioner may not renew the agreement without public review until receiving a recommendation from the recreational use advisory council as to whether public review is appropriate.

(3), (4), and (5) Same as proposed rules.

AUTH: 77-1-804, MCA; IMP: 77-1-804, MCA.

5. The agency has adopted Rule VI with modifications. However, because most of Rule VI is identical to ARM 26.3.191, which was adopted on June 27, 1994, the Board has incorporated Rule VI into ARM 26.3.191 by amending that rule as follows:

26.3.191 RECREATIONAL USE ADVISORY COUNCIL

(1) The board shall, pursuant to 2-15-122, MCA, appoint from a list of persons nominated by recreationist and lessee groups a recreational use advisory council consisting of three recreationists and three lessees. The members shall serve without compensation, but they are entitled to reimbursement for travel expenses pursuant to 2-15-122, MCA.

(2) The advisory council shall gather information and advise the commissioner on the validity of management closure or restriction appeals made pursuant to Rule I, ~~and~~ on appeals of area manager decisions regarding site-specific closure petitions pursuant to ARM 26.3.189, and on whether to subject renewal of a block management agreement pursuant to ARM 26.3.199D to public review. In advising the commissioner, the council shall attempt to provide reasonable recreational use of state lands within the bona fide management constraints of lessees.

(3) The following are general guidelines for the council's use in determining whether the term of a management closure or restriction is reasonable: for calving or lambing, 60 days; for breeding, 30 days; for gathering or moving, one day; for weed treatment, 5 days; and for concentration of 200 or more animal units per section for weaning and shipping, 30 days. The council may deviate from these guidelines as management circumstances dictate.

AUTH: Sec. 77-1-804 MCA; IMP: Secs. 77-1-804, 2-15-122 MCA.

6. A summary of comments objecting to or proposing modification of the rules, and the agency's responses to those comments, are as follows:

COMMENT #1: BMAs are set up primarily for public use. State lands are public lands and we must not let special interests get involved.

RESPONSE: Inclusion of state lands in BMAs is authorized by 77-1-804(6), MCA. The rules provide for public review and comment prior to enrollment of state lands in new BMAs and also for a complaint resolution procedure for existing BMAs. Any person or group of persons should be able to comment on the establishment of new BMAs or to file complaints or otherwise comment on existing BMAs.

COMMENT #2: If enrollment of state land in a BMA provides or enhances public access, then include it. If it doesn't, it should not be included.

RESPONSE: Criteria for the inclusion of state land in BMAs is addressed in Rule III and provides that the Department may enroll state lands if inclusion is in the best interest of the public and the trust. The public interest includes considerations of accessibility. However, other criteria should also be considered.

COMMENT #3: If public land is in a BMA and somebody trespasses on it, it's totally wrong to prosecute for trespass on state land.

RESPONSE: Section 77-1-804(6), MCA, authorizes inclusion of state lands into block management areas and allows public access to be restricted in accordance with block management rules. In order to enforce these rules, the Department must be able to prosecute for entry that is not in compliance with those rules.

COMMENT #4: You need to determine if the BMA agreements are in the public interest.

RESPONSE: With the enactment of 77-1-804(6), MCA, the Legislature determined that the inclusion of state lands in BMAs is, as a general rule, in the public's interest. For specific BMAs, Rule III(1)(a) requires that before state land may be included in a BMA, the Department must find that inclusion is in the best interests of the public and the trust.

COMMENT #5: Conditions of some BMAs allocate access and therefore limit public use of public lands. Criteria should be developed to determine when use should be limited.

RESPONSE: Rule III provides criteria for inclusion of state land in BMAs. Rule III(1)(a) sets one criterion as being that enrollment must be in the best interests of the public and the trust.

COMMENT #6: Criteria should be developed that allows for public review of state land enrolled or proposed for enrollment in a BMA.

RESPONSE: Rule II(2) requires opportunity for public review and comment on any proposed BMA which contains publicly

accessible state land. In addition, Rule V provides opportunity for public review and comment regarding renewal of a BMA if comments or unresolved complaints have been received which merit such review.

COMMENT #7: Public lands that are not legally accessible should not be subject to the public review process.

RESPONSE: Rule II(5) does not require public review of BMAs which do not contain publicly accessible state lands.

COMMENT #8: Rule VI(2) should be amended. The current proposal states "public hearing" and that should be changed to "public notice". The recommended amendment will match the advisory committee's intent which was to allow the Recreational Use Advisory Council to recommend to the Commissioner of State Lands that public notice may or may not be appropriate for renewal of a BMA under Rule 5.

RESPONSE: The Board concurs and has changed the wording in Rule VI(2) to provide that the council advises on "public review".

COMMENT #9: Take no action on the new proposed rules for BMAs until the Private Lands/Public Wildlife Council finalizes proposals on outfitting, non-resident licenses and BMA use.

RESPONSE: The Board does not believe these rules will have an effect on proposals made by the Private Lands/Public Wildlife Council. Therefore, it is not imperative to wait for the final proposals of that council. In addition, the Board wishes to establish procedures for the inclusion of state land in BMAs for the 1994 hunting season.

COMMENT #10: We believe that state land that is not contiguous (connected) to private land that makes up the core of the BMA should be excluded from Block Management. In fact, there is the possibility that such inclusion runs counter to the stated intent of HB778 (that these lands shall be available to the fullest extent possible for public recreation).

RESPONSE: The Board concurs and the language of Rule III(1) has been amended to prohibit inclusion of state land that is not contiguous to (touching) other private or federal land enrolled in the BMA. For purposes of this rule, the Department will consider contiguous state leaseholds to be one tract.

COMMENT #11: Public review and the advisory committee were intended to arbitrate unresolved complaints. The DSL Commissioner can only review complaints if the BMA is up for renewal and some agreements are for 5 year periods. Unresolved complaints should trigger review in the year of the complaint. Also, disputes should be considered unresolved under this rule if a complainant other than the Department is unsatisfied.

RESPONSE: DFWP Rule 12.4.210(1)(a)-(f) provides for immediate investigation and resolution of complaints. If a complaint is not resolved under that rule, DSL may withdraw the state land from the BMA under Rule IV(1)(c). The rule has therefore not been amended to apply during the term of the Block Management Agreement. However, the rule has been amended to apply when parties other than the department consider the complaint to be unresolved.

COMMENT #12: If the Department of Fish, Wildlife and Parks (DFWP) is a part of the proposed rules for BMAs, they should have control of state lands.

RESPONSE: The Montana Constitution and statutes generally vest control of state trust lands in the Board of Land Commissioners and the Department of State Lands. Section 77-1-804(6), MCA, provides that the Board may restrict access on state land in accordance with the DFWP Block Management Program. Therefore, the division of responsibilities implemented by the rules and the DFWP rules reflects the statutory allocation of authority.

COMMENT #13: The Department of State Lands (DSL) should make the DFWP Regional meeting in February when tentatives for BMA agreements are presented and DSL should present BMA plans for each BMA at sportsmen's meetings.

RESPONSE: If the DFWP feels that it is appropriate and invites DSL to attend regional meetings, then DSL will attend. It is not, however, appropriate for DSL to regulate a DFWP meeting by administrative rule. The BMA program is administered by DFWP and it would be more appropriate for the interested sportsmen's groups to request DFWP to present BMA plans at the respective meetings.

COMMENT #14: I am very strongly opposed to any outfitting on state lands that are included in a BMA.

RESPONSE: Outfitting on a BMA will not restrict the public's use of that BMA. Outfitters must comply with any and all restrictions of a given BMA, the same as any other sportsmen utilizing that BMA. However, outfitting will not be totally prohibited because it does provide income to the trusts, which is the Department's primary mandate in administering these lands.

COMMENT #15: The amount of private land in a BMA should be at least equivalent to the amount of public land included.

RESPONSE: Rule III(1)(a) requires that inclusion must be in the best interests of the public and the trust. The Department will use this criterion, as well as other criteria listed in the rule, in determining whether or not to include state lands. The ratio of public to private land will be considered in assessing the public interest but should not dictate whether or not state lands will be enrolled. Other factors must also be considered.

COMMENT #16: State lands should not be reserved for just a few. We agreed last October that preferential treatment was not in the best interest of the public who use BMAs and that the new rules would eliminate this. The rules, as proposed, perpetuate preferential treatment of state lands. State lands cannot be reserved for family and friends.

RESPONSE: DFWP Rule 12.4.205 provides that access to all lands, including state land, within a BMA are subject to access on a first-come, first-served basis.

COMMENT #17: Most current BMA rules were privately negotiated between DFWP and the lessee without input from DSL. There is an apparent attempt to grandfather existing BMAs and shield their rules from DSL review. We agreed that no public review would be necessary for those BMAs which contained accessible state land unless there were unresolved complaints about them. We thought it was clearly understood that no BMAs were grandfathered by HB778 and that state lands in BMAs would be subject to the rules established by this process. We feel that every BMA which contains accessible state lands should be reviewed by DSL to determine if the rules are in the best interest of the public and the trust. Since only the Board can adopt rules, you must meet your constitutional obligation and require that DSL review all BMAs.

RESPONSE: Under the provisions of RULE V, BMAs are subject to DSL review and possibly to public review, at the time of renewal. Therefore, all BMAs that contain legally accessible state land will have been subject to public review within 5 years of adoption of these rules. Most will be subject to review before that time. Existing BMAs are subject to the complaint resolution process as provided in DFWP Rule 12.4.210. If a complaint is not adequately addressed, DSL may withdraw from the BMA under Rule IV(1)(c).

COMMENT #18: BMA cooperators should, at the end of each season, be required to provide a list to DSL of the hunters names and the dates they hunted.

RESPONSE: The commentor did not indicate the purpose for requiring this information. The Board does not feel that such information is necessary for the proper management of state lands.

COMMENT #19: (a) Numerous BMAs have rules that are more stringent than DSL rules. In some cases, it requires that permission be obtained at a designated period of time each day and permission is not available at any other time. If these lands were under DSL rules, the lessee would be required to be available to accept notice all day.

(b) We strongly recommend complete rejection of the inclusion of State Lands in Block Management Areas.

RESPONSE: Section 77-1-804(6), MCA, authorizes state lands to be enrolled in block management and to restrict access in accordance with that program. While inclusion of state land in BMAs may result in more restrictions than are

imposed in the recreational use rules (eg: permission, lessee availability, etc.), there are also advantages to recreationists from their inclusion. Lands are managed as a unit, regardless of ownership, and the block management program is designed to provide or enhance land availability for hunting within that unit or within the general area.

COMMENT #20: If the school trust land is in Block Management, the landowner should have control of the school trust land as long as the landowner abides by the BMA rules.

RESPONSE: Access to and use of state land enrolled in a BMA are subject to the terms and conditions of the BMA agreement. The BMA cooperator is responsible for compliance with the terms and conditions of the agreement and may manage the land under those provisions and the DSL rules.

COMMENT #21: It is clearly unfair and confusing for the private landowner in the BMA to be bound by one set of rules (no fee hunting), while the state and federal landowners in the same BMA are bound by different rules. If the landowner is going to be treated like a second class partner in the BMA, it would be preferred that all fee hunting on BMAs be rejected.

RESPONSE: Sections 77-1-801 and 77-1-804(7), MCA, provide that a person may engage in recreational use on state lands only if that person purchases the appropriate recreational use license. The Board may not adopt a rule that conflicts with these statutes.

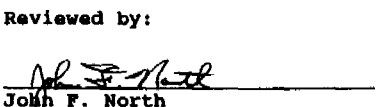
COMMENT #22: The Advisory Committee that was set up to deal with BMA problems and worked so diligently to find solutions should be addressed in the draft rules. The reason it was left out is hopefully just an oversight and its composition, appointment, and authority will be addressed.

RESPONSE: The Advisory Committee to which the commentor refers was established to recommend rules governing block management for both DSL and DFWP. The committee accomplished this task and the rules reflect its findings and recommendations. Rule VI establishes an on-going advisory council to advise the Commissioner regarding the requirement for public review of BMAs which contain state land.

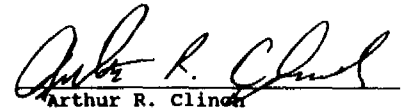
7. The Administrative Code Committee of the Montana Legislature submitted a comment indicating that the Department's statement of reasonable necessity was not adequate to demonstrate why it is necessary to adopt the block management. The Board is adopting the rules because the public has expressed concerns to the Department of State Lands and the Department of Fish, Wildlife and Parks that the parameters for establishment of block management areas and for the inclusion of state lands within those areas have been

vague and inconsistent in the past and need to be subject to established rules.

Reviewed by:



John F. North
Chief Legal Counsel



Arthur R. Clinch
Commissioner

Certified to the Secretary of State July 11, 1994.

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

In the Matter of Amendment to a Rule Pertaining to Stenographic Recording and Transcripts.	))))	NOTICE OF AMENDMENT OF RULE 38.2.3909

TO: All Interested Persons

1. On April 14, 1994 the Department of Public Service Regulation published notice of a proposed amendment to Rule 38.2.3909, pertaining to stenographic recording and transcripts, at page 929, issue number 7 of the 1994 Montana Administrative Register.

2. The Commission has amended rule 38.2.3909 TRANSCRIPTS as proposed.

3. No comments were received on the proposed amendment.

Bob Anderson
Bob Anderson, Chairman

CERTIFIED TO THE SECRETARY OF STATE JULY 11, 1994.

Reviewed By

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

In the matter of the adoption of Rules I through X and the amendment of rule 46.30.1101 pertaining to review and modification of support orders	)))))	NOTICE OF THE ADOPTION OF RULES I THROUGH X AND THE AMENDMENT OF RULE 46.30.1101 PERTAINING TO REVIEW AND MODIFICATION OF SUPPORT ORDERS

TO: All Interested Persons

1. On May 26, 1994, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I through X and the amendment of rule 46.30.1101 pertaining to review and modification of support orders at page 1392 of the 1994 Montana Administrative Register, issue number 10.

2. The Department has amended rule 46.30.1101 as proposed.

3. The Department has adopted rules [RULE I] 46.30.1103, AVAILABILITY OF REVIEW; [RULE II] 46.30.1105, RIGHT TO HEARING ON DENIAL; [RULE III] 46.30.1107, PROCEDURE FOR TERMINATING REVIEW AFTER CLOSURE OF IV-D CASE; [RULE IV] 46.30.1109, CHOICE OF LAW; [RULE V] 46.30.1111, TIME FRAME DETERMINATIONS; [RULE VI] 46.30.1113, REQUESTS FOR DISCOVERY; [RULE VII] 46.30.1115, SETTLEMENT CONFERENCE; [RULE VIII] 46.30.1117, NEGLIGIBLE CHANGE; [RULE X] 46.30.1121, ADDITIONAL HEARING PROCEDURES as proposed.

4. The Department has adopted the following rule as proposed with the following changes:

46.30.1119 [RULE IX] MODIFICATION HEARING All remain as proposed.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-202, 40-5-272 and 40-5-273 MCA

5. The Department has thoroughly considered all commentary received:

COMMENT: An attorney from the Administrative Code Committee noted that 40-5-202 MCA should be included as an implementing cite for [Rule IX] 46.30.1119.

RESPONSE: The department agrees and has added 40-5-202 MCA as an implementing cite.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, July 11, 1994.

VOLUME NO. 45 OPINION NO. 27

SCHOOL BOARDS - Authority to transfer funds from end-of-the-year general fund balance;
SCHOOL DISTRICTS - Trustees' authority to transfer funds from end-of-the-year general fund balance;
SUPERINTENDENT OF PUBLIC INSTRUCTION - Authority to limit interfund transfers by local school trustees;
MONTANA CODE ANNOTATED - Sections 20-9-104, -133, -512;
MONTANA LAWS OF 1991 - Chapter 754;
MONTANA LAWS OF 1981 - Chapter 138.

HELD: School district trustees may transfer any portion of the end-of-the-year general fund balance into the compensated absence liability fund subject to the limitations in Mont. Code Ann. § 20-9-512(4).

July 8, 1994

Mr. Mike McGrath
Lewis and Clark County Attorney
Courthouse, 228 Broadway
Helena, MT 59623

Dear Mr. McGrath:

You have requested my opinion on the following issue:

> Whether school district trustees are limited to amounts budgeted in but not expended from the general fund when they make a transfer from the end-of-the-year general fund balance into the compensated absence liability fund pursuant to Mont. Code Ann. § 20-9-512(3).

Resolution of this issue turns on the meaning of the term "general fund end-of-the-year fund balance" appearing in Mont. Code Ann. §§ 20-9-104 and -512(3). Because that term must be given the same meaning in both provisions and because in § 20-9-104 it unquestionably includes any revenue remaining in a school district's general fund at the end of the fiscal year after satisfaction of all liabilities, I conclude school district trustees are not limited to amounts budgeted but not expended in making transfers under § 20-9-512(3).

Mont. Code Ann. § 20-9-512(3) reads:

> At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year fund balance to establish and maintain the compensated absence liability fund.

The amount which may be transferred from the general fund end-of-the-year fund balance is limited in Mont. Code Ann. § 20-9-512(4), but that limit is not relevant here. The term "general fund end-of-the-year fund balance" is also used in Mont. Code Ann. § 20-9-104, which deals with determining permissible general fund operating reserves. No dispute exists that, in determining the general fund end-of-the-year fund balance under the latter section, all revenues received during the fiscal year, including amounts in excess of those anticipated when the general fund budget was set, must be counted. Subsection (5) of § 20-9-104 thus excludes certain types of unanticipated tax revenue from the operating reserve limit--an exclusion which would be meaningless if those amounts were not part of the general fund end-of-the-year budget balance. See also Montana School Accounting Manual ¶ 7-0430 (the general fund end-of-the-year fund balance consists of the total of all revenues and other financing sources, less all expenditures and other financing uses). Since it is presumed ordinarily that, where the legislature has used an identical phrase in different sections of a single statutory scheme, an identical meaning is intended, the meaning given "general fund end-of-the-year fund balance" in § 20-9-104 must be given that term in § 20-9-512(3). People v. Hernandez, 637 P.2d 707, 710 (Cal. 1981); Agustin v. Dan Ostrow Constr. Co., 636 P.2d 1348, 1351 (Haw. 1981).

My conclusion in this regard is supported by another consideration. In 1981 the legislature established the reserve fund for payment of accumulated sick leave and provided for its funding from the "general fund end-of-the-year cash balance." 1981 Mont. Laws, ch. 138. Ten years later it replaced the sick leave reserve fund with the compensated absence liability fund. 1991 Mont. Laws, ch. 754. The amended statute, however, left in place the provision for transferring amounts from the general fund end-of-the-year balance, substituting the word "fund" for "cash." Throughout the 1981-91 period school districts, with approval of the office of public instruction, effected transfers pursuant to § 20-9-512(3) consistent with the above construction of the term "general fund end-of-the-year fund balance." The replacement of "cash" with "fund" was presumably a technical change designed to make uniform the terminology in §§ 20-9-104 and -512(3). The Montana Supreme Court has recognized that "the re-enactment of a statute, or passage of a similar one, in substantially the same terms, is an adoption of the practical construction placed on the previous statute by the administrative department of government." State ex rel. Lewis & Clark County v. Board of Pub. Welfare, 141 Mont. 209, 212, 376 P.2d 1002, 1003 (1962).

Three concerns have been expressed over the construction of "general fund end-of-the-year fund balance" adopted here. The first involves Mont. Code Ann. § 20-9-133(2). That provision states:

> Except as provided in subsection (3), the trustees and all officers and employees of the district are limited in making expenditures or incurring liabilities to the total amount of each fund's budget. Transfers from any appropriation item to another appropriation item within a fund's budget may be made as provided by 20-9-208. Except as provided in subsection (3), money of the district may not be used to pay expenditures made, liabilities incurred, or warrants issued in excess of the final budget established for each budgeted fund.

The suggestion is that this statute limits transfers under § 20-9-512(3) to actually budgeted amounts. I disagree. The legislature gave a specific meaning to the term "general fund end-of-the-year fund balance." That meaning has been discussed above. Since the specific statute controls the general (Carbon County Sch. Dist. No. 28 v. Spivey, 247 Mont. 33, 805 P.2d 61 (1991)), a contention that § 20-9-133(2) in some fashion modifies operation of § 20-9-512(3) cannot be credited. Authority also exists for the proposition that interfund transfers should be distinguished from expenditures in financial statements. Governmental Accounting Standards Board, Codification of Governmental Accounting and Financial Reporting Standards § 1800.107 (1993). Instantly, transfers pursuant to § 20-9-512(3) are not "expenditures" under § 20-9-133(2). This reading enables the statutes to be reconciled, which they must be if possible. Schuman v. Bestrom, 214 Mont. 410, 415, 693 P.2d 536, 538-39 (1985).

The second concern is that my interpretation of § 20-9-512(3) runs counter to generally accepted accounting principles as applied by the office of public instruction and, therefore, Mont. Code Ann. § 20-9-103. See Montana School Accounting Manual ¶ 6-0200.11. The requirement for school budget forms to be prescribed in accordance with generally accepted accounting principles does not contravene the express language in § 20-9-512(3). Again, the specific statute controls over the more general. Reliance on the contrary application of those principles by the office of public instruction is unavailing. Darby Spar Ltd. v. Department of Revenue, 217 Mont. 376, 379, 705 P.2d 111, 113 (1985).

Finally, it has been suggested that adoption of this interpretation will limit the accountability of trustees and allow them to escape public scrutiny in the process of expending public funds. While that may be sound public policy and one which the legislature will wish to explicitly adopt in the future, I am constrained to interpret the law as it is written. I find no basis for concluding that school district trustees may establish or maintain the compensated absence liability fund only with the positive difference between initially budgeted and actually expended amounts.

THEREFORE, IT IS MY OPINION:

School district trustees may transfer any portion of the end-of-the-year general fund balance into the compensated absence liability fund subject to the limitations in Mont. Code Ann. § 20-9-512(4).

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfs/brf

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER of the Petition of N.D. HOLDINGS, INC., for a Declaratory Ruling on the Application of Montana Individual Income Tax to Interest Earned on 1993 Series Bonds Issued Pursuant to a Trust Indenture entered into by the Montana Higher Education Assistance Corporation and the Norwest Bank of Minneapolis, Minnesota.	)	**Docket No. DO-93-24**
TO: All Interested Persons	)	**DECLARATORY RULING**

INTRODUCTION

1. The Montana Department of Revenue ("Department"), has received a Petition for Declaratory Ruling from N.D. Holdings, Inc. ("Petitioner"), whose principal place of business is in Minot, North Dakota. The mailing address of the Petitioner is 201 South Broadway; Minot, North Dakota, 58701.

2. The facts upon which this declaratory ruling is made are as follows: Series 1993 Bonds are to be issued pursuant to a trust indenture between the Montana Higher Education Student Assistance Corporation ("Corporation"), and the Norwest Bank Minnesota National Association, Minneapolis, Minnesota. The purpose of the bonds is to provide the corporation with revenue needed to maintain its student loan program. Petitioner, or one of its subsidiaries, acting as a registered broker-dealer, proposes to market the bonds. Bond Counsel, Dorsey & Whitney of Minneapolis, Minnesota, has opined that interest earned on the bonds will not be subject to federal individual income tax.

However, Bond Counsel declined to offer an opinion as to whether interest on the bonds would be subject to Montana individual income tax.

3. The question of law upon which this ruling is made is as follows: Whether interest income that is excluded from the federal definition of "gross income" is subject to Montana's individual income tax. This question primarily involves the application of Section 15-30-101, MCA, and related provisions of the Internal Revenue Code.

ANALYSIS

4. Bond Counsel opines that interest earned on the bonds issued by the Corporation will be excluded from the owner's gross income, and thus, will not be subject to federal income tax. The determination of an individual taxpayer's federal "gross income" is governed by Section 61 of the Internal Revenue Code. Pursuant to IRC Section 61, an individual's gross income is defined as follows: "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, . . ." Interest income is generally included in the taxpayer's gross income under IRC Section 61.

5. However, specific types of interest income are excluded from gross income in subsequent Internal Revenue Code sections found in the same subtitle as Section 61. Of particular significance is IRC Section 103 which excludes interest derived from state and local bonds. Pursuant to IRC

Section 103 certain "qualified private activity" bonds are considered state and local bonds for federal income tax purposes. Consequently, the interest on qualified private activity bonds is also exempt from federal income tax.

6. A "Preliminary Official Statement" dated August 16, 1993, states the 1993 series bonds "do not constitute a debt, a liability or a legal or moral obligation of the State of Montana or any agency or political subdivision thereof." The bonds are limited obligations of the Montana Higher Education Student Assistance Corporation which is a private, nonprofit corporation. Since the bonds are not state and local government obligations per se, they must be qualified private activity bonds if the interest on the bonds is to be excluded from a taxpayer's federal gross income pursuant to IRC Section 103.

7. Section 141 of the IRC defines a qualified private activity bond. A "private activity bond" is a bond which meets the federal "private business test" (ten percent of the proceeds used for a private business use) and "private security or payment test" (payment of bond principal or interest by private business). IRC Section 141(a). A private activity bond is considered a "qualified bond" if the bond is "an exempt facility bond, a qualified mortgage bond, a qualified veterans' mortgage bond, a qualified small issue bond, a qualified student loan bond, a qualified redevelopment bond, or a qualified 501(c)(3)

bond." IRC Section 141(e). A qualified student loan bond is further defined in IRC Sections 146 and 147.

8. The federal tests for defining a qualified private activity bond involve several factors and limitations which need not be set forth here. For the purpose of this ruling, it will be assumed Bond Counsel is correct and that the interest received on the bonds issued by the Corporation is excluded from a taxpayer's federal gross income. However, it should be noted that this assumption has no application beyond this declaratory ruling. In issuing this ruling, the Department of Revenue is not determining whether such interest may be properly excluded from a taxpayer's federal gross income.

9. Section 15-30-101(7), MCA, incorporates the federal definition of "gross income" for Montana income tax purposes.

> **15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply: . . . (7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

The Montana courts have held that when the Montana tax system incorporates the federal definition of "gross income," a Montana taxpayer is entitled to the deductions and exclusions provided in federal law unless Montana law expressly provides otherwise.

Baker Bancorporation v. Department of Revenue, 202 Mont. 94, 657 P.2d 89 (1983).

10. Section 15-30-111, MCA, contains specific provisions relating to interest received on state and local obligations.

> **15-30-111. Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:
>
> (a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof; . . .
>
> (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:
>
> (a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof; . . .

However, while this statute addresses interest income from certain state and local obligations, it does not address interest income from qualified private activity bonds. Similarly, the other provisions of the Montana tax code are silent regarding this issue. Because Montana has incorporated the federal definition of gross income in its tax law, and has not expressly addressed interest received on qualified private activity bonds, individual taxpayers may exclude such interest for Montana individual income tax purposes.

DECLARATORY RULING

11. Based on the foregoing reasons and analysis, it is hereby ruled that a purchaser of the 1993 Student Loan Revenue Bonds issued by the Montana Higher Education Student Assistance Corporation, may exclude the interest received on those bonds from his or her gross income for Montana individual income tax purposes provided such interest income may be properly excluded from the purchaser's gross income for federal income tax purposes.

DATED this 5th day of July, 1994.

MONTANA DEPARTMENT OF REVENUE

Mick Robinson
MICK ROBINSON
Director

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 6th day of July, 1994 a true and correct copy of the foregoing has been served by placing same in the United States Mail, postage prepaid, addressed as follows:

Mr. Robert E. Walstad
Director
ND Holdings, Inc.
201 South Broadway
Minot, North Dakota 58701

Cleo Anderson

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code 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 lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1994. This table includes those rules adopted during the period April 1, 1994 through June 30, 1994 and any proposed rule action that was 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 March 31, 1994, 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 1994 Montana Administrative Register.

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