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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 found at the back of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of)	
17.24.101 through 17.24.103, 17.24.108,)	
17.24.115 through 17.24.119, 17.24.121,	)	SUPPLEMENTAL
17.24.128, 17.24.129, 17.24.132 through	)	NOTICE OF
17.24.134, 17.24.136, 17.24.137,	)	PUBLIC
17.24.140 through 17.24.146, 17.24.153,	)	HEARING OF
17.24.159, 17.24.165, 17.24.181 and	)	PROPOSED
17.24.185, and the repeal of 17.24.151	)	AMENDMENT
and 17.24.152 pertaining to hard rock	)	AND REPEAL
mining reclamation	)	(Hard Rock)

TO: All Interested Persons

1. On September 9, 1998, the board of environmental review published notice of public hearing on the proposed amendment and repeal of rules outlined above at page 2376 of the 1998 Montana Administrative Register, Issue No. 17. The hearing was held on October 2, 1998. This supplemental notice provides the public with an additional opportunity for hearing and comment on the proposed amendments.

On December 15, 1998, at 1:30 p.m. the board will hold a supplemental public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal outlined above.

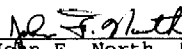
The board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., December 2, 1998, to advise us of the nature of the accommodation you need. Please contact the board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

2. Interested persons may submit their data, views or arguments concerning the proposed actions either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, no later than December 19, 1998. To guarantee consideration, the comments must be postmarked on or before that date.

3. Richard Thweatt has been appointed to preside over and conduct the hearing.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW


John F. North, Rule Reviewer

by 
CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State November 9, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the AMENDMENT OF ARM)	NOTICE OF
17.24.301, 17.24.302, 17.24.303,)	PUBLIC
17.24.304, 17.24.305, 17.24.306,)	HEARING ON
17.24.313, 17.24.315, 17.24.321,)	PROPOSED
17.24.324, 17.24.327, 17.24.401,)	AMENDMENT,
17.24.403, 17.24.404, 17.24.405,)	REPEAL, AND
17.24.413, 17.24.415, 17.24.416,)	ADOPTION OF
17.24.501, 17.24.503, 17.24.505,)	COAL AND
17.24.507, 17.24.510, 17.24.520,)	URANIUM
17.24.522, 17.24.601, 17.24.603,)	MINING
17.24.605, 17.24.607, 17.24.623,)	PROGRAM RULES
17.24.625, 17.24.632, 17.24.633,)	
17.24.634, 17.24.639, 17.24.640,)	
17.24.642, 17.24.645, 17.24.646,)	
17.24.647, 17.24.652, 17.24.702,)	
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17.24.724, 17.24.725, 17.24.726,)	
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17.24.1222, 17.24.1223, 17.24.1224,)	
17.24.1225, 17.24.1226, 17.24.1228,)	
17.24.1261, and 17.24.1262; REPEAL OF)	
17.24.501A, 17.24.514, 17.24.519A,)	
17.24.604, 17.24.606, 17.24.1103, and)	
17.24.1116A; ADOPTION OF NEW RULE I)	
relating to coal and uranium mining)	
program rules for the Industrial and)	
Energy Minerals Bureau)	(Coal)

TO: All Interested Persons

1. On December 10, 1998, at 7 p.m., the Board will hold a public hearing in the Lewis and Clark Room, Student Union Building on the MSU Campus, Billings, Montana, to consider the proposed amendment, repeal and adoption of the above-referenced rules relating to the coal and uranium mining program.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the Board no later than 5 p.m., December 2, 1998, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax

(406) 444-4386.

2. Many of the rule amendments are being proposed in response to federal requirements. The Surface Mining Control and Reclamation Act provides that a state may not regulate coal mining unless it has obtained approval of its coal regulatory program from the Secretary of Interior. The Secretary may not approve a state program unless he finds that it is no less stringent than the Act and as effective as the regulations adopted by the Office of Surface Mining (OSM) pursuant to the Act. After its program has been approved, a state must amend its coal statute and rules as federal statutes and rules are modified. The process is instituted by notice from the Director of OSM pursuant to 30 CFR 732.17(d) that program changes are necessary.

The Department of Environmental Quality has received several of these notice letters and many of the rule modifications are made to respond to these letters. For rule changes made in response to the letters, the rationale lists the federal rule or statute that requires the modification and the date of the OSM letter. The rationale for these modifications is that the policy of the state is that the state will regulate coal mining and that other modification is necessary in order to implement that policy.

Other modifications are made for other reasons. These reasons are included in the sections of this notice that follow.

Although the rationale for the rule modifications, adoptions, and repeals are usually listed in one section that follows the section that contains the proposed modifications, new rules, and repealers, the Board has chosen to depart from that practice and include that rationale immediately following the specific rule provision. The Board has chosen this approach because of the number of proposed amendments and the diversity of reasons for the proposals.

3. The rules as proposed to be amended appear as follows. Matter to be added is underlined. Matter to be deleted is interlined. The rationale for each amendment follows each amendment in indented print.

17.24.301 DEFINITIONS (1) through (12) Remain the same.

(13) "Approximate original contour" means that surface configuration achieved by backfilling and grading of disturbed areas so that the reclaimed area, ~~including any terracing or access roads,~~ closely resembles the general surface configuration of the land prior to disturbance and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, ~~and refuse waste piles, and depressions (except as provided in ARM 17.24.503(1))~~ eliminated. ~~Permanent water impoundments may be permitted where the department determines that they are in compliance with ARM 17.24.505.~~

(14) through (33) Remain the same.

(34) "Domestic water supply" means water received from a well or spring and any appurtenant delivery system that provides

water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or sanitation or domestic use.

(34) through (37)(b) Remain the same in text, but are renumbered (35) through (38)(b).

(37)(c)(i) through (d) Remain the same in text, but are renumbered (38)(c) through (e).

~~(38)~~ (39) "Excess spoil" means spoil material disposed of in a location other than the mined-out area, provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain, in accordance with ARM 17.24.308 17.24.313 and 17.24.501, in non-steep slope areas may not be considered excess spoil. See ARM 17.24.519 17.24.520.

(39) through (44) Remain the same in text, but are renumbered (40) through (45).

(46) "Habit or characteristic pattern" means, with respect to ARM 17.24.634(1)(a), the particular reactions of drainage channels to general laws related to stream work, channel morphology and stability, whether or not the channels have attained the conditions of equilibrium.

(45) through (61) Remain the same in text, but are renumbered (47) through (63).

(64) "Material damage" means, with respect to subchapter 9 rules on underground mining operations:

(a) any functional impairment of surface lands, features, structures or facilities;

(b) any physical change that has a significant adverse impact on the capability of the affected land to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

(62) through (67) Remain the same in text, but are renumbered (65) through (70).

(71) "Non-commercial building" means any building, other than an occupied residential dwelling, that, at the time subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in ARM 17.24.1132(1). Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(68) Remains the same in text, but is renumbered (72).

~~(69)~~ (73) "Occupied residential dwelling and structures related thereto" is defined in ARM 17.24.1132(1)(b) means, with respect to subchapter 9 requirements for underground mining operations, any building or other structure that, at the time any subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above

or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to: garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; lot drainage; and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(70) and (71) Remain the same in text, but are renumbered (74) and (75).

~~772~~ (76) "Other treatment facilities" means, with respect to ARM 17.24.639(23), any chemical treatments (such as flocculation or neutralization) or mechanical structures (such as clarifiers or precipitators) that have a point-source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area and to provide compliance with all applicable state and federal water quality laws and rules.

(73) and (74) Remain the same in text, but are renumbered (77) and (78).

~~775~~ (79) "Owned or controlled" and "owns or controls" mean any ~~± one~~ or a combination of the following relationships:

(a) being a permittee of a surface ~~strip~~ or underground coal mining operation;

(75)(b) through (90) Remain the same in text, but are renumbered (79) (b) through (94).

(95) "Railroad loop" means any rail transportation system within the mine permit area, whether it is in the form of a loop or a straight rail line.

(91) through (97) Remain the same in text, but are renumbered (96) through (102).

(103) "Replace adversely affected domestic water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by underground coal mining operations, to provide a water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision for an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the operator and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the operator and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied

by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

(98) through (100) Remain the same in text, but are renumbered (104) through (106).

~~(101)~~ (107) "Sedimentation pond" means a primary sediment control structure designed, constructed and maintained in accordance with ARM 17.24.639 and includes, but is not limited to, including a barrier, dam, or excavated depression, which slows down runoff water to allow sediment to settle out. The term does not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, and mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, where such secondary sedimentation structures drain to a sedimentation pond.

(102) and (103) Remain the same in text, but are renumbered (108) and (109).

~~(104)~~ (110) "Soil horizon" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The major types of soil horizons are described in issue 1 - revision of chapter 4 (as revised in May 1981) of the 1951 Soil Survey Manual, US Department of Agriculture, Soil Conservation Service, June 9, 1981, Washington, DC. This manual is available for inspection at the Department of Environmental Quality, 1520 E. 6th Ave., Helena, MT ~~59620-0901~~ 59601, and at the national, state, and local offices of the ~~soil~~ US natural resources conservation service.

~~(105)~~ (111) "Soil survey" means field and related investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the national cooperative soil survey, which is based on procedures and standards in the following US department of agriculture, soil conservation service publications: National Soils Handbook, Soil Taxonomy (Handbook 436), and Soil Survey Manual. These documents are on file and available for inspection at the main office of the Department of Environmental Quality, 1520 E. 6th Ave., Helena, MT ~~59620-0901~~ 59601, and at the national, state, and local offices of the US ~~soil~~ natural resources conservation service.

(106) through (135) Remain the same in text, but are renumbered (112) through (141).

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-203, MCA

Rationale: 17.24.301(13) - The phrase "including any terracing or access roads" is proposed to be deleted because these features would be included in the reclaimed area which needs to be graded to the approximate original

contour (AOC).

The word "refuse" is being replaced with "waste", because the former is not used in the rules, whereas the latter is used and is defined. The phrase "and depressions (except as provided..." is proposed to be added, since it is found in the language proposed for deletion from ARM 17.24.501(4) (a).

The last sentence is deleted, because it is immaterial to the definition.

17.24.301(34) - This is proposed for the purpose of meeting federal rule changes (30 CFR 701.5; OSM letter of June 5, 1996).

17.24.301(39) - These changes are corrections to the indicated rule references.

17.24.301(46) - This change shifts language from ARM 17.24.634(1) (a) to the definition section of the rules, because the purpose of this language is to define a term used in 17.24.634(1) (a).

17.24.301(64) - This is proposed for the purpose of meeting federal rule changes (30 CFR 701.5; OSM letter of June 5, 1996).

17.24.301(71) - This is proposed for the purpose of meeting federal rule changes (30 CFR 701.5; OSM letter of June 5, 1996).

17.24.301(73) - This is proposed for the purpose of meeting federal rule changes (30 CFR 701.5; OSM letter of June 5, 1996).

17.24.301(76) - These changes are in response to OSM comments on the rules (30 CFR 701.5; issue XI.A.1 in OSM letter of June 26, 1997).

17.24.301(79) - The change to "strip and underground" is to implement Montana's February 6, 1996 response to OSM comments (OSM letter of October 17, 1995). The term "surface coal mining operation" is not defined in either the Montana Act or the rules, whereas "strip mining", "underground mining", and "operation" are defined in the Act.

17.24.301(95) - This definition is proposed to insure that a straight rail line system or any other rail line configuration, as well as a loop configuration, are regulated similarly. Impacts from rail facilities are the same, regardless of their configuration.

17.24.301(103) - This is proposed for the purpose of meeting federal rule changes (30 CFR 701.5; OSM letter of June 5, 1996).

17.24.301(107) - The Board proposes to amend the definition of "sedimentation pond" because, as currently written the definition is circular.

17.24.301(110) and 17.24.301(111) - The name of this agency has changed as indicated. The former name of the agency has been retained where there is a reference to earlier publications of the agency.

Also, the street address zip code of the Department is corrected.

17.24.302 FORMAT AND SUPPLEMENTAL INFORMATION (1) through (5) Remain the same.

(6) For applications to mine areas containing federal ~~coal~~ lands, 9 an appropriate number of copies, as determined in consultation with the department, of all applications, maps, reports or other informational data must be submitted. ~~Four copies must be sent to the department and 5 to the federal coal regulatory authority.~~ For applications to mine areas not containing federal ~~coal~~ lands, 4 2 copies of all applications, maps, reports, and other informational data must be submitted to the department, unless otherwise approved by the department.

(7) through (9) Remain the same.

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

Rationale: 17.24.302 - These changes would in many cases reduce the number of copies of application materials to be submitted. This reflects changes in federal needs and the experience of Montana (in the case of non-federal lands applications) in administering its program. Also, "federal coal" is being changed to "federal lands" for accuracy: the language of the new cooperative agreement between OSM and the Department provides in Article VI for procedures in the submittal and review of applications on federal lands, which include both surface- and mineral-owned lands of the U.S. [Public Law 95-87, Section 701(4)].

17.24.303 LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION Each application must contain, in any format prescribed by the department, the following information:

(1) through (13) Remain the same.

(14) ~~a description~~ copies of the documents upon which the applicant bases his or her legal right to enter and begin mining operations in the permit area and whether that right is the subject of pending litigation. ~~The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant. The applicant may request confidentiality on any proprietary information within such documents;~~

(15)(a) whenever the private mineral estate to be strip mined has been severed from the private surface estate, an applicant shall also submit:

~~(i)~~ (a) a copy of the written consent of the surface owner for the extraction of mineral by strip mining methods; ~~or~~
~~(ii)~~ (i) a copy of the conveyance that expressly grants or reserves the right to extract mineral by those methods; or
~~(iii)~~ (ii) if the conveyance does not expressly grant the right to extract the mineral by strip mining methods, documentation that under Montana law the applicant has the legal right to extract the mineral by those methods;

(15)(b) through (24) Remain the same.

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

Rationale: 17.24.303 - The changes in (14) are proposed to require complete and unequivocal documentation of the legal right to enter the surface and mine the lands to be affected, instead of merely a description of the legal right by the applicant. This would be supplemented by an allowance for keeping proprietary information confidential. Many coal mining companies are already submitting copies of the actual documents showing the legal right to mine.

The additions of "or" "(i)" and "(ii)" to (15)(a) are to clarify the application of these optional requirements.

17.24.304 BASELINE INFORMATION: ENVIRONMENTAL RESOURCES

The following environmental resources information must also be included as part of an application for a strip or underground mining permit:

(1) through (4) Remain the same.

(5) all hydrologic and geologic data necessary to evaluate baseline conditions, to evaluate the probable hydrologic consequences and cumulative hydrologic impacts of mining pursuant to ARM 17.24.314(3) and (5) and 82-4-222, MCA, and to develop a plan to monitor water quality and quantity pursuant to address the requirements of ARM 17.24.314(3) and 82-4-222, MCA;

(6) Remains the same.

(7)(a) a detailed description of all overburden and mineral materials (all materials other than soil) that will be handled during mining or backfilling operations. The description must include:

(7)(a)(i) through (b) Remain the same in text, but are renumbered (7)(a) through (f).

(8) through (12) Remain the same.

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

Rationale: 17.24.304 - These proposed changes are for clarification and precision.

17.24.305 MAPS (1) Remains the same.

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

(a) Each map containing information pursuant to (1) of this rule must be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of

my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized in affidavit form. The department may reject a map as incomplete if its accuracy is not so attested.

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

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

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

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

(3) Remains the same.

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

Rationale: 17.24.305 - The term "registered land surveyor" is proposed for deletion in (2)(b) for the following reasons. In a Federal Register Notice dated August 19, 1992, OSM indicated a need for Montana to delete this language, because Montana law at 37-67-101(7), MCA, does not authorize land surveyors to certify mine maps. In the same sentence, the term "professional geologist" is also proposed for deletion, because Montana does not officially recognize or have an official designation for "professional geologist". Furthermore, as a result of these actions, the remaining portion ("with assistance from experts in related fields...") of this sentence is proposed for deletion, because it is rendered meaningless without "registered land surveyor" and "professional geologist".

Finally, all of the above deletions render (2)(b)(i) and (ii) without any purpose; thus, these provisions are proposed for deletion as well.

17.24.306 BASELINE INFORMATION: PRIME FARMLAND INVESTIGATION (1) The application must contain the results of a prime farmland investigation developed in consultation with the US ~~soil natural resources~~ conservation service to determine whether lands within the proposed permit area are prime farmlands as defined in ARM 17.24.301.

(2) Remains the same.

(3) If the lands in question have historically been used for cropland, the applicant shall, in consultation with the Montana state office of the US ~~soil natural resources~~ conservation service, determine if any soils, characterized and described in accordance with ARM 17.24.304(11), on these lands meet the criteria of prime farmlands as contained in 7 CFR 657;

(3)(a) and (b) Remain the same.

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

Rationale: 17.24.306 - The name of this agency has changed as indicated.

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

(1) through (5)(j) Remain the same.
(5)(k) the types of major equipment to be used in the above operations;

(6) a description, including appropriate cross-sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration prospecting holes, other bore holes, wells, and other openings within the proposed permit area in accordance with subchapter 9 and ARM 17.24.1005; and

(7) Remains the same.

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

Rationale: 17.24.313 - The term "exploration", and in later rules "exploratory", need to be changed to "prospecting", because the latter is the term defined and used in the Montana Act (82-4-200 et. seq., MCA). Also, since "prospecting" is used elsewhere in the rules, it needs to be used consistently throughout.

17.24.315 PLAN FOR PONDS AND EMBANKMENTS (1) Each application must include a general plan for each proposed sedimentation pond and water impoundment within the proposed mine plan areas.

(a) Each general plan must:

(1)(a)(i) through (v) Remain the same.

(1)(b) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the mine safety and health administration, 30 CFR 77.216(a), or meets the Class B or C criteria for dams in USDA soil conservation service Technical Release No. 60 (210-VI-TR60, October 1985, as revised through January 1991), "Earth Dams and Reservoirs", (TR-60) must:

(i) be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, surveying, and landscape architecture. The certifying engineer must have experience designing impoundments;

(ii) include any geotechnical investigation, design, and construction requirements for the structure; and

(iii) include a stability analysis of the structure. The stability analysis must contain, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. It must contain a foundation investigation, as well as any necessary laboratory testing of foundation materials, to determine the design requirements necessary to meet and to show that the design will meet the standards of ARM 17.24.639(8) for foundation stability. The plan must also contain a description of each engineering design assumption and calculation with a

discussion of each alternative considered in selecting the specific design parameters and construction methods;

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

(iv) (v) describe the timetable and plans to remove each structure, if appropriate.

(c) Technical Release No. 60 (TR-60) is available for inspection at the Department of Environmental Quality, 1520 East 6th, Helena, MT 59601.

(d) Each detailed design for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) or the criteria for Class B or C dams in TR-60, must:

(1)(c)(i) and (ii) Remain the same in text, but are renumbered (1)(d)(i) and (ii).

(iii) include appropriate information on the foundation conditions of the structure to determine the design requirements necessary to meet and to show that the design will meet the standards of ARM 17.24.639(8) for foundation stability;

(1)(c)(iii) and (iv) Remain the same in text, but are renumbered (1)(d)(iv) and (v).

(2) Sedimentation ponds, whether temporary or permanent, must be designed in compliance with the requirements of ARM 17.24.603 and 17.24.639. Impoundments meeting the criteria of 30 CFR 77.216(a), must comply with the requirements of 30 CFR 77.216-1 and 77.216-2, and must be submitted to the mine safety and health administration.

(3) and (4) Remain the same.

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

Rationale: 17.24.315 - The proposed changes in section (1) are in response to OSM requirements (letter of June 26, 1997, issues XI.A.3 (30 CFR 780.25 and 784.16) and XI.A.4 (30 CFR 816.49 and 817.49)).

The change in section (2) is due to proposed changes in 17.24.603 and 17.24.639. 17.24.603 would only address roads and railroad loops, whereas embankments for sediment ponds would be addressed completely in 17.24.639.

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

(a) a map, appropriate cross-sections, and specifications for each road including width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

(1)(b) through (g) Remain the same.

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

(3) The plans and drawings for each haul road, access road, conveyor, and railroad loop shaft must be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of roads such facilities. The certification must state that the road designs meet the performance standards of (1) and (2) of this rule, ARM 17.24.601 through 17.24.606, and current prudent engineering practices.

(4) Ramp roads must be shown and designated on the map(s) required in (1)(a) above.

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

Rationale: 17.24.321 - The proposed changes in 17.24.321(1) are for clarity, to reduce repetition, and to change "rail system" to "railroad loop" for consistency with the use of the latter term in 17.24.601 and 17.24.602.

The last part of the sentence under 17.24.321(2) is proposed to be deleted, because it is unnecessary. The use the Department will make of this information is immaterial.

In 17.24.321(3), the changes regarding the specification of haul roads and access roads and the addition of railroads and conveyors to the certification requirement is for consistency with section (1). The reference in section (3) to ARM 17.24.321(1) and (2), which are not performance standards, is not correct and can be deleted.

A new section (4) is proposed to include reasonable requirements for ramp roads which are not otherwise covered with the proposed revisions in the rest of this rule. Ramp roads would be excluded from the requirements of sections (1), (2), and (3) above in the proposed language changes, i.e., "roads" would be changed to "haul roads" and "access roads". Although most of the requirements of these provisions are not necessary for ramp roads, it is reasonable to require that ramp roads be shown on maps required by (1)(a).

17.24.324 PRIME FARMLANDS: SPECIAL APPLICATION REQUIREMENTS (1) Remains the same.

(2) Before any permit is issued for areas that include prime farmlands, the department shall consult with the Montana state office of the US soil natural resources conservation service.

(3) A permit for the mining and reclamation of prime farmland may be granted by the department, if it first finds, in writing, upon the basis of a complete application, that:

(a) the permit incorporates as specific conditions the contents of the plan submitted under (1) of this rule after consideration of any revisions to that plan suggested by the Montana state office of the US soil natural resources conservation service pursuant to (2) of this rule;

(3) (b) through (d) Remain the same.

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

Rationale: 17.24.324 - The name of the agency has changed as indicated.

17.24.327 COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED WITHIN A MINE PERMIT AREA: SPECIAL APPLICATION REQUIREMENTS (1) Remains the same.

(2) Any application for a permit for operations covered by this rule must contain in the mining and reclamation plan, specific plans, including descriptions, maps, and cross-sections of the construction, operation, maintenance, and removal of the preparation plant, processing plant and associated support facility. The plan must demonstrate that those operations will be conducted in compliance with ~~this subchapter~~ all applicable rules.

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

Rationale: 17.24.327 - This is necessary because the requirement pertains to performance standards which are found in rules other than subchapter 3.

17.24.401 FILING OF APPLICATION AND NOTICE (1) An applicant for an operating permit, a test pit prospecting permit, a renewal of an operating permit or test pit prospecting permit, a major revision to an operating permit or test pit prospecting permit, or an amendment (other than an incidental boundary revision) to add acreage to an operating permit or a test pit prospecting permit shall file the application with the department's main office in Helena, as directed by the department, and the federal coal regulatory authority.

(2) through (4) Remain the same.

(5) ~~for~~ Immediately upon issuance of a determination of administrative completeness, the department shall:

(a) issue written notification of:

(5)(a)(i) through (v) Remain the same.

(b) The written notifications must be sent to:

(i) federal, state and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities, fish and wildlife and historic preservation agencies, the ~~USDA soil natural resources~~ conservation service state office, the US army corps of engineers, district engineer, and the national park service;

(5)(b)(ii) through (6) Remain the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-222, 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

Rationale: 17.24.401 - The change in (1) is due to changes in federal needs for application materials; many such materials no longer need to be submitted to the federal

coal regulatory authority. In (5)(b)(i), the main agency name has changed as indicated.

17.24.403 INFORMAL CONFERENCE (1) Remains the same.

(2) Except as provided in (3) of this rule, if an informal conference is requested in accordance with this rule, the department shall hold an informal conference within 30 days following the receipt of the request. The informal conference shall be conducted according to the following:

(a) If requested under (1)(b) below of this rule, it must be held in the locality of the proposed activity.

(2)(b) through (d) Remain the same.

(3) If all parties requesting the informal conference stipulate before the informal conference and to withdraw their request, the informal conference need not be held.

(4) Remains the same.

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

Rationale: 17.24.403 - Correction to the rule citation is needed in (2)(a) and grammatical correction is needed in (3).

17.24.404 REVIEW OF APPLICATION (1) Remains the same.

(2) ~~far~~ If the application is not acceptable, the department shall notify the applicant in writing, setting forth the reasons why it is not acceptable.

(a) The department may propose modifications, delete areas, or reject the entire application. All items not identified as unacceptable are presumed acceptable.

(2)(b) through (6) Remain the same.

(7) If, based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to 30 USC 1268, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violation of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface strip or underground coal mining operation, the department determines that issuance of the permit is prohibited pursuant to 82-4-227(11), MCA, the department may:

(a) issue the permit only upon a showing that the applicant or person who either owns or controls the applicant or is owned or controlled by the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the violation.

(b) If the initial judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any strip or underground coal mining operations being conducted under a permit issued according to this section must be immediately terminated within 30 days of the judicial decision, unless the applicant provides, within that period,

proof that the violation has been or is in the process of being resolved to the satisfaction of the agency having jurisdiction over the violation.

(8) through (10) Remain the same.

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

Rationale: 17.24.404 - In (7), "surface" needs to be changed to "strip or underground" to be consistent with the usage of terminology in the statute. The other changes are in response to OSM comments on our rules for updating to the federal program (30 CFR 773.15; OSM letter of October 17, 1995).

17.24.405 FINDINGS AND NOTICE OF DECISION (1) The department shall prepare written findings approving or denying an application filed pursuant to ARM 17.24.401(1) in whole or in part no later than 45 days from the date of the acceptability determination or from date of publication of the final environmental impact statement, whichever occurs later. ~~However, whenever the application is for, or concerns, a permit subject to the federal lands program and the department's decision is to approve the application in whole or in part, the department shall issue its findings on the same day as the federal regulatory authority issues its findings if practical.~~

(2) through (7) Remain the same.

(8) ~~(a)~~ If the department decides to approve the application, it shall:

(8) (a) (i) through (b) Remain the same in text, but are renumbered (8) (a) through (d).

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

Rationale: 17.24.405 - The language proposed for deletion is obsolete, because the federal regulatory authority (OSM) no longer prepares written findings on federal lands. That is the sole responsibility of the state.

17.24.413 CONDITIONS OF PERMIT (1) through (3) Remain the same.

(4) Within 30 days after a cessation order is issued under 30 CFR 843.11 or 82-4-251, MCA, for operations conducted under the permit, except where a state stay of the cessation order is has been granted and remains in effect, the permittee shall either submit to the department the following information, current to the date the cessation order was issued, or notify the department in writing that there has been no change since the immediately preceding submittal of such information:

(4) (a) through (5) Remain the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA

Rationale: 17.24.413 - This change would correct a grammatical error in the rules (OSM letter of October 17, 1995).

17.24.415 PERMIT REVISIONS (1) An application for revision to a permit must be obtained submitted for departmental review:

(a) for any proposed change(s) in the operation as described in the original permit and subsequent revisions thereof; or

(b) when required under ARM 17.24.414.

(2) through (4) Remain the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA

Rationale: 17.24.415 - The above proposed changes are for clarification purposes.

17.24.416 PERMIT RENEWAL (1) Applications for renewals of a permit must be made at least 240, but not more than 300 days prior to the expiration date. Renewal applications must be on a form provided by the department, including, at a minimum, the following:

(a) a statement of the name and address of the permittee, the term of the renewal requested, and the permit number;

(b) a copy of the newspaper notice and proof of publication of same under (2)~~(a)~~ of this rule; and

(c) evidence that a liability insurance policy or adequate self-insurance will be provided by the applicant for the proposed period of renewal; and

(d) an update of ownership and control information and violation histories in accordance with ARM 17.24.303.

(2)~~(a)~~ Applications for renewal are subject to the requirements of public notification and participation contained in ARM 17.24.401 through 17.24.405.

~~(b) Whenever an application for renewal of a permit includes a proposal to extend operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit that addresses any new land areas is subject to the full standards applicable to applications pursuant to 82-4-225, MCA, and ARM 17.24.417.~~

~~(c) (a) If the operations authorized under the original permit were not subject to the standards contained in 82-4-227(3)(b), MCA, because the permittee complied with the exceptions contained in 82-4-227(4), MCA, the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan for the original permit is not subject to the standards contained in 82-4-227(3)(b), MCA.~~

~~(d) (b) Before finally acting to grant the permit renewal, the department shall require any additional performance bond needed by the permittee to comply with 82-4-225 and 82-4-232, MCA ARM 17.24.1104(1).~~

~~(e) Applications must include an update of ownership and control information and violation histories in accordance with ARM 17.24.303.~~

(3) Remains the same.

(4)~~(a)~~ The department shall, upon the basis of application

for renewal and completion of all procedures required under this rule, issue a renewal of a permit, unless it is established and written findings by the department are made that:

(4)(a)(i) through (iv) Remain the same in text, but are renumbered (a) through (d).

(4)(a)(i)(A) and (B) Remain the same in text, but are renumbered (i) and (ii).

(4)(a)(v) through (viii) Remain the same in text, but are renumbered (e) through (h).

(4)(b) through (5) Remain the same in text, but are renumbered (5) through (8).

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, 82-4-226, MCA

Rationale: 17.24.416 - The language in new (1)(d) is taken from (2)(e), which is proposed for deletion, because this is a renewal application requirement and thus belongs in section (1).

The language proposed for deletion in (2)(b) involves amendments to permits, which must be administered as major permit revisions (i.e., all provisions under 17.24.401 through 17.24.405 and review of compliance with all applicable application and performance standards of subchapters 3, 5, 6, 7, 8, 9, and 10). This is quantitatively and qualitatively a different process and typically requires a much longer period of time to complete than that allowed for the permit renewal process. Thus, the two processes should not be commingled, but handled completely separately.

The revised legal citation in new (2)(c) (current (2)(b)) is merely a correction.

17.24.501 GENERAL BACKFILLING AND GRADING REQUIREMENTS

(1) Backfilling and grading of the disturbed area must be completed prior to removal of necessary reclamation equipment from the area of operation. ~~If the operator for good cause shown cannot complete backfilling and grading requirements within the time limits set for current backfilling and grading, the department may approve a revised time table. Additional bonding may be required.~~

(2) Remains the same.

(3)(a) Backfilled material must be placed to minimize erosion and sedimentation of undisturbed and reclaimed areas both on and offsite, water pollution, adverse effects on ground water, other offsite effects, and to support the approved postmining land use.

(b) Backfilled materials must be selectively placed and compacted wherever necessary to prevent leaching of acid, ~~acid-forming~~ toxic, ~~acid-forming~~ or toxic-forming materials into surface or sub-surface waters and wherever necessary to ensure the stability of the backfilled materials. The method and design specifications for placing and compacting such

materials must be approved by the department.

(c) The method and design specifications of placing and compacting such materials must be approved by the department before the acid, toxic, acid-forming or toxic-forming materials are covered.

(4) All final grading on the area of land affected must be to the approximate original contour of the land. Final slopes must be graded to prevent slope failure, may not exceed the angle of repose, and must achieve a minimum long-term static safety factor of 1.3.

(a) To achieve the approximate original contour, the permittee operator shall transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials pursuant to ARM 17.24.501(3)(b) and 17.24.505), and grade all spoil material as necessary to eliminate all spoil piles and depressions achieve the approximate original contour. Highwalls must be reduced or backfilled in compliance with ARM 17.24.501A or 17.24.515(1), as appropriate. Box-cut spoils or portions thereof must be hauled to the final cut if:

(4)(a)(i) through (b) Remain the same.

(c) The postmining graded slopes must approximate the premining natural slopes in the area as defined in ARM 17.24.501A and 17.24.515.

(d) See also ARM 17.24.504 and 17.24.505.

(5) The disturbed area must be blended with surrounding and undisturbed ground to provide a smooth transition in topography.

(6) Backfilling and grading must be kept current with mining operations. To be considered current, backfilling and grading must meet the following requirements, unless otherwise approved by the department upon adequate written justification and documentation provided by the operator:

(a) On lands affected by area strip mining, there must not be more than four consecutive spoil ridges present in any location.

(b) Backfilling and grading must be completed within 2 years after coal removal from each pit has been concluded.

(c) Backfilling and grading of other excavations must be kept current as departmental directives dictate for each set of field circumstances.

(d) All grading must approximate the approved postmining topography. This does not relieve the operator from any final grading necessary to achieve the approved postmining topography.

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

Rationale: 17.24.501 - The language proposed for deletion in (1) is unnecessary, because it is redundant with other rules. The sentence "If the operator..." would be covered in ARM 17.24.501(6). The sentence "Additional bonding may be required" is covered in the requirements of ARM 17.24.1102.

The proposed changes in the third line of (3)(b) are for

readability and simplification; the content is not changed. The proposed additional requirement at the end of (3)(b) is language being deleted as part of (3)(c) and moved to (3)(b). The rest of (3)(c) is unnecessary because of the obvious and logical procedure that methods and design specifications for placing and compacting materials must be approved before the covering of acid and other deleterious materials actually occurs.

The Board is proposing to move some important standards (with some revisions for clarity, simplification, or usefulness) from ARM 17.24.501A (which rule is proposed to be entirely deleted) to this rule, i.e., much of the language in new portions of section (4) and much of new sections (5) and (6). Changes in subsection(4)(a) are for clarification or to correct for changes in other rules. In moving language from ARM 17.24.501A to this rule, the wording of the four-spoil-ridge requirement has been changed for clarity.

For grading to be considered current, there is a need to define the degree of grading that needs to be accomplished. Therefore, we have also added as (6)(d) that, to be considered current, grading must approximate the approved postmining topography.

In (4)(a), the Board is proposing to delete language dealing with approximate original contour, because it is redundant with or more properly located in the definition of AOC.

Subsection (4)(d) has no practical value and is thus proposed for deletion.

17.24.503 SMALL DEPRESSIONS (1) The requirement to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the department to minimize erosion, conserve soil moisture, or promote vegetation or wildlife use. These depressions must be compatible with the approved postmining land use and may not be ~~inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section must have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, may not restrict normal access throughout the area or constitute a hazard.~~ Large, permanent impoundments are governed by ARM 17.24.504 and ~~by 17.24.642.~~

AUTH: 82-4-204, MCA; IMP, 82-4-232, MCA

Rationale: 17.24.503 - The addition of the term "wildlife use" is warranted, because it is a relevant factor in considering the value of depressions. In 82-4-232(10)(j), MCA, operators must "to the extent possible using the best

technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable..." (emphasis added). Depressions represent one kind of feature where wildlife enhancement is clearly possible and desirable.

Several other changes are warranted to avoid confusion as follows. First, the meaning of the proposed deleted portion of the second sentence is not clear and this portion is otherwise unnecessary. Secondly, the third sentence, which is proposed for deletion, imposes a very small size restriction on depressions, although a variance is possible; in any case, none of this has any practical value. The counterpart federal rules do not contain a size restriction.

17.24.505 BURIAL AND TREATMENT OF WASTE MATERIALS (1) All exposed mineral seams remaining after mining must be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material, unless otherwise approved by the department upon demonstration by the operator that a lesser cover depth will afford the same protection against combustion and other undesirable properties or effects of the mineral seam.

(2) Acid, ~~toxic~~, acid-forming, ~~toxic~~, toxic-forming, combustible, or other undesirable waste materials or fly ash identified by the department that are exposed, used, or produced during mining or mineral preparation must be covered in accordance with ARM 17.24.501(2) with the best available nontoxic and noncombustible material. The method and site of final disposal must be approved by the department. If necessary, these materials must be tested to determine necessary mitigations to neutralize acidity, to nullify toxicity, to prevent water pollution and sustain combustion, or to minimize adverse effects on plant growth and land uses. If necessary to protect against upward migration of salts or exposure by erosion, to provide an adequate depth for plant growth or to otherwise meet local conditions, the department may specify thicker amounts of cover using noncombustible and nontoxic material or the use of special compaction and isolation techniques to prevent contact of these materials with ground water. Acid, acid-forming, toxic, toxic-forming or other deleterious materials must not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(3) and (4) Remain the same.

(5) Whenever waste is temporarily impounded:

(5) (a) and (b) Remain the same.

(c) spillways and outlet works for coal impounding structures must be designed to provide adequate protection against erosion and corrosion; and

(d) inlets must be protected against blockage; and

(e) the impoundment may not include acid, acid-forming,

toxic, or toxic-forming waste.

(6) Remains the same.

(7) If any examination or inspection discloses that a potential hazard exists at a waste disposal site, including a temporary waste impoundment, the department must be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the department must be notified immediately. The department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(8) Remains the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.505 - In section (1), the Board is proposing to revise the language to allow for some flexibility in the covering of exposed mineral seams but with a requirement for a demonstration of protection with a lesser cover depth for regulatory consistency.

The changes in section (2) are for clarification.

The changes in sections (5) and (7) are in response to OSM comments on updating Montana's regulations to OSM rules (30 CFR 816.81 and 816.84; OSM letter of July 10, 1997).

17.24.507 STORAGE AND FINAL DISPOSAL OF GARBAGE AND OTHER DEBRIS (1) through (3) Remain the same.

(4) Notwithstanding any provision of this subchapter, any garbage or other debris meeting the definition of "hazardous" as found in section 3001 of PL 94-580, as amended, must be handled in accordance with ~~that Act~~ PL 94-580 and regulations adopted thereunder.

AUTH: 82-4-204, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.507 - The proposed change in (4) is to correct for the usage of the term "Act", which is defined in ARM 17.24.301(4) for the purpose of these rules as the Strip and Underground Mine Reclamation Act. Thus, use of "Act" in the context of (4) of this rule is incorrect, because it is referring to PL 94-580.

17.24.510 DISPOSAL OF OFFSITE-GENERATED WASTE AND FLY ASH

(1) Before waste materials or fly ash from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes collection may be used for fill material or other purpose or disposed of on the mine site, the permittee shall demonstrate to the department by hydrogeological means, chemical and physical analyses, and the disposal procedures that use and disposal of these materials will be conducted in accordance with ARM 17.24.505, 17.24.631, 17.24.643, 17.24.702, 17.24.711, and any other applicable provision of the Act and pursuant rules, will

not adversely affect water quality, public health or safety, or other environmental resources, and will not cause instability in the backfilled area. The operator may not use such waste or fly ash for fill or other purpose or dispose of such material on the permit area without prior approval by the department.

(2) Notwithstanding any provision of this subchapter, any waste materials meeting the definition of "hazardous" as found in section 3001 of PL 94-580, as amended, must be handled in accordance with the Act PL 94-580 and regulations adopted thereunder.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-232, MCA

Rationale: 17.24.510 - The changes in (1) are primarily to expand the language regarding the types of materials and their possible proposed uses on a mine site (e.g., coal combustion ash for haul road bases and winter "sanding" activity, which has been proposed in Montana) and to add appropriate provisions of the regulatory program that need to be applied to certain off-site-generated kinds of materials or their proposed uses. Also, "municipal wastes collection" and "by" are proposed to clarify or correct the grammar used.

The proposed change in (2) is to correct for the usage of the term "Act", which is defined in 17.24.301(4) for the purpose of these rules as the Strip and Underground Mine Reclamation Act. Thus, use of "Act" in the context of (2) of this rule is incorrect, because it is referring to PL 94-580.

17.24.520 THICK OVERBURDEN AND DISPOSAL OF EXCESS SPOIL

(1) Thick overburden occurs where the final spoil thickness exceeds 1.2 times the sum of the overburden thickness and mineral thickness for the entire area to be mined in the permit area. Final spoil thickness is the product of the overburden thickness times the swell factor, which is also to be determined for the entire area to be mined in the permit area.

(2) Where thick overburden is encountered, and if the operator wishes to dispose of excess spoil outside of the mined area, the operator shall demonstrate that the volume of spoil and available waste materials is more than sufficient to restore the disturbed area to the approximate original contour. In this case, highwall elimination must be achieved by backfilling with spoils and waste materials. Any excess spoil material must be disposed of in accordance with the requirements of this rule as well as all other rules.

(3) Spoil not required to achieve the approximate original contour may be transported to and placed in a controlled (engineered) manner in a disposal area other than the mine workings or excavations. All of the following conditions, in addition to the other requirements of the Act and this subchapter, must be met:

(1) through (9) Remain the same in text, but are renumbered

(a) through (i).

~~(10)(a)~~ (j) The fill must be inspected for stability at least quarterly by the registered engineer or other qualified professional specialist under the direction of a registered engineer. The engineer or specialist must be experienced in the construction of similar earth and water structures. The above-described inspections must be made during critical construction periods to assure removal of all organic material and soil, placement of underdrainage and surface drainage systems, and proper placement and compaction of fill materials, and revegetation. The permittee shall provide a report by the registered engineer or other qualified professional specialist within 2 weeks after each inspection. The report must certify that the fill has been constructed as specified in the design approved by the department. A copy of the report must be retained at the mine site.

~~(b)~~ (i) "Critical construction periods" include, at a minimum:

(10)(b)(i) through (iv) Remain the same in text, but are renumbered (3)(j)(i)(A) through (D).

(10)(c) Remains the same in text, but is renumbered (3)(j)(ii).

~~(d)(i)~~ (iii) The certified report on the drainage system and protective filters must include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase must be certified separately.

(10)(d)(ii) and (iii) Remain the same in text, but are renumbered (3)(j)(iii)(A) and (B).

(10)(d)(e) Remains the same in text, but is renumbered (3)(j)(iv).

(10)(e)(i) through (iii) Remain the same in text, but are renumbered (3)(j)(iv)(A) through (C).

(11) through (15) Remain the same in text, but are renumbered (3)(k) through (o).

AUTH: 82-4-204, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.520 - These changes are the result of combining ARM 17.24.519A with this rule, with some additional wording changes. The word "suitable" has been removed from "suitable waste materials" to be consistent with the allowance with proper controls (ARM 17.24.505) for disposal of unsuitable materials in the backfill.

The sentence "Highwall elimination must be achieved by backfilling with spoils and waste materials" has been added for the following reasons. It is reasonable and logical to expect that if excess spoils are available, full use of these materials to reclaim the mined area should ensue before any consideration for off-site disposal is entertained. This procedure would minimize highwall reduction and off-site excess-spoil-disposal disturbances. Section 82-4-232(10)(j) and (k), MCA, mandates minimizing

disturbances to fish, wildlife, and related environmental values and minimizing disturbances to the prevailing hydrologic balance at the mine site and adjacent areas; this would help to achieve that mandate.

17.24.522 PERMANENT CESSATION OF OPERATIONS (1) An operator who permanently ceases strip or underground mining operations in all or part of the permit area, shall close or backfill and otherwise permanently reclaim all affected areas, in accordance with the Act, rules adopted thereunder, and the permit as approved by the department. This must occur regardless of whether the permit has expired, or has been revoked or suspended.

(2) and (3) Remain the same.

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

Rationale: 17.24.522 - The change in the first sentence is to specify more precisely how reclamation as rapidly as possible needs to be accomplished, pursuant to 82-4-232(1), MCA. The proposed additional sentence at the end is in response to OSM comments [letter of October 17, 1995 to update Montana's rules to federal rules (30 CFR 773.11(a))].

17.24.601 GENERAL REQUIREMENTS FOR ROAD AND RAILROAD LOOP CONSTRUCTION (1) Haul roads through permitted areas are allowed provided that their presence does not delay or prevent recontouring and revegetation on immediately adjacent spoils, unless upon request of the applicant or permittee the department finds in writing that a delay in recontouring and revegetation of immediately adjacent spoils will result in better reclamation otherwise approved by the department for documented and justified reasons related to the needs of the mining operation or improved reclamation.

(2) (a) No more than 2 ramp roads per mile of active pit being mined may be allowed. Fractional portions of ramp roads resulting from active pit lengths of uneven mileage must be counted as an additional ramp road allowable. (Example: 2.1 (active pit mile length) x 2 (ramp roads/mile) = 4.2 (ramp roads) or 5 ramp roads allowable). The department may authorize an additional ramp road.

(b) Ramp roads, beginning from the spoil edge of the pit being worked, must be engineered so as to exhibit an overall 7% grade, or steeper, until topping on graded spoils. As each new pit is excavated, the ramp roads must be regraded, as soon as possible, so as to remain at an overall 7% or steeper grade from the spoil side of the new pit. Ramp road renovation grading must allow for resodding and revegetative activities to proceed during prime revegetative seasons. Lesser slopes may be allowed if the department makes a written determination that 7% slopes would cause safety problems or hamper successful reclamation.

(c) Access and haul roads must be graded, constructed, and maintained according to sound engineering and construction practices to incorporate appropriate limits for grade, width,

surface material, surface-drainage control, culvert placement and size, and any necessary other design criteria established by the department and must meet the following:

- (i) ~~A sustained grade must not exceed 8% (4.6°).~~
- (ii) ~~The maximum pitch grade must not exceed 12% (6.8°) for greater than 300 feet.~~
- (iii) ~~There must not be more than 300 feet of maximum pitch grade for each 1,000 feet.~~
- (iv) ~~The grade on switchback curves must be reduced to less than the approach grade and must not be greater than 10% (5.7°).~~

(v) (3) ~~Cut slopes must not be more than 1v:1.5h in soils unconsolidated materials or 1v:0.25h in rock.~~

(vi) ~~All grades referred to are subject to a tolerance of plus or minus 1/2 degree of angular measurement. Linear measurements are subject to a tolerance of 10% of measurement.~~

(4) ~~Temporary erosion control measures must be utilized as necessary during construction to control sedimentation and minimize erosion until permanent control measures can be established.~~

(d) (5) ~~All cut and fill slopes resulting from construction of access roads, railroad loops, or haul roads must be reseeded and revegetated, or otherwise stabilized, at the first seasonal opportunity. The provisions of ARM 17-24-604 for the prevention of contamination and degradation of soil must be observed.~~

(e) ~~Roads must have horizontal alignment as consistent with the existing topography as possible and must provide the alignment required to meet the performance standards of the rules regarding roads. The alignment must be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alignment must be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.~~

(3) (6) ~~To the extent possible using the best technology currently available (BTCA), roads and railroad loops must not cause damage to fish, wildlife, and related environmental values and must not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area or otherwise degrade the quantity or quality of surface or ground water. Any such contributions must not be in excess of limitations of state or federal law.~~

(4) (7) ~~Roads and railroad loops must not be built with or surfaced with waste coal, or acid, acid-producing, toxic, or toxic-producing materials. Surface material must be suitable for the anticipated volume, weight, and speed of traffic.~~

(5) (8) ~~Following construction or reconstruction of each haul road, access road, and railroad loop other than a ramp road, the permittee operator shall submit to the department a report, prepared by a qualified registered professional engineer experienced in the design and construction of roads or railroad loops, as applicable, stating that the roads or railroad loop~~

have been ~~was~~ constructed or reconstructed in accordance with the plan approved pursuant to ARM 17.24.321.

~~(6) (9)~~ All appropriate methods, as approved by the department must be employed by the operator to prevent loss of haul or access road surface material in the form of dust.

~~(7) (10)~~ Immediately upon abandonment of any road or railroad loop, the area must be graded to approximate original contour and ripped, subsoiled or otherwise tilled reclaimed in accordance with the approved plan. If necessary, embankment and fill materials must be hauled away and disposed of properly. All bridges and culverts must be removed and natural drainage patterns restored. ~~The area must be reseeded, conditioned and seeded in accordance with subchapter 7.~~ Adequate measures must be taken to prevent erosion by such means as cross drains, dikes, water bars, or other devices. ~~Such areas must be abandoned in accordance with all provisions of the Act and of the rules adopted pursuant thereto.~~

~~(8) (11)~~ Upon completion of mining and reclamation activities, all each roads and railroad loop must be closed and reclaimed unless retention of the road or railroad loop is approved as part of the approved postmining land use pursuant to ARM 17.24.762 and the landowner requests in writing and the department concurs that certain the roads, railroad loop, or specified portion(s) thereof are to may be left open for further use retained. In such event, necessary maintenance must be assured by the operator or landowner and drainage of the road or railroad loop systems must be controlled according to the provisions of ARM 17.24.601 through 17.24.610 while the road or railroad loop is under permit.

AUTH: 82-4-204, MCA; IMP, 82-4-231, 82-4-232, MCA

Rationale: 17.24.601 - The Board proposes many deletions and changes in the first half of this rule, due to provisions which have no practical value or benefit or have redundant provisions or language.

The language (with slight wording changes) of ARM 17.24.603(13) is proposed to be moved to new section (4) of this rule so that temporary erosion-control measures will be applied to all construction-related disturbance of roads and railroad loops.

The term "railroad loops" is proposed to be added to current sections (3), (5), and (8) so that this rule is consistently applied to railroad loops as well as roads, as the title of this rule indicates needs to be the case. An additional provision is proposed for current section (4), because of our proposal to delete ARM 17.24.606.

The Board is proposing to simplify some of the language in section (11) while retaining the meaning of this section. A qualifying phrase is proposed to be added to the last sentence in this section to indicate that required

maintenance of a road or railroad loop to be retained is limited to the period while it is under permit, because the Department has no authority over a road or railroad loop after bond release.

17.24.603 ROAD AND RAILROAD LOOP EMBANKMENTS All embankments must be designed and certified by a registered professional engineer experienced in the design of earth and/or rock structures. Embankment sections must be constructed in accordance with the following provisions:

(1) After soil is salvaged from embankment areas pursuant to ARM 17.24.701 through 17.24.703, all organic material and soil must be removed from the embankment foundation during construction to increase stability, and neither organic material nor soil may be placed beneath or in any embankment.

(2) Where an embankment is to be placed on side slopes exceeding 1v:5h (11.3°), the existing ground must be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway must be a minimum of 10 feet in width and must extend a minimum of 2 feet below the toe of the fill. All material used in embankments must be suitable for the intended use. The material must be free of organic matter, coaly or carbonaceous material, wet or frozen materials, and any other material considered unsuitable by the department for use in embankment construction.

(3) Material containing by volume less than 25% of rock larger than 6 inches in greatest dimension must be spread in successive uniform layers not exceeding 12 inches in thickness before compaction.

(4) Whenever the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing it in 12-inch layers impossible under (3) of this rule, the embankment must be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers must not exceed 36 inches in thickness. Rock must not be dumped in final position, but must be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, and so that voids, pockets, and bridging are reduced to a minimum. The final layer of the embankment must meet the requirements of (3) of this rule.

(5) Each layer of the embankment must be completed, leveled, and compacted before the succeeding layer is placed. Loads of material must be leveled as placed and kept smooth. The successive layers must be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure must be continued until no visible horizontal movement of the embankment material is apparent.

(6) Embankment layers must be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume, of traffic and weight, and speed of vehicles to be used. In selecting the method to be used for placing embankment material, consideration must be given in the design to such factors as the foundation, geological structure, soils,

type of construction, and equipment to be used. A structural and foundation analysis must be performed to establish design standards for embankment stability appropriate to the site. Publications of the American association of state highway and traffic officers (AASHTO), including AASHTO T-99, T-100, and the modified AASHTO test, or other specifications generally recognized by transportation engineers as adequate for design of highway embankments, must be used to determine the degree of compaction required, on the basis of soil type and the anticipated volume of traffic and weight and speed of vehicles to be used. Compaction effort must be adequate to achieve the degree of compaction required. A lift must not be placed on a layer until the design density is achieved throughout the layer. AASHTO specifications such as T-99, T-100, the modified AASHTO test, or other comparable specifications approved by the department must be used as guidelines for the determination of the maximum dry density for granular materials.

(7) Material must be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction.

(8) Embankment slopes may not be steeper than 1v:2h (26.6°), except that whenever the embankment material is a minimum of 85% rock, the department may allow slopes up to 1v:1.35h (36.5°) if it has been demonstrated to the department that embankment stability will result. Where rock embankments are constructed, they must meet the requirements of (4) of this rule.

(9) (4) All Road and railroad loop embankments must have a minimum seismic safety factor of 1.2 and a minimum static safety factor of 1.5 under any condition of loading likely to occur, or such higher factor as the department determines to be reasonably necessary for safety or protection of property.

(5) Any embankment that impounds water as part of the sediment control plan must be designed and constructed in accordance with ARM 17.24.639.

(10) The road surface must be sloped toward the ditch line at a minimum rate of 1/4 inch per foot of surface width, or crowned at a minimum rate of 1/4 inch per foot of surface width.

(11) All material used in embankments must be suitable for use under (1) through (8) of this rule. The material must be free of organic material; coal or coal blossom; frozen materials; wet or peat material; natural soils containing organic matter; and any other material considered unsuitable by the department for use in embankment construction.

(12) Soil or other suitable material as determined by the department must be placed on embankment slopes to aid in establishing vegetation or to minimize erosion or both. Material depth must be adequate to support vegetation or to prevent erosion or both. Measures in lieu of reseedling and vegetation may be proposed to the extent that they can be shown to reduce erosion and prevent the degradation and contamination of soil.

(13) Temporary erosion control measures must be incorporated during construction to control sedimentation and

~~minimize erosion until permanent control measures can be established.~~

AUTH: 82-4-204, MCA; IMP, 82-4-231, 82-4-232, MCA

Rationale: 17.24.603 - The Board is proposing to confine this rule to road and railroad loop embankments, because the series of rules (17.24.601 through 17.24.608) of which this rule is a part otherwise deals only with roads and railroad loops; thus many of the current provisions in this rule are unneeded here because they only apply to sediment pond embankments. Embankments for sediment ponds would be addressed completely in ARM 17.24.639 and a few of the provisions in this rule are proposed to be added to that rule. There are no other kinds of embankments that need to be addressed by embankment rules.

Some provisions need to be retained in this rule, because they apply to road and railroad embankments. Other proposed language changes are for the purpose of clarification. Section (13) is proposed to be deleted here and moved (with some minor wording changes) to ARM 17.24.601(4), where necessary temporary erosion-control measures would then apply to all road- and railroad-loop-construction-related disturbance, not just embankments.

17.24.605 HYDROLOGIC IMPACT OF ROADS AND RAILROAD LOOPS

(1) Access and haul roads and railroad loops and associated bridges, culverts, ditches, and road rights-of-way must be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, diversions, or to runoff outside the permit area to the extent possible, using the BTCA. ~~in no event may the contributions be in excess of requirements set by applicable state or federal law.~~

(2) ~~Drainage ditches must be constructed on both sides of any through-cut, and the inside shoulder of a cut-fill section, with ditch relief cross-drains being spaced according to grade. Water must be intercepted before reaching a switch-back or large fill and must be drained off or released below the fill through conduits or in riprapped channels and may not be discharged onto the fill. Drainage ditches must be placed at the toe of all cut slopes formed by the construction of roads. Drainage structures must be constructed to cross a stream channel and must not affect the flow or sediment load of the stream unless otherwise approved by the department in writing for a site-specific situation. Ditches must be sloped sufficiently to allow them to drain.~~

(3) ~~(a) (i) Railroad loops and all roads other than except ramp roads must be adequately drained using structures such as, but not limited to, ditches, water barriers, cross-drains, and ditch-relief drainages, culverts, and bridges.~~

(a) For railroad loops and for roads that are to be

maintained for more than 6 months and for all roads used to haul coal or spoil (excluding ramp roads) or to be retained for the postmining land use, water-control structures must be designed with a discharge capacity capable of safely passing the peak runoff from a 10-year, 24-hour precipitation event without impounding water at the entrance or greater event as specified by the department.

~~(b)~~ Culverts with an end area of greater than 35 square feet and ~~b~~ Bridges with a span of 30 feet or less must be designed to safely pass a 25-year, 24-hour precipitation event. All other bridges must be designed to safely pass the 100-year, 24-hour precipitation event or greater event as specified by the department.

~~(c)~~ Drainage pipes and culverts must be constructed to avoid plugging or collapse and erosion at inlets and outlets. Trash racks and debris basins must be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Culverts must be covered by compacted fill to a minimum depth of 1 foot. Culverts must be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles to be used.

~~(ii) With prior written approval of the department, culverts may be spaced at intervals of from 300 feet for roads of slope greater than 10% to 1,000 feet for level roads, depending on the road slope. The department shall require a lesser interval if necessary to prevent erosion and may allow a greater interval if erosion will not be increased.~~

~~(b) (d)~~ Natural channel drainageways must not be altered or relocated for road or railroad loop construction or reconstruction without the prior approval of the department in accordance with ARM 17.24.635 through 17.24.637. The department may approve alterations and relocations only if:

(i) the natural channel drainage is not blocked;
(ii) no significant damage occurs to the hydrologic balance; and

(iii) there is not adverse impact on adjoining landowners.
~~(c) (e)~~ Drainage structures are required for stream channel crossings. Drainage structures must not affect the normal flow or gradient of the stream or adversely affect fish migration and aquatic habitat or related environmental values.

~~(d) (f)~~ Vegetation must not be cleared for more than the width necessary for road, railroad loop, and associated ditch or road construction, to serve traffic needs, and for utilities. Such clearing must be done consistent with the requirements of ARM 17.24.604(2).

AUTH: 82-4-204, MCA; IMP, 82-4-231, 82-4-232, MCA

Rationale: 17.24.605 - The Board is proposing various deletions, because of redundant or unnecessary language. The last sentence in section (1) is redundant with 17.24.633(4). The first two sentences in section (2) are unneeded, because they are very specific performance

standards that address operational aspects of drainage control that should be left to the operator to decide if or how to utilize. The last sentence in section (2) is unneeded, because it states a self-evident condition and purpose of drainage ditches.

Addition of the term "railroad loop(s)" in (1), new (3), (3)(a), (3)(d), and (3)(f) is for clarity, because the title of this rule indicates that rail loops are included in the standards of this rule.

"Other than" is being changed to "except" in (3) for clarity. The language being added at the end of (3) is for completeness.

Paragraph (3)(a) is proposed to be split up into three paragraphs to facilitate understanding.

Proposed changes in the last half of new (3)(a) are to allow greater flexibility in impounding water under certain conditions at the site of water control structures without compromising the safe passage of the design peak runoff event.

Professional experience in the coal program indicates that the first part of the first sentence in (3)(b) regarding culverts is an excessive requirement that should be eliminated; it does not provide sufficient additional protection to justify its continued existence. This requirement was originally imposed in 1980 as a result of OSM regulations at that time. Since then, OSM has eliminated this requirement from its rules.

The language in (3)(c) that is proposed for elimination consists of some specific methods that operators must use to meet the broader performance standards described in the first and third sentences of this paragraph. The methods for achieving these standards should be left to the discretion of the operators; the Department's responsibility is to insure that the standards of drainage pipe and culvert performance are met.

Old paragraph (3)(b)(ii) is proposed for deletion for reasons similar to those stated immediately above. This paragraph describes methods for achieving a broader standard for drainage control. The precise spacing and location of culverts should be left to the operator to decide based upon site-specific needs of the overall drainage control plan. The Department would be reviewing culvert location in the general context of compliance of the drainage control plan.

The deletion of "or road" in (3)(f) is due to its

redundance with "road" earlier in the sentence. The last sentence is nonsensical and thus proposed for deletion, because it refers to a rule (17.24.604) that is proposed for complete deletion.

17.24.607 MAINTENANCE OF ROADS AND RAILROAD LOOPS (1) ~~Access and haul~~ All roads must be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing, and replacement of paving materials, such that the required design standards of the roads are met throughout the life of the operation.

(2) ~~(a)~~ Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads and railroad loops must not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure: unless the department determines that:

~~(b) The department may waive the maintenance requirements of (a) above if it determines that:~~

~~(i) (a) the operator cannot maintain structures indicated in (a) (2) above due to wet field conditions resulting from sudden runoff events;~~

~~(ii) (b) obstructions to these structures will not result in environmental damage or imminent harm to the health and safety of the public; and~~

~~(iii) (c) runoff and sediment are totally contained in accordance with the approved drainage control plan.~~

(3) Roads and railroad loops ~~or embankments~~ severely damaged by events such as floods, earthquakes, or equipment damage must not be used until reconstruction of damaged road or embankment elements. ~~The reconstruction must be completed reconstructed or reclaimed~~ as soon as practicable after the damage has occurred.

AUTH: 82-4-204, MCA; IMP, 82-4-231, 82-4-232, MCA

Rationale: 17.24.607 - Adding "railroad loop(s)" to the title, section (2), and section (3) is for consistency of standards of compliance. There is no rationale for applying applicable standards in this rule to roads, but not to rail loops. Likewise, the change from "access and haul [roads]" to "All roads" in (1) and (2) is for consistency of application of the standards in this rule to other roads as well (such as ramp roads).

The proposed changes at the end of old (2)(a) and the elimination of (2)(b) is for simplification of language.

The elimination of "resulting from sudden runoff events" from new (2)(a) is proposed, because that is an unjustified limiting qualification; there are other circumstances that could result in wet field conditions that should also be considered in the context of this provision.

Changing "totally" to "in accordance with the approved drainage control plan" in new (2)(c) is for the purpose of precision; the word "totally" in terms of drainage and sediment control has no specific definition, whereas the proposed new phrase does.

In lines one and four of (3), "embankments" and "embankment elements" are proposed for elimination, because these terms are redundant with respect to roads and railroad loops; this rule deals with embankments of those facilities since the rule is all inclusive. Sediment pond embankments are addressed in ARM 17.24.639.

In (3), elimination of the language in lines three and four is proposed, because using or not using a road or railroad loop that has been severely damaged by some event is an operational consideration for the operator. The main consideration for the Department is that the proper environmental controls are in place at all times and circumstances, which is required by the regulatory program. Therefore, the language proposed for elimination here is unneeded, because it does not provide regulatory control beyond what the Department already has.

17.24.623. BLASTING SCHEDULE (1)(a) Remains the same in text, but is renumbered (1).

(b) and (c) remain the same, but are renumbered (a) and (b).

(2)(a) A blasting schedule must not be so general as to cover the entire permit area or all working hours, but it must identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

(b) The blasting schedule must contain at a minimum:

(i) name, address and telephone number of the operator;

(ii) identification of the specific areas in which blasting will take place. Each specific blasting area described must be reasonably compact and not larger than 300 acres;

(iii) days and time periods when explosives are to be detonated. ~~These periods must not exceed an aggregate of 8 hours in any one day. However, the department may impose more restrictive conditions pursuant to ARM 17.24.624;~~

(iv) methods to be used to control access to the blasting area;

(v) types of audible warnings and all-clear signals to be used before and after blasting; and

(vi) a description of unavoidable hazardous situations referred to in ARM 17.24.310(6) that have been approved by the department for blasting at times other than those described in the schedule.

(3) Remains the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.623 - These changes will provide more flexibility without compromising safety or creating a public nuisance.

17.24.625 SEISMOGRAPH MEASUREMENTS (1) Whenever a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limits of ARM 17.24.624~~(10)~~(11) are not exceeded, the equation in ARM 17.24.624~~(13)~~(14) need not be used. If that equation is not used by the operator, a seismograph record must be obtained for each shot.

(2) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the department, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. The department may not approve the use of a modified equation if the peak particle velocity for the limits specified in ARM 17.24.624~~(10)~~(11) are exceeded, meeting a 95% statistical confidence level.

(3) and (4) Remain the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.625 - These changes are corrections of the indicated citations.

17.24.632 PERMANENT SEALING OF DRILLED HOLES (1) When no longer needed for its intended use as approved by the department and if not transferred as a water well under ARM 17.24.647, each exploration prospecting hole, other drilled hole, borehole, or well must be abandoned according to the procedures described in ARM 17.24.1005. Other exposed underground openings must also be abandoned in accordance with ARM 17.24.1005 or, with department approval, be cased, sealed, or otherwise managed to prevent acid or other toxic drainage from entering the ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent areas.

AUTH: 82-4-204, MCA; IMP, 82-4-231, MCA

Rationale: See 17.24.313 for explanation.

17.24.633 WATER QUALITY PERFORMANCE STANDARDS (1) and (2) Remain the same.

(3) ~~Whenever the department determines that sedimentation ponds are BPCA, they All sediment control must be constructed in accordance with ARM 17.24.638 and 17.24.639 in appropriate approved locations before beginning any strip or underground mining operations in the drainage area to be affected may begin.~~

~~(4) Wherever a sedimentation pond or series of sedimentation ponds results in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current strip or underground mining operations, the permittee shall achieve the following criteria:~~

~~(a) All discharges of which include water from areas disturbed by strip or underground mining operations must be in compliance with all federal and state laws and regulations, including, but not limited to, those laws and regulations that apply to total iron, total manganese, total suspended solids,~~

and pH and applicable effluent limitations.

~~(b) Wherever BTCA practices result in a point discharge, the discharge must meet applicable effluent limitations.~~

(5) In accordance with 40 CFR 434, for certain constituents as defined in the operator's MPDES permit, discharge from the disturbed areas is not subject to the effluent limitations or BTCA standards of ARM 17.24.638 if:

(a) the discharge is demonstrated by the permittee to have resulted from a precipitation event equal to or larger than a 10-year, 24-hour precipitation event, or snowmelt runoff of equivalent volume; and

(b) the discharge is from BTCA practices designed, constructed, and maintained in accordance with (1) through (4) of this rule above and ARM 17.24.639.

~~(6) BTCA practices must be installed, operated, and maintained to treat any water discharged from the disturbed area to ensure compliance with all federal and state laws and regulations and the limitations of this rule.~~

AUTH: 82-4-204, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.633 - In current sections (3), (4), and (6), the Board has proposed various revisions to simplify, clarify, or eliminate redundant or superfluous language in this rule, while still maintaining the essential provisions required by federal rules.

The change in (5) (b) is for clarification.

17.24.634 RECLAMATION OF DRAINAGES (1) **Design Construction** of reclaimed drainages must emphasize channel and floodplain dimensions that approximate the premining configuration and that will blend with the undisturbed drainage system above and below the area to be reclaimed. The average stream channel gradient must be maintained with a concave longitudinal profile and the channel and floodplain must be designed and constructed to:

~~(a) establish or restore the drainage channel to its natural approximate an appropriate geomorphic habit or characteristic pattern with a geomorphically acceptable gradient as determined by the department. The habits or characteristics of individual streams include their particular reactions to general laws related to stream work; whether or not streams have attained the conditions of equilibrium, and the stream channel morphology and stability;~~

(1) (b) through (e) Remain the same.

(1) (f) establish or restore the stream channel to include, where appropriate, a diversity of aquatic habitats (generally a series of riffles and pools) that approximates the premining characteristics; and

(1) (g) Remains the same.

(2) ~~At least 120 days prior~~ to reclamation of a drainage channel depicted on the postmining topographic map, the operator shall, unless the department in writing exempts all or portions

of the drainage channel from this requirement, submit to the department detailed designs for the drainage channel or any modifications from the approved design based on sound geomorphic and engineering principles. These designs must be certified by a qualified registered professional engineer, and must meet the criteria in (1) above and any other applicable performance standards and applicable design criteria set by these in the rules. These designs must represent the state-of-the-art in reconstruction of geomorphically stable channels and must be approved by the department before construction begins. The operator shall notify the department when construction begins. The regraded drainage channel must not be resoiiled or seeded until it is inspected and approved by the department.

(3) Alternate drainage channel reclamation techniques may be proposed in place of (1)(a) and (c) of this rule, and the stream channel gradient and longitudinal profile requirements of (1) of this rule, and may be utilized if approved. The department may not approve alternate techniques unless they are as environmentally protective as the techniques they replace. No alternative to (1)(a), (b), (d), (e), (f), or (g) of this rule may be proposed or accepted.

(4) Remains the same.

AUTH: 82-4-204, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.634 - In (1), (1)(f), and (3), the terms "stream" and "drainage" are proposed to be changed to "channel" for clarification and consistency.

In (1), the Board is proposing to replace "Design" with "Construction" (first line) and to delete "designed to" near the end of (1) to indicate that the focus of the criteria in (1) is toward performance standards. However, the criteria in (1) will still need to be addressed in the design as (2) now states. Also, the Board is proposing to simplify and clarify the language in (1)(a). Finally, the Board is proposing removal of what is essentially a definition of natural habit and characteristic pattern of streams from (1)(a) and placing it into ARM 17.24.301(46).

The proposed deletion of the 120-day requirement for the design submittal in (2) is to give the operators more flexibility regarding the timing of such submittals. The 120-day or any other numerical timing requirement is arbitrary and serves no regulatory purpose. Based upon the Department's experience, the focus needs to be on submittal of drainage designs, not on specific submittal timing.

The requirement in section (2) that designs be certified by a registered professional engineer is unnecessary, because there does not appear to be more of a rationale for having such designs certified compared to any other work submitted by an operator that does not currently require certification. There is nothing particularly unique or

critical (e.g., public safety) about drainage designs that requires certification. Thus, this requirement is proposed for deletion.

Also in section (2), the "state-of-the-art in reconstruction of geomorphically stable channels" language is redundant with a general requirement of all reclamation (82-4-231(1), MCA) and the specific requirement of ARM 17.24.634(1)(a). Thus, it is proposed for deletion.

The last two sentences in section (2) are proposed for elimination, because it is impractical for the Department to inspect all drainage channels prior to resoiling and seeding.

In (3), the Board does not believe there should be any alternative to (1)(a) of this rule, because having a channel "approximate an appropriate geomorphic habit or characteristic pattern" is a recognized fundamental characteristic of any channel for which there should be no exception. Thus, "(a)" is proposed for deletion.

17.24.639 SEDIMENTATION PONDS AND OTHER TREATMENT FACILITIES (1) Sedimentation ponds, either temporary or permanent, may be used individually or in series and must:

(a) be constructed before any disturbance of an area that will drain into the pond takes place;

(b) be located as near as possible to the disturbed area, and out of major stream courses, unless another site is approved by the department;

(c) provide an adequate sediment storage volume equal to:

(i)(A) the accumulated sediment volume from the drainage area to the pond for a minimum of 3 years. ~~Sediment storage volume must be determined using the universal soil loss equation, including gully erosion rates and the sediment delivery ratio converted to sediment volume information if applicable, or using either the sediment density method or another empirical method derived from regional sediment pond studies, if the as determined by a method is approved by the department; or~~

(B) ~~not less than 0.035 0.02 acre-foot for each acre of disturbed area, excluding well-established reclamation, within the upstream drainage area, unless the operator affirmatively demonstrates that the sediment volume for from any site-specific area is would be less, or demonstrates that sediment removed by other sediment control measures will result in a reduction in the sediment load. A value greater than 0.035 acre-feet per acre must be used whenever the department determines it is sediment volume may be required if necessary to contain a higher sediment yield; and, as applicable,~~

(ii) the accumulated sediment volume necessary to retain sediment for 1 year in any discharge from an underground mine passing through the pond; and

(d) be accurately surveyed immediately after construction in order to provide a baseline for future sediment volume measurements.

~~(2) The permittee may be required to conduct yearly bathymetric studies of representative sediment ponds in order to provide data for future pond design.~~

~~(3)(a)~~ Sedimentation ponds must provide the required theoretical detention time adequate to meet effluent limitations described in ARM 17.24.633 and for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event), plus the average inflow from the underground mine if applicable.

~~(a)~~ "Theoretical detention time" is the average time that the design flow is detained in the pond and is further defined as the time difference between the centroid of the in-flow hydrograph and the centroid of the outflow hydrograph for the design event. Runoff diverted under ARM 17.24.635 through 17.24.637 away from the disturbed drainage areas and not passed through the sedimentation pond need not be considered in sedimentation pond design. In determining the runoff volume, the characteristics of the mine site, reclamation procedures, and on site sediment control practices shall be considered. Sedimentation ponds must provide a theoretical detention time of not less than 24 hours, or any higher amount required by the department, except as provided below.

~~(3)(b)~~ through ~~(5)~~ Remain the same in text, but are renumbered ~~(2)(b)~~ through ~~(4)~~.

~~(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this rule does not relieve the operator of responsibility for compliance with applicable effluent limitations as contained in ARM 17.24.633.~~

~~(7)~~ Remains the same in text, but is renumbered ~~(5)~~.

~~(8) (6)~~ Sediment must be removed from sedimentation ponds when the volume of sediment accumulates to 60% of the design sediment storage volume. With the approval of the department, additional permanent storage may be provided for sediment and water above that required for the total design requirement sediment storage. If additional permanent storage is provided above that required for sediment under ~~(1)~~ of this rule and the design runoff storage and theoretical detention time is are maintained, sediment removal, upon approval by the department, may be delayed until the remaining volume of permanent storage has decreased to 40% of the total required sediment storage volume remains.

~~(9) Embankments must be constructed in compliance with ARM 17.24.603 and the requirements of this rule.~~

~~(10) (7)~~ Sedimentation ponds must be constructed to provide:

~~(a)~~ a combination of principal and emergency spillways or a single spillway only to safely discharge the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the department. A single spillway must be constructed of

non-erodible materials and designed to carry sustained flows, or be earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected. If the sediment pond consists entirely of an excavation, no spillway is required. The elevation of the crest of the emergency spillway must be a minimum of 1 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities must be approved by the department;

(b) containment of runoff from a 25-year, 24-hour precipitation event, or greater event as specified by the department, with no spillway required, provided that the impounding structure does not meet any of the criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in USDA soil conservation service Technical Release No. 60 (210-VI-TR60, October 1985, as revised through January 1991), "Earth Dams and Reservoirs", (TR-60), and provided further that adequate provisions are made for safe dewatering of the pond within an appropriate time after the design precipitation event occurs, using current, prudent engineering practices; or

(c) for ponds meeting any of the criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60, containment of runoff from the probable maximum precipitation of a 6-hour event, or greater event as specified by the department, with no spillway required, provided that adequate provisions are made for safe dewatering of the pond within an appropriate time after the design precipitation event occurs, using current, prudent engineering practices.

(8) Foundations and abutments for sediment ponds must be stable during all phases of construction and operation and must be designed based on appropriate and adequate information on foundation conditions that is collected pursuant to ARM 17.24.315(1)(b) or (d), as appropriate.

~~(11)~~ (9) The minimum elevation at the top of the settled embankment must be 1 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1-foot minimum elevation requirement applies at all times, including the period after settlement.

~~(12)~~ The constructed height of the dam must be increased a minimum of 5% over the design height to allow for settlement, unless it has been demonstrated to the department that the material used and the design will ensure against all settlement.

(13) Remains the same in text, but is renumbered (10).

~~(14)~~ (11) The combined upstream and downstream side slopes of the settled embankment may must not be less steeper than 5h:1v 3h:1v, with neither slope steeper than 2h:1v. Slopes must be designed to be stable in all cases, even if flatter side slopes are required unless otherwise approved by the department.

~~(15)~~ (12) After Ssoil must be salvaged from the embankment foundation area pursuant to ARM 17.24.701 through 17.24.703. All other organic material must be removed, and all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(13) Where an embankment is to be placed on side slopes exceeding 1v:5h (11.3°), the existing ground must be scarified, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill.

(16) (14) Fill Embankment material must be free of sod, large roots, other large vegetative matter, and not contain organic matter, wet or frozen soil materials, and in no case may coal-processing or coaly mine waste be used or carbonaceous materials, or any other material considered unsuitable by the department for use in embankment construction.

(17) (15) The placing and spreading of fill embankment material must be started at the lowest point of the foundation. The fill embankment must be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this rule. Compaction must be conducted. A lift must not be placed on the previous layer until the density as specified in the design approved by the department has been achieved throughout the previous layer.

(a) In selecting the method to be used for placing embankment material, consideration must be given in the design to such factors as the foundation, geological structure, soils, static water level, high water level, type of construction, and equipment to be used.

(b) AASHTO or other comparable specifications approved by the department for the determination of the maximum dry density for granular materials must be applied during construction.

(16) Embankments must have a minimum seismic safety factor of 1.2 and a minimum static safety factor of 1.5 under any condition of loading likely to occur, or such higher factor as the department determines to be reasonably necessary for safety, protection of property, or preventing environmental harm.

(17) All pond embankments must be designed and constructed in accordance with sound engineering and construction practices and certified by a registered professional engineer experienced in the design of such structures.

(18) Temporary erosion-control measures must be utilized as necessary during construction to control sedimentation and minimize erosion until long-term erosion-control measures can be established.

(19) The entire embankment, including the surrounding areas disturbed by construction, must be stabilized with a vegetative cover or other means immediately after the embankment is completed in order to protect against erosion and sudden drawdown. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop must be repaired and revegetated in accordance with ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.721, 17.24.723 through 17.24.726, 17.24.728, and 17.24.730 through 17.24.733.

(18) Remains the same in text, but is renumbered (20).

(21) If a sedimentation pond meets the Class B or C criteria for dams in TR-60, it must comply with the following

additional requirements:

(a) for freeboard, the freeboard hydrograph criteria listed in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60; and

(b) for safely discharging the design precipitation event, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the department.

(19) (22) Each pond must be designed and inspected regularly during construction under the supervision of, and certified after construction by, a qualified registered professional engineer experienced in the construction of impoundments.

(a) For ponds designed and constructed pursuant to ARM 17.24.639(7)(b) or (c), the certification must also indicate that safe dewatering of the pond will occur within an appropriate time after the design precipitation event occurs, using current, prudent engineering practices.

(b) After construction, inspections must be made and reports filed in the same manner as for dams and embankments under ARM 17.24.642(8).

(20) The entire embankment, including the surrounding areas disturbed by construction, must be stabilized with a vegetative cover or other means immediately after the embankment is completed in order to protect against erosion and sudden drawdown. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop must be repaired and revegetated in accordance with ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.721, 17.24.723 through 17.24.726, 17.24.728, and 17.24.730 through 17.24.733.

(21) (23) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), must be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications must be made to the department, in accordance with 30 CFR 77.216-3. With the approval of the department, dams not meeting these criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 must be examined at least 4 times per year. If an examination or inspection discloses that a potential hazard exists, the person who examined the impoundment must promptly inform the department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the department must be notified immediately. The department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(22) (a) (24) Sedimentation ponds and other treatment facilities must not be removed:

(1) (a) sooner than 2 years after the last augmented seeding within the drainage, unless otherwise approved by the department in compliance with ARM 17.24.633;

(22)(a)(ii) through (c) Remain the same in text, but are renumbered (24)(b) through (e).

(23) and (24) Remain the same in text, but are renumbered (25) and (26).

~~(25) (27)(a) Excavations which are primary sediment control structures during or after the mining operation must have perimeter slopes that are stable and must not be steeper than 3h:1v or lesser slope determined by the department to ensure stability. Where surface runoff enters the impoundment area, the sideslope must be protected against erosion.~~

(b) Excavations which are primary sediment control structures must be certified initially by a qualified registered professional engineer. The department shall perform subsequent inspections. If any modifications are necessary, the department shall promptly notify the operator.

AUTH: 82-4-204, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.639 - The Board's proposed changes in ARM 17.24.639(1)(c)(i)(A) are to simplify and to recognize that other methods besides those listed may be appropriate and that some of those currently listed are impractical or difficult to apply.

The Board is proposing to revise ARM 17.24.639(1)(c)(i)(B) for the amount of sediment storage that is required, unless detailed calculations are performed, from 0.035 ac-ft per acre to 0.02 ac-ft per acre. The Department's experience in working with sediment volume estimation for many years indicates that the proposed 0.02 ac-ft per acre is a more reasonable yet safe number under this option of sediment estimation. The hoped-for effect of this change would be a reduction, in certain cases, in the required volume of sediment ponds, and therefore the amount of land disturbance. Operators would still be required to maintain the pond volume necessary for the design runoff event. The addition of "excluding well-established reclamation" is proposed, because such areas have similar sediment-producing rates as undisturbed areas. Other changes are proposed for the purpose of simplification and clarification.

The Board proposes to delete section (2); while the principle behind section (2) may have some value, it has been little used and other approaches to pond design are much more utilized. There appears to be little or no reason to require a bathymetric survey. Nevertheless, deleting the section does not preclude the use of such bathymetric survey data for pond designs or any other valid purpose.

Section (6) is proposed for deletion, because it is redundant with ARM 17.24.633.

The proposed changes in current section (8) are for the purpose of clarification and removing excess verbiage.

Current section (9) is proposed for deletion, because ARM 17.24.603 would no longer apply to ARM 17.24.639 (see proposed changes in ARM 17.24.603) and the rest of the sentence in section (9) is repetitious of what would apply in ARM 17.24.639.

The Board proposes adding two sentences to the current ARM 17.24.639(10)(a). The first one is in response to OSM comments on limitations to single-spillway-only situations. The second additional sentence states that ponds constructed by excavation do not need a spillway; the reason for this is that excavated ponds by their nature do not have a spillway, because they have no embankment or dam. However, the outflow area below an excavation may require stabilization measures to protect against erosion or downcutting from discharge waters; this is covered in ARM 17.24.640, as proposed for revision. The federal rules do not specifically address spillways in relation to excavations.

The proposed changes in (7)(b) and (c) are in response to OSM requirements (30 CFR 816/817.49(c)(2)(i); letter of June 26, 1997, issue XI.A.4).

New section (8) is being proposed in response to OSM requirements (30 CFR 816/817.49(a)(6)(i); letter of June 26, 1997, issue XI.A.4).

The second sentence in current section (11) [newly numbered section (9)] is proposed for deletion, because it is redundant with the first sentence in that section.

Section (12) is proposed for deletion, because it consists of a specific method for accounting for settlement of embankments. This should be left to the operators to decide if or how to address in the overall design and construction of embankments. The responsibility of the Department should be to assure that the embankments meet the design criteria that are approved (e.g., see newly numbered section (9), regarding the "settled" condition that must be met).

The proposed changes in the first sentence of current section (14) (new section (11)) are for the purpose of clarification and providing an understandable standard. The last sentence in this section is proposed for deletion, because it is redundant with the specific stability standards proposed in new section (16).

The minor changes proposed in the first three lines of

current section (15) [new section (12)] are for the purpose of clarification. The phrase at the end of this section that is proposed for deletion is unnecessary, because scarification of the foundation surface is not a technically warranted practice in all circumstances. Also, the rules would retain steps (including scarification) to increase stability of embankments on steeper slopes [see proposed new section (13)].

All of the proposed changes to current sections (16) and (17), and the addition of new sections (13) and (16) through (18) are:

- 1) the result of the proposed changes to ARM 17.24.603, which would address only road embankments. Thus, some of the requirements that were in ARM 17.24.603 have been moved to this rule (with some changes in language), i.e., new sections (13), (16), (17), and (18), and new subsections (15)(a) and (b); and
- 2) for the purpose of clarification or improvement, i.e., current sections (16) and (17).

Current section (20) is proposed to be relocated to section (19), because the content of this section logically follows new section (18).

New section (21) is proposed in response to OSM requirements (30 CFR 816/817.49(a)(5) and (a)(9)(ii)(A); letter of June 26, 1997, issue XI.A.4).

Newly numbered section (22) has been divided into subsections for clarity, because of the proposed additional new language in (a), which is in response to OSM requirements (30 CFR 816/817.49(c)(2); letter of July 10, 1997, issue 10b).

In newly numbered section (23), the deletion in the first line is to remove redundancy and to create clearer wording with respect to the exception in the second sentence. The additional text in the second sentence is to address OSM requirements (30 CFR 816/817.49(a)(12); letter of June 26, 1997, issue XI.A.4).

The change in newly numbered section (24) is in response to OSM requirements (30 CFR 816.46(b); letter of July 10, 1997, issue 12).

The Board proposes deleting a sentence in newly renumbered (27)(a) to allow steeper interior slopes for excavated ponds. Allowance for steeper slopes would reduce the land disturbance required to build an excavated pond. This

would also make it easier to clean sediment out of excavations, and reduce the amount of surveying and reconstruction work that might otherwise be required to meet this rule. Although steeper interior slopes would increase the erosion potential of such slopes, additional material eroded would be captured by the pond itself. The slopes must be stable in any case as required by language in the first part of (27) (a).

Finally, the Board proposes deleting the word "primary" in (27) (a) and (27) (b). The term "primary" is not defined in the rules. Furthermore, the requirements of (27) should apply to all excavations that are sediment control structures.

17.24.640 DISCHARGE STRUCTURES AND OUTFLOW SITES

(1) Discharge from sedimentation ponds, impoundments, and diversions must be controlled by vegetation, energy dissipators, riprap channels, and other ~~devices~~ measures, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures must be designed according to standard engineering-design procedures and be certified by a qualified, registered, professional engineer as meeting the performance standards of this subchapter and any design criteria specified by the department.

AUTH: 82-4-204, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.640 - The added language in the title is proposed to clarify that ponds such as excavations that do not have discharge "structures" as such but have outflow sites are covered by this rule. The addition of "vegetation" is to include this as a recognized measure for stabilization. The proposed replacement of "devices" with "measures" is to broaden the meaning of the statement to include such items as vegetation.

17.24.642 PERMANENT AND TEMPORARY IMPOUNDMENTS

(1) Permanent impoundments are prohibited unless constructed in accordance with ARM 17.24.504 and authorized by the department upon the basis of a demonstration that:

(1) (a) through (e) Remain the same.

(1) (f) the design, construction, and maintenance of structures will achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act. PL 83-566 (16 USC 1006). Requirements for impoundments that meet the size or other criteria of the mine safety and health administration, 30 CFR 77.216(a) are contained in US soil conservation service's Technical Release No. 60 (210-VI-TR60, October 1985, as revised through January 1991), "Earth Dams and Reservoirs," June 1976 (TR-60). Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are

contained in US soil conservation service's Practice Standard 378, "Ponds," October 1978. The technical release and practice standard are hereby incorporated by reference as they exist on March 13, 1979. Technical Release No. 60 and Practice Standard 378 are on file and available for inspection at the Helena office of the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901 59601;

(1)(g) through (i) Remain the same.

(2) All impoundments must meet the design and performance requirements of ARM 17.24.603 and 17.24.639.

(3) Excavations that will impound water must meet the requirements of ARM 17.24.639(25)(27).

(4) and (5) Remain the same.

(6) All dams and embankments meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 must be routinely inspected by a qualified registered professional engineer or by someone under the supervision of a qualified registered professional engineer, in accordance with 30 CFR 77.216-3.

(7) through (10) Remain the same.

AUTH: 82-4-204, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.642 - The first proposed change in (1)(f) is to fully explain the reference to Technical Release No. 60. This change then dictates the deletion of "as they exist on March 13, 1979", because that phrase is consequently out of date. The deleting of "PO Box 200901" is proposed, because it is irrelevant to the location of the Department's office.

The change in (2) is due to the proposed shift of provisions relating to embankments from ARM 17.24.603 to 17.24.639. As a result of this shift, there would be no provisions in ARM 17.24.603 that apply to ARM 17.24.642.

The change in (3) is due to renumbering of sections in ARM 17.24.639.

The proposed change in (6) is due to OSM requirements (30 CFR 816/817.49(a)(12); letter of June 26, 1997, issue XI.A.4).

17.24.645 GROUND WATER MONITORING (1) through (4) Remain the same.

(5) Ground water monitoring must proceed through mining and continue until phase IV bond release. The department may allow modification of the monitoring requirements, except those required by the Montana pollutant discharge elimination system permit, including the parameters covered and sampling frequency, if the operator or the department demonstrates, using the monitoring data obtained under this section, that:

(a) the operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and

prevented material damage to the hydrologic balance outside the permit area;

~~iiii~~ (i) water quantity and quality are suitable to support approved postmining land uses; and

~~iiii~~ (ii) the water rights of other users have been protected or replaced;

(b) monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under this rule; or

(c) with regard to monitoring related to an alluvial valley floor, monitoring of the essential hydrologic function of the alluvial valley floor is ensured under the modified program.

~~(6) Sampling and water quality analyses Methods of sample collection, preservation and sample analysis must be conducted according to the methodology in either the current 15th edition of "Standard Methods for Examination of Water and Wastewater" or the methodology in accordance with 40 CFR Parts 136 and 434 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 1997) and the department's document entitled "Circular WQB-7, Montana Numeric Water Quality Standards", dated April 4, 1994 November 1998 edition. Copies of these documents Circular WQB-7 are available at the department's main office in Department of Environmental Quality, 1520 E. 6th Ave., Helena, MT 59601. Sampling and analyses must include a quality assurance program acceptable to the department.~~

(7) and (8) Remain the same.

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

Rationale: 17.24.645 - The changes in the first two lines are proposed to clarify and add precision. Deletion of the reference "Standard Methods for Examination..." is proposed, because it is redundant to the next reference (40 CFR Part 136), which itself references "Standard Methods for Examination...". The title of 40 CFR Part 136 is being added to more clearly show the nature and subject matter of this document. The reference to 30 CFR Part 434 is being deleted, because it does not pertain to groundwater. The reference to WQB-7 is being updated to the most current edition. Finally, language changes are proposed to indicate that copies of only WQB-7 are available at DEQ, and to provide the DEQ address.

17.24.646 SURFACE WATER MONITORING (1) through (5) Remain the same.

~~(6) Sampling and water quality analyses Methods of sample collection, preservation and sample analysis must be conducted according to in accordance with 40 CFR, pParts 136 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 1997) and Part 434 titled "Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards" (July 1997), and the April 4, 1994, November 1998 version of the department's document entitled~~

"Circular WQB-7, Montana Numeric Water Quality Standards". Copies of ~~these documents~~ Circular WQB-7 are available at the Department of Environmental Quality, ~~PO Box 200901~~ 1520 E. 6th Ave., Helena, MT 59620-0901 59601. Sampling and analyses must include a quality assurance program acceptable to the department.

(7) Remains the same.

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

Rationale: 17.24.646 - The changes in the first two lines are proposed to clarify and add precision. The title of 40 CFR Part 434 is being added to more clearly show the nature and subject matter of this document. The reference to WQB-7 is being updated to the most current edition. Language changes are proposed to indicate that copies of only WQB-7 are available at DEQ, and to provide the appropriate DEQ address. Finally, an additional sentence is proposed at the end of this section for a quality assurance program so this rule for surface water is consistent with that for groundwater (ARM 17.24.645(6)).

17.24.647 TRANSFER OF WELLS (1) With prior approval of the department, the permittee may allow the surface owner to use ~~an exploratory~~ a prospecting well or a monitoring well as a water well. To obtain departmental approval, the surface owner must submit a written request for transfer and evidence that the well has been completed in compliance with standards established by the board of water well contractors. The permittee remains responsible for proper management of the well and site until final bond release.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-231, MCA

Rationale: See explanation under 17.24.313.

17.24.652 WELLS AND UNDERGROUND OPENINGS: SAFETY (1) Each ~~exploration~~ prospecting well, other well, and all other exposed underground openings in the permit area must be temporarily sealed before use and temporarily protected during use by barricades, fences, or other protective devices approved by the department. The permittee shall periodically inspect these devices and maintain them in good operating condition.

AUTH: 82-4-204, MCA; IMP, 82-4-231, MCA

Rationale: See explanation under 17.24.313.

17.24.702 REDISTRIBUTION AND STOCKPILING OF SOIL (1) After salvage, ~~Soil~~ must be immediately redistributed according to the requirements of (5) and (6) ~~of this rule below~~ on areas graded to the approved postmining configuration ~~topography~~.

(2) Salvaged soil must be stockpiled if graded areas are not immediately available for redistribution. Soil stockpiles must be located where they will not be disturbed by mining operations and will not be lost to wind or water erosion.

Compaction, contamination, and degradation of stockpiles must be minimized, ~~and, once, stockpiled, the~~ soil must not be rehandled until replaced on regraded areas, unless authorized by the department.

(3) through (5) Remain the same.

(6) Soil must be redistributed in a manner that achieves ~~approximate uniform~~ thicknesses consistent with soil resource availability and appropriate for the postmining vegetation, land uses, contours, and surface water drainage systems. Soil replacement must be done on the contour, whenever possible.

(7) Remains the same.

AUTH: 82-4-204, MCA; IMP, 82-4-232, MCA

Rationale: 17.24.702 - In section (1), "After salvage" is proposed to be added to clarify the practice of soil direct-haul. The word "configuration" is being changed to "topography", because the latter is more precise and more commonly used.

The changes in section (2) are for simplification.

In section (6), "approximate uniform" is proposed for deletion to clearly allow varying soil substrate thicknesses conducive to plant diversity and specific revegetation needs.

17.24.711 ESTABLISHMENT OF VEGETATION (1) A diverse, effective, and permanent vegetative cover of predominantly native species (except as provided in 82-4-233(4) or 82-4-235(2), MCA, of the same seasonal variety and utility as the vegetation native indigenous to the area of land to be affected must be established. Revegetation must be capable of self-regeneration. This vegetative cover must also be capable of meeting the criteria set forth in 82-4-233, MCA, and must be established on all areas of land affected except on road surfaces and below the low-water line of permanent impoundments that are approved as a part of the postmining land use. Vegetative cover is considered of the same seasonal variety if it consists of a mixture of species of equal or superior utility when compared with the natural vegetation during each season of the year.

(2) through (5) Remain the same.

(6) The department shall determine cover, planting, and stocking specifications for each operation based on local and regional conditions after consultation with and approval by:

(a) the department of fish, wildlife, and parks for reclamation to land uses involving fish and wildlife habitat; and

(b) ~~the administrator of the division of forestry of the~~ department of natural resources and conservation for reclamation to land uses involving commercial forest land.

AUTH: 82-4-204, MCA; IMP, 82-4-233, 82-4-235, MCA

Rationale: 17.24.711 - In the first sentence of section (1), the Board proposes to add the requirement to use "predominantly native species" and the requirement for self-regeneration and delete them from ARM 17.24.716(2). This transfer would properly place the predominantly-native and self-regeneration requirements in a rule prescribing revegetation attributes, rather than revegetation methods. The use of the word "indigenous" instead of "native" is for style (to prevent somewhat awkward repetition), because of the insertion of "predominantly native species" earlier in the sentence. The references to 82-4-233 and 82-4-235, MCA, are proposed to update the rule to reflect the 1995 and 1997 legislative amendments to these provisions of MSUMRA.

In section (6)(b), the proposed deletion updates the current location of the state's forestry program.

17.24.713 TIMING OF SEEDING AND PLANTING (1) Seeding and planting of disturbed areas must be conducted during the first appropriate period for favorable for planting after final seedbed preparation ~~but may not be more than 90 days after soil has been replaced~~; unless a variance is approved by the department. The appropriate period for favorable for planting is that planting time generally accepted locally for the type of plant materials selected to meet specific site and climatic conditions and climate.

AUTH: 82-4-204, MCA; IMP, 82-4-233, 82-4-234, 82-4-235, MCA

Rationale: 17.24.713 - In section (1), the deletion of the 90-day seeding requirement is proposed, because it has been found over the years to have little practical value in protecting soil resources. No equivalent language is found in the federal rules. Wet soil conditions or late-fall soil lay-down are generally the reasons cited for requesting a variance to the 90-day seeding requirement, and approval has been virtually automatic. An operator has no reason to needlessly delay seeding of a prepared seedbed.

Other changes are proposed for grammatical improvement.

17.24.716 METHOD OF REVEGETATION (1) All revegetation must be in compliance with the approved reclamation plan and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels.

(2) ~~An operator shall establish a permanent diverse vegetative cover of predominantly native species of the same seasonal variety and utility found on the premine area. Revegetation must be accomplished by drill or broadcast seeding or planting, by seedling transplants, by establishing sod plugs, or by other methods. All methods must have prior approval of the department. Revegetation must be capable of self-~~

regeneration. All seeding must be done on the contour, ~~unless otherwise approved by the department whenever possible. When grasses, shrubs, or forbs are seeded as a mixture, they may be drill seeded in separate rows at intervals specified in the standard soil conservation service (SCS) planting guidelines.~~ Mixed seedings must be conducted in a manner and at a time that will avoid deleterious competition of different vegetal types or to avoid seed distribution problems due to different seed sizes.

(3) and (4) Remain the same.

(5) Introduced species may:

(a) may be substituted for native species as part of an approved plan for alternate revegetation; ~~or~~

(b) constitute more than 50% of the revegetation cover as provided in 82-4-233(4) or in 82-4-235(2), MCA; or

(c) may be established as a part of the permanent diverse vegetative cover in compliance with ARM 17.24.728(2).

AUTH: 82-4-204, MCA; IMP, 82-4-233, 82-4-235, MCA

Rationale: 17.24.716 - In section (1), the word "vegetation" should be "revegetation" to provide both clarity and consistency with the title of the rule.

In the first sentence of section (2), as noted earlier for ARM 17.24.711(1), the Department proposes that the requirement to use "predominantly native species...found on the premine area" be transferred from 17.24.716(2) to 17.24.711(1). This transfer would place the predominantly-native requirement in a more appropriate rule. ARM 17.24.711(1) also contains other descriptors found in this rule (i.e., permanent, diverse, same seasonal variety and utility). In consideration of that repetition, deletion of these descriptors from ARM 17.24.716(2) is appropriate. Deletion of the words "or planting" is also appropriate, considering that "planting" is redundant to "seeding" in the context of the sentence. Planting of shrubs is covered by the phrase "seedling transplants".

In the third sentence of section (2), also as noted earlier for ARM 17.24.711(1), the Department proposes to transfer the requirement that revegetation be capable of self-regeneration from ARM 17.24.716(2) to 17.24.711(1). This transfer would place the self-regeneration requirement in a more appropriate rule.

In the fourth sentence of section (2), the requirement that "All seeding must be done on the contour unless otherwise approved by the department" has no federal counterpart. However, 82-4-231(1), MCA, requires that each operator revegetate affected lands using the most modern technology and the most advanced state of the art. Contour seeding represents state of the art technology, and should be required whenever it is possible. In addition, 82-4-233(2), MCA, requires that "the method of planting...

necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board". To provide more consistency with the language in ARM 17.24.702(4)(b), (6), and (7), and to eliminate the necessity of submitting minor revision requests when site conditions preclude contour seeding, the Department proposes that the sentence be rephrased as indicated.

In the fifth sentence of section (2), the discussion of a method of drill seeding as specified in standard SCS planting guidelines is obsolete and has no federal counterpart. Current Natural Resources Conservation Service (formerly the SCS) planting guidelines for row crops, hayland, special-use pasture, and rangeland do not specify seed row spacing intervals, as the fifth sentence of ARM 17.24.716(2) does. All coal-mine seeding is conducted using methods and equipment which have been approved by the Department, as required in the same paragraph of this rule. Due to the use of the word "may", the provision is really just an option for the operator's consideration, rather than a requirement. Therefore, this sentence is proposed for deletion.

In section (5), references to 82-4-233 and 82-4-235, MCA, are proposed to update the rule to reflect the 1995 and 1997 legislative amendments to these provisions of MSUMRA.

17.24.724 USE OF REVEGETATION COMPARISON STANDARDS (1) and (2) Remain the same.

(3) ~~(a)~~ Reference areas must be managed such that they are in at least a "good" range condition, as defined by the SCS US natural resources conservation service. When this required range condition has been achieved, the reference area must be grazed at an approved level.

~~(b)~~ (a) Where the operator has an approved enclosed reference area, prior to February 3, 1978, grazing is not necessary on that reference area. In this case the success of revegetation must be based on the ungrazed reference area. These operators shall initiate a study approved by the department that will demonstrate that the revegetated areas are capable of withstanding grazing pressure.

~~(c)~~ (b) If past management of the reference area has resulted in a disclimax such that the required range condition cannot be attained, the department may approve use of this area, may require designation of a different reference area, or may approve or require use of technical standards derived from historical data for determining success of revegetation.

~~(4)~~ ~~(a)~~ Revegetated areas and reference areas, when appropriate, must be grazed at an approved level for at least 2 years during the last 5 years of responsibility for vegetative establishment.

~~(b)~~ (a) Vegetation measurements (exclusive of grazing) must be conducted on the reclaimed areas and on reference areas

when appropriate for at least the last 2 years of this period of responsibility.

~~(e)~~ (b) Grazing must be conducted in a manner and at a time that does not preclude acquisition of appropriate vegetation production, cover and diversity data.

(5) Remains the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-233, 82-4-235, MCA

Rationale: 17.24.724 - The name of this agency has changed as indicated.

17.24.725 PERIOD OF RESPONSIBILITY (1) Except as provided in 82-4-235(2), MCA, et seq., The minimum period of responsibility for reestablishing vegetation begins after the last seeding, planting, fertilizing, irrigating, or other activity related to final reclamation as determined by the department unless it can be demonstrated that such work is a normal husbandry practice that can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success.

(2) Application for phase III bond release may not be submitted prior to the end of the tenth growing season.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-233, 82-4-235, MCA

Rationale: 17.24.725 - In section (1), the reference to 82-4-235, MCA, is proposed to update the rule to reflect the 1997 Legislature's amendments to this provision of MSUMRA.

17.24.726 VEGETATION PRODUCTION, COVER, DIVERSITY, DENSITY, AND UTILITY REQUIREMENTS (1) Remains the same.

(2) The current vegetative production must be measured by clipping and weighing each morphological class on the revegetated area and the reference areas (morphological classes must be segregated by native and introduced: annual grasses, perennial cool-season grasses, perennial warm-season grasses, annual forbs, biennial forbs, perennial forbs, shrubs and half-shrubs). Vegetative cover must be documented for each species present on revegetated areas and on all other areas where a vegetation data base is required. Except as provided in 82-4-233(4) or 82-4-235(2), MCA, ~~At~~ at least 51% of the species present on the revegetated areas must be native species genotypically adapted to the area. A countable species must be contributing at least 1% of the live cover for the area.

(3) through (9) Remain the same.

AUTH: 82-4-204, MCA; IMP, 82-4-233, 82-4-235, MCA

Rationale: 17.24.726 - In section (2), references to 82-4-233 and 82-4-235, MCA, are proposed to update the rule to reflect the 1995 and 1997 legislative amendments to these provisions of MSUMRA.

17.24.728 COMPOSITION OF VEGETATION Except as provided in 82-4-233(4) or 82-4-235(2), MCA. pPrior to phase III bond release the revegetated area must meet the following criteria:

(1) It must be composed of at least 51% native species based on stratified cover data derived in accordance with ARM 17.24.726 and 17.24.733.

(2) Introduced species may be present in a minority (less than 50% based on the stratified cover data) if it has been documented to the department's satisfaction that they have the ability to survive in the area through adverse climatic conditions, particularly drought. Introduced species must be as capable as native species of meeting the requirements of ARM 17.24.711, 17.24.730, 17.24.751, and 82-4-233(1), MCA.

AUTH: 82-4-204, MCA; IMP, 82-4-233, 82-4-235, MCA

Rationale: 17.24.728 - In section (1), references to 82-4-233 and 82-4-235, MCA, are proposed to update the rule to reflect the 1995 and 1997 legislative amendments to these provisions of MSUMRA.

At the end of section (2), the reference to 82-4-233 is proposed to be more specific (by adding "(1)"), to clarify which portion of this section of the Act is pertinent, because of the recent legislative changes referenced in the previous paragraph.

17.24.733 MEASUREMENT STANDARDS FOR TREES, SHRUBS, AND HALF-SHRUBS (1) Remains the same.

(2) When comparing the stocking rates of the revegetated area with the reference areas or historical record standard, only healthy, living plants may be counted.

~~(a) (3) Trees, shrubs, and half-shrubs counted for revegetation success must be at least 2 years old and at least 80% of these plants must have been in place for 60% of the applicable period of responsibility, and.~~

~~(b) whenever multiple stems occur, only the tallest stem may be counted.~~

(3) and (4) Remain the same in text, but are renumbered (4) and (5).

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-233, 82-4-235, MCA

Rationale: 17.24.733 - The proposed deleted provision is essentially impossible to apply to undisturbed clonal shrubs (e.g., snowberry, rose, and skunkbush), since it is impractical to try to determine how many stems constitute an individual. Compliance with the provision has never been required during baseline studies. The tallest-stem provision was presumably written to ensure that reclamation shrubs were not overcounted, but if it cannot be applied equitably to baseline/reference populations and reclamation populations, it only confuses the issue of woody taxa

density comparisons. There is no federal counterpart to the language proposed for deletion.

17.24.762 POSTMINING LAND USE (1) The postmining land use must be grazing land for livestock and wildlife, fish and wildlife habitat, or both, as outlined in 82-4-233(1), MCA, and ~~ARM 17.24.301(60)~~ unless alternate reclamation is approved under ARM 17.24.823 and, as appropriate, ARM 17.24.824.
AUTH: 82-4-204, MCA; IMP, 82-4-233, MCA

Rationale: 17.24.762 - The deletion of the reference to ARM 17.24.301(60) is proposed, because it is a definition and does not contain requirements. The addition of the reference to ARM 17.24.824 is proposed, because this rule involves criteria for alternate postmining land use.

17.24.815 PRIME FARMLANDS: REVEGETATION (1) Remains the same.

(2) All prime farmlands reclaimed either temporarily or permanently as cropland must meet the following revegetation requirements:

(2)(a) and (b) Remain the same.

(c) if row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth must be ~~± one~~ of the reference crops;

(2)(d) Remains the same.

(e) ~~(i)~~ revegetation success on prime farmlands must be determined upon the basis of a comparison of actual crop production on the disturbed area and the crop production on reference areas meeting the following requirements:

(2)(e)(i)(A) and (B) Remain the same in text, but are renumbered (2)(e)(i) and (ii).

~~(c)~~ ~~(iii)~~ the location of reference areas and the yields from them that are used to determine revegetation success pursuant to (e) ~~(i)~~ above must be determined with the concurrence of the Montana state office of the US ~~soil~~ natural resources conservation service.

~~(i)~~ ~~(f)~~ if undisturbed prime farmland is not available for comparison purposes, comparison of production on the disturbed area must be made with target yields approved by the department and meeting the following standards:

~~(a)~~ ~~(i)~~ target yields for a given year must be determined on the basis of current yield records of representative local farms, with the concurrence of the Montana state office of the US ~~soil~~ natural resources conservation service, or by the average county yields recognized by the US department of agriculture;

~~(b)~~ ~~(ii)~~ these yields must be adjusted as necessary by the Montana state office of the US ~~soil~~ natural resources conservation service for local yield variation that is associated with differences between undisturbed prime farmland soil and all other soils that produce the crops of interest

within the locale or the county;

~~(iii)~~ (g) under either procedure in (e) or (f) above, crop production of the reference area or the target yield must be adjusted, as necessary, with the concurrence of the Montana state office of the US ~~soil~~ natural resources conservation service, for:

(2) (e) (iii) (A) and (B) Remain the same in text, but are renumbered (2) (g) (i) and (ii).

~~(f)~~ (h) crop production on disturbed prime farmland must be determined based upon a minimum of 3 consecutive crop years of data;

(i) for permanent cropland, these 3 years of data must include the last year of a minimum 10-year period of responsibility preceding the application for phase ~~ff~~ III bond release;

(ii) for temporary test plots, these 3 years of data must include the last year of a minimum 10-year period of crop production;

(2) (g) Remains the same in text, but is renumbered (2) (i).

~~(h)~~ (j) Revegetation on prime farmland is considered successful when the crop yield for each of the 3 years is equivalent to, or higher than, that on the reference area or the target yield. This equivalence must be shown at least at the 10% level of significance using statistically appropriate sampling techniques approved by the department in consultation with the Montana state office of the US ~~soil~~ natural resources conservation service.

AUTH: 82-4-204, MCA; IMP, 82-4-227, 82-4-232, MCA

Rationale: 17.24.815 - The name of this agency has changed as indicated.

The change in (2) (c) is to correct grammar.

In (2) (f) (i), the change is to correct the reference to the phase of bond release (III) that addresses the primary revegetation requirements in the current bond release rules [ARM 17.24.1116(7) (c)].

17.24.821 ALTERNATE RECLAMATION: SUBMISSION OF PLAN

(1) Each operator who desires to conduct alternate reclamation pursuant to 82-4-232(7) and if alternate revegetation is proposed (8), MCA, for ~~alternate revegetation~~ shall submit his plan to the department. The plan must contain appropriate descriptions, maps and plans that show:

(1) (a) through (f) Remain the same.

(g) for areas proposed for alternate revegetation, the area(s) of undisturbed land to which the mined and reclaimed land shall be compared or technical standards derived from historical data as applicable in ARM 17.24.724(5), or target yields in the case of prime farmland as prescribed in ARM 17.24.815(2) (e), to which the mined and reclaimed land will be

compared and that will be used for bond release purposes.

(2) Remains the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-233, MCA

Rationale: 17.24.821 - The proposed changes in (1) are for clarification.

In (1)(g), the additional language regarding technical standards is in response to OSM comments (30 CFR 816/817.116(a)(1); OSM letter of July 10, 1997). The additional language on prime farmlands is for clarification regarding the standards that are applicable in this circumstance. The relocation of the phrase "to which the mined and reclaimed land shall be compared" is for clarification.

17.24.823 ALTERNATE RECLAMATION: APPROVAL OF PLAN AND REVIEW OF OPERATION (1) Remains the same.

(2) The department shall consult with the Montana state office of the US soil natural resources conservation service before approving alternate reclamation plans or revisions involving prime farmlands.

(3) Remains the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-232, MCA

Rationale: 17.24.823 - The name of the agency has changed as indicated.

17.24.825 ALTERNATE RECLAMATION: ALTERNATE REVEGETATION

(1) If the operator proposes to plant cereal crops or row crops alone or in rotation with hay or pasture crops, the following minimum criteria must be met:

(1)(a) Remains the same.

(b) Prior to mining, all soils within the proposed reclamation area must have been at least capability class IV, based on US soil natural resources conservation service criteria;

(1)(b)(i) and (ii) Remain the same.

(c) Soils proposed for use must have the following properties:

(1)(c)(i) and (ii) Remain the same.

(iii) after materials are replaced, no greater than moderate wind and water erosion hazards as determined by US soil natural resources conservation service procedures; and

(iv) levels of electrical conductivity, sodium adsorption ratio, and plant available water-holding capacity meeting the criteria for class III soils according to the Land Capability Guide for Montana, US soil conservation service, September 1, 1982 June 1988, which is hereby incorporated by reference into this rule. A copy of this document may be obtained from the natural resources conservation service.

(1)(d) through (1)(i) Remain the same.

(j) Soil amendments must be added in accordance with ARM ~~17.24.717~~ 17.24.718.

(2) Remains the same.

(3) Revegetation success on areas reclaimed to cereal or row crops alone or in rotation with hay or pasture crops must be determined on the basis of a comparison of crop production on the disturbed area with the same crops on an undisturbed reference area or with ~~target yields pursuant to the procedures and criteria of ARM 17.24.815(2)~~ technical standards derived from historical data (ARM 17.24.724(5)). The level of management on the reclaimed area must be equivalent to that on the reference area or on which the ~~target yields~~ technical standards are based.

(4) (a) Remains the same in text, but is renumbered (4).

(b) and (c) Remain the same, but are renumbered (a) and (b).

(5) and (6) Remain the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-233, MCA

Rationale: 17.24.825 - The name of the agency has changed as indicated in (1)(b) and (c)(iii). In (1)(c)(iv), the referenced publication has a new edition and the date has been updated, accordingly, because that is the edition that is most readily available. "Incorporated by reference..." has been added, because it is accepted practice to include it when referring to an outside reference. The location for obtaining a copy of the referenced document is added to assist operators.

The change in (1)(j) is a correction.

The change in section (3) is to make this provision consistent with the proposed revised language in ARM 17.24.821(1)(g).

17.24.901 GENERAL APPLICATION AND REVIEW REQUIREMENTS

(1) In addition to appropriate material required under subchapter 3, any plan for underground mining must include the following:

(1) (a) and (b) Remain the same.

(c) ~~(i)~~ a complete subsidence control plan for the proposed operation which must include:

(1) (c) (i) (A) through (C) Remain the same in text, but are renumbered (1)(c) (i) through (iii).

~~(D)~~ (iv) a description of the physical and geological conditions, such as depth of cover, seam thickness, and lithology of overlying strata, affecting the subsidence potential;

~~(E)~~ (v) an analysis of the amount and lateral extent of planned or controlled subsidence anticipated, using acceptable geotechnical practices, including specific methods proposed for the control of subsidence; and

~~(F)~~ (vi) a survey, including a map at 1":400' scale or

larger as determined by the department and a narrative, which shows the location and type of all structures, and renewable resource lands, and domestic water supplies within the permit area and adjacent areas, and whether subsidence, if it should occur, could cause material damage or diminish the reasonably foreseeable use of such structures or lands, or could contaminate, diminish, or interrupt such domestic water supplies; and

(vii) of the structures and domestic water supplies identified in (1)(c)(vi) above (the structure survey requirements of ARM 17.24.911(4) notwithstanding), a survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, and a determination, in accordance with ARM 17.24.304(5) and (6), of the quality and quantity of all domestic water supplies.

(A) The applicant must submit copies of the results of this survey and determination to the surface owner of the land where the above structures and domestic water supplies are found, as well as to the department.

(B) If the applicant cannot make this survey and determination because the surface owner will not allow access, the applicant must notify the surface owner, in writing, of the effect that denial of access will have on the rebuttable presumption of causation of subsidence as stated in ARM 17.24.911(8)(b). This notification must be documented in the application:

(i) If the plan shows that no such structures, or renewable resource lands, or domestic water supplies exist, or that no such material damage or diminution of the reasonably foreseeable use of such structures or lands, and no contamination, diminution, or interruption of such water supplies would occur as a result could be caused in the event of mine subsidence, and if the department agrees with such conclusion, no further information must be provided in the application under this section:

(e) In the event the survey shows such structures, or renewable resource lands, or water supplies exist, and that subsidence could cause material damage or diminution of value or foreseeable use of the land or contamination, diminution, or interruption of such water supplies, or if the department determines that such damage or diminution or contamination, diminution, or interruption could occur, the application must include the following information:

(i) a detailed description of the measures to be taken to prevent or minimize subsidence from causing material and subsidence-related damage or lessening the value or reasonably foreseeable use of the surface, including:

(A) the anticipated effects of planned subsidence, if any, and a map of the proposed underground mine workings which shows the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the measures in (1)(e)(i)(B) and (C) below will be taken to prevent or minimize subsidence and

subsidence-related damage, and to mitigate such damage;

~~(iii) (B)~~ measures, if any, to be taken in the mine to reduce the likelihood of prevent or minimize subsidence, including, but not limited to, such measures as backstowing or backfilling of voids, leaving support pillars of coal, and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place;

~~(iii) (C)~~ measures to be taken on the surface to prevent or minimize material damage or lessening of the value or the reasonably foreseeable use of structures or the surface, including such measures as reinforcement of sensitive structures or features, installation of footers designed to reduce damage caused by movement, change of location of pipelines, utility lines, or other features, relocation of movable improvements to sites outside the angle-of-draw, and monitoring to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent, or reduce minimize, or mitigate material damage in accordance with ARM 17.24.911. For areas where planned subsidence is proposed, written consent or request by the owners of non-commercial buildings and occupied residential dwellings and structures related thereto that material damage minimization measures should not or need not be taken may be provided in lieu of a description of minimization measures to be taken;

~~(b) (ii)~~ a detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands that may occur, including 1 or more of the following:

~~(i) (A)~~ restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

~~(ii) (B)~~ replacement of structures and water sources adversely affected by subsidence;

~~(iii) (C)~~ purchase of structures prior to mining and restoration of the land after subsidence to a condition capable of supporting and suitable for the structures and foreseeable land uses; and

~~(iv) (D)~~ purchase of non-cancelable insurance policies payable to surface owner in the full amount of the possible material damage or other comparable measures;

~~(e) (iii)~~ a detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as:

~~(i) (A)~~ the results of presubsidence surveys of all structures and surface features that might be materially damaged by subsidence;

~~(ii) (B)~~ monitoring proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation;

(iv) any other information that the department deems necessary to demonstrate compliance with ARM 17.24.911;

(1)(d) through (h) Remain the same in text, but are renumbered (1)(f) through (i).

(2) Remains the same.

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

Rationale: 17.24.901 - These changes are proposed for the purpose of complying with federal rule changes (30 CFR 784.20; OSM letter of June 5, 1996).

17.24.903 GENERAL PERFORMANCE STANDARDS (1) In addition to all appropriate requirements of subchapters 4 through 8, and 10 through 13, except ARM 17.24.519, the following requirements apply to underground mining operations:

(a) Each exploration prospecting hole, other drill hole or borehole, shaft, well, or other exposed underground opening must be cased, lined, or otherwise managed as approved by the department to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the mine plan and adjacent area, and the safety and integrity of underground mines in the area, present and future. Each exploration prospecting hole, drill hole, borehole, or well that is uncovered or exposed by mining operations must be permanently sealed, in compliance with ARM 17.24.1005, unless approved for water monitoring or otherwise managed in a manner approved by the department. Use of a drilled hole or monitoring well as a water well must meet the provisions of ARM 17.24.647. This rule does not apply to holes drilled and used for blasting in the area affected by surface operations.

(1)(b) Remains the same.

(c) Each exploration prospecting hole, other drill hole or borehole, shaft, well, and other exposed underground opening that has been identified in the approved permit application for use to return underground development waste, coal processing waste, water to underground workings, or to be used to monitor ground water conditions, must be temporarily sealed until actual use.

(d) When no longer needed for monitoring or other use approved by the department and upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, exploratory prospecting hole, entry way or other opening to the surface from underground must be capped, sealed, backfilled, or otherwise properly managed, as required by the department in accordance with (1)(a), (g), (h), and (i). Permanent closure measures must be designed to prevent access to the mine workings by people, livestock, fish, wildlife, and machinery and to keep acid or other toxic drainage from entering ground or surface waters.

(1)(e) through (j) Remain the same.

AUTH: 82-4-204, MCA; IMP, 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

Rationale: See 17.24.313 for explanation.

17.24.911 SUBSIDENCE CONTROL (1) Underground mining operations must be planned and conducted to prevent or minimize subsidence from causing and subsidence-related material damage to the surface to the extent technologically and economically feasible, and to maintain the value and reasonably foreseeable use of surface lands, and to prevent contamination, diminution, and interruption of domestic water supplies. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence.

(2) If the operator utilizes planned and controlled subsidence in the mining operation, all necessary measures must be taken to minimize material damage to non-commercial buildings and occupied residential dwellings and all structures related thereto, to the extent technologically and economically feasible. Such measures are not required if the operator has the written consent of the owners of such structures.

(3) Nothing herein prohibits the standard method of room and pillar mining.

(2) through (4) Remain the same in text, but are renumbered (4) through (6).

+5+ (7) An operator who conducts underground mining which results in subsidence that causes material damage or reduces the value or reasonably foreseeable use of the surface lands shall, in accordance with 82-4-243, MCA, and with respect to each surface area affected by subsidence:

(a) restore, rehabilitate, or remove and replace each damaged structure, feature or value promptly after the damage is suffered to the condition it would have been in if no subsidence had occurred and restore the land to a condition capable of supporting the reasonably foreseeable uses it was capable of supporting before subsidence; or

(b) purchase the damaged structure or feature for its fair market, presubsidence value, and, after subsidence occurs, to the extent technologically and economically feasible, promptly restore the land surface to a condition capable of and suitable for supporting the purchased structure and other foreseeable uses it was capable of supporting before mining. Nothing in this section grants or authorizes an exercise of the power of condemnation or the right of eminent domain by any person engaged in underground mining operations; or

(c) compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence, by purchasing, prior to mining, a noncancellable, premium-prepaid insurance policy or other means approved by the department, thereby assuring before mining begins that payment will occur; indemnify every person with an interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence; and

(d) replace any adversely affected domestic water supply.

(8) If damage to any non-commercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption of causation of the damage by subsidence exists. The presumption applies to a 30-degree angle of draw.

(a) An operator or permit applicant may request that the presumption apply to an angle of draw different from 30 degrees. The department may approve application of the presumption to a site-specific angle of draw different from 30 degrees if an operator or applicant demonstrates and the department determines in writing that the proposed angle of draw has a more reasonable basis than 30 degrees, based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

(b) If the operator or applicant is denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with ARM 17.24.901(1)(c)(i)(G), no rebuttable presumption exists.

(c) The presumption of causation must be rebutted, if the evidence establishes that:

(i) the damage predated the mining in question;

(ii) the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or

(iii) the damage occurred outside the surface area circumscribed by the angle of draw.

(d) In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and available information will be considered by the department.

(6) (9) Within a schedule approved by the department, the operator shall submit a detailed plan of the underground workings. The plan shall include maps and descriptions of significant features of the underground workings, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damages, areas of full extraction, and other information required by the department.

(10) If subsidence-related damage occurs, additional bond in accordance with ARM 17.24.1104(2) may be required.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, 82-4-231, MCA

Rationale: 17.24.911 - The proposed changes are for the purpose of complying with federal rule changes (30 CFR 817.121(a) and (c); OSM letter of June 5, 1996).

17.24.924 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: GENERAL REQUIREMENTS (1) through (14) Remain the same.

(15) An alternative subdrainage system may be utilized

~~after approval by the department upon a thorough analytical demonstration that such an alternative will ensure the applicable static safety factor, stability of the fill, and protection of the surface and ground water in accordance with applicable rules.~~

(16) through (18) Remain the same in text, but are renumbered (15) through (17).

(19)(a) through (f) Remain the same in text, but are renumbered (18) through (18)(e).

(20) Remains the same in text, but is renumbered (19).

~~(21)~~ (20) Disposal of underground waste by incorporation into spoils backfill of excavation areas must be in accordance with (3) and ~~(20)~~ (19) of this rule.

AUTH: 82-4-204, 82-4-205, 82-4-231, MCA; IMP, 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

Rationale: 17.24.924 - The deletion of (15) is made in response to OSM comments 16 and 17 on updating Montana's rules (30 CFR 817.83(a)(3), 817.102(e), 817.71(f)(3), 817.73; OSM letter of July 10, 1997, issues 16 and 17).

17.24.925 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: VALLEY FILL (1) Remains the same.

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

(3) through (5) Remain the same.

AUTH: 82-4-204, 82-4-205, 82-4-231, MCA; IMP, 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

Rationale: See 17.24.313 for explanation.

17.24.927 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: DURABLE ROCK FILLS (1)(a) through (c) Remain the same in text, but are renumbered (1) through (1)(b).

(2)(a) through (c) Remain the same in text, but are renumbered (2) through (2)(b).

(3)~~(a)~~ The design of the durable rock fill must include an internal drainage system, in accordance with ARM 17.24.924(14) or ~~(15)~~, that will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet-weather seeps.

(3)(b) through (d) Remain the same in text, but are renumbered (3)(a) through (c).

(4) through (7) Remain the same.

AUTH: 82-4-204, 82-4-205, 82-4-231, MCA; IMP, 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

Rationale: 17.24.927 - The deletion of the reference to section (15) of ARM 17.24.924 is made in response to the proposed deletion of ARM 17.24.924(15) above.

17.24.932 DISPOSAL OF COAL PROCESSING WASTE (1) through (4) Remain the same.

(5) ~~(a)~~ All coal processing waste disposal areas must be inspected, on behalf of the operator, by a qualified and registered professional engineer, in accordance with ARM 17.24.924 and the additional requirements of this section.

~~(b)~~ (a) Inspection must occur at least quarterly, beginning within 7 days after the preparation of the disposal area begins, and be made in accordance with the same critical construction period schedule as contained in ARM 17.24.924 ~~(19)~~ ~~(b)~~ (18) (a). The department may require more frequent inspection based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources.

(5) (c) and (d) Remain the same in text, but are renumbered (5) (b) and (c).

(6) through (10) Remain the same.

AUTH: 82-4-204, 82-4-205, 82-4-231, MCA; IMP, 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

Rationale: 17.24.932 - The change in (5) (b) is due to the proposed numbering changes of the sections in ARM 17.24.924.

17.24.1001 PERMIT REQUIREMENT (1) A person who intends to prospect for coal or uranium on land not included in a valid strip or underground mining permit must obtain a prospecting permit from the department if the prospecting will:

(a) be conducted to determine the location, quality or quantity of a ~~natural~~ mineral deposit and will substantially disturb, as defined in ARM 17.24.301, the natural land surface; or

(1) (b) Remains the same.

(2) An application for a prospecting permit must be made on forms provided by the department and must be accompanied by the following information:

(2) (a) Remains the same.

(b) documentation that the proposed ~~exploration~~ prospecting program would not adversely affect any area possessing special, exceptional, critical, or unique characteristics as defined in 82-4-227, MCA. The applicant shall promptly report the existence of such characteristics if in the course of prospecting he becomes aware of them;

(2) (c) through (f) Remain the same.

(2) (g) and (2) (g) (i) Remain the same.

(ii) whenever prospecting by test hole is proposed, the maps must include proposed locations of test holes. Specific locations for initial ~~exploration~~ prospecting shall be shown by quarter section, section, township, and range. New road construction for drill rig or seismic equipment access must be clearly indicated on the maps. Permanent roads, and roads that are to be abandoned, must be identified;

(2) (g) (iii) Remains the same.

(h) a narrative description of the exploration prospecting program including at a minimum:

(i) a description of the proposed method of exploration prospecting;

(ii) the type of equipment to be used in the exploration prospecting;

(iii) the size, depth, and number and location by legal description, of proposed drill holes (refer to map location), the depth(s) of any known subsurface ground water occurring above the deepest projected depth of the exploration prospecting operation, the drilling medium used (air, water, mud, etc.), and the method of containing drilling fluids;

(2)(h)(iv) through (vii) Remain the same.

(i) Remains the same.

~~(j) the source of the applicant's legal right to prospect for the mineral or minerals on the land affected by the permit, including a listing of all surface and subsurface estate owners. The listing must include the their current mailing addresses, and phone numbers of each party affected;~~

~~(k) copies of the documents upon which the applicant bases his or her legal right to prospect for the mineral or minerals on the land affected;~~

~~(l) documentation that the owners of the land affected have been notified and understand that the department must make investigations and inspections necessary to ensure compliance with the Act, applicable rules, and permit conditions;~~

~~(m) an estimated timetable for conducting and completing each phase of exploration prospecting and reclamation;~~

(2)(l) and (m) Remain the same in text, but are renumbered (2)(n) and (o).

(3) Remains the same.

(4) Each person who conducts prospecting shall, while in the exploration prospecting area, have available a copy of the prospecting permit for review by the department upon request.

(5) Remains the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-226, MCA

Rationale: See 17.24.313 for explanation of the change from "exploration" to "prospecting".

The change in (1) is to reflect a change in 82-4-226, MCA that was passed in the 1997 legislative session.

The first portion of (2)(j) is proposed to be moved (with revised language) to (2)(k) for ease of comprehension. The proposed change in the language of documenting the prospecting applicant's legal right to prospect is for consistency with the same language proposed in 17.24.303(14) for mining operations. The other changes in (2)(j) are for clarity and simplification.

The new language proposed for (2)(l) is necessary, because landowners must be made aware of the prospector's liability

under a prospecting permit, and of the Department's responsibility to inspect prospecting operations to insure compliance with the Act, the rules, and approved prospecting permits. Prospectors do not necessarily have the same control of lands, or access to lands, outside mine permit areas as miners do within a mine permit area. This may be especially true over the five or more years that a bond is held in relation to prospecting related reclamation requirements. In the past, the Department has encountered complications in conducting inspections, and in relation to expediting remedial reclamation work, on sites not owned or controlled by, or accessible to, prospecting permittees.

The prospectors must advise landowners of the need for the Department to inspect prospecting operations during the conducting of prospecting activities, and as necessary during the liability period. Landowners must also be made aware of the potential need for the Department and prospectors to revisit permitted sites, should remedial reclamation work prove to be necessary during the responsibility period. This must be documented prior to the granting of a prospecting permit under ARM 17.24.1001 (or 17.24.1018; see below).

17.24.1002 INFORMATION AND MONTHLY REPORTS (1) Whenever the department must investigate possible environmental damage or complaints which may occur as a direct result of prospecting activities conducted by means of drilling, the prospector shall furnish sufficient information to the department to facilitate such investigation. Such information must include, but is not limited to, stratigraphic findings, geophysical and lithological logs, construction details (for example, on roads and environmental monitoring sites), and related data.

(2) A monthly report must be submitted for each successive 30 day period no later than the 15th of the following month, provided, however, that monthly reports need not be submitted for 30 day periods of inactivity. Reports must include, but are not limited to, the following information:

(2)(a) through (i) Remain the same.

(j) description of any activity that substantially disturbs land or water resources pursuant to ARM 17.24.301(117);

(k) mapped location of any surface disturbance such as road, disposal pit, or mud pit construction;

~~(*) (l) mapped location and description of areas seeded or otherwise reclaimed; and~~

~~(*) (m) anticipated location of activity in next reporting period.~~

(3) Transfer of a prospecting permit must meet the same requirements as for a transfer of mining permit in ARM 17.24.418 (1) and (2). Annual reports must be filed in accordance with 82-4-226(7) and 82-4-237, MCA, and must include the information required under (2) of this rule for all activities conducted during the report year.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-226, MCA

Rationale: 17.24.1002 - The changes made to ARM 17.24.1002(1) are necessary, because of the activities now covered under prospecting operations that "substantially disturb". ARM 17.24.1018(4)(b) and (6)(b) under the rule revision package, requires: "A notice of intent to prospect for prospecting operations that will substantially disturb...the natural land surface, must contain...a statement that information required in ARM 17.24.1002(1) and (2) will be provided...". A notice of intent to prospect applies, but is not limited, to activities that substantially disturb the surface, but "are not conducted for the purpose of determining the location, quality or quantity of a natural mineral deposit..." [17.24.1018(1)(b)(i)]. "Substantially disturb" covers more than just drilling; it also means removal of vegetation, construction of roads, and other activities (see 17.24.301(11) in the current rules; renumbered to (117) in this rule revision package).

The proposed addition of new language under (2)(j) is to allow for the requirements of ARM 17.24.1018. As indicated in the previous paragraph a notice of intent to prospect that "substantially disturbs" the land involves activities that are not associated with determining the location, quality, or quantity of the mineral. Thus, this new subsection (j) is needed to address this circumstance.

The change in (2)(1) is necessary to demonstrate progress made on all reclamation work required by permit -- e.g., documentation that road construction or improvement, disposal pit construction and use, soil handling, regrading, resoiling, and revegetation -- has been conducted in compliance with permit requirements and in accordance with ARM 17.24.1001, 17.24.1005, 17.24.1006, 17.24.1007, 17.24.1008, etc.

The deleted language in (3) is proposed to be relocated in a revised form to ARM 17.24.1003(2), which is a more appropriate location.

The new language in (3) is for completeness and clarification with regard to requirements in 82-4-226(7) and 82-4-237, MCA, and ARM 17.24.1129. While annual reports have always been required by the Montana Strip and Underground Mine Reclamation Act and related sections of ARM, and permittees have in fact filed these reports thereby, the annual report requirements have never been clearly, concisely and logically "locatable" in Subchapter 10, the "Prospecting" permit and compliance section of ARM.

17.24.1003 RENEWAL OF PERMITS (1) An application for

renewal of a prospecting permit must be submitted by the permittee on forms provided by the department. The application must be submitted at least 120 but not more than 150 days prior to the anniversary date of the permit and must include:

(1) through (6) Remain the same in text, but are renumbered (a) through (f).

(2) No transfer or assignment of any prospecting permit may be made without the prior written approval of the department.

(3) The department may not approve any transfer or assignment of any permit unless the potential transferee or assignee:

(a) obtains the performance bond coverage of the original permittee by:

(i) obtaining transfer of the original bond;

(ii) obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the department. If such an agreement is reached, the department may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement; or

(iii) providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; and

(b) provides the department with an application for approval of such proposed transfer, assignment, or sale, including:

(i) the name and address of the existing permittee;

(ii) the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent and a brief description of the proposed transaction; and

(iii) the same information as is required in subchapter 10 for applications for new permits.

(4) The successor shall immediately provide notice to the department of the consummation of the transfer, assignment, or sale of permit rights. Upon receipt of this notice, the department shall release the original permittee from all obligations not retained under (3) of this rule.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-226, MCA

Rationale: 17.24.1003 - This rule is proposed to be revised by shifting the provisions for transfer of a prospecting permit from ARM 17.24.1002(3) to a new section (2) in this rule; this is a more logical location than in ARM 17.24.1002, INFORMATION AND MONTHLY REPORTS.

For ease of use, the Board proposes to repeat the language of ARM 17.24.418(1) and (2) here, instead of merely

referencing it. In so doing there is one change germane to this language that is needed; in (3)(b)(iii), "subchapter 3" [as is stated in ARM 17.24.418(2)(b)(iii)] is changed to "subchapter 10", because the latter, not the former applies to prospecting.

One additional provision is proposed to be added as (4); this is language taken from ARM 17.24.418(5)(b) on mine permit transfers. This is a reasonable requirement, because the Department cannot release the previous permittee from all appropriate obligations until it is notified by the applicant of consummation of the prospecting permit transfer.

17.24.1005 DRILL HOLES (1) and (2) Remain the same.

(3) Unless alternative procedures are approved or required by the department, the prospector shall use the following reclamation techniques:

(3)(a) and (b) Remain the same.

(c) promptly after exploration prospecting on a site is completed, and unless otherwise approved by the department, all drill holes must be abandoned in accordance with the following:

(3)(c)(i) through (iii) Remain the same.

(3)(d) through (4) Remain the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-226, MCA

Rationale: 17.24.1005 - See explanation under ARM 17.24.313 for the change of "exploration" to "prospecting".

17.24.1006 ROADS AND OTHER TRANSPORTATION FACILITIES

(1) The prospector shall limit vehicular travel on other than established graded and surfaced roads to the minimum that is necessary to conduct the exploration prospecting. Travel must be confined to graded and surfaced roads during periods when excessive damage to vegetation or erosion of the land surface could result.

(2) Remains the same.

(3) Existing roads and transportation facilities may be used for exploration prospecting in accordance with the following:

(3)(a) through (c) Remain the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

Rationale: 17.24.1006 - See explanation under ARM 17.24.313 for the change of "exploration" to "prospecting".

17.24.1010 REMOVAL OF EQUIPMENT All equipment and facilities must be promptly removed from the exploration prospecting area when no longer needed for exploration or reclamation, except for equipment and facilities that the department determines may remain to:

(1) through (3) Remain the same.

AUTH: 82-4-204, MCA; IMP, 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

Rationale: 17.24.1010 - See explanation under ARM 17.24.313 for the change of "exploration" to "prospecting".

17.24.1014 TEST PITS: APPLICATION REQUIREMENTS, REVIEW PROCEDURES, BONDING, AND ADDITIONAL PERFORMANCE STANDARDS (1) In addition to all the other performance standards set forth in ARM 17.24.1005 through 17.24.1012, prospecting test pits must also comply with the following requirements:

(1)(a) Remains the same.

(b) Applications, permits, bonds, ~~exploration prospecting~~ activities, and related procedures, and reclamation relating to test pits or excavations that are to produce test shipments of minerals, must comply with the applicable provisions of subchapters 3 and 5 through 9, and ARM 17.24.1101 through 17.24.1122, 17.24.1125, 17.24.1129, and 17.24.1131 through 17.24.1138.

(2) An application for a coal test pit prospecting permit must contain:

(2)(a) through (c) Remain the same.

(d) evidence that sufficient reserves of mineral are available to the person conducting the ~~exploration prospecting~~ or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of mineral to be removed is not the total reserve, but is a sampling of a larger reserve; and

(2)(e) through (3) Remain the same.

(4) Subchapter 4 is applicable to test pit prospecting permit applications and permits with the following additional requirements:-

(a) The notice of receipt of application published by the applicant must contain, in addition to the information required in ARM 17.24.401(3), the date the application was filed.

(b) The affirmative demonstration and written findings required for the application by ARM 17.24.405(6) must also include the items listed in (2) above.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-226, MCA

Rationale: 17.24.1014 - See explanation under ARM 17.24.313 for the change of "exploration" to "prospecting".

The reorganization of section (4) is to promote clarity because of the additional language proposed as (4)(b).

The changes proposed in (4)(a) are for the purpose of clarification.

New subsection (4)(b) is in response to OSM requirements (30 CFR 772.14(b); OSM letter of July 10, 1997, issue 18d).

17.24.1017 BOND RELEASE PROCEDURES FOR DRILLING OPERATIONS

- (1) Remains the same.
 - (2) The bond release application must be submitted in duplicate and must include:
 - (2) (a) and (b) Remain the same.
 - (c) final updated, certified maps that include the precise location of each exploration prospecting disturbance and each permitted site that remains undisturbed. Maps must be of a workable scale with topographic delineations equal to or better than those found on United States geological survey topographic maps;
 - (2) (d) and (e) Remain the same.
 - (3) At the time of filing an application for bond release, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement must:
 - (3) (a) through (c) Remain the same.
 - (d) describe the extent of disturbance, in acres, or for exploration prospecting drilling, the total number of drill holes;
 - (3) (e) through (7) Remain the same.
- AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-226, 82-4-232, 82-4-235, MCA

Rationale: 17.24.1017 - See explanation under ARM 17.24.313 for the change of "exploration" to "prospecting".

17.24.1018 NOTICE OF INTENT TO PROSPECT (1) and (2) Remain the same.

(3) The notice must include copies of the documents upon which the applicant bases his or her legal right to prospect on the land affected.

(4) The notice must document that the owners of the land affected have been notified and understand that the department shall make investigations and inspections necessary to ensure compliance with the Act, applicable rules, and permit conditions. The notice must also include the current mailing address and phone number of each affected landowner.

(3) Remains the same in text, but is renumbered (5).

~~†††~~ (6) A notice of intent to prospect for prospecting operations that will substantially disturb, as defined in ARM 17.24.301, the natural land surface, must contain the following:

(4) (a) and (b) Remain the same in text, but are renumbered (6) (a) and (b).

(c) a statement that exploration prospecting activities will be conducted in compliance with the requirements of ARM 17.24.1004 through 17.24.1013 and sufficient information to demonstrate to the department's satisfaction that the performance standards of these rules will be met.

(5) Remains the same in text, but is renumbered (7).

~~†††~~ (8) Each person who conducts prospecting which substantially disturbs the natural land surface shall, while in the exploration prospecting area, have available to the

department for review upon request a copy of the notice of intent to prospect.

(7) Remains the same in text, but is renumbered (9).

AUTH: 82-4-205, 82-4-226, MCA; IMP, 82-4-226, MCA

Rationale: 17.24.1018 - The proposed change in (1) is for grammatical correctness.

Newly formulated section (3) is proposed for the same reasons given for the same language in ARM 17.24.1001(2)(k).

The first sentence in new section (4) is being added for consistency with the same requirement that is being proposed as ARM 17.24.1001(2)(l). The second sentence in section (4) is being proposed for consistency with ARM 17.24.1001(2)(j).

See explanation under ARM 17.24.313 for the change of "exploration" to "prospecting".

17.24.1104 BONDING: ADJUSTMENT OF AMOUNT OF BOND

(1) Remains the same.

(2) When subsidence-related material damage to land, structures, or facilities protected under ARM 17.24.911(7)(a) through (c) occurs, or when contamination, diminution, or interruption to a domestic water supply protected under ARM 17.24.911(7)(d) occurs as a result of underground mining activities, the department shall require the operator to obtain additional performance bond in the amount of the estimated cost of the repairs if the operator will be repairing damage, or in the amount of the decrease in value if the operator will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the operator will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The department may extend the 90-day time frame, not to exceed 1 year, if the operator demonstrates and the department finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes affecting the protected water supply have occurred, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of a protected water supply.

(2) through (4) Remain the same in text, but are renumbered (3) through (5).

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA

Rationale: 17.24.1104 - The proposed additional language is for the purpose of addressing federal rule changes (30 CFR 817.121(c)(5); June 5, 1996 letter from OSM).

17.24.1111 BONDING: BOND RELEASE APPLICATION CONTENTS

(1) through (3) Remain the same.

(4) Each application for partial or full bond release must include a notarized statement which certifies that all applicable reclamation requirements have been achieved in accordance with the Act, the rules, and the approved reclamation plan.

(4) and (5) Remain the same in text, but are renumbered (5) and (6).

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA

Rationale: 17.24.1111 - This requirement is being added in response to OSM comments on the need to update our rules to federal standards (30 CFR 800.40(a)(3); issue V.A. of OSM letter dated June 26, 1997).

17.24.1112 BONDING: ADVERTISEMENT OF RELEASE APPLICATIONS AND RECEIPT OF OBJECTIONS

(1) At the time of filing an application for bond release, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement must:

(1)(a) through (g) Remain the same.

(h) state that written comments, objections, and requests for public hearing or informal conference may be submitted to the department by any affected person, and provide the address of the department and the closing date by which comments, objections, and requests must be received.

(2) Remains the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA

Rationale: 17.24.1112 - This proposed change is for consistency with section (2) of this rule.

17.24.1116 BONDING: CRITERIA AND SCHEDULE FOR RELEASE OF BOND

(1) through (7) Remain the same.

(8) Following final bond release, the department shall reassert jurisdiction under the Act and this chapter if it is demonstrated that the bond release or statement of reasons made pursuant to ARM 17.24.1114(4) was based upon fraud, collusion, or misrepresentation of a material fact.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA

Rationale: 17.24.1116 - See explanation under ARM 17.24.1116A below.

17.24.1132 AREAS UPON WHICH COAL MINING IS PROHIBITED: DEFINITIONS AND STANDARD FOR MEASUREMENT OF DISTANCES (1) For the purpose of 82-4-227(13), MCA, the following definitions apply:

(a) "valid existing rights" means:

(1)(a)(i) through (iii) Remain the same.

(iv) "valid existing rights" does not mean mere expectation of a right to conduct strip or underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal ~~exploration prospecting~~ permits or licenses, applications or bids for leases, or where a person has only applied for a state or federal permit;

(1)(b) through (2) Remain the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA

Rationale: 17.24.1132 - See ARM 17.24.313 for explanation.

17.24.1143 DESIGNATION OF LANDS UNSUITABLE: PROSPECTING ON DESIGNATED LANDS (1) Prospecting operations on any lands designated unsuitable for strip or underground mining operations, pursuant to 82-4-228, MCA, and this subchapter, must be approved by the department under subchapter 10 and must insure that ~~exploration prospecting~~ does not interfere with any value for which the area has been designated unsuitable for strip or underground coal mining.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA

Rationale: 17.24.1143 - See explanation under ARM 17.24.313.

17.24.1221 SMALL OPERATOR ASSISTANCE PROGRAM: PROGRAM SERVICES (1) To the extent possible with available federal funds, the department shall, for a coal mine operating permit applicant who meets the criteria of ARM 17.24.1222 and who requests assistance, ~~(1) select and pay a qualified laboratory contractor or consultant to:~~

(a) determine for the applicant the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with ARM 17.24.1225; and

(b) prepare a statement of the results of test borings or core samplings in accordance with ARM 17.24.1225; and

~~(2) (c) collect and provide general hydrology information on the basin or subbasin areas within which the anticipated mining will occur. The information provided must be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area; and~~

(d) provide other services specified in ARM 17.24.1225.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA

Rationale: 17.24.1221 - These changes are in response to OSM requirements: 30 CFR 795.3; OSM letter of June 26,

1997, issue X.A.1.

17.24.1222 SMALL OPERATOR ASSISTANCE PROGRAM: ELIGIBILITY FOR ASSISTANCE An applicant is eligible for assistance if he or she:

(1) intends to apply for a permit pursuant to the Act;
(2) establishes that the probable total actual and attributed coal production of the operation for each year of the permit will not exceed ~~100,000~~ 300,000 tons. Production from the following operations must be attributed to the applicant:

~~(a) all coal produced by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or in any other manner whatsoever, by the applicant;~~

~~(b) (a) the pro rata share, based upon percentage of beneficial ownership by the applicant, of coal produced by operations in which the applicant owns more than a 5 10% interest;~~

~~(c) (b) all coal produced by operations owned by persons who own more than 5% of the applicant or who directly or indirectly control the applicant by reason of stock ownership, direction of the management or in any other manner whatsoever;~~

~~(d) (c) the pro rata share, based upon percentage of ownership of the applicant, of coal produced by in other operations owned or controlled by the persons who owns or controls more than 10% of the applicant's operation;~~

~~(e) (d) all coal produced by operations owned by the family and relatives of the applicant, unless there is no direct or indirect business relationship between or among the individuals; and~~

(3) has not organized or reorganized his or her company solely for the purpose of obtaining assistance.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA

Rationale: 17.24.1222 - These changes are in response to OSM requirements [30 CFR 795.6(a)(2)(i) and (ii); OSM letter of June 26, 1997 letter, issue X.A.2.], to clarify language, and to correct punctuation.

17.24.1223 SMALL OPERATOR ASSISTANCE PROGRAM: FILING FOR ASSISTANCE Each applicant shall submit the following information to the department:

(1) through (4) Remain the same.

(5) a ~~US geological survey~~ topographic map of ~~1:24,000~~ 1":400' scale or larger or other scale approved by the department topographic map of equivalent detail that clearly shows:

(5)(a) through (e) Remain the same.

(6) copies of documents which show that:

(a) the applicant has a legal right to enter and commence mining within the permit area; and

(b) a legal right of entry has been obtained for the

department, contractor, consultant, and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA

Rationale: 17.24.1223 - The change in (5) is for consistency with the program standards under ARM 17.24.302(7), 17.24.304(9)(a), and 17.24.304(11)(b). The change in (6)(b) is in response to OSM requirements (30 CFR 795.3; OSM letter of June 26, 1997, issue X.A.1).

17.24.1224 SMALL OPERATOR ASSISTANCE PROGRAM: APPLICATION APPROVAL AND NOTICE (1) If the department finds the applicant eligible, and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

(a) determine the minimum data requirements necessary to meet the provisions of ARM 17.24.1225; and

(b) select the services of 1 or more qualified laboratories, contractors, and/or consultants to perform the required work. A copy of the contract or other appropriate work must be provided to the applicant.

(2) Remains the same.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA

Rationale: 17.24.1224 - These changes are in response to OSM requirements: 30 CFR 795.3; OSM letter of June 26, 1997, issue X.A.1.

17.24.1225 SMALL OPERATOR ASSISTANCE PROGRAM: DATA REQUIREMENTS (1) The department shall determine the data collection requirements for each applicant based on:

(a) the extent of currently available hydrologic, and core analysis, and other resource or environmental data for the applicable area; and

(b) the data collection and analysis guidelines developed and provided by the federal coal regulatory authority requirements of subchapter 3 and any other applicable portions of these rules.

(2) Data collection and the results provided must be sufficient to satisfy the requirements for:

(a) ~~A~~ a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off-site, must be made by a qualified laboratory;

(i) The data required for this determination must be collected pursuant to ARM 17.24.304(5) and (6);

(ii) The determination of probable hydrologic consequences must be made pursuant to ARM 17.24.314;

(iii) The report of the determination must include engineering analyses and designs necessary for the determination;

(b) ~~The applicant shall include a statement of the results of test borings or core samplings from the proposed permit area, including information on overburden and coal, as required by ARM 17.24.304(7) and 17.24.322(2)(a).~~

~~(c) the preparation of maps, cross-sections, and plans under subchapter 3 to the extent allowed by 30 CFR 779.25 and 783.25;~~

~~(d) cultural and historic information pursuant to ARM 17.24.304(2) and (4) and the development of mitigation measures pursuant to ARM 17.24.318;~~

~~(e) preblasting surveys pursuant to ARM 17.24.622;~~

~~(f) climatological information and an air pollution control plan pursuant to ARM 17.24.304(8) and 17.24.311, respectively;~~

~~(g) a vegetation survey and revegetation plan pursuant to ARM 17.24.304(9) and 17.24.313(5) and applicable rules in subchapter 7, respectively;~~

~~(h) a fish and wildlife survey and a fish and wildlife plan pursuant to ARM 17.24.304(10) and 17.24.312, respectively;~~

~~(i) a soil survey and a soil salvage and redistribution plan pursuant to ARM 17.24.304(11) and 17.24.313(4) and applicable rules in subchapter 7, respectively; and~~

~~(j) a statement of the condition, capability and productivity of the land pursuant to ARM 17.24.304(12).~~

(3) The statement by a qualified laboratory under (2)(b) of this rule may be waived by the department by a written determination that such requirements are unnecessary with respect to the specific permit application.

(4) Data collected under this program must be made available to all interested persons.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA

Rationale: 17.24.1225 - These changes are in response to OSM requirements: 30 CFR 795.9(a) and (b)(1) through (6); OSM letter of June 26, 1997, issue X.A.3.

17.24.1226 SMALL OPERATOR ASSISTANCE PROGRAM: QUALIFICATION OF LABORATORIES, CONSULTANTS, AND CONTRACTORS (1) The department shall designate qualified laboratories, consultants, and contractors. To receive such a designation, laboratories shall apply to the department and provide such information as is necessary to establish the qualifications required by (2) of this rule.

(2) ~~††~~ To qualify for designation a laboratory firm shall demonstrate that it:

~~††† (a) is staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed capable of performing any or all of the work described in ARM 17.24.1225(2);~~

~~†††† (b) is capable of collecting necessary field data and samples;~~

~~††††† (c) has adequate space for material preparation~~

cleaning and sterilizing necessary equipment, stationary equipment, storage, and space to accommodate periods of peak work loads;

~~(iv)~~ (d) meets the requirements of the department of labor and industry safety and health bureau;

~~(v)~~ (e) has the financial capability and business organization necessary to perform the work required;

~~(vi)~~ (f) has analytical, monitoring and measuring equipment capable of meeting the applicable standards and methods contained in ARM 17.24.625 and 17.24.646; and

~~(A) Standard Methods for the Examination of Water and Waste Water, 15th Edition. This publication is available from the American Public Health Association, 1015 18th Street, NW, Washington, DC 20036;~~

~~(B) Methods for Chemical Analysis of Water and Wastes, 1974. This publication is available from the Office of Technology Transfer, US Environmental Protection Agency, EPA Library, Region 8, 1060 Lincoln Street, Suite 270, Denver, CO 80295. These standards are hereby incorporated by reference;~~

~~(vii) has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods, or by those appropriate methods or guidelines for data acquisition recommended by the department.~~

~~(b) (g) To become qualified, a laboratory must be capable of performing either the determination or statement under ARM 17.24.1225(2)(a) and (b).~~

~~(3) Subcontractors may be used to provide the services required if their use is described in the application for designation and approved by the department.~~

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA

Rationale: 17.24.1226 - The changes in (1), (2), and (2)(a) are in response to OSM requirements: 30 CFR 795.3; OSM letter of June 26, 1997, issue X.A.1.

The change in (2)(d) is to correct the name of the indicated agency.

The changes in (2)(f) and the elimination of (A) and (B) are for the purpose of clarification and simplification; the methodology for water quality sampling and analysis for mining operations is found in ARM 17.24.645 and 17.24.646, which can simply be referenced here.

Elimination of (2)(a)(vii) is proposed, primarily because it is redundant with (2)(b) and (f), but also because hydrological analyses for all other mine permitting activities are required to be done in accordance with ARM 17.24.645 and 17.24.646; there is no rationale for allowing other methods ("acceptable engineering or analytical methods") in the case of the small operator assistance program.

17.24.1228 SMALL OPERATOR ASSISTANCE PROGRAM: APPLICANT LIABILITY (1) The applicant shall reimburse the department for the cost of the laboratory services performed pursuant to ARM 17.24.1224 if the applicant:

- (a) submits false information;
- (b) fails to submit a permit application within 1 year from the date of receipt of the approved laboratory, consultant, and/or contractor report;
- (c) fails to mine after obtaining a permit;
- (d) produces coal in excess of ~~100,000~~ 300,000 actual and attributable tons at all operations during any consecutive the 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit, whichever is shorter immediately following the date on which the applicant was issued a coal mining permit; or
- (e) sells, transfers, or assigns the permit and the total actual and attributed production of the transferee exceeds the ~~100,000~~ 300,000-ton annual production limit during any consecutive the 12-month period of the remaining term of the permit immediately following the date on which the applicant was issued a coal mining permit. Under this section, the applicant and its successor are jointly and severally obligated to reimburse the department.

(2) The department may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.
AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA

Rationale: 17.24.1228 - These changes are in response to OSM requirements: 30 CFR 795.3 and 795.12(a), (a)(2), and (3); OSM letter of June 26, 1997, issues X.A.1 and X.A.4.

17.24.1261 CERTIFICATION OF BLASTERS (1)~~(a)~~ A person seeking certification as a blaster shall submit to the department an application on a form provided by the department.

(a) The applicant shall include a verifiable statement that he has successfully completed a training course, provided by the department, the operator, or other person, meeting the requirements of ARM 17.24.1262(2) and incorporating the training manual prepared by the department.

(b) The department shall make available to the public, upon request and payment of a reasonable fee, a copy of the training manual. The training manual must be updated yearly and these updates must also be available upon request and payment of a reasonable fee as necessary.

(2) The department shall issue a blaster certification to each applicant who:

- (a) has 2 years field experience in blasting;
- (b) has successfully completed a 24-hour blaster training course meeting the requirements of ARM 17.24.1262; and

~~(c)(i) if the department determines that the surface coal mine foreman's certificate examination administered by the department of labor and industry examines adequately, at a minimum, in the topics set forth in ARM 17.24.1262, achieves a grade of 80% or higher on the blasting portion of that test, or~~
(iii) achieves a grade of 80% or higher on an examination administered by the department. The examination must, at a minimum, reflect the training manual prepared by the department and examine in the topics set forth in ARM 17.24.1262. The examination must also incorporate an equally weighted section that covers practical field experience on blasting procedures and occurrences. An applicant who fails may retake the examination. If the applicant fails the examination a second time, he shall successfully complete a blaster training course again and reapply for certification before retaking the examination.

(3) Blaster certifications are non-transferable.

(4) A certification shall expire 3 years after issuance. The department shall recertify if the blaster:

(a) submits to the department, at least 60 days prior to the expiration of his certification, an application for recertification on a form provided by the department;

(b) has documented successfully completed completion of 24 16 hours of refresher training meeting the requirements of ARM 17.24.1262 during the certification period; and

(c) has conducted or directed blasting operations within the 12 months immediately preceding the date of application for recertification or receives a grade of 80% or better on a recertification examination. The only new developments that the department may include in the recertification examination are those that have been included in annual supplements the updates to the training manual. The applicant for recertification may take the examination twice.

(5) ~~in lieu of the provisions of (1) and (2) of this rule,~~
~~the department shall certify any person who has a current state or federal blaster certificate under any program approved by the federal coal regulatory authority under 30 CFR Part 850 and can demonstrate that he or she has met requirements equivalent to those in (1) and (2) above.~~ The period of the department's certification must be coextensive with the period of certification under the other program but ~~shall may~~ not exceed 3 years.

AUTH: 82-4-204, 82-4-205, 82-4-231, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.1261 - The Board's changes in (1)(b) and (4)(c) regarding the updating of the manual are proposed, because, in the Department's experience administering the blaster certification program, changes in blasting practices and techniques (which are the bases for changes in the training manual), are slow enough not to warrant mandated yearly changes in the training manual. The elimination of the last two lines of (1)(b) is for the

purpose of deleting redundant language.

Part (2)(c)(i) is proposed for deletion, because discussion between DEQ and Dept. of Labor (DL) personnel indicates that the exam that DL administers does not meet DEQ standards for blaster certification.

The change in (2)(c)(ii) is for clarification.

In (4)(b), the Board proposes lowering the required refresher training hours to 16, because, in the Department's long experience in administering the blaster certification and recertification program, the training material that needs to be presented (from ARM 17.24.1262) for recertification can be covered in 16 hours.

The changes in section (5) are proposed, because the Board believes that, for the sake of consistency, fairness, and application of uniform standards of certification, all certified blasters in this state must meet equivalent requirements. Blasting certificates should not be issued to someone merely because that person has a certificate from another state, if that certificate does not meet the standards of the Department's program.

All other proposed changes in this rule are for clarity, grammatical correctness, or for the purpose of transferring requirements from ARM 17.24.1262 to this rule.

17.24.1262 BLASTER TRAINING COURSES (1) ~~In order to qualify for certification or recertification, an applicant shall successfully complete training or refresher courses meeting the requirements of (2) or (3) of this rule.~~

~~(2) A blaster training course must provide 24 hours of appropriate training in and discuss practical applications of:~~

~~(2)(a) through (1) Remain the same in text, but are renumbered (1)(a) through (1).~~

~~(m) identification of unpredictable hazards including:~~

~~(i) lightning;~~

~~(ii) stray currents;~~

~~(iii) radio waves; and~~

~~(iv) misfires; and~~

~~(n) updates to the department's training manual.~~

~~(3) A blaster refresher course must familiarize the blaster with new developments contained in the yearly supplement to the department's training manual and must refresh the blaster's knowledge in one or more of the topics listed in (2) of this rule.~~

AUTH: 82-4-204, 82-4-205, 82-4-231, MCA; IMP, 82-4-231, MCA

Rationale: 17.24.1262 - The Board proposes deletion of the language in section (1), because this is now covered in the

changes proposed for ARM 17.24.1261(2)(b) and (4)(b). The same is true for the changes in section (2). With these changes, all blaster certification requirements would be found in one rule (17.24.1261).

Section (3) can be replaced with the simpler language proposed in new subsection (n).

3. Rule 17.24.501A, Final Grading Requirements, as proposed to be repealed, is on page 17-2066 and 17-2067 of the Administrative Rules of Montana.

AUTH: 82-4-204, MCA; IMP, 82-4-231, 82-4-232, 82-4-234, MCA

Rationale: Some language in this rule [(1)(a), (2), and (3)] is proposed for transfer (with modifications) to ARM 17.24.501, as discussed earlier or to the definition of "approximate original contour" [ARM 17.24.301(13)]. Other language has been found to have no practical or useful application [(1)(b) and (c)].

4. 17.24.514, Contouring, as proposed to be repealed, is on page 17-2077 of the Administrative Rules of Montana.

AUTH: 82-4-204, MCA; IMP, 82-4-231, 82-4-232, MCA

Rationale: This rule has unnecessary and redundant language for the following reasons. It is not necessary to require grading on the contour, because, after final grading, the spoils must be scarified on the contour to the extent possible [ARM 17.24.702(4)(b)]. This requirement also precludes the need for the language regarding final preparation of surfaces on the contour in ARM 17.24.514.

5. 17.24.519A, Thick Overburden and Excess Spoil, as proposed to be repealed, is on page 17-2079 of the Administrative Rules of Montana.

AUTH: 82-4-204, MCA; IMP, 82-4-231, 82-4-232, MCA

Rationale: This language is being proposed for transfer, with some wording and organization changes for clarification and other reasons (as explained in the amendment of ARM 17.24.520), to ARM 17.24.520 as new sections (1) and (2).

6. 17.24.604, Soil Removal, as proposed to be repealed, is on page 17-2101 of the Administrative Rules of Montana.

AUTH: 82-4-204, MCA; IMP, 82-4-231, 82-4-232, MCA

Rationale: All requirements of ARM 17.24.604, except for the stripping distance, are already covered in ARM 17.24.701. The stripping distance of 10' is arbitrary and impractical to enforce. If ARM 17.24.604 is repealed, the operator would have discretion under ARM 17.24.701 to adopt

stripping distances suited to various circumstances, but would still be required to protect the soil resource along roads, as is required for all other disturbances related to mining activity.

7. 17.24.606, Surfacing of Roads, as proposed to be repealed, is on page 17-2103 of the Administrative Rules of Montana.

AUTH: 82-4-204, MCA; IMP, 82-4-231, 82-4-232, MCA

Rationale: Part of this rule is already found in ARM 17.24.601(4). Other provisions from this rule were added to ARM 17.24.601(4).

8. 17.24.1103, Bonding: Period of Responsibility for Alternate Revegetation, as proposed to be repealed, is on page 17-2326 of the Administrative Rules of Montana.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA

Rationale: This rule is proposed to be shifted, with some language changes, to new Rule I. See rationale for new Rule I.

9. 17.24.1116A, Reassertion of Jurisdiction, as proposed to be repealed, is on page 17-2338 of the Administrative Rules of Montana.

AUTH: 82-4-205, MCA; IMP, 82-4-235, MCA

Rationale: The Board proposes to delete this rule by the following procedures: Section (1) is already covered in ARM 17.24.1116(4) and Section (2) is proposed to be added as new section (8) of ARM 17.24.1116.

10. The rule proposed to be adopted appears as follows.

[RULE I] ALTERNATE RECLAMATION: PERIOD OF RESPONSIBILITY FOR ALTERNATE REVEGETATION (1) Whenever the department approves a long-term intensive agricultural postmining land use in accordance with ARM 17.24.825, the applicable 10-year period of responsibility for vegetative reestablishment commences at the date of initial planting for such long-term intensive agricultural land use.

(2) The department may, upon a written finding, after approving a long-term intensive agricultural land use pursuant to ARM 17.24.825, grant an exception to the revegetation requirements of ARM 17.24.711.

AUTH: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA

Rationale: This rule is proposed to be placed into subchapter 8. ARM 17.24.1103 prescribes a 10-year responsibility period for agricultural reclamation. However, subchapter 11 is not the most appropriate or useful location for this rule, considering that both

operators and Department staff focus on subchapter 8 when contemplating and reviewing alternate reclamation proposals. Also, a similar requirement for non-agricultural revegetation is found in ARM 17.24.725, not in subchapter 11. The Board is therefore proposing that the language of ARM 17.24.1103 be transferred (with some wording changes) to subchapter 8 as a new rule.

This new rule reflects the following language changes when compared to ARM 17.24.1103. The word "BONDING" is removed from the title and replaced with "ALTERNATE RECLAMATION" to reflect that it is in the alternate reclamation rule sequence. The phrase "but shall not grant exception to the period of responsibility in this rule" [referring to ARM 17.24.711], as found in ARM 17.24.1103, is not included in Rule I, because that reference is in error due to the fact that there is no responsibility period indicated in ARM 17.24.711.

11. Interested persons may submit their data, views or arguments concerning the proposed actions either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, no later than December 17, 1998. To be guaranteed consideration, the comments must be postmarked on or before that date.

12. Martin Tuttle has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by


CINDY E. YOUNKIN, Chairperson

Reviewed by:


John F. North, Rule Reviewer

Certified to the Secretary of State November 9, 1998.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of rules I through XXV and	)	ON PROPOSED ADOPTION AND
repeal of 17.82.101 through	)	REPEAL
17.82.126 pertaining to)	
standards for licensing of)	
laboratories conducting)	
analyses of public water)	
supplies)	

TO: All Interested Persons

1. On December 15, 1998, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and repeal of the above-stated rules pertaining to standards for licensure of laboratories conducting analyses of public water supplies.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 1, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE 1] DEFINITIONS For the purpose of this subchapter:

(1) "Accuracy" means the degree of agreement between an observed value and an accepted reference value.

(2) "Analyte" means the substance or thing for which a water sample is analyzed to determine its presence or quantity.

(3) "Bachelor degree or equivalent" means a college degree with the equivalent of 30 semester hours in a specific scientific discipline or at least four years of experience in a specific scientific discipline.

(4) "Certification officer" means a representative of the department who conducts assessments of laboratories to determine if they should be approved for licensure. The representative may be a third party contractor who acts under the authority of the department.

(5) "Chemical hygiene plan" means a document written by a laboratory that describes the procedures used to store, handle, and dispose of chemicals in the laboratory.

(6) "Contaminated" means exceeding a maximum contaminant

level established in Title 17, chapter 38, subchapter 2 of the Administrative Rules of Montana.

(7) "Department" means the department of public health and human services.

(8) "Environmental laboratory" means the environmental laboratory of the department of public health and human services that is responsible for the licensing of laboratories performing drinking water analyses in Montana.

(9) "Environmental Protection Agency, (EPA)" means the United States environmental protection agency.

(10) "EPA laboratory certification manual" means the EPA publication entitled "Manual for the Certification of Laboratories Analyzing Drinking Water," March, 1997, 4th edition (EPA 815-B-97-001).

(11) "Holding time" means the maximum time that a sample may be held prior to preparation or analysis.

(12) "Interdependent analyte group" means a group of analytes, as determined by the department, for which the ability to correctly identify and quantify a single analyte in the group indicates the ability to correctly identify and quantify other analytes in the group.

(13) "Initial demonstration of analytical capability" means the procedure described in the method cited in 40 CFR Part 136, Appendix A, for chemistry analysis, used to determine a laboratory's accuracy and precision in applying an analytical method.

(14) "Key personnel" means a laboratory's director, supervisor, and quality assurance officer, all of whom meet the requirements of the EPA laboratory certification manual.

(15) "Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero as determined from analysis of a sample containing the analyte in a given matrix as described in 40 CFR Part 136, Appendix B, 1 July 1995 edition.

(16) "Performance evaluation (PE) sample" means a sample obtained through a source approved by the environmental laboratory whose composition is unknown to the laboratory performing the analysis and which is used to evaluate the ability of the laboratory to produce precise and accurate results.

(17) "Precision" means the degree to which a set of observations or measurements of the same property, usually obtained under similar conditions, conform to themselves. Precision is usually expressed as standard deviation, variance or range, in either absolute or relative terms.

(18) "Quality assurance plan" means a document written by a laboratory that describes the procedures used to ensure that routinely generated analytical data are scientifically valid and that their precision and accuracy are within defined limits.

(19) "Safe drinking water act" means the federal law set out in 42 U.S.C. 300f through 300j-11, governing drinking water

programs.

(20) "Standard operating procedures (SOPs)" means a laboratory's written document which details the steps of an operation, analysis, or action whose techniques and procedures are thoroughly prescribed and is accepted by the laboratory as the procedure for performing certain routine or repetitive tasks.

(21) "Variance" means written approval from the environmental laboratory allowing a laboratory to use a method, procedure, or equipment other than that required by these rules that meets the purpose and intent of these rules and that has been shown to have no adverse material effects on the accuracy of analyses.

(22) "Waiver" means written approval from the environmental laboratory exempting a laboratory from a requirement of these rules if the environmental laboratory finds that the requirement is inapplicable to the particular practice of that laboratory.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE II] LABORATORY LICENSURE: COVERAGE (1) A laboratory that conducts analyses of water from public water supplies must meet the licensure requirements of these rules before the analyses or reports of the analyses may be accepted by the department of environmental quality for the purpose of meeting the requirements of Title 75, chapter 6, MCA, and rules of the department of environmental quality concerning public water supplies.

(2) A laboratory may be licensed to perform microbiology testing, chemistry testing, or both. Microbiology testing and chemical testing are separate licensure categories. If a laboratory requests licensure for both categories, it must submit to the department a separate license application and undergo a separate inspection for each category, and it will receive a separate license for each category for which it qualifies.

(3) A license granted by the department constitutes permission to perform only those analyses of analytes which the laboratory requests the licensure to cover and that the department finds the laboratory is capable of performing in accordance with the provisions of this subchapter.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE III] LICENSURE DURATION: INSPECTIONS AND TESTS REQUIRED (1) The duration of a microbiology or chemical license is 3 years from the date it is issued, unless terminated earlier.

(2) In order to be licensed, a laboratory must:

(a) meet all of the applicable personnel, equipment, training, and facility requirements of this subchapter;

(b) at least once during the 3 year term of its license, pass an on site inspection by an agent of the environmental laboratory that shows compliance with the requirements of these rules for the license category in question; and

(c) if the laboratory performs chemical analyses, have performed analyses on two Performance Evaluation (PE) samples each year during the term of its license, at least one of which indicates a successful identification of each analyte that it is approved under its license to analyze.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE IV] PROVISIONAL LICENSE (1) In the case of a laboratory applying for a license for the first time, the department may grant a provisional license to a laboratory that:

(a) is in compliance with all requirements for licensure but has not yet analyzed a second PE sample or does not have records of historical performance; or

(b) does not comply with all of the requirements of this subchapter, but whose deficiencies do not affect the capability of the laboratory to perform valid analyses.

(2) Provisional licensure will be granted only after an on site inspection, and is in effect for 1 year or until full licensure is granted, whichever is earlier.

(3) In order for a laboratory applying for a chemistry license for the first time to upgrade from provisional licensure status to fully licensed status, it must perform analyses of a minimum of two PE samples over the course of a year that indicate at least two successful analyses of each analyte for which they seek licensure to analyze, and undergo a second on site inspection that shows full compliance with licensure standards.

(4) In order for a laboratory applying for a microbiology license for the first time to upgrade from provisional licensure status to fully licensed status, a microbiology laboratory must be in continual operation for 1 year, accurately analyze any required audit samples, and undergo a second on site inspection to verify that its methodologies and quality control meet the standards of this subchapter.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE V] FEE FOR LICENSE APPLICATION (1) A fee of \$250 must be submitted to the department with an application or applications for a microbiology or chemical license or both.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

[RULE VII] RECIPROCITY (1) The department may issue a license to an out-of-state laboratory to perform analyses for public drinking water systems in Montana provided that the laboratory:

(a) applies for licensure and is currently approved by the Environmental Protection Agency or the state in which the laboratory is located if that state has a certification program approved by EPA for laboratories analyzing water from public water supplies;

(b) the EPA or the state's certifying authority, whichever is appropriate, provides the department with a copy of the laboratory's current certification and most recent inspection report;

(c) the requirements for certification in the approving state are no less stringent than the requirements for resident laboratories in the state of Montana;

(d) the laboratory submits qualification information for all key personnel and provides the department with a current copy of the laboratory's quality assurance plan;

(e) the laboratory performs and accurately analyzes PE samples for analytes from sources approved by the department. The provider of the PE samples shall report results of the analyses directly to the department; and

(f) the laboratory complies with the notification requirements of [Rules XI, XII, and XIII].

(2) The department may license a laboratory that is accredited by the national environmental laboratory accreditation program (NELAP) if:

(a) it provides evidence of its accreditation and applies for licensure on that basis; and

(b) it obtains approval from the department of the testing procedures for each analyte or interdependent analyte group and meets the approval requirements of this rule.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE VIII] DURATION OF LICENSE (1) A license granted to an in-state laboratory is for a 3 year period provided:

(a) All of the requirements of this subchapter continue to be met for the type of license granted;

(b) The laboratory completes annual questionnaires from the department designed to update the department on personnel and procedures; and

(c) The laboratory remits to the department the appropriate annual licensure fee and any other fees due pursuant to [Rule V].

(2) A reciprocal license granted to an out-of-state laboratory is for the same period as the license, certification, or other approval granted by the approving authority, provided that:

(a) All of the requirements of [Rule VI] continue to be

met;

(b) The laboratory completes annual questionnaires designed to update the department on personnel and procedures; and

(c) The laboratory remits to the department the appropriate annual licensure fee or fees due pursuant to [Rule V].

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE VIII] RESTRICTION OF LICENSE (1) The department may place conditions upon the license of a laboratory under the following circumstances:

(a) The laboratory reports results of an analysis of PE samples that are outside acceptable limits, or it fails to report results of a PE sample analysis for any analyte that the laboratory is approved to analyze. In this case:

(i) the laboratory's license is conditional only in regard to the laboratory's approval to conduct analyses of the particular analyte involved;

(ii) the conditional status remains in effect until the next available PE results are reported to the department, at which time:

(A) the conditions will be removed if acceptable PE results are reported to the department; or

(B) approval to conduct the analysis in question will be revoked if unacceptable PE results are reported to the department.

(b) The laboratory notifies the department, after the fact, of changes in personnel, equipment, or procedures that have a material effect on the analyses of analytes for which it is approved. In this case, conditional approval will remain in effect until:

(i) the department has re-evaluated the laboratory; and

(ii) those analyses affected by the changes are conducted on PE samples and the results are evaluated by the department, at which time the conditions may be removed if the analyses meet the standards of these rules or approval to do those tests may be revoked if the standards are not met.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE IX] REVOCATION OR DENIAL OF LICENSE (1) The department may deny or revoke a license at any time that a laboratory is not in compliance with the requirements for licensure under this subchapter, including if the laboratory:

(a) fails to analyze and report results of at least two PE samples per year;

(b) reports unacceptable results or fails to report the results of analyses of two consecutive PE samples for an analyte

for which the laboratory is approved;

(c) fails to correct cited deficiencies within the time specified by the department or fails to adhere to conditions of a waiver or variance;

(d) no longer employs a director or analysts who have satisfied the requirements of this subchapter;

(e) does not use EPA-approved methods to perform analyses;

(f) does not perform required quality control procedures;

(g) falsifies data, or engages in deceptive practices such as reporting another laboratory's data without giving credit on the report to the laboratory which performed the analysis;

(h) reports data that were obtained using equipment, procedures, analysts, methods, or facilities that are not approved by the department; or

(i) fails to report the results of unsatisfactory test results of samples or maximum contaminant level (MCL) violations to the department of environmental quality as required under Title 17, chapter 38, subchapter 2 of the Administrative Rules of Montana.

(2) The department will send the laboratory written notice of the denial or revocation of a license that indicates the grounds for the revocation or denial and the right to an appeal of the decision pursuant to the Montana Administrative Procedure Act.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE X] REISSUANCE OF LICENSE (1) The department will issue a license to a laboratory whose license has been denied or revoked when the laboratory demonstrates to the department that all appropriate requirements listed in the EPA laboratory certification manual are satisfied and when a compliance schedule has been set to meet all additional requirements of this subchapter.

(2) If the laboratory does not fulfill the terms of the compliance plan, the license will again be revoked pursuant to [Rule IX].

(3) A laboratory may request technical assistance from the department to remediate any deficiencies. The department shall provide the technical assistance as soon as is practical.

(4) The department hereby adopts and incorporates by reference the EPA laboratory certification manual (EPA 815-B-97-001, "Manual for the Certification of Laboratories Analyzing Drinking Water", March, 1997), which contains criteria, procedures, and quality assurance standards required by the environmental protection agency that must be met by laboratories analyzing drinking water to determine compliance with the federal Clean Water Act and its rules. A copy of the manual may be obtained from the Department of Public Health and Human

Services, Operations and Technology Division, Environmental Laboratory, 1400 Broadway, Cogswell Building, P.O. Box 202951, Helena, Montana 59620-2951 [telephone: 406-444-3444].

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XI] REQUIRED NOTIFICATION OF CHANGES (1) Whenever a laboratory makes any change in personnel, equipment, or procedures that has a material effect on the analysis of analytes, the laboratory must notify the department of that fact within 30 days after making the change.

(2) After receiving the above notification, the department will place conditions upon the laboratory's license pursuant to [Rule VIII].

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XII] CHANGE IN NAME (1) A licensed laboratory that changes its name or business organizational status must report the change in writing to the department within 30 days of the change.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XIII] CHANGE IN LOCATION (1) A licensed laboratory which intends to change its physical location shall notify the department 90 days prior to the relocation. The notification shall include the following:

(a) The full physical address of the new location;

(b) A notification of any personnel, equipment, or analytic method changes which will occur as a result of the relocation; and

(c) A signed statement either that the laboratory quality assurance plan will not be affected by the relocation, or, if it will be, that the plan will be revised to address the necessary changes.

(2) If, in view of the information received pursuant to (1) above, the department is satisfied that the laboratory can produce valid results at the new location, it shall issue a conditional license for the laboratory.

(3) The department shall conduct an on site inspection at the new location within 60 days after the relocation is completed.

(4) Within 30 days after the on site inspection, the department shall issue a determination either that the laboratory license is:

(a) revoked;

(b) its conditional status is retained; or

(c) the conditions are removed.

(5) If the department's decision is to revoke the license, the procedure followed will be that set out in [Rule IX].

(6) The term of the license remains the same as it was for the original site.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XIV] ACCESS TO FACILITY AND RECORDS (1) A laboratory applying for a license and a licensed laboratory must allow department representatives access to the laboratory facility and records during laboratory operating hours to determine initial or continued compliance with this subchapter.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XV] BLIND SAMPLE TESTING (1) The department may submit blind samples for analyses to a license applicant or a licensed laboratory in such a manner that the applicant or licensed laboratory is unaware of the identity of the submitter. The laboratory shall credit any charges for blind samples to the department when later notified that a sample was a blind sample.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XVII] PROFICIENCY TESTING (1) For a laboratory to become approved and to maintain approval for conducting analyses for an analyte or an interdependent analyte group by a specific method, the laboratory must, at its own expense, meet the proficiency testing requirements of this rule.

(2) In order to initially obtain and to maintain approval, the laboratory must:

(a) enroll and participate in a proficiency testing program for each analyte or interdependent analyte group, or, for each analyte or interdependent analyte group for which proficiency testing is not available, the laboratory must establish, maintain, and document the accuracy and reliability of its procedures through a quality assurance plan;

(b) participate in more than one proficiency testing program to be evaluated to obtain or maintain approval to analyze an analyte or interdependent analyte group;

(c) prior to obtaining approval, notify the department of the authorized proficiency testing program or programs in which it has enrolled for each analyte or interdependent analyte group;

(d) follow the proficiency testing provider's instructions for preparing the proficiency testing sample and must analyze the proficiency testing sample as if it were a client sample;

(e) direct the proficiency testing provider to send, either in hard copy or electronically, a copy of each evaluation

of the laboratory's proficiency testing audit results to the department; and

(f) authorize the proficiency testing provider to release to the department all information necessary for the department to assess the laboratory's compliance with this rule.

(3) In addition to the requirements of (2) above, in order to remain approved for testing an analyte or interdependent analyte group, a laboratory must:

(a) in each calendar year, complete at least two separate proficiency testing audits for each analyte or interdependent analyte group;

(b) maintain a copy of all proficiency testing records, including analytical worksheets and a copy of the proficiency testing provider report forms authorized by the environmental laboratory and used by the laboratory to record proficiency testing results;

(c) for every proficiency test, ensure that the director of the laboratory signs and retains an attestation statement stating that the laboratory followed the proficiency sample provider's instructions for preparing the proficiency sample and analyzed the proficiency testing sample as if it were a client sample; and

(d) analyze and report to the provider the results of the proficiency test by the deadline set by the proficiency testing provider.

(4) A laboratory may not:

(a) perform multiple analyses (such as replicates or duplicates) that are not normally performed in the course of analysis of a routine sample;

(b) average the results of multiple analyses for reporting when not specifically required to do so by the analytic method in question;

(c) permit anyone other than bona fide laboratory employees who perform the analyses on a day-to-day basis for the laboratory to participate in the generation of data or reporting of results;

(d) discuss the results of a proficiency testing audit with any other laboratory until after the deadline set for receipt of results by the proficiency testing provider;

(e) If the laboratory has multiple testing sites or separate locations, discuss the results of a proficiency testing audit across sites or locations until after the deadline set for receipt of results by the proficiency testing provider;

(f) Send proficiency testing samples or portions of samples to another laboratory to be tested; or

(g) Knowingly receive a proficiency testing sample from another laboratory for analysis and fail to notify the department of the receipt of the other laboratory's sample within 5 business days of discovery.

(5) Results of proficiency tests must be within the control limits established by the EPA as specified in chapter IV of the EPA laboratory certification manual for each analysis for

which the laboratory requests approval. These limits are determined by using the known concentration of the analyte in the sample, and by the application of accepted statistical procedures.

(6) The department may require the testing of other samples, such as blind samples or split samples, as needed to evaluate laboratory performance.

(7) The laboratory must participate in an authorized proficiency testing program for at least 12 months before changing to another proficiency testing provider for the analyte or interdependent analyte group and must notify the department before changing enrollment in an authorized proficiency testing program.

(8) The department hereby adopts and incorporates by reference the acceptance limits for regulated parameters in chapter IV of the EPA laboratory certification manual (EPA 815-B-97-001, "Manual for the Certification of Laboratories Analyzing Drinking Water", March, 1997), which contains the critical elements for chemistry that a laboratory must meet, including the acceptance limits required by the EPA for metals, inorganics, volatile organic compounds, and synthetic organics in drinking water samples. A copy of chapter IV may be obtained from the Department of Public Health and Human Services, Operations and Technology Division, Environmental Laboratory, 1400 Broadway, Cogswell Building, P.O. Box 202951, Helena, Montana 59620-2951 [telephone: 406-444-3444].

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XVII] PROCEDURE FOR LICENSURE (1) Any laboratory not currently licensed but desiring licensure under this subchapter must:

(a) Submit a completed application to the Department of Public Health and Human Services, Operations and Technology Division, Environmental Laboratory, 1400 Broadway, Cogswell Building, P.O. 202951, Helena, MT 59620-2951, on forms provided by the department. The application must include:

- (i) the legal name of the laboratory;
- (ii) the name of the laboratory owner;
- (iii) the laboratory mailing address;
- (iv) the full address of the physical location of the laboratory;
- (v) the laboratory hours of operation;
- (vi) a description of qualifications of key personnel and technical employees;
- (vii) the name and daytime phone number of the laboratory director;
- (viii) the name and daytime phone number of the laboratory's quality assurance officer;
- (ix) the name and daytime phone number of the laboratory contact person; and

(x) the laboratory's quality assurance plan and documentation of the laboratory's implementation and adherence to the quality assurance plan.

(b) Be enrolled in a proficiency testing program;

(c) Apply for approval to analyze at least one analyte or interdependent analyte group by a method the department approves under [Rule XVIII];

(d) Pay all applicable fees prescribed by [Rule V] prior to the department's processing of the application; and

(e) Submit a statement of assurance of compliance signed and dated by the laboratory owner, director, and quality assurance officer, which shall include:

(i) An acknowledgment that the applicant understands that, once licensed, the laboratory must continually comply with the requirements for licensure in this subchapter in order to remain licensed;

(ii) An acknowledgment that the department may make unannounced inspections of the laboratory for the purpose of assessing compliance with these rules and that a refusal to allow entry to the laboratory premises by the department's authorized representatives is grounds for denial or revocation of its license;

(iii) A statement that the applicant laboratory will perform all proficiency testing audits according to acceptable methods, in accordance with department requirements, and at their own expense; and

(iv) A statement that there is no misrepresentation in the information provided in the application.

(2) When the laboratory submits the documentation required by [Rule XVIII], the department shall conduct an on site assessment at a date and time agreed to by the laboratory director to determine whether the laboratory complies with the minimum requirements of this subchapter and that the laboratory can produce valid results.

(3) At the time of scheduling the assessment, the department's certification officer shall specify what staff, equipment, and supplies need to be on hand during the evaluation and what tests need to be run in order to determine whether the laboratory can meet the licensure requirements set out in this subchapter.

(4) If possible, the evaluations will be scheduled to occur within 45 days after the department determines the application is complete, except in the case of applications received in May, June, July, or August, which will be scheduled for evaluation no later than October 31 of the same year.

(5) The certification officer shall provide the laboratory director with a written report of the department's findings from the on site assessment.

(6) If the department determines that the laboratory does not meet the requirements for licensure:

(a) the department will send the laboratory written notice of that fact, the grounds for the decision, and the right to

submit a plan of correction within 15 days after receipt of the notice;

(b) if a plan of correction is not received by the deadline or if the plan of correction is inadequate to correct the deficiencies, the department will issue a written denial of the license, the grounds for denial, and the right to an appeal pursuant to the Montana Administrative Procedure Act.

(7) If the on site assessment is satisfactory or, if it is not, if implementation of the plan of correction successfully eliminates the deficiencies cited, the department shall issue a final decision in writing granting the type of license requested and stating which analyte(s) or interdependent analyte group(s) the laboratory is approved to analyze.

(8) A license expires on the expiration date listed on the license, unless revoked earlier. To avoid a lapse in licensure, a laboratory must submit a completed application for renewal and the required fees for licensure prior to the expiration of the license.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XVIII] APPROVAL TO CONDUCT ANALYSES (1) Analyses must be conducted using current EPA approved methods in accordance with the analytical requirements set forth in 40 CFR 141.

(2) Alternate analytical procedures are not permitted unless such procedures satisfy 40 CFR 141.27 and have been approved by the EPA.

(3) An applicant laboratory must request approval to analyze for an analyte or interdependent analyte group as part of its application for licensure or renewal of a license.

(4) Approval for such analyses will be granted only after an on site assessment. The applicant laboratory shall submit:

(a) documentation that it has the necessary equipment and qualified technical employees to perform the tests;

(b) for chemistry analysis, documentation that the laboratory has passed two proficiency testing audits for the analyte in question in a proficiency testing program;

(c) its standard operating procedure for the method used to analyze for the analyte in question;

(d) documentation of its initial demonstration of analytical capability; and

(e) documentation establishing the laboratory's method detection limit for the analyte.

(5) If the department is satisfied from its assessment that the applicant laboratory can produce valid results, it shall grant approval for the analyte or interdependent analyte group by a specific method.

(6) At a time other than when applying for a license renewal:

(a) a licensed laboratory may request approval to analyze

for an additional analyte or interdependent analyte group by submitting a written request together with the documentation required in (1).

(b) If the analyte for which approval is requested is an addition to, or a group similar to, analytes that have already received approval, the state environmental laboratory may grant a provisional approval for the analyte which shall remain in effect until the next review for license renewal as long as the laboratory continues to successfully complete proficiency testing on the analyte.

(c) If the analyte for which approval is requested is unrelated to previously approved analytes, or requires specialized equipment and/or personnel training, the state environmental laboratory shall require a new application packet and an application fee to be submitted, as well as an update of the laboratory licensure file, and shall perform an on site assessment prior to approval.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XIX] QUALITY ASSURANCE (1) A licensed laboratory must develop and implement a quality assurance program that is an integrated system of activities involving planning, quality control, quality assessment, reporting, and quality improvement to ensure that its services meet its standards of quality with its stated level of confidence.

(2) The quality assurance program must address the type and volume of testing activities the licensed laboratory undertakes. The quality assurance program must include a quality assurance plan and documentation of quality assurance activities.

(3) As part of its quality assurance program, each licensed laboratory must develop and adhere to a quality assurance plan. The laboratory must include and address the following essential items in the quality assurance plan:

- (a) listing of key individuals, laboratory organization and lines of responsibility;
- (b) position descriptions;
- (c) evaluation of staff competency;
- (d) staff training;
- (e) general quality control procedures;
- (f) frequency of proficiency testing;
- (g) proficiency testing audit handling;
- (h) reporting of proficiency testing results;
- (i) analytical methods and SOPs with annual reviews and dates of revisions of the methods and SOPs;
- (j) sample handling procedures;
- (k) data reduction, validation, reporting, and verification (an SOP may be referenced);
- (l) record keeping, quality assurance review of data, and reporting of results;

- (m) equipment operation and calibration;
 - (n) physical facility factors that may affect quality;
 - (o) corrective action policy and procedures;
 - (p) definitions of terms used in the quality assurance plan;
 - (q) frequency and procedure of quality reviews and the content of reports to the laboratory director; and
 - (r) frequency, procedure, and documentation of preventive maintenance.
- (4) For chemistry laboratories the plan must also include:
- (a) calibration procedures for chemistry (an SOP may be referenced);
 - (b) instrument performance checks;
 - (c) laboratory reagent blanks, and field or trip blanks;
 - (d) field or laboratory matrix replicates;
 - (e) reference samples;
 - (f) laboratory fortified blanks and laboratory fortified matrix spikes;
 - (g) initial demonstration of method capability and use of control charts; and
 - (h) qualitative identification and confirmation of contaminants.
- (5) As part of the quality assurance program, the laboratory must document and retain records demonstrating that it has maintained compliance with its quality assurance program.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XX] SAFETY (1) A laboratory shall develop and maintain a safety program, including an education-based safety program, which meets the requirements of the Montana Safety Culture Act, Title 39, chapter 71, part 15, MCA, and ARM 24.30.2501 through 24.30.2558 implementing that act and adopted by the department of labor and industry.

(a) The department hereby adopts and incorporates by reference those portions of ARM 24.30.2501 through 24.30.2558, which contain requirements that employers must meet concerning the establishment of educational safety programs and safety programs for employers who employ more than five employees. A copy of those rules may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 1400 Broadway, Cogswell Building, P.O. Box 202951, Helena, Montana 59620-2951.

(2) The laboratory shall develop and maintain a chemical hygiene plan.

(3) Where safety methods are included in an analytic method approved by the department, they must be included in the method's SOP and adhered to by the laboratory's analysts performing the procedure.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XXI] LABORATORY EQUIPMENT AND SUPPLIES (1) A laboratory must have, at a minimum, the equipment and supplies necessary to perform an approved analytical method for each contaminant analysis for which approval is requested pursuant to [Rule XVII].

(2) The equipment and supplies must meet the specifications required by the approved analytical method used and the specifications specified in the EPA laboratory certification manual for that method.

(3) Analytical reagent (AR) grade chemicals or better must be used for analyses.

(4) The laboratory must have a source of distilled or deionized water that meets all the requirements listed in the EPA laboratory certification manual and the requirements of the analytical method being used.

(5) For chemical analyses of drinking water, the laboratory must have a source of reagent water having a specific resistance value of at least 0.5 megohms (less than 2.0 umhos/cm) at 25C. Reagent water for organic analysis must be free of interferences for the analytes being measured.

(6) The department hereby adopts and incorporates by reference the standards contained in the EPA laboratory certification manual (EPA 815-B-97-001, "Manual for the Certification of Laboratories Analyzing Drinking Water", March, 1997) for sources of distilled or deionized water. A copy of the manual may be obtained from the Department of Public Health and Human Services, Operations and Technology Division, Environmental Laboratory, 1400 Broadway, Cogswell Building, P.O. Box 202951, Helena, Montana 59620-2951 [telephone: 406-444-3444].

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XXII] CRITICAL ELEMENTS FOR CHEMISTRY LABORATORY LICENSURE (1) In order to be licensed to perform chemical analyses, a laboratory must meet the standards contained in this rule.

(2) Analysts in training must be supervised by an experienced analyst who meets all of the requirements of this rule.

(3) Supervising analysts must verify all results of testing performed by analysts in training and cosign those results.

(4) The laboratory's analysts must:

(a) meet all of the qualifications and conditions set forth in chapter IV of the EPA laboratory certification manual, except those noted in (5) and (6) below, and:

(b) if operating the following, have the training noted:

(i) if using a gas chromatograph, liquid chromatograph,

mass spectrometer, or an inductively coupled plasma atomic emission spectrophotometer, have satisfactorily completed a short course in their operation offered by the equipment manufacturer, a professional organization, a university, or another department-approved training facility acceptable to the department; and

(ii) if operating an atomic absorption, an ion chromatograph, a gas chromatograph, or an inductively coupled plasma atomic emission spectrophotometer, have a minimum of 6 months previous experience in their operation;

(iii) if operating a gas chromatograph or mass spectrometer, have a minimum of 12 months previous experience in its operation.

(5) A test for ortho-phosphate may not be filtered.

(6) The wavelength settings of variable wavelength spectrophotometers must be verified quarterly with color standards.

(7) The department hereby adopts and incorporates by reference chapter IV of the EPA laboratory certification manual (EPA 815-B-97-001, "Manual for the Certification of Laboratories Analyzing Drinking Water", March, 1997), which establishes qualifications for staff training and experience and conditions for approval of laboratories conducting chemical analyses of public drinking water. A copy of the above chapter IV may be obtained from the Department of Public Health and Human Services, Operations and Technology Division, Environmental Laboratory, 1400 Broadway, Cogswell Building, P.O. Box 202951, Helena, Montana 59620-2951.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XXIII] CRITICAL ELEMENTS FOR MICROBIOLOGY LABORATORY LICENSURE (1) In order to be licensed to perform microbiological analyses, a laboratory must meet the standards contained in this rule.

(2) Individual analysts must be approved by the state as meeting the standards of this rule in order to perform microbiological analysis of drinking water samples.

(3) Analysts in training must be supervised by an experienced analyst who meets all of the requirements of this rule.

(4) Supervising analysts must verify all results of testing performed by analysts in training and cosign those results.

(5) A laboratory must meet all of the qualifications and conditions set forth in chapter V of the EPA laboratory certification manual, except that:

(a) the first sentence of paragraph 6.4 is amended to say, "The time from sample collection to initiation of analysis for total coliforms, fecal coliforms, or E. coli in drinking water must not exceed 48 hours."; and

(b) Analysts must have a minimum of 4 days of training at the environmental laboratory with a successful evaluation from the state training personnel, with the exception that up to two days training may be waived at the discretion of the microbiology certification officer based upon education and experience of the analyst.

(6) Each membrane filter lot must be checked by comparing recovery of coliform organisms against membrane filters from a previously acceptable lot.

(7) The department hereby adopts and incorporates by reference chapter V of the EPA laboratory certification manual (EPA 815-B-97-001, "Manual for the Certification of Laboratories Analyzing Drinking Water", March, 1997), which establishes qualifications for staff training and experience and conditions for approval of laboratories conducting microbiological analyses of public drinking water. A copy of the above chapter V may be obtained from the Department of Public Health and Human Services, Operations and Technology Division, Environmental Laboratory, 1400 Broadway, Cogswell Building, P.O. Box 202951, Helena, Montana 59620-2951.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XXIV] REPORTING REQUIREMENTS (1) Reporting requirements for laboratories performing microbiological or chemical analyses of water from public water supplies are as follows:

(a) All analyses of samples not meeting the requirements of Title 17, chapter 38, subchapter 2 of the Administrative Rules of Montana must be promptly, on that day or no later than noon of the next working day, reported by telephone to the department of environmental quality (phone 406-444-5313 for chemistry results and 406-444-3425 for microbiology results);

(b) When a maximum contaminant level set out in Title 17, chapter 38, subchapter 2 of the Administrative Rules of Montana is found to be exceeded in any sample, the laboratory must notify the water supplier within 24 hours after the analysis is completed and request resampling from the sampling point according to the requirements of Title 17, chapter 38, subchapter 2 of the Administrative Rules of Montana, with the exception noted in (1)(c) below;

(c) If the membrane filter (MF) method shows contamination of a sample, the laboratory must notify the supplier immediately without waiting for the MF verification, and, after MF verification, the adjusted counts must be reported to the supplier;

(d) Written reports of contaminated microbiological samples must be sent to the department of environmental quality within 48 hours after the test is performed; and

(e) Written reports of all microbiological samples other than those which are contaminated must be sent to the department

of environmental quality within 5 days after the tests are completed.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XXV] REPORTING RESULTS FROM OTHER LABORATORIES

(1) A laboratory that reports analyses from other laboratories must report all such laboratory results on the original reporting document, or a copy thereof, of the other laboratory performing the analyses and must attest that the laboratory performing the analyses is a laboratory licensed to perform drinking water analysis in Montana.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

3. The rules 17.82.101 through 17.82.126 as proposed to be repealed are on pages 17-8601 through 17-8649 of the Administrative Rules of Montana.

AUTH: Sec. 50-1-202 and 75-6-103, MCA

IMP: Sec. 50-1-202 and 75-6-106, MCA

4. Montana law (75-6-106, MCA) states that if analyses of public water supplies are to be accepted by the Department of Environmental Quality, the laboratory must meet licensure standards adopted by the Department of Public Health and Human Services. Testing of water supplies is required both by Montana law and federal law and rules administered by the Environmental Protection Agency. In order for the EPA to delegate the responsibility to Montana for regulating laboratories doing analyses for purposes of the federal Clean Water Act, Montana has to ensure the standards it adopts meet those required by the EPA. The State of Montana has chosen to assume and maintain the delegated responsibility (primacy) from the EPA for certifying laboratories, which in Montana is done through licensure. Current rules date back to 1983 and 1991 and do not meet EPA certification standards. The proposed new rules embody EPA requirements and revise the fee setting process.

Due to departmental reorganization in 1995 and a statutory change in 1997, laboratory licensure rules are currently included as part of the rules of the Department of Environmental Quality, while the responsibility for adopting and administering those rules resides in the Department of Public Health and Human Services (DPHHS). Because they are poorly organized, difficult to interpret, and do not meet EPA's current certification standards, the department has decided to repeal and replace the existing rules, rather than to transfer them to the title assigned to DPHHS and amend them. Additional and more specific reasons for each rule follow.

The definitions contained in Rule I are necessary to explain the meaning of the terms used in the entire body of new replacement rules.

Rule II is necessary to explain precisely what analyses each license constitutes approval to conduct. The option of a single license rather than separate ones for microbiology and chemistry was rejected because laboratories are not necessarily equipped to do the same types of analyses and the license needs to indicate precisely what each laboratory is approved to do.

Rule III was necessary to define the period for which a license is issued and to generally indicate the conditions that have to be met in order to be licensed. The conditions reflect those required to meet federal certification standards, so no alternatives were acceptable.

Rule IV was needed to set standards allowing a provisional license to be issued to a laboratory that is seeking licensure for the first time and that shows evidence of complying with licensure standards, but has not yet been able to show practical evidence of competence in performing analyses, or whose temporary deficiencies do not affect its capacity to conduct valid analyses. Unless a provisional license is allowed under the circumstances allowed by the rule, receipt of a license by a laboratory applying for its initial licensure may be delayed for reasons unnecessary to protect public health.

Rule V sets a fee for processing an application or applications for either a microbiology license, chemistry license, or both. The fee of \$250 is the same as that charged under the current rules, ARM 17.82.115. The fee is set at the amount determined by the environmental laboratory to be necessary to partially cover its costs. Alternative means of funding were not considered, since 50-1-202(17), MCA, requires the department to set fees covering its actual costs. Although the fee in question only partially covers the department's actual costs, the constitutional amendment approved at the general election held November 3, 1998, requires any fee increase to be approved by public vote, which effectively prevents the department from assessing a fee in excess of that already imposed. The department plans to submit to the electorate in June, 1999, a fee schedule representing the actual cost to the department of licensing laboratories.

Rule VI explains the conditions and requirements that out-of-state laboratories must meet in order to be licensed to test public drinking water supplies in Montana. The department considered, as alternatives, prohibiting out-of-state laboratories from doing water testing for Montana sources, as well as requiring on site visits. It did not adopt either of those

alternatives, for the following reasons. Prohibiting out-of-state laboratories from testing Montana water would reduce competition among the labs and limit the availability of some tests. In addition, requiring on site inspections by environmental laboratory staff would be a burden the environmental laboratory is not equipped to handle and would duplicate the efforts of certifying authorities in other states.

Rule VII is needed to distinguish between the duration of an in-state license as opposed to a license for an out-of-state license that is granted by reciprocity, as well as to indicate the conditions under which the license will be granted. Shorter and longer certification periods were considered and rejected because EPA certifies labs on three-year cycles and consistency with EPA standards helps prevent confusion, and because this schedule protects the public health without being overly burdensome to the laboratories.

Rule VIII is necessary to set out the circumstances under which a laboratory's licensure may be downgraded, in order to maintain the control needed to protect public health when the quality of a laboratory's performance slips. More and less stringent standards were considered but rejected in order to maintain consistency with EPA's standards and because the rule, as proposed, protects the public health without being overly burdensome to the laboratories.

Rule IX is needed to establish the grounds for revocation or denial of a license, in order to screen out laboratories that are not properly performing drinking water analyses and thereby protect public health. It also requires the department to send written notice of the grounds for the department's action, which is a requirement of the Montana Administrative Procedure Act. The grounds stated for revocation or denial are the minimum determined by the department as necessary to protect public health while not being overly burdensome to the laboratories.

Rule X, by listing the steps that a laboratory whose license has been denied or revoked can take to regain licensure, is conforming to EPA standards for such reinstatement, which is necessary in order for the state to retain primary responsibility for certifying labs that do public water supply analyses to determine compliance with the federal Clean Water Act.

The requirements of Rules XI, XII, and XIII for notification of changes in a laboratory are necessary to meet EPA standards. Failure to adopt them would result in loss of Montana authority to certify labs doing public water supply analyses. In addition, the 30-day notice period was chosen as being soon enough to protect public health while not being unduly burdensome to the labs.

Rule XIV is necessary to allow the department access to labs in order to determine compliance with the other standards in these rules. No other choice was considered because the access is necessary to protect public health.

Rule XV allows the department to submit "blind" samples to a lab in order to double check the accuracy of the lab's results, a type of check that is necessary to adequately assess the quality of the lab's work. Submission of such samples is a fundamental element of proper quality assurance, so leaving out the requirement was not considered. As for (2) of the rule, since performing blind samples is a necessary step for labs to take to prove the quality of their analyses, they are not to bill the department for providing them with blind samples.

The proficiency testing required by Rule XVI is also an EPA requirement and is necessary both to retain primacy for Montana in certifying labs for the EPA and to ensure that Montana public water supplies are properly tested. No alternatives were considered because the proficiency testing steps are required by EPA and are not overly burdensome to the labs.

Rule XVII sets out the procedure that must be followed for a laboratory to become licensed. Establishing such a procedure is a necessity for any type of licensing process. The rule requires the minimum documentation and other proof to be provided that is necessary to show that the lab is capable of performing the analyses which it desires to be licensed to perform and to meet the requirements of the EPA.

Most of the provisions in Rules XVIII, XIX, XXI, XXII, and XXIII are also necessary to meet EPA requirements and no alternatives could be considered for the reasons stated above. The provision that is not required by the EPA is (6) of Rule XVIII; that provision was added to allow approval of analyses that are similar to or simpler than those for which a laboratory is already licensed. If the provision were not included, a lab would have to complete a new license application to be allowed to use the new procedure, which would be an unnecessary burden to the lab in question. Therefore, that alternative was rejected.

Rule XX is not an EPA requirement but is necessary to protect lab employees and to reflect the current statutory requirements of the Montana Safety Culture Act. Although the department could have declined to require compliance with that act as a condition of licensure, it considered its inclusion to be in the public interest by assisting in protecting the health of lab staff.

Rule XXIV parallels the reporting requirements established by the Department of Environmental Quality as set out in Title 17,

chapter 38, subchapter 2 of the Administrative Rules of Montana. No alternatives were considered because the department's rule concerning reporting needs to be consistent with Department of Environmental Quality rules on the subject.

Rule XXV is necessary to ensure that all analyses reported to the department are complete and from laboratories licensed to do such analyses. Therefore, no alternatives were considered.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 202951, Helena, MT 59604-2951, no later than December 25, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.



Rule Reviewer



Director, Public Health and
Human Services

Certified to the Secretary of State November 9, 1998.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,) NOTICE OF AMENDMENT, REPEAL
repeal and adoption of rules) AND ADOPTION OF RULES
pertaining to the practice of) PERTAINING TO THE PRACTICE
pharmacy) OF PHARMACY

TO: All Interested Persons:

1. On September 10, 1998, the Board of Pharmacy published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of pharmacy at page 2353, 1998 Montana Administrative Register, issue number 17.

2. The Board has amended ARM 8.40.401, 8.40.404, 8.40.414, 8.40.415, 8.40.502, 8.40.602, 8.40.606, 8.40.903, 8.40.905, 8.40.907, 8.40.909, 8.40.1001, 8.40.1002, 8.40.1003, 8.40.1004, 8.40.1005, 8.40.1203, 8.40.1207, 8.40.1209, 8.40.1212 and 8.40.1215; repealed ARM 8.40.410, 8.40.412, 8.40.501, 8.40.701, 8.40.1201, 8.40.1202, 8.40.1204, 8.40.1205, 8.40.1206, 8.40.1210, 8.40.1211 and 8.40.1214 and adopted new rules I (8.40.417), II (8.40.418) and III (8.40.419) exactly as proposed.

3. No comments or testimony were received.

BOARD OF PHARMACY
SHIRLEY BAUMGARTNER, PRESIDENT

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 9, 1998.

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF THE) NOTICE OF AMENDMENT
AMENDMENT of ARM 10.102.4001)
relating to Reimbursement to)
Libraries for Interlibrary)
Loans)

TO: All Interested Persons:

1. On June 25, 1998 the State Library published notice of the proposed amendment of ARM 10.102.4001 relating to reimbursement to libraries for interlibrary loans at page 1563 of the 1998 Montana Administrative Register, issue no. 12.

2. A public hearing was held on July 16, 1998 where no comments were received.

Written comments received during and subsequent to the hearing are summarized as follows along with the response of the Library:

COMMENT: Four library representatives indicated that receiving no funds for ILL for the first year would be a budgeting hardship.

RESPONSE: The State Library will implement a transition period of one year, beginning on July 1, 1999 and ending on June 30, 2000. By October 1, 1999, the State Library will extend an advance payment for interlibrary loan on the request of a library. All libraries requesting this advance, regardless of yearly reimbursement amount, must notify the State Library in writing by August 31, 1999. The advance will equal fifty (50) percent of the library's last fiscal year payment.

In following years, for libraries that receive a yearly disbursement of \$10,000 or more, the State Library will extend an advance payment by October 1. Libraries who wish to receive an advance but do not meet the disbursement amount requirement will be evaluated on an individual basis. All libraries requesting this advance must notify the State Library in writing by August 31 of each year. The advance will equal fifty (50) percent of the library's last fiscal year payment.

COMMENT: In section (2)(e)(iii), the term "electronic submission" should replace "fax transmission" to allow the inclusion of fax, E-mail, Ariel, or other future online technologies.

RESPONSE: The State Library agrees, and will amend the rule as suggested.

COMMENT: The language in (3) suggests that for any library to receive reimbursement, every library must certify.

RESPONSE: The State Library will clarify the meaning of this section.

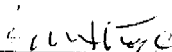
3. The State Library has amended the rule as proposed, but with the following changes:

10.102.4001 REIMBURSEMENT TO LIBRARIES FOR INTERLIBRARY LOANS (1) through (2)(e)(ii) remain the same as proposed.

(iii) Interlibrary loans, when completed via ~~fax transmission~~ electronic submission, also count as reimbursable interlibrary loans. Costs associated with ~~fax transmission~~ electronic submission are chargeable if the transmission was specified by the requesting library. ~~Fax transmissions~~ Electronic submissions qualify as special handling.

(3) For ~~any~~ a library to receive reimbursement through the program, ~~each~~ it must annually certify to the state library that the appropriate member of its staff has demonstrated competence regarding the application of the standardized interlibrary loan protocols. AUTH: 22-1-330, MCA; IMP: 22-1-328, MCA.

4. Therefore, the State Library amends the rule with the changes listed above.



KAREN STREGÉ
State Librarian

Certified to Secretary of State November 9, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of amendment of	)	NOTICE OF AMENDMENT
ARM 17.8.302 and 17.8.340,	)	OF RULES
adopting and incorporating by)	
reference emission guidelines)	
for hospital/medical/)	
infectious waste incinerators	)	(Air Quality)

TO: All Interested Persons

1. On September 10, 1998, the board of environmental review published notice of public hearing on proposed amendment outlined above at page 2373 of the 1998 Montana Administrative Register, Issue No. 17.

2. The board has amended rule 17.8.302 as proposed.

3. The board has amended the following rule as proposed with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

17.8.340 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES

(1) through (5)(a) Remain as proposed.

(5)(b) award contracts for any necessary control systems/process changes within ~~18~~ 21 months after the date of EPA's publication of approval of the state plan in the Federal Register;

(5)(c) through (e) Remain as proposed.

AUTH: 75-2-111, ~~75-2-203~~, MCA; IMP: 75-2-203, MCA

4. The board received the following comment; the board's response follows:

COMMENT #1: The department testified that it had received a comment from an affected facility that the 18-month deadline under proposed ARM 17.8.340(5)(b) for awarding contracts for any necessary control equipment or process changes after EPA approval of the state plan might not allow sufficient time for an affected facility to submit a final control plan and award necessary contracts. The department agreed with the comment and proposed that the board revise ARM 17.8.340(5)(b) to allow 21 months, rather than 18.

RESPONSE: The proposed revision would not alter the deadlines for initiation and completion of any necessary construction or the deadline for final compliance. It will take the department some time to review and approve control plans, which must be submitted within 15 months after EPA approval of the state plan. The department's review may take a substantial portion of the 3-month period between that 15-month deadline and the 18-month deadline originally proposed for awarding of contracts. Because an affected facility cannot begin to award any necessary contracts until it is notified of department approval of the

facility's control plan, and extending the deadline to 21 months will not affect the deadlines for construction and compliance, it is reasonable to allow an additional 3 months for a facility to award any necessary contracts and the board has made that revision to the proposed amendments.

BOARD OF ENVIRONMENTAL REVIEW

by Cindy E. Younkin
CINDY E. YOUNKIN, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State November 9, 1998.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of ARM 17.56.1001	)	AND ADOPTION OF RULE
providing a tank fee schedule)	
and adoption of NEW RULE I	)	(Underground Storage
providing for upgrading of	)	Tanks)
existing UST systems)	
)	

TO: All Interested Persons

1. On September 24, 1998, the department of environmental quality published notice of public hearing on the proposed amendment and adoption outlined above at page 2547 of the 1998 Montana Administrative Register, Issue No. 18.

2. The department has amended rule 17.56.1001 as proposed.

3. The department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (17.56.221) ISSUANCE OF COMPLIANCE TAGS AND CERTIFICATES (1) The department shall issue to an owner or operator of an underground storage tank that meets the requirements of ARM 17.56.201 or 17.56.202(1)(a) or (1)(b) a compliance tag that indicates the owner or operator has satisfied the applicable requirements. The compliance tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if ~~the fill pipe is inaccessible~~ affixing the tag to the fill pipe is impracticable.

(2) through (5) Remain as proposed.

AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA

4. The department received the following comments; department responses follow:

COMMENT #1: Section (1) of the new rule (17.56.221) states "The compliance tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if fill pipe is inaccessible." If the fill pipe is inaccessible how will the tank be filled with fuel?

RESPONSE: The department agrees that the proposed language does not accurately convey the concept intended. The rule has been amended to read "The compliance tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable."

COMMENT #2: What amount of evidence would be satisfactory under Rule I(4) (17.56.221) in order that an owner or operator might receive a replacement compliance tag? Also, a replacement tag

might be placed on a non-compliant tank.

RESPONSE: Satisfactory evidence as defined by Black's Law Dictionary is "...such evidence as is sufficient to produce a belief that the thing is true." In this instance, it would be that amount of evidence which is sufficient to produce the belief that the tag is actually lost or destroyed.

If an owner or operator uses a replacement tag on a non-compliant tank, he would be subject to a penalty of up to \$10,000 per violation. Each day of violation may be considered a separate violation. Additionally, each tag is individually numbered to correspond to a particular tank. Whether a particular tag corresponds to a particular tank can easily be determined by checking the compliance certificate or by searching the department's database.

COMMENT #3: Rule I (17.56.221) refers only to underground storage tanks and does not mention piping. Is piping considered part of the tank?

RESPONSE: Section 75-11-503, MCA, defines "underground storage tank" and includes in that definition "any underground pipe used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground." This definition is applicable to the term as used in Rule I (17.56.221).

COMMENT #4: What effect will these rules have on aboveground tanks with underground piping?

RESPONSE: Rule I (17.56.221) provides that aboveground tanks with underground piping must have the compliance tag attached to the fill pipe or other visible location. The underground piping must be in compliance before a tag will be issued and must remain in compliance once a tag is issued.

COMMENT #5: To which tanks would these rules apply? How would that information be distributed? The above information should be transmitted to transporters as soon as possible and a toll-free (800) number should be available to answer any questions.

RESPONSE: The department will be communicating with fuel transporters to advise them as to which tanks this rule will apply, together with a list of all tanks known to be in compliance as of the date of the letter. The department is also planning to update that information at regular intervals and is relying on transport companies to relay the information to their individual drivers.

The department has an (800) number, 1-(800)457-0568, available
Montana Administrative Register 22-11/19/98

for reporting releases from underground storage tank systems. That number may be used by transporters having questions as to whether they should fill particular tanks. The department strongly suggests that transporters call the number before making deliveries. No rule amendments are necessary to perform these actions.

COMMENT #6: What are the potential penalties for violating the proposed rule?

RESPONSE: Section 75-11-516, MCA, provides that "[a] person who violates any provision of this part, a rule under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for each violation." Other remedies, including injunctive relief, may be pursued. This penalty would apply to transporters, owners and operators if a tank not having a compliance tag is filled.

COMMENT #7: The new and amended rules could have indirect consequences on the Tribes. The State of Montana's assertion of jurisdiction is improper.

RESPONSE: The adoption of these rules has no effect on the extent of state jurisdiction on reservations. That is controlled by federal law and state statute.

COMMENT #8: Closure of rural facilities could cause economic hardships in those areas as well as the possibility of improper storage of regulated substances.

RESPONSE: The department shares this concern. The department has recently completed a study of this very issue. The department encourages those concerned about this issue to review the report which may be requested by calling (406)444-5970. However, Rule I (17.56.221) and the proposed amendments do not impose the requirement to upgrade or close tanks. That is required by federal law and ARM 17.56.202.

COMMENT #9: The compliance tags called for in the proposed new rule should not use the word "compliance" on the tag. That may lead owners and operators to believe that they are also in compliance with Petroleum Release Compensation Board requirements as well as those of the State Fire Marshal.

RESPONSE: The department has reached the conclusion that labeling the tag "UST COMPLIANCE TAG" best indicates the purpose of the tag. The proposed rule clearly states that the purpose of the compliance certificate is to show that the tanks listed

thereon have satisfied the requirements of ARM 17.56.201 or 17.56.202(1)(a) or (1)(b).

DEPARTMENT OF ENVIRONMENTAL QUALITY

by 
MARK A. SIMONICH, Director

Reviewed by:


John F. North, Rule Reviewer

Certified to the Secretary of State November 9, 1998.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of ARM 17.58.331	)	OF RULE
pertaining to assent to audit)	
requirements	)	(Petroleum Tank Release
	)	Compensation Board)

TO: All Interested Persons

1. On August 27, 1998, the board published notice on the proposed amendment outlined above at page 2245 of the 1998 Montana Administrative Register, Issue No. 16.

2. The board has amended the following rule as proposed with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

17.58.331 ASSENT TO AUDIT (1) ~~Except as provided in (3),~~
~~Each~~ contractor, subcontractor, or vendor employed to carry out a corrective action plan in whole or in part shall assent to an audit ~~by the board of the documentation supporting their invoices when billable labor is charged if they charge at an hourly labor rate.~~

(2) Remains as proposed.

~~(3) Vendors that do not provide services away from the release site are not required to submit to an audit.~~


AUTH: Sec. 75-11-318, MCA; IMP: Sec. 75-11-309, MCA

3. The board received the following comments; board responses follow:

COMMENT #1: The Board received the comments that the rule was confusing and contained double negatives.

RESPONSE: The Board has simplified the amendment language to make it more readable. Section (3) is deleted because it is now clear that contractors, subcontractors or vendors must submit to an audit if they charge an hourly rate and it would be redundant to retain section (3).

BOARD OF ENVIRONMENTAL REVIEW

by 
JEAN A. RILEY, Executive Director

Reviewed by:


John F. North, Rule Reviewer

Certified to the Secretary of State November 9, 1998.

22-11/19/98

Montana Administrative Register

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION,
new rules I through III, the) AMENDMENT, AND REPEAL
amendment of rules 18.9.602 and)
18.9.603, and the repeal of rule)
18.9.604 concerning the Alcohol)
Tax Incentive Program.)

TO: All Interested Persons.

1. On August 13, 1998, the Department of Transportation published notice of the proposed adoption, amendment and repeal of the rules referenced above at page 2144 of the 1998 Montana Administrative Register, issue number 15.

2. The agency has adopted new rules I through III (18.9.606, 18.9.607, and 18.9.608) as proposed. Rules 18.9.602 and 18.9.603 are amended as proposed and rule 18.9.604 is repealed as proposed.

3. Robert Mease and former Governor Tim Babcock, representing American Agri-Technology of Montana, spoke in support of the rules at the hearing. No written comments on the rules were received by the Department.

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State November 2, 1998

BEFORE THE DEPARTMENT OF CORRECTIONS
STATE OF MONTANA

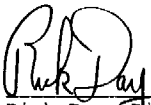
In the matter of the adoption)	NOTICE OF ADOPTION
of new rules I through XI)	OF NEW RULES I THROUGH XI -
pertaining to the siting,)	20.7.501 THROUGH 20.7.511
establishment, and expansion)	
of prerelease centers in the)	
State of Montana)	

TO: All Interested Persons

1. On October 8, 1998, the Department of Corrections published a notice at page 2675 of the 1998 Montana Administrative Register, Issue No. 19, of the proposed adoption of new rules pertaining to the siting, establishment, and expansion of prerelease centers in the State of Montana.

2. No written comments were received prior to the closing date of November 5, 1998.

3. The Department has adopted rules I through XI (20.7.501 through 20.7.511) exactly as proposed.


Rick Day, Director
Department of Corrections


Lois Adams
Rule Reviewer

Certified to the Secretary of State, November 9, 1998.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of a new rule)	
regarding Chronic Wasting	)	NOTICE OF EMERGENCY
Disease and importation	)	RULE
restrictions on Game Farm)	
Animals)	

TO: All Interested Persons:

1. The board believes the following reasons constitute the necessity for imposition of this emergency rule:

a) Chronic Wasting Disease is a dangerous disease which may threaten the wildlife of the State of Montana as well as the Game Farm Industry.

b) If the board did not act immediately to impose restrictions it would create an unacceptable risk of exposure or possible infection of wild animals and game farm animals. In the opinion of the state veterinarian conditions may exist that place wild animals and game farm animals in imminent peril.

c) Therefore, the board imposes the following emergency rule. This rule will be mailed to all licensees as well as interested commenting parties and published as an emergency rule in the Montana Administrative Register.

2. The emergency rule will be effective November 11, 1998.

3. The text of the emergency rule is as follows:

RULE 1. IMPORTATION RESTRICTIONS FOR WILD AND CAPTIVE CERVID SPECIES (1) Wild or captive cervids may not be imported or transported from a geographic area or game farm where chronic wasting disease (CWD) is endemic or has been diagnosed.

(2) Prior to shipment, all imported cervids must be identified with an official USDA eartag or the Canadian equivalent "H of A" eartag.

(3) The exporting herd has been participating in a CWD surveillance program, approved by the Montana state veterinarian, for a minimum of twelve months prior to importation into Montana.

(4) (a) Wild or captive cervids must have resided in the exporting herd for a minimum of twelve months immediately prior to importation. Satisfactory documentation (as determined by the Montana state veterinarian) of this requirement must be furnished prior to importation into

Montana; or

(b) A satisfactory and complete (as determined by the Montana state veterinarian) documented animal movement history from (birth) farm or origin must be furnished prior to importation into Montana.

AUTH: 87-4-422, 81-2-707, 81-2-103, MCA

IMP: 87-4-422(2), 81-2-703, 87-4-424, 81-2-103, MCA

4. The rationale for the emergency rule is set forth in paragraph 1.

5. Rule-making procedures will be undertaken prior to the expiration of this emergency rule.

6. Interested persons are encouraged to submit their comments during the upcoming rule-making process. If interested persons wish to be personally notified of that rule-making process, they should submit their names and addresses to the Department of Livestock, 301 N. Roberts Street, Room 308, P.O. Box 202001, Helena, MT 59620-2001.

MONTANA BOARD OF LIVESTOCK
JOHN PAUGH, CHAIRMAN

BY: 

Laurence Petersen, Executive Officer
Board of Livestock,
Department of Livestock

BY: 

Lon Mitchell, Rule Reviewer
Livestock, Chief Legal Counsel

Certified to the Secretary of State November 11, 1998.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION,
of rules I through III, the	)	TRANSFER AND AMENDMENT
transfer and amendment of	)	AND REPEAL
11.14.601, 11.14.602,)	
11.14.604, 11.14.605 and)	
11.14.607 through 11.14.611,)	
11.5.1003, 11.5.1004, and)	
the repeal of 11.5.1001,)	
11.5.1002, 11.5.1005 and)	
11.14.613 pertaining to child)	
care assistance)	

TO: All Interested Persons

1. On September 10, 1998, the Department of Public Health and Human Services published notice of the proposed adoption, transfer, amendment and repeal of the above-stated rules at page 2408 of the 1998 Montana Administrative Register, issue number 17.

2. The Department has transferred and amended rules 11.14.601, 11.14.602, 11.14.604 and 11.14.607 through 11.14.611, 11.5.1003, 11.5.1004 and repealed rules 11.5.1001, 11.5.1002, 11.5.1005 and 11.14.613 as proposed.

3. The Department has adopted rules I (37.80.103), II (37.80.205), and III (37.80.502) as proposed.

4. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

11.14.605 (37.80.202) INCOME ELIGIBILITY AND COPAYMENTS
(1) through (10) remain as proposed.

[This proposed chart is deleted and the following chart is the new one.]

CHILD CARE SLIDING FEE SCALE								
FAMILY SIZE		2	3	4	5	6	7	8
%Poverty	Gross income	Below 95.5% + \$1 of the Federal Poverty Level						
-\$Income	CoPay	\$5	\$5	\$5	\$5	\$5	\$5	\$5
95.5% + \$1	Gross income	\$865	\$1,087	\$1,309	\$1,533	\$1,755	\$1,977	\$2,201
1%	CoPay	\$9	\$11	\$13	\$15	\$18	\$20	\$22
100%	Gross income	\$904	\$1,138	\$1,371	\$1,604	\$1,838	\$2,071	\$2,304
13%	CoPay	\$27	\$34	\$41	\$48	\$55	\$62	\$69
105%	Gross income	\$949	\$1,194	\$1,439	\$1,684	\$1,929	\$2,174	\$2,419
5%	CoPay	\$47	\$60	\$72	\$84	\$96	\$109	\$121
110%	Gross income	\$995	\$1,251	\$1,508	\$1,765	\$2,021	\$2,278	\$2,535
7%	CoPay	\$70	\$88	\$106	\$124	\$141	\$159	\$177
115%	Gross income	\$1,040	\$1,308	\$1,576	\$1,845	\$2,113	\$2,381	\$2,650
9%	CoPay	\$94	\$118	\$142	\$166	\$190	\$214	\$239
120%	Gross income	\$1,085	\$1,365	\$1,645	\$1,925	\$2,205	\$2,485	\$2,765
11%	CoPay	\$119	\$150	\$181	\$212	\$243	\$273	\$304
125%	Gross income	\$1,130	\$1,422	\$1,714	\$2,005	\$2,297	\$2,589	\$2,880
13%	CoPay	\$147	\$185	\$223	\$261	\$299	\$337	\$374
130%	Gross income	\$1,175	\$1,479	\$1,782	\$2,085	\$2,389	\$2,692	\$2,995
15%	CoPay	\$176	\$222	\$267	\$313	\$358	\$404	\$449
135%	Gross income	\$1,221	\$1,536	\$1,851	\$2,166	\$2,481	\$2,796	\$3,111
17%	CoPay	\$208	\$261	\$315	\$368	\$422	\$475	\$529
140%	Gross income	\$1,266	\$1,593	\$1,919	\$2,246	\$2,573	\$2,899	\$3,226
19%	CoPay	\$241	\$303	\$365	\$427	\$489	\$551	\$613
145%	Gross income	\$1,311	\$1,649	\$1,988	\$2,326	\$2,664	\$3,003	\$3,341
21%	CoPay	\$275	\$346	\$417	\$488	\$559	\$631	\$702
150%	Gross income	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456
23%	CoPay	\$312	\$392	\$473	\$553	\$634	\$714	\$795

[The following chart is all new material to the rule, but is not shown with underlines to make it easier to read.]

		CHILD CARE SLIDING FEE SCALE						
FAMILY SIZE		2	3	4	5	6	7	8
%Poverty	Gross Income	Below 95.5% +\$1 of the Federal Poverty Level						
%Income	CoPay	\$5	\$5	\$5	\$5	\$5	\$5	\$5
95.5% + \$1	Gross Income	\$865	\$1,087	\$1,309	\$1,533	\$1,755	\$1,977	\$2,201
3%	CoPay	\$26	\$33	\$39	\$46	\$53	\$59	\$66
100%	Gross Income	\$904	\$1,138	\$1,371	\$1,604	\$1,838	\$2,071	\$2,304
4%	CoPay	\$36	\$46	\$55	\$64	\$74	\$83	\$92
105%	Gross Income	\$949	\$1,194	\$1,439	\$1,684	\$1,929	\$2,174	\$2,419
5%	CoPay	\$47	\$60	\$72	\$84	\$96	\$109	\$121
110%	Gross Income	\$995	\$1,251	\$1,508	\$1,765	\$2,021	\$2,278	\$2,535
6%	CoPay	\$60	\$75	\$90	\$106	\$121	\$137	\$152
115%	Gross Income	\$1,040	\$1,308	\$1,576	\$1,845	\$2,113	\$2,381	\$2,650
7%	CoPay	\$73	\$92	\$110	\$129	\$148	\$167	\$185
120%	Gross Income	\$1,085	\$1,365	\$1,645	\$1,925	\$2,205	\$2,485	\$2,765
8%	CoPay	\$87	\$109	\$132	\$154	\$176	\$199	\$221
125%	Gross Income	\$1,130	\$1,422	\$1,714	\$2,005	\$2,297	\$2,589	\$2,880
9%	CoPay	\$102	\$128	\$154	\$180	\$207	\$233	\$259
130%	Gross Income	\$1,175	\$1,479	\$1,782	\$2,085	\$2,389	\$2,692	\$2,995
10%	CoPay	\$118	\$148	\$178	\$209	\$239	\$269	\$300
135%	Gross Income	\$1,221	\$1,536	\$1,851	\$2,166	\$2,481	\$2,796	\$3,111
11%	CoPay	\$134	\$169	\$204	\$238	\$273	\$308	\$342
140%	Gross Income	\$1,266	\$1,593	\$1,919	\$2,246	\$2,573	\$2,899	\$3,226
12%	CoPay	\$152	\$191	\$230	\$270	\$309	\$348	\$387
145%	Gross Income	\$1,311	\$1,649	\$1,988	\$2,326	\$2,664	\$3,003	\$3,341
13%	CoPay	\$170	\$214	\$258	\$302	\$346	\$390	\$434
150%	Gross Income	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456
14%	CoPay	\$190	\$239	\$288	\$337	\$386	\$435	\$484

AUTH: Sec. 52-2-704 and 53-4-212, MCA

IMP: Sec. 52-2-704, 53-4-212, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601 and 53-4-611, MCA

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follows:

RULE II (37.80.205)

A total of 206 comments were received regarding Rule II (37.80.205) on the 1999 different rates by district. Of those comments 156 support the district rates and 50 oppose the district rates.

COMMENT #1: Several comments were received that support the geographic rates based on 75th percentile of the market rate survey. They believe families will experience equal access to quality child care programs, given the different rates found in various locations.

RESPONSE: The Department of Public Health and Human Services (Department) acknowledges receipt of the comments in support.

COMMENT #2: Several comments were received stating they believe the geographic rates are discriminatory, favoring high cost areas over low cost areas or allowing urban rates to drive neighboring rates.

RESPONSE: The Department noted the geographic rate structure is designed to address the need for child care services in areas experiencing different costs of living. The Department considered determining rates by county and found the number of providers insufficient for analysis in many counties. In some cases, there were no providers in a county. A district view produced a large enough sample to determine the rate at the 75th percentile in the multi county areas. The Department recognizes urban child care rates may differ from rural child care rates within each district. Currently, the Department does not have a method of distinguishing among urban or rural programs. The district rate structure is the most workable solution to equalizing out-of-pockets costs for families.

COMMENT #3: Several comments were received stating that the market rate survey was flawed, or not broad enough, and the Department is controlling child care costs.

RESPONSE: The market rate survey is actually a data analysis of provider rates in the Montana Automated Child Care Computer System (MACCS). Each month, providers participating in the state payment system have the opportunity to update their rate

information on the Turn Around Document (TAD) which is submitted to claim payment from the Department. Information in MACCS reflects the monthly updates, as well as those providers who responded to a request to update their rates by contacting their Child Care Resource and Referral agency prior to analysis. This process provides a large statistical sample which closely resembles the population of child care providers. Informal care, provided outside the Department's regulatory process is not included in the analysis.

The Department analyzes child care rates every two years with the intention of adjusting to "the market rate". It appears, however, some child care providers follow the Department by setting their rates according to the existing Department rate. This may produce the unintentional effect, or perception, that the Department sets child care rates. Child care providers are encouraged to report their actual rates, regardless of their relationship to the Department rates.

COMMENT #4: Several comments were received that suggested Legally Unregistered Provider (LUP) rates are too low.

RESPONSE: Expanding on the previous comment, LUPs appear to accept the Department rate, and thereby allow the Department to set the child care rate. Again, LUPs are encouraged to report their actual rate for providing care, regardless of their relationship to the Department rate.

COMMENT #5: Several comments were received stating the district rate structure is too complex.

RESPONSE: The district rate structure will be integrated into the Montana Automated Child Care Computer System (MACCS). The computer will manage the added complexity for Department staff. The Department anticipates the families and programs served by the Department will not experience the complexity of district rates.

ARM 11.14.604 [37.80.2011]

COMMENT #6: Several comments were received stating that they objected to the work requirement (60 hours per month in one parent household or 120 hours per month in two parent households).

RESPONSE: The Personal Responsibility and Work Opportunity Reconciliation Act which encompasses the Child Care and Development Fund (CCDF) programs are designed to move people into the workforce. With few exceptions, families must be working to receive child care benefits. In discussing minimum work requirements, an average of 20 hours per week, or 80 hours per month per adult was considered. However, the average per

adult of 15 hours per week or 60 hours per month was chosen because it was low enough to accommodate many work study students who may need child care assistance while attending post secondary education activities.

COMMENT #7: Several comments were received stating they objected to reducing the upper limit of the sliding fee scale from 185% of the federal poverty level (FPL) to 150% of the FPL.

RESPONSE: The Department noted that Montanans experience lower wages than most other states and many family incomes are at or below 185% of the FPL. Given the limited nature of block grant funding and recent budget shortfalls due to serving families with incomes up to 185% of FPL, the Department must lower the upper limit of eligibility to maintain the viability of the program with emphasis on families with the lowest incomes, as mandated by the Child Care and Development Fund.

ARM 11.14.605 [37.80.202]

COMMENT #8: Several comments were received stating that they objected to increasing the copayment percentages on the child care sliding fee scale.

RESPONSE: The Department agrees with the comments and will amend the rule as shown above. The Department has decided not to increase copayment percentages at this time, but to keep the percentages the same as they were before the proposed rule change.

GENERAL COMMENTS

COMMENT #9: Some comments were received stating the Department payment rate does not account for variables such as quality of care, odd-hour care, the number of children in a family, or the level of service (transportation, preschool curriculum, etc.).

RESPONSE: While the Department may include other rate structure factors in the future, there is considerable work to be done before addressing other factors. These remain a topic for future policy and system discussions. The Department largely depends on the market to set child care rates.

COMMENT #10: One comment was received stating the rule change is too hasty.

RESPONSE: During the rule change process, the Department began discussing transferring funds from the Temporary Assistance for Needy Families (TANF) block grant. Five million dollars have been transferred to child care to accommodate the recent budget short fall. If more funds are identified, the Department will reevaluate the proposed sliding fee scale changes.

Dawn Silva
Rule Reviewer

Lauri Elmer
Director, Public Health and
Human Services

Certified to the Secretary of State November 9, 1998.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the transfer of) NOTICE OF TRANSFER
title 46, chapter 8, with the)
exception of reserved and)
repealed rules, pertaining to)
the developmental disabilities)
program)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the developmental disabilities program is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, the above-stated rules are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 34.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
46.8.101	<u>37.34.101</u>	Purpose of the Developmental Disabilities Division Program
46.8.102	<u>37.34.102</u>	Definitions
46.8.104	<u>37.34.105</u>	Evaluation Services
46.8.106	<u>37.34.108</u>	Confidentiality of Information
46.8.107	<u>37.34.109</u>	Client Grievance Procedure
46.8.109	<u>37.34.114</u>	Certification of Persons Assisting in the Administration of Medication
46.8.201	<u>37.34.1101</u>	Individual Plan: Purpose
46.8.202	<u>37.34.1102</u>	Individual Plan: Implementation
46.8.203	<u>37.34.1103</u>	Individual Plan: Components
46.8.206	<u>37.34.1107</u>	Individual Plan: Composition of Individual Planning Team
46.8.207	<u>37.34.1108</u>	Individual Plan: Status Reports and Annual Planning Meeting
46.8.208	<u>37.34.1109</u>	Individual Plan: Duties of the Case Manager
46.8.211	<u>37.34.1114</u>	Individual Plan: Decision Making
46.8.212	<u>37.34.1115</u>	Individual Plan: Individual Planning Appeal Committee
46.8.301	<u>37.34.201</u>	Eligibility: General Eligibility Requirements
46.8.302	<u>37.34.202</u>	Eligibility: Evaluation
46.8.305	<u>37.34.206</u>	Eligibility: State Funded Family Education and Support Services
46.8.306	<u>37.34.207</u>	Eligibility: Federally Funded Part H Family Education and Support Services

<u>OLD</u>	<u>NEW</u>	
46.8.307	<u>37.34.208</u>	Eligibility: Federally Funded Intensive Family Education and Support Services
46.8.310	<u>37.34.211</u>	Eligibility: Children's Community Home Services
46.8.311	<u>37.34.212</u>	Eligibility: Children's Summer Day Services
46.8.315	<u>37.34.215</u>	Eligibility: State Funded Adult Services
46.8.316	<u>37.34.216</u>	Eligibility: State Funded Adult Intensive Services
46.8.317	<u>37.34.217</u>	Eligibility: Federally Funded Intensive Adult Services
46.8.320	<u>37.34.221</u>	Eligibility: State Funded Senior Services
46.8.321	<u>37.34.222</u>	Eligibility: Federally Funded Senior Services
46.8.325	<u>37.34.226</u>	Eligibility: Appeal Procedures
46.8.401	<u>37.34.1601</u>	Regional Councils
46.8.502	<u>37.34.1701</u>	Preparation of Montana Developmental Disabilities State Plan
46.8.705	<u>37.34.2301</u>	Residential Facility Screening: Purpose
46.8.706	<u>37.34.2302</u>	Residential Facility Screening: Definitions
46.8.710	<u>37.34.2306</u>	Residential Facility Screening: Administration and Composition of Screening Team
46.8.711	<u>37.34.2307</u>	Residential Facility Screening: Responsibilities of Developmental Disabilities Professionals and QMRP's
46.8.712	<u>37.34.2308</u>	Residential Facility Screening: Responsibilities of the Screening Team
46.8.713	<u>37.34.2309</u>	Residential Facility Screening: Determination of Screening Team
46.8.717	<u>37.34.2313</u>	Residential Facility Screening: Appeal of Screening Team
46.8.720	<u>37.34.2316</u>	Determination or Recommendation
46.8.721	<u>37.34.2317</u>	Residential Facility Screening: Certification of Developmental Disabilities Professionals
46.8.721	<u>37.34.2317</u>	Residential Facility Screening: The Certification Committee for Development Disabilities Professionals
46.8.722	<u>37.34.2318</u>	Residential Facility Screening: Certification Procedures for Developmental Disabilities Professionals

OLD	NEW	
46.8.723	<u>37.34.2319</u>	Residential Facility Screening: Qualifications of Developmental Disabilities Professionals
46.8.724	<u>37.34.2320</u>	Residential Facility Screening: Right to Appeal Certification Committee Decisions
46.8.901	<u>37.34.1801</u>	Standards: Adoption and Applicability
46.8.902	<u>37.34.1802</u>	Department Assistance
46.8.1101	<u>37.34.1201</u>	Adult and Family Services: Education and Training Requirements
46.8.1104	<u>37.34.1204</u>	Adult and Family Services: Leisure and Community Activities
46.8.1201	<u>37.34.1401</u>	Aversive Procedures: Purpose
46.8.1202	<u>37.34.1402</u>	Applicability
46.8.1203	<u>37.34.1403</u>	Aversive Procedures: Use
46.8.1204	<u>37.34.1404</u>	Aversive Procedures: Definitions
46.8.1206	<u>37.34.1408</u>	Aversive Procedures: Systematic Program Review
46.8.1207	<u>37.34.1409</u>	Aversive Procedures: Approval Criteria
46.8.1208	<u>37.34.1410</u>	Aversive Procedures: Classification and Conditions Governing Use of Procedures
46.8.1211	<u>37.34.1415</u>	Aversive Procedures: Developmental Disabilities Program Review Committee
46.8.1213	<u>37.34.1418</u>	Aversive Procedures: Restriction of Any Client Rights
46.8.1214	<u>37.34.1419</u>	Meal Delay
46.8.1215	<u>37.34.1420</u>	Aversive Procedures: Emergency Procedures
46.8.1216	<u>37.34.1421</u>	Aversive Procedures: Reimposition of Deceleration Program
46.8.1218	<u>37.34.1426</u>	Aversive Procedures: Appeal Process
46.8.1219	<u>37.34.1427</u>	Aversive Procedures: Staff Certification
46.8.1220	<u>37.34.1428</u>	Aversive Procedures: Unclassified Procedures
46.8.1301	<u>37.34.1501</u>	Incident Reporting and Handling, Purpose
46.8.1302	<u>37.34.1502</u>	Incident Reporting and Handling, Policy
46.8.1304	<u>37.34.1506</u>	Incident Reporting and Handling
46.8.1305	<u>37.34.1507</u>	Incident Reporting and Handling, Death, Suicide Attempt, Unaccounted for Absence, Emergency Hospitalization or Law Enforcement Involvement
46.8.1307	<u>37.34.1511</u>	Incident Reporting and Handling, Investigations

<u>OLD</u>	<u>NEW</u>	
46.8.1308	<u>37.34.1512</u>	Incident Reporting and Handling, Confidentiality
46.8.1309	<u>37.34.1513</u>	Incident Reporting and Handling, Client Abuse or Client Problem Behavior
46.8.1501	<u>37.34.301</u>	Placement Determinations: Purpose
46.8.1502	<u>37.34.302</u>	Placement Determinations: Definitions
46.8.1505	<u>37.34.306</u>	Placement Determinations: Referral Process
46.8.1506	<u>37.34.307</u>	Placement Determinations: Screening Procedures
46.8.1507	<u>37.34.308</u>	Placement Determinations: Criteria
46.8.1508	<u>37.34.309</u>	Placement Determinations: Local Screening Committees
46.8.1509	<u>37.34.310</u>	Placement Determinations: Central Screening Committee
46.8.1510	<u>37.34.311</u>	Placement Determinations: Categorical Exceptions to Placement Rules
46.8.1515	<u>37.34.318</u>	Placement Determinations: Supported Living Screening
46.8.1517	<u>37.34.319</u>	Placement Determinations: Supported Employment
46.8.1525	<u>37.34.325</u>	Placement Determinations: Service Exchange
46.8.1527	<u>37.34.329</u>	Placement Determinations: Trial Placement
46.8.1528	<u>37.34.330</u>	Placement Determinations: Temporary Service Authorization
46.8.1550	<u>37.34.335</u>	Placement Determinations: Notices and Appeals
46.8.1601	<u>37.34.701</u>	Adult Services: Purpose
46.8.1602	<u>37.34.702</u>	Adult Services: Performance Requirements
46.8.1605	<u>37.34.706</u>	Adult Services: Community Home Services Requirements
46.8.1608	<u>37.34.711</u>	Adult Services: Work or Day Services Requirements
46.8.1609	<u>37.34.712</u>	Adult Services: Supported Living Services Requirements
46.8.1610	<u>37.34.713</u>	Adult Services: Supported Living Services Safety Requirements
46.8.1701	<u>37.34.601</u>	Family Services: Purpose
46.8.1702	<u>37.34.602</u>	Family Services: General Definitions
46.8.1703	<u>37.34.604</u>	Family Services: Definitions for State Funded and Federally Funded Part H Family Education and Support Services

<u>OLD</u>	<u>NEW</u>	
46.8.1704	<u>37.34.605</u>	Family Services: Definitions for State Funded Family Education and Support Services
46.8.1706	<u>37.34.609</u>	Family Services: General Requirements
46.8.1708	<u>37.34.612</u>	Family Services: Family Education and Support Services Requirements
46.8.1709	<u>37.34.613</u>	Family Services: State Funded Family Education and Support Services Requirements
46.8.1710	<u>37.34.614</u>	Family Services: Federally Funded Part H Family Education and Support Services Requirements
46.8.1711	<u>37.34.615</u>	Family Services: Family Education and Support Services Resource and Support Wrap-around Services Requirements
46.8.1712	<u>37.34.616</u>	Family Services: Federally Funded Intensive Family Education and Support Services Requirements
46.8.1715	<u>37.34.621</u>	Family Services: Children's Community Home Services Requirements
46.8.1716	<u>37.34.622</u>	Family Services: Children's Summer Day Services Requirements
46.8.1901	<u>37.34.2101</u>	Staffing: Applicability
46.8.1902	<u>37.34.2102</u>	Staffing: Staff Competencies Generally
46.8.1905	<u>37.34.2106</u>	Staffing: Staff Competencies for Family Education and Support Services
46.8.1906	<u>37.34.2107</u>	Staffing: Staff Competencies for Community Home, Intensive Community Home, Supported Living, Work or Day Services
46.8.1909	<u>37.34.2111</u>	Staffing: Contractor Staffing for Services
46.8.1910	<u>37.34.2112</u>	Staffing: Contractor Staffing for Supported Living Services
46.8.2001	<u>37.34.901</u>	Medicaid Home and Community Services Program: Authority
46.8.2002	<u>37.34.902</u>	Medicaid Home and Community Services Program: Generally
46.8.2005	<u>37.34.906</u>	Medicaid Home and Community Services Program: Eligibility
46.8.2006	<u>37.34.907</u>	Medicaid Home and Community Services Program: Intensive Services Review Committee
46.8.2008	<u>37.34.911</u>	Medicaid Home and Community Services Program: Available Services
46.8.2009	<u>37.34.912</u>	Medicaid Home and Community Services Program: General Provider Requirements

<u>OLD</u>	<u>NEW</u>	
46.8.2010	<u>37.34.913</u>	Medicaid Home and Community Services Program: Reimbursement
46.8.2012	<u>37.34.917</u>	Medicaid Home and Community Services Program: Individual Plans of Care
46.8.2013	<u>37.34.918</u>	Medicaid Home and Community Services Program: Informing Beneficiary of Choice
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OLD	NEW	
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46.8.2035	<u>37.34.955</u>	Medicaid Home and Community Services Program: Physical Therapy Services, Requirements
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46.8.2037	<u>37.34.957</u>	Medicaid Home and Community Services Program: Speech Therapy Services, Requirements
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3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

Dawn Klein
Rule Reviewer

Wendell R. Billings Jr.
Director, Public Health and
Human Services

Certified to the Secretary of State November 9, 1998.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT AND
of ARM 42.12.104, 42.12.131,) ADOPTION
42.12.144, 42.12.401, 42.12.)
404, 42.12.406, 42.12.410,)
42.12.412, and 42.12.414;)
and ADOPTION of NEW RULE I)
(ARM 42.12.405) relating to)
Lottery Process for Liquor)
Licensing)

TO: All Interested Persons:

1. On September 10, 1998, the Department published notice of the proposed amendments to ARM 42.12.104, 42.12.131, 42.12.144, 42.12.401, 42.12.404, 42.12.406, 42.12.410, 42.12.412, and 42.12.414; and adoption of NEW RULE I (ARM 42.12.405) relating to Lottery Process for Liquor Licensing at page 2441 of the 1998 Montana Administrative Register, issue no. 17.

2. A public hearing was held on October 2, 1998, where written and oral comments were received.

3. Oral and written comments received by the Department are summarized as follows along with the Department's responses:

COMMENT 1: Mr. Steve Shuel, President, MacKenzie Northwest, Inc., supported the amendment to ARM 42.12.401, which deletes the definition of evening dinner menu. Mr. Shuel stated that requiring distinctly different items be served at dinner in the evening from those served at other times is a problem for restaurant owners. Patrons inquire why they cannot be served an item they desire at another time during the day. Mr. Shuel indicated he had to change his way of doing business in order to comply with department rule. Relying on the statutory language of 16-4-420(6), MCA, assures issuance of restaurant beer and wine licenses to eligible parties.

RESPONSE: The department agrees to delete the definition of evening dinner menu and rely on the definition of restaurant set forth in 16-4-420(6), MCA.

COMMENT 2: Senator Mignon Waterman stated support of Mr. Shuel's comments. Senator Waterman further commented that existing law is adequate to determine eligibility for a restaurant beer and wine license. There is no need to go beyond the definition of restaurant as shown in 16-4-420, MCA. Senator Waterman agreed with the amendment to ARM 42.12.401 to delete the definition of evening dinner menu. Senator Waterman stated that acceptance of the applicant's representations, the ability for public protest, and department review on a case by case basis, if a complaint is filed, is sufficient to assure compliance with the law.

RESPONSE: See response to Comment 1.

COMMENT 3: Ms. Kati Kintli, attorney representing the Montana Tavern Association, had no objection to the deletion of the definition for evening dinner menu. Ms. Kintli stated that the restaurant beer and wine license was intended for fine dining establishments who desired beer and wine to compliment food. Ms. Kintli suggested that perhaps what constitutes a fine dining establishment should be characterized.

RESPONSE: See response to Comment 1. The law defines restaurant and the department believes that definition includes fine dining establishments.

COMMENT 4: Senator Waterman stated opposition to NEW RULE I (ARM 42.12.405), restaurant beer and wine application fees. She argued that the intent of the law was that the fee based on the seating criteria, be a one time fee, paid at the time of original issuance of the license. The fee was not intended to be required each time an application to transfer ownership and/or location was filed with the department. Senator Waterman suggested the department rely on ARM 42.12.408 which states the restaurant beer and wine license process is the same as the process outlined in sub-chapter 1 of the rules except for the initial payment ranging from \$5,000 to \$20,000. She further suggested a charge of \$100 for an application processing fee as provided for in ARM 42.12.111 similar to other license applications. Senator Waterman provided, in support of her position, a document entitled Fact and Background Sheet created by the Montana Tavern Association stating the \$5,000, \$10,000 and \$20,000 application fee was intended to be a one-time fee. Senator Waterman urged the department to accept this interpretation.

RESPONSE: The department is unable to amend NEW RULE I (ARM 42.12.405) as suggested. Section 16-4-420(11), MCA, requires the submission of an application fee based on the restaurant seating when filing an application for a license. An application is required when applying for a new license, transfer of an existing license, and/or a transfer of location of an existing license. Although those commenting urged an interpretation analogous to current law, the language of 16-4-420(11), MCA, does not provide the same explicit instructions as does 16-4-501(7)(f), MCA, as to the one time nature of the application fee. Based on the comments received, however, the department will seek an amendment to clarify this section of law. The department will issue the rule as proposed.

COMMENT 5: Mr. Steve Shuel voiced support for Senator Waterman's comments on NEW RULE I (ARM 42.12.405) adding that citizens involved in the creation of the restaurant beer and wine license legislation interpret the law to require the \$5,000, \$10,000 and \$20,000 application fee to be a one time fee with the original issuance of the license. Mr. Shuel agreed that a \$100 processing fee accompanying applications for transfers of ownership and/or location as charged for other types of licenses is reasonable. Mr. Shuel added that NEW RULE

I (ARM 42.12.405) poses dire consequences to the value of the restaurant beer and wine license and business and would be an economic catastrophe.

RESPONSE: See response to Comment 4.

COMMENT 6: Ms. Kati Kintli, attorney representing the Montana Tavern Association, concurred with Senator Waterman's comment that the intention of the application fee of \$5,000, \$10,000 or \$20,000 was a one-time fee paid at the time of the original application for a restaurant beer and wine license. She also stated, it was not contemplated that the same fee schedule would be required when an application is filed to transfer ownership and/or location of the license. She also supports a \$100 processing fee.

RESPONSE: See response to Comment 4.

COMMENT 7: Ms. Karen Suennen, owner of the Spice of Life restaurant in Hamilton, stated support for the amendment to ARM 42.12.401. Ms. Suennen stated that the amendment would benefit persons in her position. An all-beverages license currently is issued to the location of Ms. Suennen's business. Ms. Suennen does not need nor can she afford to purchase the license. However, Ms. Suennen cannot be issued a restaurant beer and wine license because a license now exists at her location. Ms. Suennen stated that currently her customers are not being properly served as beer and wine cannot be provided with meals. Ms. Suennen provided a petition supporting her licensure.

RESPONSE: The department appreciates support for the amendment.

COMMENT 8: Ms. Kati Kintli stated that the MTA understands the reason for the proposed exception to the definition of existing license and does not object. However, the MTA is concerned about possible abuse. Ms. Kintli suggested an amendment clarifying the meaning of unrelated entities. Ms. Kintli suggested the rule be further amended as follows: "a license in nonuse status does not constitute an existing license if the licensee does not own or control the applicant, the applicant and the licensee are not related, the applicant and the licensee do not share a commonality of business interests and the licensee does not own or control the premises proposed for licensing."

RESPONSE: The department agrees to amend the rule as follows: "a license in nonuse status does not constitute an existing license if the licensee does not own or control the applicant entity, the applicant and the licensee are not related, and the applicant and the licensee are independent business entities." Reference to ownership and control of the premises has been eliminated to allow for circumstances described in the testimony provided by Ms. Karen Suennen.

COMMENT 9: Ms. Kati Kintli suggested further amendment to ARM 42.12.144 subsections (2) and (5). Ms. Kintli stated those subsections conflict with ARM 42.12.209(2) which prohibits

payment for purchase of a license prior to department approval. Ms. Kintli suggested further amendment to subsection (2) to read after: "is required to," by adding: "have entered into an agreement to purchase a transferable license." The suggested amendments to subsection (5) are after: "unable to," add: "enter into an agreement to purchase a transferable."

RESPONSE: The department agrees to amend the rule as suggested.

COMMENT 10: Charmaine Murphy commented on behalf of her husband, Todd Murphy, who was an unsuccessful lottery applicant for the available Jefferson County all-beverages license. Mrs. Murphy read into the record a letter prepared by Mr. Todd Murphy stating his opposition to the amendment of ARM 42.12.131. This rule addresses conducting a lottery to select successful applicants for available licenses due to U.S. Bureau of the Census population estimates. Mr. Murphy argues that these licenses have become available due to population growth. The lottery selection process does not take into account areas where the growth has occurred. Mr. Murphy suggested amendments to the rule to require if the available license is due to population growth - then selection of the applicant for any new licenses should be based on population growth in the specific area of growth. Mr. Murphy suggested the following amendment to the lottery selection process. "When more than one application is received for a license created as a result of population growth the selection should be based on where the liquor license will best serve that area where the greatest population density occurred."

RESPONSE: The department disagrees. The lottery process has proven to be an efficient and objective method of selecting applicants from an applicant pool.

COMMENT 11: Mr. Murphy conveyed in his letter concern and disappointment that the lottery process has been implemented prior to finalization of rules.

RESPONSE: The department has moved forward in the rule process simultaneously with the lottery process at the request of numerous interested parties who wanted to minimize delays in the issuance of available licenses. Public notice of the available licenses set forth the process for selection of successful application as a lottery. All interested parties were aware prior to applying, that a lottery process would be the selection process.

4. As a result of these comments, the Department has amended the following rules:

42.12.144 TRANSFERS BETWEEN QUOTA AREAS - PROCEDURES AND DOCUMENTATION (1) Remains as proposed.

(2) An applicant applying pursuant to (1)(b), whose lottery entry is successful in the lottery drawing, is required to HAVE ENTERED INTO AN AGREEMENT TO purchase a transferable license within 60 days after the lottery drawing and submit

additional documents needed to effect a transfer of ownership and location. However, additional time can be requested and approved by the department when the applicant can demonstrate he is actively pursuing the purchase of a license and that failure to purchase a license is through no fault of the applicant. The additional time is not to exceed 60 days. An additional fee is required to cover the costs of republishing the transfer notice in a newspaper within the area from which the license is proposed to be transferred.

(3) and (4) remain as proposed.

(5) If an applicant is unable to ENTER INTO AN AGREEMENT TO purchase a TRANSFERABLE license within the time provided in (2) the application will be rejected and the application ranked next in the lottery drawing will be processed. This procedure is not constrained by 16-4-413, MCA.

AUTH: Sec. 16-1-303, MCA; IMP: Sec. 16-4-204, 16-4-413, MCA.

42.12.401 DEFINITIONS (1) remains as proposed.

(2) The following terms specifically apply to restaurant beer/wine lottery process:


(a) "Existing beer/wine/all beverage license" means either an on-premises or off-premises retail license that is either currently being used at the location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the department of revenue.


(i) A license in nonuse status does not constitute an existing license if the licensee ~~and the applicant are separate and unrelated entities~~ DOES NOT OWN OR CONTROL THE APPLICANT ENTITY, THE APPLICANT AND THE LICENSEE ARE NOT RELATED AND THE APPLICANT AND LICENSEE ARE INDEPENDENT BUSINESS ENTITIES ~~and the licensee does not control possession of the premises.~~

(b) through (f) remain as proposed.

AUTH: Sec. 16-1-303, MCA; IMP: Sec. 16-4-105, 16-4-201, 16-4-204, 16-4-420 and 16-4-502, MCA.

5. The Department adopts ARM 42.12.104, 42.12.131, 42.12.404, 42.12.406, 42.12.410, 42.12.412, and 42.12.414, and NEW RULE 1 (ARM 42.12.405) as originally proposed.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State November 9, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE ADOPTION) NOTICE OF ADOPTION
OF NEW RULES I (ARM 42.31.601),)
II (ARM 42.31.602), III (ARM)
42.31.603), and IV (ARM 42.31.)
604) relating to Universal)
Access Fund Surcharge)

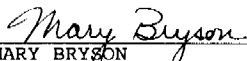
TO: All Interested Persons:

1. On September 10, 1998, the Department published notice of the proposed adoption of New Rules I (ARM 42.31.601), II (ARM 42.31.602), III (ARM 42.31.603), and IV (ARM 42.31.604) relating to Universal Access Fund Surcharge at page 2468 of the 1998 Montana Administrative Register, issue no. 17.

2. No comments were received regarding these rules.

3. The Department has adopted the rules as proposed.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State November 9, 1998

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

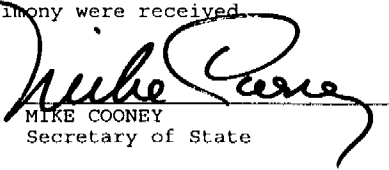
In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of ARM 1.2.419	)	ARM 1.2.419 FILING,
regarding scheduled dates	)	COMPILING, PRINTER PICKUP
for the Montana	)	AND PUBLICATION OF THE
Administrative Register	)	MONTANA ADMINISTRATIVE
	)	REGISTER

TO: All Interested Persons.


1. On October 8, 1998, the Secretary of State published notice of the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register for 1999 at page 2701 of the 1999 Montana Administrative Register, issue no. 19.

2. Rule 1.2.419 is amended as proposed.

3. No comments or testimony were received.



MIKE COONEY
Secretary of State



DAN WHYTE
Rule Reviewer

Dated this 9th day of November 1998.

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 | 1. Consult ARM topical index. |
| Subject | Update the rule by checking the accumulative |
| Matter | table and the table of contents in the last |
| | Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and |
| Department | 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 September 30, 1998. This table includes those rules adopted during the period October 1, 1998 through December 31, 1998 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 September 30, 1998, 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 1998 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 1998, appear. Vacancies scheduled to appear from December 1, 1998, through February 28, 1999, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 1998.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Cosmetology (Commerce)			
Mr. John Reichelt	Governor	Meyers	10/6/1998
Billings			7/1/1999
Qualifications (if required):	cosmetologist		
Board of Outfitters (Commerce)			
Mr. Jack Billingsley	Governor	Ereaux	10/5/1998
Glasgow			10/1/2001
Qualifications (if required):	licensed outfitter representing District 4		
Mr. Richard Pasquale	Governor	Barker	10/5/1998
Cascade			10/1/2001
Qualifications (if required):	licensed outfitter representing District 3		
Board of Real Estate Appraisers (Commerce)			
Ms. Lori Cole	Governor	Strand	10/22/1998
Billings			5/1/2001
Qualifications (if required):	public member		
Historical Society Preservation Review Board (Montana Historical Society)			
Ms. Theo Hugs	Governor	reappointed	10/6/1998
Fort Smith			10/1/2002
Qualifications (if required):	historian		
Mr. Douglas Johnson	Governor	Horner	10/6/1998
Corvallis			10/1/2002
Qualifications (if required):	administrator of historic property		
Lewis & Clark Bicentennial Commission (Montana Historical Society)			
Colonel Harold Stearns	Governor	not listed	10/1/1998
Missoula			10/1/2001
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Lewis & Clark Bicentennial Commission (Montana Historical Society) cont.			
Mr. Leif Johnson	Governor	not listed	10/1/1998
West Yellowstone			10/1/2001
Qualifications (if required):	public member		
Mr. Curley Youpee	Governor	not listed	10/1/1998
Poplar			10/1/2001
Qualifications (if required):	member of a Montana Indian Tribe		
Montana Abstinence Education Advisory Council (Public Health and Human Services)			
Mr. Nicholas Crowley	Governor	Martinelli	10/22/1998
Helena			2/13/2000
Qualifications (if required):	youth representative		
Montana Historical Society Board of Trustees (Montana Historical Society)			
Mr. Robert Morgan	Governor	Lucht	10/27/1998
Clancy			7/1/2001
Qualifications (if required):	public member		
State Banking Board (Commerce)			
Mr. Ted Goodwin	Governor	Ott	10/16/1998
Billings			7/1/2001
Qualifications (if required):	national bank officer		
State Emergency Response Commission (Military Affairs)			
Mr. Jim Hirose	Governor	Jochems	10/5/1998
Great Falls			8/10/1999
Qualifications (if required):	representative of a local fire organization		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Emergency Response Commission (Military Affairs) cont.			
Mr. Brent Erickson	Governor	not listed	10/26/1998
Helena			8/10/1999
Qualifications (if required): railroad representative			
Youth Justice Council (Justice)			
Mr. Chuck Hunter	Governor	Hudson	10/8/1998
Helena			6/10/1999
Qualifications (if required): representing a public agency concerned with delinquency prevention			

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alfalfa Seed Committee (Agriculture) Mr. John Marksgard, Laurel Qualifications (if required): representing alfalfa seed growers and alfalfa leaf-cutting bee industry	Governor	12/21/1998
Mr. Ernest Johnson, Chinook Qualifications (if required): seed producer	Governor	12/21/1998
Appellate Defender Commission (Administration) Ms. Randi Hood, Helena Qualifications (if required): public defender	Governor	1/1/1999
Mr. Daniel Donovan, Great Falls Qualifications (if required): public defender	Governor	1/1/1999
Board of Aeronautics (Transportation) Mr. Leland F. Ford, Bigfork Qualifications (if required): public member	Governor	1/1/1999
Mr. Robert M. Hector, Billings Qualifications (if required): representative of commercial airline operators	Governor	1/1/1999
Ms. Josephine Eisenzimer, Cascade Qualifications (if required): involved in aviation education	Governor	1/1/1999
Mr. Arnold Lindberg, Cut Bank Qualifications (if required): fixed base operator	Governor	1/1/1999
Board of Chiropractors (Commerce) Dr. Patrick Montgomery, Missoula Qualifications (if required): chiropractor	Governor	1/1/1999

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice)		
Mr. Craig Anderson, Glendive	Governor	1/1/1999
Qualifications (if required): representative of youth justice		
Mr. Gary Buchanan, Billings		
Qualifications (if required): public member	Governor	1/1/1999
Ms. Jani McCall, Billings		
Qualifications (if required): representative of the Youth Justice Council	Governor	1/1/1999
Ms. Sherry Matteucci, Billings		
Qualifications (if required): U.S. Attorney	Governor	1/1/1999
Sen. Debbie Shea, Butte		
Qualifications (if required): member of the State Senate	Governor	1/1/1999
Rep. Sylvia Bookout, Albion		
Qualifications (if required): member of the House of Representatives	Governor	1/1/1999
Mayor Laurel Hegstad-Deschamps, Hamilton		
Qualifications (if required): representative of local government	Governor	1/1/1999
Board of Environmental Review		
Mr. Daniel Dennehy, Butte	Governor	12/31/1998
Qualifications (if required): public health officer		
Ms. Kim Lacey, Glasgow		
Qualifications (if required): public member	Governor	12/31/1998
Board of Health and Environmental Sciences (Health and Environmental Sciences)		
Dr. Dennis Schreffler, Billings	Governor	1/1/1999
Qualifications (if required): health care professional		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Horse Racing (Commerce) Dr. Sheldon John "Skip" Score, Helena Qualifications (if required): representing District 4	Governor	1/20/1999
Board of Housing (Commerce) Mr. Bob Thomas, Stevensville Qualifications (if required): public member	Governor	1/1/1999
Ms. Barbara Hamlin, Helena Qualifications (if required): public member	Governor	1/1/1999
Ms. Waneeta Farris, Forsyth Qualifications (if required): public member	Governor	1/1/1999
Board of Investments (Commerce) Ms. Maureen J. Fleming, Missoula Qualifications (if required): represents labor	Governor	1/1/1999
Mr. F. Lee Robinson, Malta Qualifications (if required): represents business	Governor	1/1/1999
Mr. Douglas Bardwell, Missoula Qualifications (if required): represents the financial community	Governor	1/1/1999
Mr. Calvin Wilson, Busby Qualifications (if required): attorney and public member	Governor	1/1/1999
Board of Labor Appeals (Labor and Industry) Ms. Carol Donaldson, Billings Qualifications (if required): public member	Governor	1/1/1999

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Natural Resources and Conservation (Natural Resources and Conservation)		
Mr. Gerald Feda, Glasgow	Governor	1/1/1999
Qualifications (if required): experienced in subjects of natural resources		
Mr. John Bailey, Livingston	Governor	1/1/1999
Qualifications (if required): experienced in subjects of natural resources		
Mr. Jack Galt, Martinsdale	Governor	1/1/1999
Qualifications (if required): experienced in subjects of natural resources		
Board of Occupational Therapy Practice (Commerce)		
Ms. Lynn Davis, Billings	Governor	12/31/1998
Qualifications (if required): licensed occupational therapist		
Board of Oil and Gas Conservation (Natural Resources and Conservation)		
Mr. Warren H. Ross, Chinook	Governor	1/1/1999
Qualifications (if required): landowner with mineral rights		
Mr. Dean A. Swanson, Polson	Governor	1/1/1999
Qualifications (if required): in the oil and gas industry		
Mr. Denzil Young, Baker	Governor	1/1/1999
Qualifications (if required): landowner with no mineral rights		
Board of Pardons (Corrections and Human Services)		
Mr. Patrick T. Fleming, Butte	Governor	1/1/1999
Qualifications (if required): attorney		
Board of Personnel Appeals (Labor and Industry)		
Mr. Leonard A. McKinney, Lewistown	Governor	1/1/1999
Qualifications (if required): labor-management experience		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Personnel Appeals (Labor and Industry) cont.		
Ms. Jean Hagan, Hamilton	Governor	1/1/1999
Qualifications (if required): representative of management in collective bargaining activities		
Mr. Tom Foley, Helena	Governor	1/1/1999
Qualifications (if required): substitute board member representing labor		
Mr. Lloyd Doney, East Helena	Governor	1/1/1999
Qualifications (if required): substitute member representing management		
Board of Public Education (Education)		
Mr. Wilbur Anderson, Dillon	Governor	2/1/1999
Qualifications (if required): Democrat from First Congressional District		
Board of Science and Technology Development (Commerce)		
Mr. Larry Gianchetta, Missoula	Governor	1/1/1999
Qualifications (if required): representative of the public sector		
Dr. Rebecca Mahurin, Bozeman	Governor	1/1/1999
Qualifications (if required): representative of the private sector		
Mr. Dolph Harris, Sidney	Governor	1/1/1999
Qualifications (if required): representative of private business		
Ms. Susan Riplett, Billings	Governor	1/1/1999
Qualifications (if required): knowledgeable about private business financing		
Board of Social Work Examiners and Professional Counselors (Commerce)		
Dr. Leta Livotti, Helena	Governor	1/1/1999
Qualifications (if required): licensed professional counselor		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Social Work Examiners and Professional Counselors Ms. Antoinette Rosell, Billings Qualifications (if required): licensed professional counselor	(Commerce) cont. Governor	1/1/1999
Judge Richard A. Simonton, Glendive Qualifications (if required): attorney and public member	Governor	1/1/1999
Board of Social and Rehabilitation Appeals (Social and Rehabilitation Services) Ms. Donna Heggem, Lolo Qualifications (if required): public member	Governor	1/1/1999
Board of Speech Pathologists and Audiologists (Commerce) Mr. Norman Peters, Townsend Qualifications (if required): public member	Governor	12/31/1998
Coal Board (Commerce) Ms. Janice Riebhoff, Belgrade Qualifications (if required): has expertise in education and represents District 2	Governor	1/1/1999
Ms. Linda Price, Lewistown Qualifications (if required): has expertise in education and represents District 3	Governor	1/1/1999
Mr. John Sutton, Butte Qualifications (if required): residing in District 4 and having engineering experience	Governor	1/1/1999
Commission for Human Rights (Labor and Industry) Mr. Jack Copps, Seeley Lake Qualifications (if required): public member	Governor	1/1/1999
Commissioner of Political Practices Mr. Ed Argenbright, Helena Qualifications (if required): none specified	Governor	1/1/1999

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Public Health and Human Services Advisory Council (Public Health and Human Services)		
Mr. Jim Adams, Helena Qualifications (if required): none specified	Director	12/1/1998
Ms. Ann Bartel, Great Falls Qualifications (if required): none specified	Director	12/1/1998
Ms. Nancy Espy, Broadus Qualifications (if required): none specified	Director	12/1/1998
Ms. June Hermanson, Polson Qualifications (if required): none specified	Director	12/1/1998
Ms. Sally Johnson, Missoula Qualifications (if required): none specified	Director	12/1/1998
Ms. Wendy Keating, Billings Qualifications (if required): none specified	Director	12/1/1998
Dr. Michael J. McLaughlin, Great Falls Qualifications (if required): none specified	Director	12/1/1998
Dr. Bill Peters, Bozeman Qualifications (if required): none specified	Director	12/1/1998
Ms. Alicia Pichette, Helena Qualifications (if required): none specified	Director	12/1/1998
Mr. Bob Runkel, Helena Qualifications (if required): none specified	Director	12/1/1998

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Public Health and Human Services Advisory Council (Public Health and Human Services) cont.		
Sen. Vivian M. Brooke, Missoula	Director	12/1/1998
Qualifications (if required): none specified		
Rep. Ernest Bergsagel, Malta	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Fern Hart, Missoula	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Ken Caruso, Huson	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Randy Haight, Bozeman	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Joan Miles, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Fred Patton, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Deb Wade, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Sara Hudson, Billings	Director	12/1/1998
Qualifications (if required): none specified		
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)		
Sen. Sharon Estrada, Billings	Governor	1/1/1999
Qualifications (if required): member of the State Senate		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont.		
Rep. Bob Lawson, Whitefish	Governor	1/1/1999
Qualifications (if required): member of the State House of Representatives		
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks)		
Ms. Darlyne Dascher, Fort Peck	Governor	1/1/1999
Qualifications (if required): representative of District IV		
Mr. Tim Mulligan, Whitehall	Governor	1/1/1999
Qualifications (if required): representing District 2		
Governor's Vision 2005 Task Force on Agriculture (Agriculture)		
Mr. Peter Blouke, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Department of Commerce		
Rep. Ernest Bergsagel, Malta	Governor	12/31/1998
Qualifications (if required): representative of the state legislature		
Rep. Linda J. Nelson, Medicine Lake	Governor	12/31/1998
Qualifications (if required): representative of the state legislature		
Mr. W. Ralph Peck, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Department of Agriculture		
Mr. David Sagmiller, Ronan	Governor	12/31/1998
Qualifications (if required): representative of the Montana Agricultural Business Association		
Ms. Esther McDonald, Philipsburg	Governor	12/31/1998
Qualifications (if required): representative of the Montana Cattle Women's Association		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont.		
Mr. Tim Huls, Corvallis	Governor	12/31/1998
Qualifications (if required): representative of the Montana Dairymen's Association		
Mr. Thad Willis, Big Sandy	Governor	12/31/1998
Qualifications (if required): representative of the Montana Farm Bureau Federation		
Mr. Ken Maki, Great Falls	Governor	12/31/1998
Qualifications (if required): representative of the Montana Farmers Union		
Mr. Merlin R. Boxwell, Cut Bank	Governor	12/31/1998
Qualifications (if required): representative of the Montana Grain Growers Association		
Mr. Harold Clarke, Columbia Falls	Governor	12/31/1998
Qualifications (if required): representative of the Montana Mint Growers Association		
Mr. Loren Wolery, Turner	Governor	12/31/1998
Qualifications (if required): representative of the Montana Pork Producers Council		
Ms. Marilyn E. Johnson, Kalispell	Governor	12/31/1998
Qualifications (if required): representative of the Montana State Grange		
Mr. Lynn Cornwell, Glasgow	Governor	12/31/1998
Qualifications (if required): representative of the Montana Stockgrowers Association		
Mr. Ron Devlin, Terry	Governor	12/31/1998
Qualifications (if required): representative of the Montana Wool Growers Association		
Ms. Sharon Kindle, Malta	Governor	12/31/1998
Qualifications (if required): representative of Women Involved in Farm Economics		
Mr. Chris Reiquam, Bozeman	Governor	12/31/1998
Qualifications (if required): representative of the Montana Bankers Association		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Governor's Vision 2005 Task Force on Agriculture</u> (Agriculture) cont.		
Mr. Kenneth M. Walsh, Twin Bridges	Governor	12/31/1998
Qualifications (if required): representative of the Montana Independent Bankers Association		
Ms. Linda Reed, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Governor's Office		
Dr. Tom McCoy, Bozeman	Governor	12/31/1998
Qualifications (if required): representative of Montana State University		
Mr. Kerry Schaefer, Great Falls	Governor	12/31/1998
Qualifications (if required): representative of the Montana Chamber of Commerce		
Mr. Bud Leuthold, Billings	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Chuck Merja, Sun River	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Bob Quinn, Fort Benton	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Greg Rauschendorfer, Poplar	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Ron Ueland, Belgrade	Governor	12/31/1998
Qualifications (if required): representative of the public		
<u>Hard-Rock Mining Impact Board</u> (Commerce)		
Mr. David Young, Troy	Governor	1/1/1999
Qualifications (if required): representative of the industry		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

Board/current position holder	Appointed by	Term end
Hard-Rock Mining Impact Board (Commerce) cont. Ms. Betty Aye, Broadus Qualifications (if required): school board trustee	Governor	1/1/1999
Human Rights Commission (Labor and Industry) Ms. Kathy Ogren, Missoula Qualifications (if required): public member	Governor	1/1/1999
Independent Living Advisory Council (Public Health and Human Services) Ms. Kris Kleinschmidt, Great Falls Qualifications (if required): none specified	Director	2/1/1999
Judicial Nomination Commission (Justice) Mr. Frank Stock, Polson Qualifications (if required): public member	Governor	1/1/1999
Milk Control Board (Commerce) Dr. Robert Greer, Bozeman Qualifications (if required): Democrat	Governor	1/1/1999
Mr. Michael F. Kleese, Stevensville Qualifications (if required): Democrat and an attorney	Governor	1/1/1999
Missouri River Basin Advisory Council (Natural Resources and Conservation) Ms. Diane Brandt, Glasgow Qualifications (if required): public member	Governor	2/25/1999
Mr. Don Pfau, Lewistown Qualifications (if required): public member	Governor	2/25/1999
Mr. Bud Clinch, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	2/25/1999

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Missouri River Basin Advisory Council (Natural Resources and Conservation)	Governor	2/25/1999
Mr. Chuck Carlson, Fort Peck Qualifications (if required): public member		
Mr. Jim Rector, Glasgow Qualifications (if required): public member	Governor	2/25/1999
Mr. Ron Miller, Glasgow Qualifications (if required): public member	Governor	2/25/1999
Mr. Steve Page, Glasgow Qualifications (if required): public member	Governor	2/25/1999
Mr. Tom Huntley, Sidney Qualifications (if required): public member	Governor	2/25/1999
Mr. John Foster, Lewistown Qualifications (if required): public member	Governor	2/25/1999
Mr. Boone A. Whitmer, Wolf Point Qualifications (if required): public member	Governor	2/25/1999
Montana Health Facility Authority Board (Commerce)		
Mr. Sidney K. Brubaker, Terry Qualifications (if required): public member	Governor	1/1/1999
Ms. Dalyce K. Flynn, Townsend Qualifications (if required): public member	Governor	1/1/1999
Mr. Greg Hanson, Missoula Qualifications (if required): attorney	Governor	1/1/1999

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Highway Commission (Transportation) Mr. Ed Smith, Helena Qualifications (if required): Republican residing in District 4	Governor	1/1/1999
Mr. Dan Larson, Libby Qualifications (if required): Democrat in District 1	Governor	1/1/1999
Montana State Lottery Commission (Commerce) Mr. Robert Crippen, Butte Qualifications (if required): certified public accountant	Governor	1/1/1999
State Employee Group Benefits Advisory Council (Administration) Mr. Tom Burgess, Helena Qualifications (if required): none specified	Director	1/1/1999
State Tax Appeal Board (Administration) Mr. Patrick E. McKelvey, Helena Qualifications (if required): none specified	Governor	1/1/1999
Vocational Rehabilitation Divisions Advisory Council (Public Health and Human Services) Ms. Jane Tremper, Missoula Qualifications (if required): none specified	Director	12/15/1998
Whirling Disease Task Force (Fish, Wildlife and Parks) Mr. Jim Ahrens, Helena Qualifications (if required): public member	Governor	2/7/1999
Sen. Mike Halligan, Missoula Qualifications (if required): public member	Governor	2/7/1999
Mr. Pat Graham, Helena Qualifications (if required): public member	Governor	2/7/1999

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Whirling Disease Task Force (Fish, Wildlife and Parks) cont.		
Mr. John Bailey, Livingston Qualifications (if required): public member	Governor	2/7/1999
Mr. Robin Cunningham, Gallatin Gateway Qualifications (if required): public member	Governor	2/7/1999
Rep. Karl Ohs, Harrison Qualifications (if required): public member	Governor	2/7/1999
Mr. Roger Nelson, Livingston Qualifications (if required): public member	Governor	2/7/1999
Dr. Marshall Bloom, Hamilton Qualifications (if required): public member	Governor	2/7/1999
Mr. Bud Lilly, Bozeman Qualifications (if required): public member	Governor	2/7/1999
Mr. Dud Lutton, Helena Qualifications (if required): public member	Governor	2/7/1999
Mr. Art Neill, Butte Qualifications (if required): public member	Governor	2/7/1999
Ms. Chris Somers, Butte Qualifications (if required): public member	Governor	2/7/1999
Ms. Marsha "Josh" Turner, Helena Qualifications (if required): public member	Governor	2/7/1999
Mr. Frank Cooper, Helena Qualifications (if required): public member	Governor	2/7/1999

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Whirling Disease Task Force</u> (Fish, Wildlife and Parks) cont. Dr. John Duffield, Ph.D., Missoula Qualifications (if required): public member	Governor	2/7/1999
Mr. John Etgen, Belgrade Qualifications (if required): public member	Governor	2/7/1999
Dr. Willard O. Granath, Jr., Missoula Qualifications (if required): public member	Governor	2/7/1999
Mr. Fred M. Stowell, Missoula Qualifications (if required): public member	Governor	2/7/1999
Dr. William Tietz, Ph.D., Bozeman Qualifications (if required): public member	Governor	2/7/1999
Mr. Richard J. Wesnick, Billings Qualifications (if required): public member	Governor	2/7/1999
Mr. Bob Wiltshire, Livingston Qualifications (if required): public member	Governor	2/7/1999
<u>Workers' Compensation Regulation Advisory Council</u> (Labor and Industry) Mr. Jim Adams, Helena Qualifications (if required): labor representative	Governor	12/31/1998
Ms. Ann Bartel, Great Falls Qualifications (if required): labor representative	Governor	12/31/1998
Sen. Bob Brown, Whitefish Qualifications (if required): public member	Governor	12/31/1998

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Workers' Compensation Regulation Advisory Council (Labor and Industry) cont.		
Mr. Gordon Hage, Helena	Governor	12/31/1998
Qualifications (if required): public member		
Rep. Chase Hibbard, Helena	Governor	12/31/1998
Qualifications (if required): member of the Montana House of Representatives	Governor of Representatives	
Ms. Pat Haffey, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Department of Labor and Industry	Governor	12/31/1998
Rep. Vicki Cocchiarella, Missoula	Governor	12/31/1998
Qualifications (if required): member of the Montana House of Representatives	Governor of Representatives	
Sen. Fred Thomas, Stevensville	Governor	12/31/1998
Qualifications (if required): member of the Montana Senate	Governor	12/31/1998
Mr. David Owen, Helena	Governor	12/31/1998
Qualifications (if required): an employer	Governor	12/31/1998
Sen. Debbie Shea, Butte	Governor	12/31/1998
Qualifications (if required): member of the Montana Senate	Governor	12/31/1998
Mr. Bob Olsen, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Montana Hospital Association	Governor	12/31/1998
Mr. Mark Barry, Helena	Governor	12/31/1998
Qualifications (if required): workers' compensation insurer	Governor	12/31/1998
Ms. Pam Egan, Helena	Governor	12/31/1998
Qualifications (if required): labor representative	Governor	12/31/1998
Ms. Michele Fairclough, Helena	Governor	12/31/1998
Qualifications (if required): insured employer	Governor	12/31/1998

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1998 through FEBRUARY 28, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Workers' Compensation Regulation Advisory Council (Labor and Industry) cont.		
Mr. Tom Kiely, Butte	Governor	12/31/1998
Qualifications (if required): self-insured employer		
Ms. Jacqueline Lenmark, Helena	Governor	12/31/1998
Qualifications (if required): insured employer		
Mr. Ray Linder, Helena	Governor	12/31/1998
Qualifications (if required): employee representative		
Reverend Gayle Sandholm, Helena	Governor	12/31/1998
Qualifications (if required): public member		
Mr. J. David Slovak, Great Falls	Governor	12/31/1998
Qualifications (if required): employee representative		
Mr. Brian Zins, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Montana Medical Association		