

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed amendment of rules pertaining to general requirements, posting requirements, toilet facilities and the adoption of a new rule pertaining to inspections ) NOTICE OF PUBLIC HEARING  
) ON THE PROPOSED AMENDMENT  
) OF ARM 8.10.414 GENERAL REQUIREMENTS, 8.10.415  
) POSTING REQUIREMENTS,  
) 8.10.501 TOILET FACILITIES  
) AND THE ADOPTION OF NEW  
) RULE I INSPECTIONS

TO: All Concerned Persons

1. On March 22, 2001 at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Division conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Commerce 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 require an accommodation, contact the Board of Barbers no later than 5:00 p.m., on March 12, 2001 to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Barbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolbar@state.mt.us.

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

8.10.414 GENERAL REQUIREMENTS (1) will remain the same.

(2) All shops and schools that provide chemical services must be equipped with mechanical ventilation that provides for at least four air changes per hour to provide free flow of air to each room to prevent the buildup of emissions and particulate, to keep odors and diffusions from chemicals and solutions at a safe level and to provide sufficient air circulation and oxygen.

(3) through (9) will remain the same.

Auth: Sec. 37-30-203, 37-30-422, MCA

IMP: Sec. 37-30-422, MCA

REASON: The proposed rule amendment limits the requirement for mechanical ventilation to only those barbershops and schools that provide chemical services such as chemical waving, hair coloring, hair lightening services, etc. The amendment will reduce costs for barbershops not providing chemical services.

8.10.415 POSTING OF LICENSES (1) will remain the same.

(2) Practitioners must post their licenses at their work stations in clear view of clients. ~~A current photograph of the practitioner must be attached to the license.~~ Any residential address shown on a license may be blocked from public view.

Auth: Sec. 37-30-203, 37-30-422, MCA  
IMP: Sec. 37-30-422, MCA

REASON: The purpose of the rule amendment is to eliminate the requirement that barbers post their photograph on their annual barber license. The photograph is not submitted to the board office for verification, therefore the rule is not appropriate and is extraneous.

8.10.501 TOILET FACILITIES (1) through (3) will remain the same.

~~(4) Doors accessing toilet facilities must be self-closing.~~

(5) through (7) will remain the same but be renumbered (4) through (6).

Auth: Sec. 37-30-203, 37-30-422, MCA  
IMP: Sec. 37-30-422, MCA

REASON: The proposed rule amendment provides consistency to barbershop owners who have a salon license and employ or booth rent to cosmetologists, manicurists or estheticians. Elimination of this requirement will also reduce costs and allow barbershop owners to come into compliance with ADA requirements.

4. The proposed new rule provides as follows:

NEW RULE I INSPECTIONS (1) An annual inspection of barbershops and barber schools will be performed.

(2) The previous inspection report will be made available to the inspector or designee upon request.

(3) Inspection report violations must be addressed in a written response, including the corrective action taken and provided to the board office, by the barbershop owner or barber in charge, or barber school owner/director within 30 days of the inspection date.

Auth: Sec. 37-30-203, 37-30-422, MCA  
IMP: Sec. 37-30-403, 37-30-423, MCA

REASON: The purpose of this new rule is to give the licensee an opportunity to address and correct inspection violations within 30 days in lieu of disciplinary action for violations of statute or rules with regard to safety and sanitation.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Barbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolbar@state.mt.us and must be received no later than the conclusion of the hearing on March 22, 2001. If comments are submitted in writing, the Board requests that the person submit seven copies of their comments.

6. Bruce Spencer, attorney, has been designated to preside over and conduct this hearing.

7. The Board of Barbers maintains a list of interested persons who wish to receive notices of rule making actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Barbers administrative rule making or other administrative proceedings. Such written request may be mailed or delivered to the Board of Barbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolbar@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF BARBERS  
MAX DeMARS, CHAIRMAN

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 29, 2001.

BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to ankle surgery certification and fees and failure to submit fees ) NOTICE OF PUBLIC HEARING ) ON THE PROPOSED AMENDMENT ) OF ARM 8.28.1705 ANKLE ) SURGERY CERTIFICATION AND ) 8.28.1905 FEES AND FAILURE ) SUBMIT FEES

TO: All Concerned Persons

1. On March 12, 2001, at 10:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce 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 require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on March 1, 2001, to advise us of the nature of the accommodation that you need. Please contact Charlene Norris, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail cnorris@state.mt.us.

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

8.28.1705 ANKLE SURGERY CERTIFICATION (1) will remain the same.

(a) submits proof of certification by the American board of podiatric surgery in foot and ankle surgery or reconstructive rearfoot/ankle surgery; or

(b) will remain the same.

(c)(~~i~~) submits proof of completion of a podiatric surgical residency approved in the year of the candidate's residency by the council on podiatric medical education or the American board of podiatric surgery or successor(s), and

(~~ii~~) submits evidence satisfactory to the board of not fewer than 25 ankle surgeries performed as the primary surgeon of record within the five years immediately preceding the application.

(2) will remain the same.

Auth: Sec. 37-6-106, MCA  
IMP: Sec. 37-6-107, MCA

REASON: The proposed language will modernize and update requirements to conform to changes made by the American Board of Podiatric Surgery, and will serve to clarify the Board's

requirements with respect to applications for ankle surgery certification pursuant to ARM 8.28.1705.

8.28.1905 FEES AND FAILURE TO SUBMIT FEES (1) and (2) will remain the same.

Auth: Sec. 37-3-203, MCA

IMP: Sec. 37-3-344, 37-3-345, 37-3-346, 37-3-347, MCA

REASON: This amendment is being made to correct the catchphrase.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to cnorris@state.mt.us and must be received no later than the conclusion of the hearing. If comments are submitted in writing, the Board requests that the person submit 11 copies of their comments.

5. Charlene Norris, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rule making actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rule making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to cnorris@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF MEDICAL EXAMINERS  
LAWRENCE R. McEVOY, M.D.  
PRESIDENT

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 29, 2001.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed adoption,	)	ON THE PROPOSED ADOPTION,
amendment and repeal	)	AMENDMENT AND REPEAL
of rules relating	)	OF RULES RELATING TO
to content and performance	)	CONTENT AND PERFORMANCE
standards for career and	)	STANDARDS FOR CAREER
vocational/technical	)	AND VOCATIONAL/TECHNICAL
education, program area	)	EDUCATION, PROGRAM AREA
standards, curriculum and	)	STANDARDS, CURRICULUM AND
assessment, and standards	)	ASSESSMENT, AND STANDARDS
review schedule	)	REVIEW SCHEDULE

TO: All Concerned Persons

1. On March 15, 2001, at 4:30 p.m., a public hearing will be held by interactive teleconference through the Montana Educational Telecommunications Network (METNET) at the following sites:

Helena  
Department of Public Health and Human Services  
SRS Building, 111 North Sanders

Billings  
Montana State University-Billings  
Special Education Building, Room 159  
1500 North 30th Street

Bozeman  
Montana State University-Bozeman  
EPS Building, Room 126  
Burns Telecommunications Center  
Corner of S. 7th & Grant

Butte  
Montana Tech of The University of Montana  
Engineering Lab Classroom Building, Room 231  
1300 West Park Street

Great Falls  
Montana State University College of Technology-Great Falls  
Room R-182, 2100 16th Avenue South

Kalispell  
Flathead Valley Community College  
Learning Resource Center, Room 120  
777 Grandview Drive

Miles City  
Miles Community College  
Room 106, 2715 Dickinson

Missoula  
University of Montana - Missoula  
Gallagher Building, Room 104  
Corner of Arthur & Eddy

Glasgow  
Francis Mahon Deaconess Hospital  
621 3rd Street South

2. The Board of Public Education (BPE) 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 require an accommodation, contact the Office of Public Instruction (OPI) no later than 5:00 p.m. on March 1, 2001, to advise us of the nature of the accommodation that you need. Please contact Pat Reichert, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406) 444-3172, FAX: (406) 444-2893. A TTD number will be available upon request.

3. Statement of Reasonable Necessity. These proposed new rules continue the process of replacing model learner goals with content and performance standards. Mathematics and reading content and performance standards were adopted in the fall of 1998. Literature, writing, speaking and listening, media literacy, science, health, technology, and world languages content and performance standards were adopted in the fall of 1999. Social studies, arts, library media, and workplace competencies content and performance standards were adopted in the fall of 2000. The adoption of the career and vocational/technical education content and performance standards completes the process of replacing model learner goals with content and performance standards.

These amendments are necessary because the 55th Legislature directed the OPI to review the 1989 program area standards and recommend revisions to the model learner goals associated with the BPE's accreditation standards. By revising these rules the BPE and the State Superintendent are carrying out their statutory duties under Sections 20-2-114(1), 20-2-121(7) and (12), 20-3-106(18) and 20-7-101(1), MCA, (1999) to define the basic instruction program for pupils in Montana's public schools. The revisions are also necessary for school districts and the State to comply with requirements to continue receiving federal funding. The 55th Legislature directed the BPE and the OPI to act with the assistance and advice of Montana's educators, parents and the public.

Also included in this notice are:

1. Changes in program area standards to program delivery standards. These changes are necessary to replace

outdated requirements applicable to model learner goals with district requirements concerning conditions, practices, and resources for all program areas.

2. Repeal of 10.55.1002 Cross Content and Thinking Skills. This repeal is necessary to avoid a redundancy because proposed new rule XXXIV incorporates the subject matter of 10.55.1002.
3. Adoption of a schedule that establishes a five-year cycle for reviewing content and performance standards. This change is necessary to maintain current, meaningful standards.
4. Changes in the rules establishing the BPE's, the OPI's and School District's responsibilities regarding assessment. These changes are necessary to align required statewide assessment to the content and performance standards.

These changes will result in rules written in terms that conform to the content and performance standards. The changes transition state and local responsibilities for implementation from the repealed learner goals to the existing content and performance standards.

All the rule revisions in this project, including these proposed rules, represent collaborative work with a cross section of citizens and organizations interested in public education in Montana.

4. The proposed new rules provide as follows:

RULE I STANDARDS REVIEW SCHEDULE (1) Montana's content and performance standards shall be reviewed and revised on a five-year cycle beginning July 1, 2003.

(2) A schedule for review of specific programs shall be established as a collaborative process with the office of public instruction and the board of public education with input from representatives of accredited schools. The schedule shall ensure that each program area is reviewed and revised at intervals not exceeding five years.

(3) The standards review process shall use context information, criteria, processes, and procedures identified by the office of public instruction with input from representatives of accredited schools.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE II CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 1 (1) To satisfy the requirements of career and vocational/technical education content standard 1, a student must experience various career opportunities and assess personal career pathways.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE III BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 1 FOR END OF BENCHMARK 1 (1) The benchmark for career and vocational/technical education content standard 1 for a student at the end of benchmark 1 (by the end of 8th grade) is the ability to:

- (a) describe and demonstrate the importance of goal setting and career planning;
- (b) explore and investigate career opportunities; and
- (c) describe various lifetime roles (e.g., friend, student, leader, worker, family member).

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE IV BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 1 FOR END OF BENCHMARK 2 (1) The benchmark for career and vocational/technical education content standard 1 for a student at the end of benchmark 2 (grades 9 through 12) is the ability to:

- (a) explore and identify personal interests, aptitudes, and abilities and develop strategies to achieve tentative career goals;
- (b) utilize local resources to research career plans; and
- (c) recognize the interrelationships of family, community, career, and leisure roles.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE V BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 1 FOR END OF BENCHMARK 3 (1) The benchmark for career and vocational/technical education content standard 1 for a student at the end of benchmark 3 (concentrators) is the ability to:

- (a) develop, evaluate, and modify personal career plans;
- (b) experience an internship, job shadow, or work experience related to one's career plan; and
- (c) evaluate career choices and the effect on family and lifestyle.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE VI CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 2 (1) To satisfy the requirements of career and vocational/technical education content standard 2, a student must demonstrate an understanding of and ability to apply principles of resource management (i.e., financial, time, and personal management).

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE VII BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 2 FOR END OF BENCHMARK 1 (1) The benchmark for career and vocational/technical education content standard 2 for a student at the end of benchmark 1 (by the end of 8th grade) is the ability to:

- (a) use basic monetary skills, practice maintaining basic financial records;
- (b) follow detailed instructions and complete assignment (e.g., project/time management);
- (c) recognize time constraints (e.g., personal time); and
- (d) recognize limitations on physical resources.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE VIII BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 2 FOR END OF BENCHMARK 2 (1) The benchmark for career and vocational/technical education content standard 2 for a student at the end of benchmark 2 (grades 9 through 12) is the ability to:

- (a) prepare a budget and keep financial records;
- (b) prioritize, allocate time, and prepare and follow schedules to complete a project;
- (c) apply appropriate time to task; and
- (d) use physical resources wisely to accomplish a goal.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE IX BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 2 FOR END OF BENCHMARK 3 (1) The benchmark for career and vocational/technical education content standard 2 for a student at the end of benchmark 3 (concentrators) is the ability to:

- (a) prepare and analyze financial plans, make forecasts, make adjustments to meet objectives, and evaluate financial records;
- (b) select, design, complete, and evaluate a project (e.g., manage multiple facets of a project);
- (c) manage multiple priorities and assess effectiveness of outcomes (e.g., school, work, family); and
- (d) evaluate the use of physical resources.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE X CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 3 (1) To satisfy the requirements of career and vocational/technical education content standard 3, a student must acquire and utilize personal and leadership skills to become a successful, productive citizen.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XI BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 3 FOR END OF BENCHMARK 1 (1) The benchmark for career and vocational/technical education content standard 3 for a student at the end of benchmark 1 (by the end of 8th grade) is the ability to:

- (a) serve as a positive role model by following the rules, regulations, and policies of the school community;
- (b) identify personal and work ethics;
- (c) recognize characteristics of good citizenship;
- (d) identify methods that can increase a person's self-esteem;
- (e) observe and recognize diversity; and
- (f) describe several methods of communication.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XII BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 3 FOR END OF BENCHMARK 2 (1) The benchmark for career and vocational/technical education content standard 3 for a student at the end of benchmark 2 (grades 9 through 12) is the ability to:

- (a) demonstrate active leadership skills by participation in group activities and projects;
- (b) demonstrate positive personal and work ethics;
- (c) demonstrate skills to be a productive citizen;
- (d) apply self-esteem building practices;
- (e) demonstrate appreciation for diverse perspective needs and characteristics; and
- (f) practice several methods of effective communication.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XIII BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 3 FOR END OF BENCHMARK 3 (1) The benchmark for career and vocational/technical education content standard 3 for a student at the end of benchmark 3 (concentrators) is the ability to:

- (a) assume a leadership role (e.g., team leader, career and technical student organization officer, committee chair);
- (b) evaluate, compare, and contrast positive personal and work ethics;
- (c) implement and evaluate a successful, productive citizenship activity (i.e., community service project);
- (d) select methods to constructively build esteem in others as well as self;
- (e) respect differences and work well with individuals from diverse backgrounds and philosophies; and
- (f) utilize multiple communication methods to complete a class project.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XIV CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 4 (1) To satisfy the requirements of career and vocational/technical education content standard 4, a student must acquire and demonstrate current technical skills leading to an occupation.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XV BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 4 FOR END OF BENCHMARK 1 (1) The benchmark for career and vocational/technical education content standard 4 for a student at the end of benchmark 1 (by the end of 8th grade) is the ability to:

- (a) identify appropriate technical skills required for selected occupation;
- (b) practice safe and appropriate use of technology;
- (c) identify and use the appropriate tools and equipment for the task;
- (d) identify and demonstrate appropriate care of technological tools; and
- (e) follow basic technical instruction.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XVI BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 4 FOR END OF BENCHMARK 2 (1) The benchmark for career and vocational/technical education content standard 4 for a student at the end of benchmark 2 (grades 9 through 12) is the ability to:

- (a) practice technical skills and procedures required for an occupation;
- (b) practice safe and appropriate use of technology;
- (c) select the appropriate tools, equipment, and procedures for the task;
- (d) manage and maintain technological tools and follow troubleshooting protocol; and
- (e) apply technical information to a variety of sources.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XVII BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 4 FOR END OF BENCHMARK 3 (1) The benchmark for career and vocational/technical education content standard 4 for a student at the end of benchmark 3 (concentrators) is the ability to:

- (a) master the technical skills required for an entry level job or advanced training;
- (b) practice safe and appropriate use of technology;

- (c) master tools and equipment needed for an entry level job or advanced training;
- (d) manage and maintain technological systems and follow troubleshooting protocol; and
- (e) adapt technical information generated from a variety of technical sources.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XVIII CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 5 (1) To satisfy the requirements of career and vocational/technical education content standard 5, a student must know and demonstrate the requirements of the workplace through authentic application.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XIX BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 5 FOR END OF BENCHMARK 1 (1) The benchmark for career and vocational/technical education content standard 5 for a student at the end of benchmark 1 (by the end of 8th grade) is the ability to:

- (a) apply academic and technical skills to a class project;
- (b) identify the concepts of entrepreneurship;
- (c) describe how decisions affect self and others; and
- (d) use acceptable industry standard equipment in a school setting.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XX BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 5 FOR END OF BENCHMARK 2 (1) The benchmark for career and vocational/technical education content standard 5 for a student at the end of benchmark 2 (grades 9 through 12) is the ability to:

- (a) practice and demonstrate academic and technical skills in a workplace setting;
- (b) apply the concepts of entrepreneurship;
- (c) identify possible outcomes and consequences of decisions; and
- (d) use acceptable industry standard equipment in a school setting.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXI BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 5 FOR END OF BENCHMARK 3 (1) The benchmark for career and vocational/technical education



content standard 5 for a student at the end of benchmark 3 (concentrators) is the ability to:

- (a) transfer academic and technical skills to the level of industry standards;
- (b) evaluate and/or design components of a business plan;
- (c) demonstrate decision-making and problem-solving skills; and
- (d) use acceptable industry standard equipment in a school setting.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXII ADVANCED CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 1

(1) An eighth-grade student at the advanced level in career and vocational/technical education demonstrates superior performance. He/she:

- (a) consistently and independently demonstrates the skills needed to research a career;
- (b) consistently identifies and uses all available resources;
- (c) consistently demonstrates the skills needed to become a successful, productive citizen;
- (d) consistently identifies and uses technical skills, tools, and equipment for a task; and
- (e) consistently applies acceptable industry standards to a classroom project.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXIII PROFICIENT CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 1

(1) An eighth-grade student at the proficient level in career and vocational/technical education demonstrates solid academic performance. He/she:

- (a) demonstrates the skills needed to research a career;
- (b) identifies all available resources;
- (c) usually recognizes the skills needed to become a successful, productive citizen;
- (d) usually identifies and uses technical skills, tools, and equipment for a task; and
- (e) usually applies acceptable industry standards to a classroom project.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXIV NEARING PROFICIENCY CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 1

(1) An eighth-grade student at the nearing proficiency level in career and vocational/technical education

demonstrates partial mastery of prerequisite knowledge and skills fundamental for proficiency in career and vocational/technical education. He/she:

- (a) usually demonstrates the skills needed to research a career;
- (b) usually identifies all available resources;
- (c) sometimes identifies the skills needed to become a successful, productive citizen;
- (d) sometimes identifies and uses technical skills, tools, and equipment for a task; and
- (e) with assistance, applies acceptable industry standards to a classroom project.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXV NOVICE CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 1

(1) An eighth-grade student at the novice level in career and vocational/technical education is beginning to attain prerequisite knowledge and skills that are fundamental in career and vocational/technical education. He/she:

- (a) sometimes demonstrates the skills needed to research a career;
- (b) sometimes identifies all available resources;
- (c) rarely identifies the skills needed to become a successful, productive citizen;
- (d) seldom identifies and uses technical skills, tools, and equipment for a task; and
- (e) with difficulty, applies acceptable industry standards to a classroom project.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXVI ADVANCED CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 2

(1) A high school student completing one course in career and vocational/technical education at the advanced level demonstrates superior performance. He/she:

- (a) clearly utilizes local resources and identifies his/her interests, aptitudes, and personal needs as related to career plans;
- (b) consistently uses resources and applies principles of resource management;
- (c) consistently demonstrates leadership and citizenship skills;
- (d) consistently uses and demonstrates advanced technical skills and problem-solving; and
- (e) effectively applies the concepts of an entrepreneur and technical skills to a workplace setting.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXVII PROFICIENT CAREER AND VOCATIONAL/TECHNICAL  
EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 2

(1) A high school student completing one course in career and vocational/technical education at the proficient level demonstrates solid academic performance. He/she:

(a) usually utilizes local resources and identifies his/her interests, aptitudes, and personal needs as related to career plans;

(b) usually uses resources and applies basic principles of resource management;

(c) usually demonstrates leadership and citizenship skills in classroom activities;

(d) usually demonstrates advanced technical skills and problem-solving; and

(e) applies the concepts of an entrepreneur and technical skills to a workplace setting.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXVIII NEARING PROFICIENCY CAREER AND  
VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END  
OF BENCHMARK 2

(1) A high school student completing one course in career and vocational/technical education at the nearing proficiency level demonstrates partial mastery of prerequisite knowledge and skills fundamental for proficiency in career and vocational/technical education. He/she:

(a) sometimes locates local resources and identifies his/her interests, aptitudes, and personal needs as related to career plans;

(b) sometimes uses resources and applies principles of resource management;

(c) sometimes demonstrates leadership and citizenship skills in classroom activities;

(d) sometimes demonstrates advanced technical skills and problem-solving; and

(e) sometimes applies the concepts of an entrepreneur and technical skills to a workplace setting.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXIX NOVICE CAREER AND VOCATIONAL/TECHNICAL  
EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 2

(1) A high school student completing one course in career and vocational/technical education at the novice level is beginning to attain prerequisite knowledge and skills that are fundamental for proficiency in career and vocational/technical education. He/she:

(a) with assistance, finds local resources and identifies his/her interests, aptitudes, and personal needs as related to career plans;

(b) with assistance, uses resources and applies principles of resource management;

- (c) rarely demonstrates leadership and citizenship skills;
- (d) rarely demonstrates advanced technical skills and problem-solving; and
- (e) rarely applies the concepts of an entrepreneur and technical skills to a workplace setting.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXX ADVANCED CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 3

- (1) A graduating student and vocational concentrator at the advanced level in career and vocational/technical education demonstrates superior performance. He/she:
- (a) purposefully develops and evaluates a career plan that includes work experience;
  - (b) consistently manages and evaluates resource use;
  - (c) readily assumes leadership roles and is a productive citizen;
  - (d) masters current technical skills, tools, and equipment for an entry level job or advanced training; and
  - (e) independently transfers academic and technical skills to industry standards.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXXI PROFICIENT CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 3

- (1) A graduating student and vocational concentrator at the proficient level in career and vocational/technical education demonstrates solid academic performance. He/she:
- (a) completes a career plan that includes work experience;
  - (b) manages and evaluates resource use;
  - (c) accepts leadership roles and is a productive citizen;
  - (d) demonstrates current technical skills, tools, and equipment for an entry level job or advanced training; and
  - (e) often transfers academic and technical skills to industry standards.

AUTH: 20-2-114, MCA  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXXII NEARING PROFICIENCY CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 3

- (1) A graduating student and vocational concentrator at the nearing proficiency level in career and vocational/technical education demonstrates partial mastery of prerequisite knowledge and skills fundamental for proficiency in career and vocational/technical education. He/she:

- (a) develops a partial career plan that includes work experience;
- (b) sometimes manages and evaluates resource use;
- (c) sometimes assumes leadership roles and is a productive citizen;
- (d) sometimes demonstrates current technical skills, tools, and equipment for an entry level job or advanced training; and
- (e) with assistance, transfers academic and technical skills to industry standards.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXXIII NOVICE CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 3

(1) A graduating student and vocational concentrator at the novice level in career and vocational/technical education is beginning to attain prerequisite knowledge and skills that are fundamental in career and vocational/technical education. He/she:

- (a) rarely develops a complete career plan;
- (b) seldom manages and evaluates resource use;
- (c) rarely assumes leadership roles and is a productive citizen;
- (d) has difficulty with current technical skills, tools, and equipment for an entry level job or advanced training; and
- (e) struggles to transfer academic and technical skills to industry standards.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXXIV PROGRAM FOUNDATION STANDARDS (1) The purpose of all programs is to develop and apply knowledge and skills necessary to pursue lifelong goals and opportunities. Program foundation standards are the common conditions, practices, and resources that cross all programs within a school system to ensure that all students have educational opportunity to learn, develop, and demonstrate learning to the content and performance standards. All programs shall follow the content and performance standards in the accreditation rules of Montana. In addition, all programs shall:

- (a) meet the following conditions:
  - (i) incorporate in curricular programs the distinct and unique cultural heritage of American Indians;
  - (ii) provide physically, emotionally, and educationally safe and supportive learning and working environments;
  - (iii) build school calendars and schedules based upon instructional needs;
  - (iv) ensure an educational climate that promotes academic freedom and respect for diversity;

(v) maintain high expectations for student performance and behavior, and challenge every student at his/her level of need; and

(vi) support collaboration among school personnel to plan, assess, and support instruction.

(b) include the following practices:

(i) align local curricula with the Montana content and performance standards;

(ii) teach ethical behavior and the implications of one's choices;

(iii) implement research-based instructional skills and strategies to improve student learning;

(iv) encourage the use of the inquiry process and the application of multiple thinking and problem-solving skills;

(v) provide learning experiences that connect the disciplines and transfer learning from one context to another; and

(vi) integrate information literacy skills, technology tools, and workplace competencies to support learning in all curricular areas.

(c) provide the following resources:

(i) access to regional, community, and school-based resources for teaching and learning;

(ii) highly qualified staff necessary to support the instructional process;

(iii) equitable access to all facilities, technology, equipment, materials, and services necessary to support the instructional process; and

(iv) time for ongoing and sustained professional development that supports learning for all.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

RULE XXXV WORLD LANGUAGES PROGRAM DELIVERY STANDARDS

(1) In general, a basic program in world languages shall:

(a) meet the following conditions:

(i) consistent and continual experience with the target language and culture;

(ii) classes that accommodate a variety of teaching and learning styles, methods, and materials; and

(iii) classes of novice and nearing proficiency students that are not combined with other levels.

(b) include the following practices:

(i) promote confidence in practicing the language by encouraging risk-taking and minimizing verbal correction;

(ii) maximize use of target language in an authentic manner through student-teacher and student-student interaction; and

(iii) build an authentic cultural ambiance.

(c) provide the following resources:

(i) access to native speakers or experts and authentic cultural contact;

- (ii) access to culturally authentic materials, (e.g., print, video, audio, literature, music, art); and
- (iii) access to technology that provides contact with the target language.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

5. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

10.54.2501 EXPLANATION OF THE CONTENT AND PERFORMANCE STANDARDS (1) The content and performance standards shall be used by school districts to develop local curriculum and assessment in all the content areas including: communication arts (reading, ~~English language, second language,~~ literature, writing, speaking and listening, speaking and media literacy); ~~fine arts; guidance;~~ health enhancement; library media; mathematics; ~~media;~~ science; social studies; technology; world languages; workplace competencies; and career and vocational/practical arts technical education. The K-12 content standards describe what students shall know, understand and be able to do in these content areas. Benchmarks define the expectations for students' knowledge, skills, and abilities along a developmental continuum in each content area. Progress toward meeting these standards is measured at three points along that continuum: the end of grade 4, the end of grade 8, and upon graduation. Performance standards ~~explicitly~~ define the quality of student performance and describe the performance to be demonstrated. Performance level descriptions provide a picture or profile of student achievement at the four performance levels: advanced, proficient, nearing proficiency, and novice.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.2502 DEFINITIONS (1) remains the same.

(2) "Content standard" means what a all students should know, understand, and be able to do in a specific content area, such as reading, mathematics, or social studies.

(3) remains the same.

(4) "Performance standard" means the specific expectations for performance in each content area at each of the three benchmarks. Performance standards ~~explicitly~~ define the quality of performance and describe the performance to be demonstrated.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.602 DEFINITIONS For the purpose of this chapter, the following terms apply:

(1) through (6) remain the same but are renumbered (2) through (7)

~~(7)~~(8) "Performance standard" means the specific expectations for performance in each content area at each of the three benchmarks. Performance standards explicitly define the quality of performance and describe the performance to be demonstrated.

~~(8)~~(9) "Program area standards" means the subject matter Montana school districts are required to offer and the strategies and proven practices used to instruct. The program area standards include: communication arts, arts, health enhancement, mathematics, science, social studies, career and vocational/technical education, technology, workplace competencies, library media, world languages and guidance school counseling.

(10) "Program delivery standards" means the conditions, practices and resources school districts are required to provide for all students to have educational opportunities to learn, develop and demonstrate learning to content and performance standards.

~~(9)~~(1) "Assessment" means the gathering, organizing, and evaluation of information about student learning in order to monitor and measure the effectiveness of the instructional program. ~~(Eff. 7/1/89)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

#### 10.55.603 CURRICULUM DEVELOPMENT AND ASSESSMENT

(1) Local school districts shall incorporate all learner goals and the content and performance standards into their curriculum, implementing them sequentially and developmentally. School districts shall assess the progress of all students toward achieving content and performance standards in all program areas. Student assessment of all students shall be used to examine the educational program and ensure measure its effectiveness based on the learner goals and the content and performance standards.

(a) The examination of program effectiveness using assessment results shall be supplemented with information about graduates and other students no longer in attendance.

(b) The information obtained shall be considered in curriculum and assessment development.

(2) For content and performance standards in all program areas standards, learner goals, and the content and performance standards, the in accordance with ARM 10.55.602(8), school districts shall:

(a) establish curriculum and assessment development processes as a cooperative effort of personnel certified and endorsed in the program area and trustees, administrators, other teachers, students, specialists, parents, community and, when appropriate, tribal representatives and state resource people;



(b) review curricula at intervals not exceeding five years and modify as needed to meet educational goals of the five-year comprehensive education plan in accordance with ARM 10.55.601; and

~~(c) at least every five years, review and select materials and resources to include supplies, books, materials and equipment necessary for development and implementation of the curriculum and assessment that are consistent with the goals of the five-year comprehensive education program. plan; and These materials shall be reviewed at least every five years.~~

(d) review curricula to ensure the inclusion of the distinct and unique cultural heritage of the American Indians.

~~(3) School districts will continue to follow their established curriculum and assessment development processes until the school year 2003-04, when all programs must be in alignment with the content and performance standards assessment plans shall be included in the comprehensive education plan.~~

(a) School districts shall use effective and appropriate multiple measures and methods to assess student progress in achieving content and performance standards in all program areas.

(b) Utilizing input from representatives of accredited schools, the office of public instruction shall develop criteria and procedures for the selection of effective and appropriate multiple measures and methods to be used to assess student progress in reading and mathematics in grades 4, 8 and 11.

(c) The office of public instruction shall provide technical assistance to districts to meet the criteria and procedures in (3)(b).

~~(4) In all program area standards, learner goals and content and performance standards, the school district shall:~~

~~(a) assess, in accordance with the schedule in (5), student progress toward achieving learner goals and content and performance standards including:~~

- ~~(i) the content and data;~~
- ~~(ii) the accomplishment of appropriate skills;~~
- ~~(iii) the development of critical thinking and reasoning;~~

and

- ~~(iv) attitude.~~

~~(b) use assessment results to improve the educational program.~~

~~(c) use effective and appropriate tools for assessing student progress. This may include but is not limited to:~~

- ~~(i) standardized tests;~~
- ~~(ii) criterion-referenced tests;~~
- ~~(iii) teacher-made tests;~~
- ~~(iv) ongoing classroom evaluation;~~
- ~~(v) actual communication assessments such as writing, speaking, and listening assessments;~~
- ~~(vi) samples of student work and/or narrative reports passed from grade to grade;~~

~~(vii) samples of students' creative and/or performance work;~~

~~(viii) surveys of carryover skills to other program areas and outside of school.~~

~~(5)(d) Not later than the school year immediately following the completion of a written sequential curricula in a program area aligned with the content and performance standards in a program area in accordance with ARM 10.55.601(6), the school district shall begin the development of an student assessment process for that subject program area. Once begun, ~~t~~The assessment process for a subject area will must be in place within two years until the school year 2000-2001, when all programs must be in alignment with the assessment process the following year.~~

~~(6) Beginning 7/1/92 schools shall conduct follow-up studies of graduates and students no longer in attendance. The study results shall be considered in curriculum development and shared with staff and school consultants. (Eff. 7/1/92)~~

~~(7) All school districts shall conduct a program of student assessment in accordance with ARM 10.56.101 Student Assessment.~~

(4) In addition to the school-by-school reporting of norm-referenced testing results in accordance with ARM 10.56.101, districts shall annually report to the office of public instruction the school level results of measures for the standards that are not adequately assessed by the norm-referenced tests in reading and mathematics at grades 4, 8 and 11.

(a) Utilizing input from representatives of accredited schools, the office of public instruction will identify the additional standards in reading and mathematics that are to be assessed with other measures.

(b) The measures used to report to the office of public instruction shall be included within the district assessment plan in accordance with ARM 10.55.601.

(c) The criteria and procedures set forth in (3)(b) shall be used by the office of public instruction in an approval process to assure the quality of the other measures that will be used to assess and report progress in reading and mathematics at grades 4, 8 and 11.

AUTH: 20-2-114, 20-2-121, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1001 DISTRICT'S RESPONSIBILITIES FOR PROGRAM AREA DELIVERY STANDARDS (1) It is the school district's responsibility to incorporate content and performance standards into its curriculum, implementing them sequentially.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1101 COMMUNICATION ARTS PROGRAM DELIVERY STANDARDS

~~(In accordance with ARM 10.55.603 and ARM 10.55.1001) (1) In general, a school's basic program in communication arts program shall:~~

~~(a) be literature-based and include a wide variety of fiction and nonfiction, representing diverse cultures of Montana, the United States, and the world;~~

~~(b) create a "whole language" environment that integrates communication skills in all subject areas and that gives students extensive opportunities to use these skills in meaningful contexts;~~

~~(c) encourage reading as a search for information, meaning, and pleasure. The program will provide literature of high quality, which is enriching for every age and ability level;~~

~~(d) include a writing program that emphasizes process and focuses on the communication of ideas;~~

~~(e) include an oral language program that involves students in a variety of speaking, listening, and viewing activities;~~

~~(f) give students opportunities to pursue their special gifts and interests through co-curricular offerings such as drama, speech, debate, journalism, literary publications, and humanities;~~

~~(g) provide programs that enable students to use their communication arts skills in the community and in the world;~~

~~(h) take advantage of the offerings of special groups in education, business, and industry;~~

~~(i) be accomplished by activities such as creative drama, cooperative learning, small-group discussion, whole-language experience, and cross-content projects;~~

~~(j) use the language of students with limited English proficiency to develop more diverse English language skills. (Eff. 7/1/89)~~

(a) meet the following conditions:

(i) encourage an understanding of and respect for varying points of view and for diversity (e.g., gender, race, ethnicity, economic status, native language, disability, special gifts and talents); and

(ii) promote literacy and language excellence in the spoken, written, and visual form.

(b) include the following practices:

(i) integrate reading, literature, writing, speaking, listening, and media literacy with a balanced approach supported by current research and/or based on best practices in the field of communication arts;

(ii) emphasize multiple strategies and artistic forms to teach the conventions, demands, and responsibilities of language;

(iii) offer engaging experiences that enable students to develop communications skills for fulfillment in their personal lives, workplaces, and communities;

(iv) select high-quality materials that are appropriate to ability and developmental levels;

- (v) emphasize writing as a process;
  - (vi) provide opportunities for informal and formal speaking and listening;
  - (vii) offer experiences in viewing, creating, and critically evaluating different types of media; and
  - (viii) support co-curricular offerings in drama, speech, debate, journalism, literary publications, and other related activities.
- (c) provide the following resources:
    - (i) make available a variety of print and non-print materials encompassing fiction and non-fiction, classic and contemporary works, and diverse perspectives including Montana American Indian works; and
    - (ii) provide student access to a variety of current technological and informational resources (e.g., libraries, databases, computer networks, videos).

AUTH: 20-2-114 MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1201 ARTS PROGRAM DELIVERY STANDARDS (1) In general, Aa basic program in arts includes shall:

~~(a) visual arts (drawing, painting, printmaking, photography, film, electronic media, sculpture, two- and three-dimensional construction, applied design, and kinetic and performance art);~~

~~(b) performing arts, including music (choral music, instrumental music, and music appreciation); theater (drama, play production); and creative movement;~~

~~(c) literary arts (poetry, prose, drama);~~

~~(d) instruction that incorporates fine arts' history, criticism, production, performance, and aesthetics.~~

(a) meet the following conditions:

(i) incorporate visual arts (e.g., drawing, painting, printmaking, photography, film, electronic media, sculpture, applied design, installation);

(ii) incorporate performing arts, including music (e.g., choral music, instrumental music, music appreciation), theater (e.g., drama, play production), and dance;

(iii) provide instruction that includes history of the arts, criticism, production, performance, and aesthetics; and

(iv) encourage a variety of co-curricular offerings (e.g., drama, literary and art publications, performance groups, arts clubs) and other avenues for students to practice their artistic skills in the community and the world.

(b) include the following practices:

(i) structure activities to allow students to develop techniques in the arts; and

(ii) allow students to explore the elements of artistic composition and a variety of media, functions, styles, and presentation forms.

(c) provide the following resources:

(i) access to exemplary works of art from diverse cultures and historical periods;

- (ii) access to current materials, techniques, technology, and processes in the arts;
- (iii) real audiences for student performance and products, display areas, and appropriately equipped performance areas (e.g., stages, galleries, fairs);
- (iv) adequate and secure storage (i.e., portfolios) including digital, audio, video, and physical space; and
- (v) adequate materials (e.g., visual arts media and supplies, performance texts, costumes and equipment, musical scores, instruments).

AUTH: 20-2-114 MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1301 HEALTH ENHANCEMENT PROGRAM DELIVERY STANDARDS

~~(In accordance with ARM 10.55.603 and ARM 10.55.1001)~~

(1) In general, a basic health enhancement program shall:

~~(a) integrate lifestyle management throughout the curriculum;~~

~~(b) focus on the total self and the development of responsibility, values, attitudes, and behaviors;~~

~~(c) give students decision making tools for personal health;~~

~~(d) address intellectual, social, emotional, and physical dimensions of healthy lifestyles. (Eff. 7/1/89)~~

(a) meet the following conditions:

(i) maintain class size in accordance with other curriculum areas;

(ii) focus on the knowledge and skills necessary to maintain a healthy lifestyle;

(iii) integrate and include components of the traditional "health" and "physical education" disciplines; and

(iv) maintain a program that meets the educational requirements of health enhancement.

(b) include the following practices:

(i) make appropriate use of technology in the curriculum;

(ii) give students the decision-making tools to promote personal and community responsibility;

(iii) address the physical, emotional, social, and intellectual dimensions of a healthy lifestyle; and

(iv) promote physical activity as a means to a healthy lifestyle.

(c) provide the following resources:

(i) adequate classroom and physical activity space and the resources necessary to accomplish the curriculum; and

(ii) adequate first aid materials and telephone communication.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1401 MATHEMATICS PROGRAM DELIVERY STANDARDS (In accordance with ~~ARM 10.55.603 and ARM 10.55.1001~~) (1) In general, a basic mathematics program, students shall:

- ~~(a) become mathematical problem solvers;~~
- ~~(b) learn to communicate mathematically;~~
- ~~(c) learn to reason mathematically;~~
- ~~(d) learn to value mathematics;~~
- ~~(e) become confident in their ability to do mathematics;~~
- ~~(f) select and use appropriate technology to solve problems and acquire new knowledge. (Eff. 7/1/89)~~

(a) meet the following conditions:

(i) maintain a mathematics program that supports learning for all students;

(ii) provide a well-articulated curriculum that challenges students to learn increasingly more sophisticated mathematical ideas; and

(iii) provide conceptual mathematical understanding as well as factual knowledge and procedural facility.

(b) include the following practices:

(i) select high quality materials that are appropriate to ability and developmental levels;

(ii) utilize a variety of pedagogical and assessment strategies;

(iii) create, enrich, maintain, and adapt instruction to meet mathematical goals;

(iv) incorporate appropriate technology into the math program;

(v) connect the development of skills and procedures to the more general development of mathematical understanding; and

(vi) effectively observe students, listen carefully to students' ideas and explanations, have mathematical goals, and use the information to make instructional decisions.

(c) provide the following resources:

(i) time and resources so that all teachers have access to high quality professional development as an integral part of their job;

(ii) well-aligned curriculum materials, along with the appropriate technology needed to meet the standards;

(iii) a well-conceived mentoring program for teachers in the first three years of their practice; and

(iv) time for teachers to collaborate and work with colleagues to prepare high-quality lessons.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1501 SCIENCE PROGRAM DELIVERY STANDARDS (In accordance with ~~ARM 10.55.603 and ARM 10.55.1001~~) (1) In general, aA basic program in science gives ~~students the opportunity to shall:~~

- ~~(a) use scientific processes and communicate how they are used to develop scientific knowledge;~~

~~(b) develop the use of science skills to enhance his/her ability to think logically, critically, and creatively;~~

~~(c) recognize that scientific knowledge is continually subject to review, verification, and revision;~~

~~(d) gather reliable information in all areas of the sciences, using chemicals, laboratory equipment and hands-on activities safely and appropriately;~~

~~(e) show competence in measurement and mathematics;~~

~~(f) gain and convey information through oral, written, and graphic communication;~~

~~(g) recognize the character of independent and dependent variables;~~

~~(h) understand the core concepts of current scientific knowledge and use them in problem solving and decision making;~~

~~(i) identify problems of individual or social importance and select and apply appropriate scientific techniques to investigate these problems;~~

~~(j) understand the interactions of science, technology, and society;~~

~~(k) explore the use of science-related skills effectively in careers, leisure activities, and lifelong learning. (Eff. 7/1/89)~~

(a) meet the following conditions:

(i) maintain an environment that recognizes scientific knowledge as the product of inquiry and is continually subject to review, verification, and revision; and

(ii) foster an environment that embraces the interactions of science, technology, and society.

(b) include the following practices:

(i) investigate problems of individual, social, and ethical importance in the natural world through the selection and application of appropriate scientific techniques;

(ii) connect initial inquiry and discovery to prior knowledge;

(iii) employ varied strategies for investigation, allowing students to understand science as a process, experience practical problem-solving, and develop critical thinking skills;

(iv) emphasize experimentation, data analysis, and the communication of findings to build new understandings by classifying ongoing observations, modeling natural phenomena, and developing the capacity to make inferences about unexplored concepts;

(v) emphasize common unifying themes or principles that build on students' prior experiences; and

(vi) use technology for collaborative inquiries to extend curricular experiences within the school and to other schools, communities, and businesses.

(c) provide the following resources:

(i) access to appropriate materials, resources, and internet access for the acquisition of current scientific content and research;

(ii) adequate time for students to set up and complete scientific investigations and discovery; and

(iii) physical facility to accommodate inquiry-based scientific learning.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1601 SOCIAL STUDIES PROGRAM DELIVERY STANDARDS

~~(In accordance with ARM 10.55.603 and ARM 10.55.1001)~~

~~(1) In general, aA basic program in social studies gives the student an opportunity to shall:~~

~~(a) participate in meaningful first hand and hands-on learning activities that draw on experiences in the home, school, neighborhood, and the world;~~

~~(b) participate in committee work, role playing, creative drama, classroom discussion, and interviews;~~

~~(c) develop research skills, which may include the gathering and recording of information from a variety of sources such as films, pictures, oral and written literature, music, and field trips;~~

~~(d) develop citizenship skills through sharing, acceptance of responsibility, cooperative learning, compromising, conflict resolution, and decision making;~~

~~(e) enhance his/her communication skills through drawing, acting, reading, writing, listening, and speaking;~~

~~(f) use topics that engage his/her interests and extend personal context for learning to a global realm. Learning activities are varied and involve the student intellectually, socially, and physically;~~

~~(g) nurture an understanding of the contemporary and historical traditions and values of Native American cultures and other minority cultures of significance to Montana and to society. (Eff. 7/1/89)~~

(a) meet the following conditions:

(i) use strategies and methods that incorporate multiple perspectives as a basic component of social studies instruction;

(ii) support the democratic process to promote a learning environment to foster individual civic competence; and

(iii) integrate knowledge, skills, beliefs, values, and attitudes within and across disciplines to promote active citizenship.

(b) include the following practices:

(i) incorporate inquiry skills and strategies using both primary and secondary resources;

(ii) promote social criticism and socialization as a commitment to social responsibility;

(iii) analyze ethical dimensions and social policy implications of issues to provide an arena for reflective development of concern for individual needs and the common good;

(iv) promote decision-making skills and civic responsibilities through active participation (e.g., service learning projects); and



(v) nurture an understanding of the contemporary and historical traditions and values of American Indian cultures and other cultural groups of significance to Montana and to society.

(c) provide the following resources:

(i) variety of primary and secondary resources;

(ii) children and young adult literature that contain social studies themes and topics;

(iii) computer software and internet access; and

(iv) community resources (e.g., speakers, museums, parks, businesses, government agencies).

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1701 CAREER AND VOCATIONAL/PRACTICAL—ARTS TECHNICAL EDUCATION PROGRAM DELIVERY STANDARDS (In accordance with ~~ARM 10.55.603 and ARM 10.55.1001~~) (1) In general, a basic program in career and vocational/practical—arts technical education shall:

~~(a) be an integral part of the education program and a complement to the academic program;~~

~~(b) motivate students, provide exploratory experiences, and increase career planning and employment skills;~~

~~(c) be a cooperative effort of business, industry, and schools, contributing to Montana's economic development.~~

~~(2) The program shall give students the opportunity to:~~

~~(a) develop their vocational aptitudes to the highest level possible in order to promote success in their post-secondary living experience;~~

~~(b) increase their abilities to function successfully in home, social, and consumer environments;~~

~~(c) develop student leadership skills through curricular and vocational organization activities that encourage active interest in the community and in the value of good citizenship;~~

~~(d) learn to use leisure time in a worthwhile manner;~~

~~(e) become motivated to master academic skills and demonstrate the practical application of those skills in a working and living environment;~~

~~(f) apply critical thinking, decision making, and problem solving skills to vocational education and occupations;~~

~~(g) develop positive attitudes toward work, respect for quality workmanship, and effective interpersonal skills;~~

~~(h) develop an understanding of safe, efficient, and courteous highway use as a passenger, pedestrian, cyclist, or motor vehicle operator. (Eff. 7/1/89)~~

(a) meet the following conditions:

(i) skill development leading to employment based on workforce needs;

(ii) program development in consultation with an advisory council;

- (iii) opportunities for authentic application, work experience, and/or articulation with postsecondary education;
- (iv) opportunities for professional development;
- (v) safe work and learning environment; and
- (vi) equal access for all students.
- (b) include the following practices:
  - (i) skill development for employment as well as advanced training;
  - (ii) input from representatives of business and industry;
  - (iii) analysis of skills and knowledge required in paid and non-paid careers;
  - (iv) leadership and character development through participation in career and technical student organizations (CTSOs);
  - (v) progression of skills and knowledge from basic to advanced; and
  - (vi) integration of career and vocational/technical competencies with academic knowledge in a contextual setting.
- (c) provide the following resources:
  - (i) student contact and teacher preparation time necessary to achieve content standards;
  - (ii) learning environment and equipment reflective of authentic application;
  - (iii) facilities, supplies, and materials reflective of industry and/or content standards; and
  - (iv) career counseling and exploration, including utilization of community resources.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1801 LIBRARY/MEDIA PROGRAM DELIVERY STANDARDS (In accordance with ~~ARM 10.55.603 and ARM 10.55.1001~~) (1) In general, a basic program in library media services bring together the resources and technology that enable a student to shall:

- ~~(a) read for the sake of enjoyment and enrichment;~~
- ~~(b) read, listen, and view critically;~~
- ~~(c) learn effective ways to find information and material to meet his/her unique needs;~~
- ~~(d) organize, analyze, and interpret information;~~
- ~~(e) integrate information across content areas;~~
- ~~(f) reach conclusions;~~
- ~~(g) become a lifelong learner.~~
- ~~(2) To help students achieve learner goals, the library/media program shall:~~
  - ~~(a) teach library/media skills in sequence and in the context of the K-12 curriculum;~~
  - ~~(b) support and enrich all areas of the school program;~~
  - ~~(c) integrate library/media instruction across content areas;~~
  - ~~(d) involve students in literature and reading, with the opportunity to be advised about reading in an unstructured, informal setting;~~

~~(e) encourage a love of reading and an appreciation of literature;~~

~~(f) give students the opportunity to identify and meet personal information needs. (Eff. 7/1/89)~~

(a) meet the following conditions:

(i) establish flexible scheduling to ensure that libraries respond to information needs, foster intellectual curiosity, and support learning;

(ii) ensure collaboration with classroom teachers of all disciplines to implement content area standards and to assist students in engaging in the inquiry/research process;

(iii) create and sustain a climate that fosters the love of reading, listening, and viewing and stimulates a desire for lifelong learning;

(iv) model and support the ethical use of information, adherence to copyright laws, and respect for intellectual property;

(v) develop and maintain a library collection that is current, balanced, and reflects authentic historical and cultural contributions of Montana's American Indians and other minority and ethnic groups; and

(vi) engage in comprehensive long range planning to effectively administer and manage the human, financial, and physical resources of the library.

(b) include the following practices:

(i) collaborate with classroom teachers of all disciplines to highlight and reinforce the commonalities and links between and among the curricular areas;

(ii) write and implement a viable collection development policy adopted and supported by the school board which includes the following components:

(A) materials selection and de-selection;

(B) challenged materials procedure;

(C) intellectual/academic freedom statement;

(D) confidentiality assurance;

(E) copyright guidelines; and

(F) gifts and donations;

(iii) appropriately use paraprofessionals and volunteers in order to maximize the professional skills and time of the librarian;

(iv) cooperate and join with other libraries, information agencies, and community resources in the sharing of materials;

(v) partner and merge with information centers that use electronic information systems which adhere to cataloging standards and networking protocols; and

(vi) participate in school-wide technology and telecommunications planning and promote its integration into all instructional programs.

(c) provide the following resources:

(i) equitable access to the library facilities, resources, staff, and equipment;

(ii) centralized, secure area to locate, access, and use on site resources that are organized and cataloged;

(iii) access to a professionally staffed school library both during school hours and beyond the instructional day; and  
(iv) maintain par with national norms for school library expenditures.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1901 DEFINITION SCHOOL COUNSELING PROGRAM DELIVERY STANDARDS ~~(In accordance with ARM 10.55.603 and ARM 10.55.1001)~~ (1) ~~Guidance counseling is the specific educational service that helps individual students develop their personal, social, educational, and career/life planning skills. (Eff. 7/1/89)~~ In general, school counseling shall:

(a) meet the following conditions:

(i) provide advocacy for students and enable positive change; and

(ii) respect the worth and dignity of all individuals by building trust and respecting confidentiality;

(b) include the following practices:

(i) provide a comprehensive and developmental counseling program that includes personal, social, educational, and career life planning skills; and

(ii) promote the shared commitment of many individuals such as parents, teachers, administrators, counseling staff, and students.

(c) provide the following resources:

(i) adequate human resources to include counselors, teachers, parents, administrators, students, community personnel, business and labor personnel; and

(ii) adequate materials, equipment, facilities to accomplish the program goals.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

6. The rule proposed for repeal follows.

10.55.1002 CROSS-CONTENT AND THINKING SKILLS found at page 10-797, Administrative Rules of Montana.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

7. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearings. Written data, views or arguments may also be submitted by mail to the Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to [opirules@state.mt.us](mailto:opirules@state.mt.us) and must be received no later than 5:00 p.m. on March 30, 2001.

8. Jeffrey A. Weldon, of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

9. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding content and performance standards or other school related rulemaking actions. Such written request may be mailed or delivered to Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, telephone number (406) 444-6576, FAX (406) 444-0684, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

For purposes of this rulemaking, you may also be placed on the Board's list of interested persons by contacting Pat Reichert, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, telephone number (406) 444-3172.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Kirk Miller  
By: Kirk Miller, Chairperson  
Board of Public Education

/s/ Jeffrey A. Weldon  
Jeffrey A. Weldon, Staff Attorney  
Rule Reviewer  
Office of Public Instruction

Certified to the Secretary of State January 29, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the adoption )  
of NEW RULES I through III, )  
the amendment of ARM 17.4.501, )  
17.4.502, 17.20.301, )  
17.20.302, 17.20.801, )  
17.20.802, 17.20.803, )  
17.20.805, 17.20.807, )  
17.20.811, 17.20.817, )  
17.20.818, 17.20.901, )  
17.20.907, 17.20.929, )  
17.20.1301, 17.20.1302, )  
17.20.1311, 17.20.1418, )  
17.20.1426, 17.20.1501, )  
17.20.1502, 17.20.1503, )  
17.20.1504, 17.20.1509, )  
17.20.1511, 17.20.1512, )  
17.20.1604, 17.20.1701, and )  
17.20.1702, and the repeal of )  
ARM 17.20.101 through )  
17.20.108, 17.20.501 through )  
17.20.506, 17.20.701 through )  
17.20.704, 17.20.812, )  
17.20.816, 17.20.902 through )  
17.20.906, 17.20.908 through )  
17.20.911, 17.20.1201 through )  
17.20.1203, 17.20.1303, )  
17.20.1309, 17.20.1310, )  
17.20.1401 through 17.20.1405, )  
17.20.1408 through 17.20.1412, )  
17.20.1415 through 17.20.1417, )  
17.20.1419 through 17.20.1421, )  
17.20.1601 through 17.20.1603, )  
and 17.20.1705, pertaining to )  
regulation of energy )  
generation or conversion )  
facilities and linear )  
facilities )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION,  
AMENDMENT AND REPEAL

(MAJOR FACILITY SITING)

TO: All Concerned Persons

1. On March 9, 2001, at 8:30 a.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review (Board) will hold a hearing to consider the proposed adoption, amendment and repeal of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., March 2, 2001, to advise us of the nature

of the accommodation you need. Please contact the Board at PO Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The rules, as proposed to be amended, provide as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.4.501 OPPORTUNITY FOR PUBLIC COMMENT AFTER APPLICATION COMPLETE RECEIVED (1) Within 1 month after an application is declared ~~complete~~ received pursuant to 75-20-216, MCA, the department shall publish notice of the following:

(a) the name and address of the applicant; a general description of the size, purpose and pollutants discharged from the proposed facility; solid or hazardous wastes generated; any other aspects of the proposed facility which require a permit or license from the department; and the location of ~~the~~ any alternative sites;

(b) if an MPDES permit must be obtained, the name of the state water receiving the discharge, a brief description of the discharge's location, and whether the discharge is new or existing;

(c) that the department will accept written public comment on the application;

(d) the deadlines by which the above comments must be submitted, which must be no less than 30 days after the date the notice is first published in a legal advertisement pursuant to (2)(a) below;

(e) the name, address and phone number of the department and the person within each bureau from whom information on the application may be obtained;

(f) the name and address of the person to whom comments may be submitted;

(g) the fact that a public hearing will be held after a preliminary decision to grant or deny the relevant permits is made.

(2) Notice of the opportunity for public comment described in (1) of this rule must be published as follows:

(a) publishing legal notice 2 times within 2 weeks in a newspaper of general circulation in Butte, Missoula, Helena, Great Falls, Miles City, Kalispell, and Billings, and in a newspaper of general circulation ~~published~~ within 50 miles of the site of the proposed facility and any alternative site;

(b) submitting the notice to a state-wide wire service;

(c) mailing to any person, group, or agency upon written request, and to the following state agencies:

(i) environmental quality council;

(ii) department of public service regulation;

(iii) department of fish, wildlife and parks;

(iv) department of ~~state lands~~ natural resources and conservation;

(v) department of ~~community affairs~~ commerce;

(vi) department of transportation; and

(vii) department of revenue.

AUTH: 75-2-111, 75-5-201, 75-20-216(3), MCA  
IMP: 75-20-216(3), MCA

Rationale: 17.4.501 is proposed for amendment because the current rule limits the department to waiting until an application is complete before starting the public scoping process. The proposed change would accelerate the initial scoping meetings so that they would occur within 30 days of receiving an application. Up to 60 days could be saved during the application review period by making this change.

17.4.501(1)(a) is proposed for amendment to qualify the phrase regarding alternative sites because only alternative sites can be required for linear facilities or as a mitigating measure for off-site associated facilities under 75-20-301, MCA.

The term "published" is proposed for deletion because it is possible that in some parts of the state a project may be more than 50 miles from the location of where a newspaper is published.

The former agency name "department of state lands", which no longer exists, has been changed to reflect the current agency name, "department of natural resources and conservation", which now manages state lands. Similarly, the "department of community affairs" no longer exists, and its functions are now exercised by the "department of commerce".

#### 17.4.502 PUBLIC HEARING AFTER PRELIMINARY DECISION

(1) ~~Within 7 months after~~ After an application for a certificate is accepted as complete, the department shall:

(a) make a preliminary decision whether to grant or deny relevant permits for the primary proposed site and each alternative site location for which approval is sought; and

(b) hold a hearing to receive public comments on those decisions.

(2) The notice of public hearing shall be published as follows:

(a) publishing legal notice 2 times within 2 weeks in a newspaper of general circulation in Butte, Missoula, Helena, Great Falls, Miles City, Kalispell, and Billings, and in a newspaper of general circulation ~~published~~ within 50 miles of the site of the proposed facility and any alternative site;

(b) submitting the notice to a state-wide wire service;

(c) at least 30 days prior to the date of hearing, mailing to any person or group upon written request, the environmental quality council; the state departments of public service regulation; fish, wildlife and parks, ~~state lands~~ natural resources and conservation, commerce, transportation, and revenue; and, in the case of an application for an MPDES permit, those listed in ARM 17.30.1372(5).

(3) The notice of public hearing shall contain the following:

(a) the name and address of the applicant, a general description of the size, purpose, and pollutants discharged from the proposed facility, solid or hazardous wastes



generated, any other aspects of the proposed facility which require a permit or license from the department, the location of the alternative sites, the preliminary decision for each site to grant or deny any relevant permit, and the fact that only 1 site will be approved by the board of natural resources and conservation;

(b) if an MPDES permit is applied for, the name and address of the discharger, if different from the applicant;

(c) if an MPDES permit must be obtained, the name of the state water receiving the discharge and a brief description of the discharge's location;

(d) the name, address and phone number of the department;

(e) the time, date and location of the public hearing, the date to be at least 30 days after the notice is first published; and the fact that written comments may be submitted until that date;

(f) the name and address of the presiding officer and the fact that written comments should be submitted to him that person;

(g) the name, address and phone number of the person from whom information concerning each relevant permit may be obtained; and, if an MPDES permit is applied for, a draft permit, a fact sheet as required by ARM 17.30.1371, and copies of MPDES forms and related documents must also be included; and

(h) a brief description of the nature and purpose of the hearing, including the rules and procedure to be followed.

(4) The presiding officer shall accept information, comments and data from members of the public relevant to all aspects of the proposed facility which require a license or permit from the department at the primary and alternative sites proposed site and proposed and alternative locations for a linear facility orally or in writing at the hearing and in writing prior to the hearing. The hearing is not subject to the contested case procedure of the Montana Administrative Procedure Act, and no cross-examination will be allowed. The presiding officer has the discretion to limit repetitive testimony and prescribe rules to ensure orderly submission of statements.

(5) All written and oral comments submitted to the department from the date the above notice is issued until the termination of the public hearing must be retained by the department and considered in the formation of its final decision on relevant permits. The department shall issue a response to all significant comments.

(6) The department shall complete the procedures required in this rule so that all permits are issued by the applicable deadline established in 75-20-216 or 75-20-231, MCA.

AUTH: 75-2-111, 75-5-201, 75-20-216(3), MCA

IMP: 75-20-216(3), MCA

Rationale: 17.4.502 is proposed for amendment to remove the seven-month requirement for issuance of draft permits for

air or water quality. Under MFSA the Department has one year to issue air and water quality permits and parallel language is proposed to be added to the rule. These changes would give the Department maximum flexibility in meeting its responsibility to complete the air and water quality permitting process within one year for facilities with potentially significant impacts or within 6 months for those facilities without significant impacts.

17.4.502(1)(a) is proposed for amendment because under 75-20-301, MCA, the Department may only consider the proposed location for a generation or conversion facility, but may consider alternative locations for linear facilities such as pipelines and electric transmission lines.

17.4.502(2)(a) The term "published" is proposed for deletion because it is possible that in some parts of the state a project may be more than 50 miles from the location of where a newspaper is published.

17.4.502(2)(c) is proposed for amendment to correct the name of the agency responsible for managing state school trust lands.

17.4.502(3)(f) is proposed for gender neutrality.

17.4.502(4) is proposed for amendment for the same reason described for the amendment to 17.4.502(1)(a).

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

(1) through (4) remain the same.

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

(6) and (7) remain the same.

(8) "Associated powerline" means an associated facility consisting of an electrical distribution or transmission line that:

(a) is not a facility defined in 75-20-104(8)(c), MCA; and

(b) is used in delivery of electrical energy to or from a generation or conversion facility defined in 75-20-104(8)(a)(i) or 75-20-104(8)(b), MCA.

~~(8)(9)~~ (9) "Area of concern" means a geographic area or location specified in ARM ~~17.20.1405,~~ 17.20.1430, and 17.20.1431, where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems, but where formal public recognition or designation has not been granted.

(9) remains the same, but is renumbered (10).

~~(10)~~ (11) "Baseline study" means a detailed analysis of ~~alternative sites~~ a proposed site for a generation or conversion facility and impact zones or alternative routes and impact zones for a linear facility for purposes of impact assessment and comparison and selection of a ~~preferred site or preferred route.~~

(11) and (12) remain the same, but are renumbered (12) and (13).

~~(13) "Candidate siting area" means a geographic area selected pursuant to ARM 17.20.1412 that is located within an economically feasible siting area and is suitable for locating an energy generation or conversion facility.~~

(14) through (14)(c) remain the same.

(15) remains the same.

(16) "Certificate holder" means an applicant that has been granted a certificate or ~~an approved transfer by the board who has received a certificate by transfer and has agreed to be bound by the terms, conditions, and modifications contained in the certificate.~~

~~(17) "Competitive utility" means a utility that has neither a legally protected service area nor a utility mandate to serve all demands for the energy form to be produced by a proposed facility.~~

(18) through (18)(b) remain the same, but are renumbered (17) through (17)(b).

~~(19) "Curtable load" means an energy load that may be interrupted by a utility under contractual arrangement with a customer.~~

(20) through (22) remain the same, but are renumbered (18) through (20).

~~(23) "Direct unit costs" means the annual costs of operating a facility including amortized capital costs, taxes, operating, maintenance, administrative, fuel and other variable costs of production, divided by the annual output of the facility. Direct unit costs are not adjusted for assistance.~~

~~(24) "Economically feasible siting area" means a geographic area where a facility could be located with a resulting levelized delivered cost of energy that is no more than 30% higher than the lowest levelized delivered cost location for the facility.~~

~~(25) "End use" means the ultimate use of energy, such as space heating, water heating, electric motors, and process heat.~~

(26) remains the same, but is renumbered (21).

~~(27) "Energy demand" means the demand by customers for kilowatt hours of electricity, thousand cubic feet of gas or other quantities of energy, in a specific time period.~~

(28) and (29) remain the same, but are renumbered (22) and (23).

~~(30) (24) "Exclusion area" means a geographic area specified in ARM 17.20.1403 and 17.20.1428 legally designated for its environmental values and having legally defined boundaries wherein facility construction or operation is prohibited, excepting those portions of the area where permission to site a facility has been obtained from the legislative or administrative unit of government with direct authority over the area.~~

~~(31) (25) "Facility" is defined in 75-20-104(10), MCA.~~

(32) through (34) remain the same, but are renumbered (26) through (28).

~~(35) (29) "Inventory" means the collection and mapping of environmental information within candidate siting areas or study corridors for the purpose of selecting alternative sites or alternative routes.~~

(36) remains the same, but is renumbered (30).

~~(37) "Levelized unit cost" means the levelized cost divided by the annual output of the project.~~

(38) and (39) remain the same, but are renumbered (31) and (32).

~~(40) "Long range plan" means a person's plan for the construction and operation of facilities in the ensuing 10 years, submitted to the department under 75-20-501, MCA.~~

(41) through (44) remain the same, but are renumbered (33) through (36).

~~(45) "Nonutility facility" means a facility whose output, except for incidental sales, will be used to produce goods or services other than energy prior to first sale.~~

~~(46) "Nonutility" means an applicant for a nonutility facility.~~

(47) and (48) remain the same, but are renumbered (37) and (38).

~~(49) "Peak demand" means the maximum 30 minute energy demand by customers for kilowatts of electrical power, or thousand cubic feet per hour of gas, or other rates of delivery of energy.~~

(50) remains the same, but is renumbered (39).

~~(51) (40) "Reconnaissance" means a preliminary assessment of the study area based on published or readily available data used to select candidate siting areas or study corridors.~~

(52) through (53)(c) remain the same, but are renumbered (41) through (42)(c).

~~(54) "Sector of demand" means classes of customers served by a service area utility. Before January 1, 1988, the classes of customers are defined as the categories reported by a regulated utility to the state public service commission, the federal energy regulatory commission, or the rural electrification administration. After January 1, 1988, the classes of customers are residential, commercial, industrial, and agricultural; the latter 3 sectors are defined by the US office of management and budget standard industrial classification codes. The commercial sector consists of groups 50 through 97; the industrial sector consists of groups 10 through 49; and the agricultural sector consists of groups 1 through 9. Rural residences not metered separately from agricultural loads may be included either in the residential or agricultural sector depending on the predominant usage of the energy form in question.~~

(55) (43) "Sensitive area" means a geographic area or location specified in ARM 17.20.1404, 17.20.1429, and 17.20.1431, where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or

construction problems and where these values or constraints have received formal public recognition or designation or are in the process of being designated at the time the application is filed.

(56) and (57) remain the same, but are renumbered (44) and (45).

~~(58)~~ (46) "Site" means the parcel of land the applicant would acquire to construct the buildings, components, and nonlinear associated facilities comprising an energy generation or conversion facility.

~~(a) "Alternative site" means 1 of the alternate site locations potentially suitable for the construction of an energy generation or conversion facility that the applicant has selected for baseline study.~~

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

~~(59)~~ (47) "Siting study" means an analysis conducted by the applicant to identify a ~~preferred site or~~ preferred route.

~~(60)~~ (48) "Study area" means the geographical region containing the locations where a proposed linear facility reasonably could be sited, considering the applicant's service area, the intended market area(s) of the product the facility produces ~~or~~ transports, and/or the electrical system problems that would be solved by the facility.

~~(61)~~ (49) "Utility facility" means a facility whose output will be marketed as energy.

AUTH: 75-20-105, MCA

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

Rationale: 17.20.301(5). The Legislature changed in Chapter 329, Laws of 1997, the name of the certificate issued pursuant to the Major Facility Siting Act (MFSA) by deleting the words "and public need." This amendment would conform the rule to the amended statute.

17.20.301(8). This amendment would define a new term used in subchapter 15 of this chapter.

17.20.301(9). This amendment would remove a cross-reference to a rule that is proposed for repeal.

17.20.301(11). This amendment is proposed because the Legislature, in Chapter 312, Laws of 1987, provided that baseline study is no longer required for alternative sites for generation or conversion facilities.

17.20.301(13). This definition is proposed to be deleted because the term "candidate siting area" is used in the selection of alternative sites for generating facilities. The Legislature eliminated the alternative site requirement for generating facilities in Chapter 312, Laws of 1987.

17.20.301(16). This amendment is proposed because the Legislature in Chapter 583, Laws of 1997, amended 75-20-203,

MCA, to allow transfers of certificates to occur without department or board approval.

17.20.301(17). The definition for the term "competitive utility" is proposed for deletion because the term is used in connection with the determination of need for generation and conversion facilities. Since 1997 there has been no requirement for a determination of need for these facilities in MFSA and the definition is obsolete.

17.20.301(19). The term "curtailable load" was formerly used to gather information pertaining to need for a generation or conversion facility. In 1997 the Legislature changed the decision standards (75-20-301, MCA) for generation and conversion facilities and eliminated the requirement for a determination of need for these facilities. Consequently, the term is no longer necessary and is proposed for deletion.

17.20.301(23). The definition of "direct unit costs" is proposed for deletion because the term is used in portions of subchapter 12 which are proposed for repeal.

17.20.301(24). This provision is proposed for deletion because the term "economically feasible siting area" is used in the process of selecting alternative sites for generating facilities. The Legislature eliminated the alternative site requirement for generating facilities in Chapter 312, Laws of 1997.

17.20.301(25). The term "end use" is used to gather information pertaining to need for a generation or conversion facility. In 1997 the Legislature changed the decision standards (75-20-301, MCA,) for generation and conversion facilities and eliminated the requirement for a determination of need for these facilities. Consequently, the term is obsolete and is proposed for deletion.

17.20.301(27). The term "energy demand" is used to gather information pertaining to need for a generation or conversion facility. In 1997 the Legislature changed the decision standards (75-20-301, MCA) for generation and conversion facilities and eliminated the requirement for a determination of need for these facilities. Consequently, the term is obsolete and is proposed for deletion.

17.20.301(30). The cross-reference is proposed to be deleted because 17.20.1403 is proposed for repeal.

17.20.301(31) is proposed to be amended because the term is defined in a different subsection of 75-20-104, MCA. The subsection reference has been deleted so that the rule will not need to be amended if future amendments to the statute change the subsection number.

17.20.301(35). This proposed amendment would remove the alternative site inventory requirement because MFSA no longer requires consideration of alternative sites for generation or conversion facilities.

17.20.301(37). This definition is proposed for deletion because the term "levelised unit cost" is used only in the rules that are proposed for repeal.

17.20.301(40). This definition is proposed for deletion because the term "long-range plan" is obsolete. In 1993, the

Legislature repealed the requirement for applicants to submit long range plans.

17.20.301(45). The definition for the term "nonutility facility" is proposed for deletion because the term is used in connection with the determination of need for generation and conversion facilities. Since 1997, there has been no requirement for a determination of need for these facilities in MFSA and the definition is obsolete.

17.20.301(46). The definition for the term "nonutility" is proposed for deletion because the term is used in connection with the determination of need for generation and conversion facilities. Since 1997, there has been no requirement for a determination of need for these facilities in MFSA and the definition is obsolete.

17.20.301(49). The definition for the term "peak demand" is proposed for deletion because the term is used in connection with the determination of need for generation and conversion facilities. Since 1997, there has been no requirement for a determination of need for these facilities in MFSA and the definition is obsolete.

17.20.301(51). The term "candidate siting areas" is used in the selection of alternative sites for generating facilities. The Legislature eliminated the alternative site requirement for generating facilities in Chapter 312, Laws of 1987.

17.20.301(54). This term appears only in rules that are proposed for repeal.

17.20.301(55). The reference to 17.20.1404 would be deleted because that rule is proposed for repeal.

17.20.301(58). The term "alternative site" is proposed for deletion because the Legislature, In Chapter 312, Laws of 1987, eliminated the alternative site requirements for energy generation and conversion facilities. The term "proposed site" is substituted to implement the current law under which an applicant is required only to propose one site in the application.

17.20.301(59). The term "preferred site" is proposed for deletion because the Legislature, in Chapter 312, Laws of 1987, eliminated the alternative siting requirement for all non-linear facilities.

17.20.301(60). The additional language would implement the 1997 amendment to MFSA that limited the alternative siting requirement to linear facilities. The word "produces" is proposed for deletion because linear facilities do not "produce" a product.

17.20.302 PUBLIC RECORD--CONFIDENTIALITY (1) Any records, materials, or other information furnished pursuant to the Act or these rules are a matter of public record and are open to public inspection, unless they are entitled to protection under the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA. ~~Any records, materials, or information unique to an applicant which would, if disclosed, reveal methods or processes entitled to protection as trade~~

~~secrets will be maintained as confidential if so required by a court of competent jurisdiction. The burden for obtaining such relief is upon the applicant.~~

(2) A person furnishing documents that the person believes are entitled to protection as trade secrets shall notify the department before or at the time the person furnishes the documents to the department. If the department determines that the information is protected, it shall maintain the documents as confidential. If the department determines that the documents are not entitled to protection, it shall notify the person and maintain the documents as confidential for a period reasonably necessary for the person to obtain a court order requiring the department to maintain confidentiality.

AUTH: 75-20-105, MCA

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

Rationale: These amendments are necessary to allow the Department to make a determination as to whether documents contain trade secrets and to guarantee that a person has adequate time to obtain a protective order. The current rule requires a court order in all instances and may prevent the Department from maintaining confidentiality while a court order is being sought. The current rule, therefore, exposes the Department to potential liability for damages and attorney fees under the Uniform Trade Secrets Act.

17.20.801 REQUIREMENTS OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW

(1) An application must contain the information required by the department of environmental quality and the board of environmental review to determine compliance with applicable standards, permit requirements, and implementation plans under their jurisdiction for any proposed facility and for the primary and reasonable alternate locations for the a proposed linear facility pursuant to 75-20-216(3), MCA.

AUTH: 75-20-105, MCA

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

Rationale: After the amendments to MFSA made in Chapter 312, Laws of 1987, only the applicant's proposed location is considered for a generation or conversion facility, but the proposed and reasonable alternatives are considered for a linear facility.

17.20.802 APPLICATION, NUMBER OF COPIES (1) The applicant shall submit 20 copies of the application at the time of filing to the department, PO Box 200901, Helena, MT 59620-0901. The applicant may submit fewer copies, especially of maps, map overlays, exhibits, appendices, or attachments as defined in ARM 17.20.803(3)(h) and (i), upon prior written



approval from the department. For the contact prints providing photographic coverage, required by ARM ~~17.20.816(5)~~ 17.20.1418(5) and 17.20.1440(4), 1 copy is sufficient. The applicant shall promptly furnish 1 additional copy if requested by the department.

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

Rationale: The cross-reference to 17.20.816(5) is incorrect. The correct reference should be 17.20.1418(5).

17.20.803 APPLICATION, FORMAT (1) and (2) remain the same.

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

(a) through (c) remain the same.

(d) explanation of the purpose and benefits of the proposed facility;

~~(d)~~ (e) explanation of the need for the a linear facility;

(e) remains the same, but is renumbered (f).

~~(f)~~ (g) alternative siting study for linear facilities;

(g) through (i) remain the same, but are renumbered (h) through (j).

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

Rationale: Section (2)(d) is added to satisfy requirements of the Montana Environmental Policy Act (MEPA) that all environmental documents contain a description of the purpose and benefits of a proposed project. Because of amendments to MFSA made in Chapter 329, Laws of 1997, the need determination now applies only to linear facilities after legislative changes in 1997, and a conforming amendment has been made to (2)(e). The amendment to section (2)(g) is necessary because the legislature, in Chapter 312, Laws of 1987, limited the alternative siting study requirement to applications for linear facilities.

17.20.805 SUPPLEMENTAL MATERIAL (1) The applicant shall submit supplemental material to the department within ~~30~~ 15 days after it becomes available following filing of an application. The applicant shall submit supplemental material in the form of substitute pages or insertions to the application as originally filed. Supplemental material includes information to update or finalize information submitted with the original application and the following:

(a) through (2) remain the same.

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

Rationale: The time for submittal of supplemental information from the applicant to the Department would be changed from 30 days to 15 days because the total time allowed the Department for preparing the report was reduced in 1997 from 22 months to 12 months in 75-20-216(3), MCA. Waiting 30 days for supplemental information would jeopardize schedules for publishing the report.

17.20.807 AMENDMENT TO APPLICATION--NEW APPLICATION

(1) and (1)(a) remain the same.

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

(c) significant changes in the economics of alternatives to the proposed facility as required by ARM 17.20.1301, through 17.20.1302, 17.20.1304, 17.20.1305, 17.20.1309 and 17.20.1310 and 17.20.1311.

(2) through (5) remain the same.

AUTH: 75-20-105, MCA

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

Rationale: The need determination applies only to linear facilities after legislative changes in 1997. The cross references also would be corrected to reflect proposed changes to subchapter 13.

17.20.811 ALL FACILITIES, ESTIMATED COST OF FACILITY

(1) An application for a facility defined in 75-20-104(~~10~~), MCA, must contain estimates and a description of total costs and expenses attributable to the engineering, construction, and startup of the proposed facility and associated facilities up to the time of commercial operation. Cost estimates may be based on preliminary engineering or if available, standardized engineering estimates.

(2) through (7) remain the same.

AUTH: 75-20-105, MCA

IMP: 75-20-211, 75-20-213, 75-20-215, 75-20-301, MCA

Rationale: The definition of "facility" is now found in 75-20-104(8), MCA. The reference to the code subsection would be eliminated so that the rule would not need amendment if, in the future, 75-20-104, MCA, is further amended.

17.20.817 ALL LINEAR FACILITIES, PRICING POLICY

(1) An application for a linear facility must contain a discussion of how the product or transportation services provided by the facility will be priced or how the costs of the facility will be recovered. Distinction should be made between pricing according to market value, and the use of rolled-in pricing, average cost pricing, or any other cost-based pricing method. This rule does not apply to transmission lines that recover costs through overall energy charges or similar methods.

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

Rationale: ARM 17.20.817 is being changed to apply only to linear facilities because information on the pricing policy is no longer necessary to make the determinations in 75-20-301(3), MCA, for generation facilities.

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

(1) For internal costs the information provided under ARM 17.20.811 and ~~17.20.812~~ or 17.20.815 is sufficient.

(2) For external costs the information provided under ~~ARM 17.20.1419~~ and 17.20.1444 or 17.20.1445 is sufficient.

(3) remains the same.

AUTH: 75-20-105, MCA  
IMP: 75-20-211, 75-20-301, MCA

Rationale: This rule is proposed for amendment to apply only to linear facilities because the minimum adverse impact standard in 75-20-301, MCA, now applies only to linear facilities. The term "board" would be changed to "department" because the Department is now charged with making the application decision and the Board only hears appeals. The reference to the code subsection would be eliminated so that the rule would not need amendment if, in the future, 75-20-301, MCA, is amended and subsections are renumbered. References to 17.20.812 and 17.20.1419 are proposed to be removed because both rules are proposed for repeal.

17.20.901 GENERATION AND CONVERSION FACILITIES, EXPLANATION OF NEED EXPLANATION OF PURPOSE AND BENEFITS OF THE PROPOSED FACILITY (1) An application must contain an explanation of the purpose of the proposed facility and the benefits that it will provide. This includes a discussion of the likely markets it will serve and any other purposes it will serve and benefits it will provide. ~~from a service area utility must explain the basis of need for the proposed facility by documenting the need for the energy to be produced by the facility, including an explanation of the existing resources available to the applicant, future resources for which major permits and regulatory approvals have been granted, the expected growth in energy demands in the applicant's service area, and the role of the proposed facility and other planned resources in serving the load growth. An application must include a discussion of the degree of uncertainty in the timing of the need for the proposed facility, the degree of uncertainty in the likely markets for sale of the output of the proposed facility in the~~

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

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

Rationale: The changes to 17.20.901 are necessary because a finding of need is no longer necessary for a generation or conversion facility to be certified. An explanation of the applicant's purpose and benefits is necessary to meet the requirements of the MEPA.

17.20.907 ALL TRANSMISSION FACILITIES, REGIONAL RELIABILITY CRITERIA An application ~~for a transmission facility~~ must contain a discussion of the ~~applicant's system reliability of the applicant's system and regional transmission system,~~ including the following:

(1) a description of the existing and desired levels of generation, transmission system and distribution reliability and how the proposed facility affects the level of reliability;

(2) as relevant, an explanation of the rationale for the selection of the applicant's desired level of reliability;

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

(4) as relevant, the expected frequency of interruption of service to customers on the applicant's transmission system under current reliability criteria, and the extent to which that frequency of interruption is associated with outages of generation, transmission, and distribution facilities; and

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

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

Rationale: This rule is designed to provide information to support the need for the facility by showing how any proposed generating or transmission facility would support the applicant's reliability criteria. Since there is no longer a demonstration of need for generating facilities, the requirements pertaining to generation and conversion facilities would be removed from this rule. If a regional transmission organization is formed to operate the regional high voltage transmission grid, applications to build new transmission lines may come from parties other than transmission owners. Transmission reliability levels will then not be under the control of the applicant and system

outage frequencies on the local or regional transmission system may not be relevant to the applicant.

17.20.929 ALL LINEAR FACILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE, AND SALE AGREEMENTS

(1) An application for a linear facility from an electric utility must contain the information listed in ARM 17.20.504 and 17.20.505 that is relevant to the proposed facility. must include either a copy of any and all interconnection agreements involving the proposed facility, or the following information for each such agreement:

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

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

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

(d) a summary of the terms of the agreement; and

(e) the financial agreements.

(2) An application for a linear facility must include a description of all current and planned negotiations with respect to interconnection of the facility and transmission of energy. The description must include a list of the parties to any negotiations and a general discussion of the history and current status of the negotiations.

AUTH: 75-20-105, MCA

IMP: 75-20-211, MCA

Rationale: This material (formerly provided in long range plans, which are no longer required) is still needed for applications to help identify effects on local and regional transmission systems and would be incorporated into 17.20.929. The required information for generation and conversion facilities is proposed to be moved to subchapter 15. The information needed for linear facilities would remain in 17.20.929.

17.20.1301 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES

(1) An application must contain an evaluation of the nature and economics of alternatives to the proposed facility, including alternative energy resources, energy conservation, alternative energy technologies that could be implemented at the proposed site, nonconstruction alternatives, alternative sizes and timing of facilities, the no action alternative, and alternative technological components and pollution control systems, for the proposed facility. An application must contain a comparison of alternatives leading to selection of the proposed facility as the preferred alternative, and an explanation of the reasons for selection of the proposed facility.

(2) An application must contain an evaluation of each alternative energy resource, energy conservation, or alternative energy technology that can produce or save at

~~least 1 megawatt or 1% of the output of the proposed facility, whichever is greater. The evaluation must describe each alternative energy resource or energy conservation measure, the location and quantity of the resource available, and the constraints to its availability. Predictable daily and seasonal variations in the availability of an alternative energy resource or energy conservation must also be described. Dispersed resources such as conservation shall be treated collectively as a single alternative, not analyzed one site at a time.~~

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

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

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

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

~~(a) For peaking facilities, nonconstruction alternatives include load management and peak load pricing, and increased contractual interruptibility and curtailability of customer loads.~~

~~(4) An application must contain an evaluation of alternative size facilities and alternative timing and frequency of construction. The evaluation must include the alternative timing of appropriately sized plants using alternative energy resources and technologies as well as alternative sizing and timing of energy generation or conversion plants of the same type as the proposed facility, including those below the size thresholds in 75-20-104(10), MCA. The evaluation must also include alternative timing of any other energy generation or conversion units planned by the applicant, including those identified in the long-range plan filed with the department under ARM 17.20.502 or other planning documents of the applicant.~~

~~(5) (2) An application must contain an evaluation of the no action alternative, wherein no action would be taken to meet the need purpose or provide the services benefits the proposed facility is designed to meet or provide.~~

~~(6) (3) An application must contain an evaluation of alternative technological components and subsystems that could be employed by the proposed facility that could substantially reduce the cost or environmental impacts of the proposed facility, including, but not limited to, air and water~~

pollution control systems, cooling systems, and transmission and distribution systems and those required by ARM 17.20.1418(8)(10) and ~~17.20.1419(8) and (9)~~ department Circular MFSA-1, Sections 3.11 and 3.12.

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

Rationale: The catchphrase for 17.20.1301 would be amended because there is no longer any distinction between service area utilities, competitive utilities, and non-utilities for generation or conversion utilities. 17.20.1301(1) would be amended to better summarize the material in the remainder of this rule. With the exception of 17.20.1301(2)(c), 17.20.1301(2), (3) and (4) are proposed for deletion because this information is no longer required to make the decision in 75-20-301, MCA. In Chapter 329, Laws of 1997, the Legislature amended 75-30-301, MCA, to provide that, for energy generation or conversion, the Department is to consider only cost and environmental benefits of mitigation to significant environmental impacts of the applicant's proposed facility. The internal reference is proposed for amendment to reflect the proposed amendment to 17.20.1418.

17.20.1302 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY An application must contain an evaluation of relevant alternatives listed in ARM 17.20.1301, leading to a ranking of alternatives and selection of the proposed facility. The evaluation and selection may be made by any method preferred by the applicant.

(1) An application must include a detailed description of the methods and criteria used by the applicant to select the proposed facility given the capacity, availability, and types of alternatives, and to determine the proposed size and timing of construction, in order to achieve maximum economies of scale and the applicant's desired level of reliability at the lowest economic cost. Documentation for process tradeoff studies performed by the applicant must be provided. Published tradeoff studies may be cited by reference. A description of the methods used to select the proposed designs for major process areas must be included.

(2) In addition to the applicant's criteria for comparison, all appropriate alternatives which have no insurmountable environmental, technical or other problems serious enough to warrant elimination from further consideration, must be ranked by the levelized delivered cost of energy, including known mitigation costs. Alternatives whose levelized delivered cost of energy is not more than 35% higher than the cost of energy from the proposed facility, or which have significant environmental, ~~planning or operational~~ advantages over the proposed facility, must be compared on the basis of performance, system impact, and environmental impact as follows:

- (a) performance criteria include:
  - (i) the first year and levelized delivered cost of energy, including known mitigation costs, incremental transmission costs and the effect of line losses; and
  - (ii) remains the same, but the semicolon will be changed to a period.
  - ~~(iii) impact on reserve requirements;~~
  - ~~(iv) availability;~~
  - ~~(v) planning flexibility and resource commitment;~~
  - ~~(vi) operating flexibility; and~~
  - ~~(vii) amount of demand that can be provided for by the alternative;~~
  - ~~(viii) constraints to implementation;~~
- ~~(b) system impact criteria include:
  - ~~(i) incremental system cost;~~
  - ~~(ii) impact on system reliability;~~
  - ~~(iii) impact on system reserve requirements; and~~
  - ~~(iv) potential contribution of the alternative to the firming of existing secondary resources; and~~
  - ~~(v) impact on need for future expansion of the transmission and distribution system;~~~~
- ~~(c) (b) environmental impact criteria include:
  - (i) through (4) remain the same.~~

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

Rationale: Subsection (1) would be amended to enable the Department to understand the applicant's reasons for selecting technologies used in a generation or conversion facility. Subsection (2) would be amended to reflect changes in 17.20.1301(4). In Chapter 329, Laws of 1997, the Legislature amended 75-20-301, MCA, to provide that, for energy generation and conversion facilities, the Department is to consider only cost and environmental benefits of mitigation of significant environmental impacts of the applicant's proposed facility. Therefore, the Board is proposing to amend this rule to require information on cost and environmental benefits for a narrowed range of alternatives.

17.20.1311 PIPELINE FACILITIES, EVALUATION OF ALTERNATIVES (1) An application for a pipeline facility must contain an evaluation of alternatives, including, but not limited to, the use of alternative transportation modes, alternative starting points ~~if the point of origin is a plant or facility for which a site must be chosen~~, alternative destination points, alternative diameter pipe, alternative flow rates, alternative rates of pumping or compressing, alternative size, number and location of pump or compressor stations, alternative pump or compressor fuels and fuel sources, alternative pipe wall thickness and alternative pipe material, and the no action alternative. Service area utilities shall also evaluate alternate methods of meeting the need for the energy being transported.



AUTH: 75-20-105, MCA  
IMP: 75-20-211, 75-20-301, MCA

Rationale: The change is necessary to reflect the notion that a pipeline may originate at a conversion facility or its destination may be a generation facility. The Department no longer considers alternative sites for generation or conversion facilities and cannot use an alternative location for a linear facility to move the location of a generation or conversion facility. See 75-20-301(5), MCA.

17.20.1418 ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (1) An application must contain a baseline study of ~~at least 3 alternative~~ the proposed sites and the proposed and any alternate locations of off-site associated facilities and their impact zones to gather baseline data describing the existing environment, to assess impacts associated with the proposed facility, and to identify mitigation strategies, ~~and to select the preferred site for potentially significant adverse impacts.~~

(2) The applicant shall depict ~~each alternative~~ the proposed site and its boundaries, and the ~~proposed and any alternate~~ locations of all on-site and off-site associated facilities, as appropriate, using symbols or lines approximately one-half millimeter or less in width drawn on a 1:24,000 topographic base map. This base map shall indicate any upgrade, replacement or removal of existing equipment or installation(s) that would be necessary for construction or operation of the proposed facility and associated facilities. The applicant shall provide one mylar copy of this base map to the department and an electronic equivalent acceptable to the department. Each electronic submittal shall be accompanied by metadata describing the submittal. ~~For any areas where 1:24,000 topographic base maps are not available, USGS maps preliminary to the published 7.5 minute quadrangle maps shall be used, or where these are not available, USGS advance or final 7.5 minute orthophoto quads shall be used. Where none of these are available, USGS 15 minute topographic maps or the best available published maps with a scale of 1:125,000 or 100,000, enlarged to 1:24,000 if necessary, shall be used.~~

(3) An application must contain 1 set of 1:4800 topographic maps and an electronic equivalent acceptable to the department showing the locations, as applicable, of the generators, emission control devices, condensers, shift conversion facilities, reactors, stacks, catalyst production and regeneration facilities, cooling towers, water storage ponds, waste disposal ponds, roads, parking areas, railroad spurs, substations, pumping stations, on-site pipelines, coal storage facilities, any other structures or buildings, nonlinear associated facilities, and any existing structures for ~~each alternative~~ the proposed site, noting structures that would be relocated or destroyed.

(4) An application must contain an overlay or overlays and an electronic equivalent(s) acceptable to the department,

as appropriate, to the base map required by (2) of this rule of the baseline data required by ~~ARM 17.20.1419~~ department Circular MFSA-1 that can be mapped, ~~the exclusion areas listed in 17.20.1403, the sensitive areas listed in 17.20.1404, and the areas of concern listed in 17.20.1405, that and~~ are within the impact zones associated with each alternative the proposed site and the proposed and any alternate locations of associated facilities. The applicant shall organize the information according to the ~~categories listed in ARM 17.20.1420(3)(c) through (e) and (h) through (m)~~ requirements of department Circular MFSA-1 and shall present the information on the minimum number of overlays to the base map that will clearly portray the information. The applicant shall provide 1 mylar copy of each overlay to the department. All overlays shall clearly show section lines or corners and township and range locations.

(5) An application must contain 1 set of ~~black and white color~~ contact prints at a scale of approximately 1:48,000 or 1:24,000 that provide complete aerial stereo coverage of the alternative proposed sites, the geographic area within a 5 mile radius of each alternative the proposed site, and within a ½ mile buffer of the proposed and any alternate locations of off-site associated facilities. These photos shall be taken during a season of full foliage no more than 3 years prior to filing the application unless otherwise approved by the department. An application must contain advance or final USGS 7.5-minute orthophoto quads, where available, for the impact zones or portions of impact zones that are not covered by the aerial photos. However, this requirement does not apply to the impact zones associated with assessment of social and economic impacts required ~~pursuant to ARM 17.20.1419(3)(B), (4) and (5)~~ by section 3.6 of department Circular MFSA-1.

(6) For each ~~alternative the proposed site, or for the proposed site for any facility for which a waiver has been obtained pursuant to 75-20-304(3), MCA,~~ the applicant must certify in the application that purchase options or access for purposes of conducting the studies required by these rules have been obtained. For off-site associated facilities, the applicant shall describe the location(s) where options or access for the purpose of conducting these studies have been denied and the reason(s) for denial.

(7) An application must contain a summary of the results of consultation with appropriate government agencies to identify their concerns about the proposed facility's possible effects on the environment, and the way the applicant considered these concerns in identifying mitigating measures to address potentially significant impacts of the facility.

(8) An application may contain any valid and useful existing studies, reports, or data prepared on the energy generation or conversion facility and may be submitted by the applicant towards fulfilling the requirements of department Circular MFSA-1 but shall be subject to supplementation and shall be used by the department only to the extent it considers them applicable.

(7)(9) An application must contain, for each alternative the proposed site and the proposed and any alternate locations of off-site associated facilities, information required by the department and or board necessary to make or issue any decision, opinion, order, certification, or permit required under laws administered by the department, other than those contained in the Act to determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction pursuant to 75-20-216(3), MCA.

(8)(10) An application must identify and discuss available alternative levels and types of mitigation to reduce or eliminate potentially significant adverse impacts of the facility at each alternative the proposed site and the proposed and any alternate locations of off-site associated facilities, including, but not limited to:

(a) alternative pollution control and waste disposal strategies, equipment and/or facilities;

(b) alternative strategies, equipment and/or facilities for reducing water consumption;

(c) alternative locations of associated facilities; and

(d) plans to reduce adverse impacts on local communities, including, but not limited to, plans for meeting the service needs of the work force and maintaining the existing quality of services.

(11) An application must contain the estimated cost of implementing each level and type of mitigating measure to reduce or eliminate potentially significant adverse impacts that would occur during construction, operation, or decommissioning of the proposed facility and associated facilities. Estimated costs of mitigation measures for potentially significant adverse impacts also must be included for associated facilities whose operations would be modified to serve the proposed facility.

(12) An application must contain a summary of the baseline study and impact assessment for the proposed site and for each off-site associated facility which includes the following:

(a) a summary of potentially significant adverse impacts of the proposed site and off-site associated facilities, and the impact zones around them as determined by the baseline study conducted pursuant to department Circular MFSA-1;

(b) description of mitigating measures, if any, proposed for potentially significant adverse impacts;

(c) an evaluation of any increased impact to other resources resulting from implementation of each mitigating measure;

(d) a summary of potentially significant adverse impacts at the proposed site and off-site associated facilities for which no mitigation has been identified;

(e) a summary of any unmitigated impacts of the proposed site and off-site associated facilities that may pose a threat of serious injury or damage to the environment, social and economic conditions of inhabitants of the affected area or the health, safety, or welfare of area inhabitants;

(f) a comparison of the estimated cost and the degree of mitigation achieved, for each alternative level and type of mitigation measure considered to address each potentially adverse significant impact; and

(g) an explanation of the applicant's reasons for selecting the proposed mitigating measures and an explanation of the applicant's reasons for not selecting other mitigating measures.

(13) Information for (12)(a) through (g) above must be provided for the impact categories listed in department Circular MFSA-1.

(14) The board hereby adopts and incorporates by reference department Circular MFSA-1, which sets forth the baseline study requirements and impact assessment to be included in an application for a proposed energy generation and conversion facility and associated facilities. Copies may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-20-105, MCA

IMP: 75-20-211, MCA

Rationale: In 17.20.1418(1), the phrase "at least 3 alternatives" is proposed for deletion and the words "the proposed" are proposed for insertion to reflect legislative changes in MFSA that no longer require consideration of alternative sites for a proposed generation and conversion facility. The phrase "and the proposed and any alternate locations of off-site associated facilities" is proposed for insertion in order to consolidate the route and centerline approval process for linear associated facilities with the approval process for a proposed generation or conversion facility. See also rationale for the proposed deletion of 17.20.1426(3). The phrase "for potentially significant adverse impacts" is proposed for insertion to require the applicant to identify potentially significant impacts and is necessary to initially identify the full range of possible significant impacts. The number of potentially significant impacts would be reduced through the application of mitigating measures. The intent is to have the applicant and the Department start the certification process by thinking broadly in identifying impacts. Initially identifying too narrow a range of impacts could result in unnecessary disputes over determinations of whether all reasonable, cost-effective mitigating measures have been applied late in the certification process.

In 17.20.1418(2), the words "each alternative" are proposed for deletion and the words "the proposed" are proposed for insertion. See rationale for 17.20.1418(1) above. The phrase "and its boundaries" is proposed for insertion to clarify that depiction of the proposed generation site must also indicate its boundaries when identifying potentially significant impacts. Specification of a site boundary is necessary to show the area which is proposed to be

covered by a certificate and to clarify where the Department would have jurisdiction. The phrase "proposed and any alternate" is proposed for insertion to indicate that use of an alternate location for an associated facility is a potential mitigation measure for certain significant impacts. If an alternative location is proposed pursuant to (1) above, the Department can identify its location.

In 17.20.1418(2), the sentence, "This base map shall indicate any upgrade, replacement or removal of existing equipment or installation(s) that would be necessary for construction or operation of the proposed facility and associated facilities." is proposed for insertion in order to fully identify and assess potentially significant impacts. The phrase "and an electronic equivalent acceptable to the department" is proposed for insertion in order to speed preparation of maps and figures for inclusion in the Department's report. When the existing rules were written almost all drafting was still being done by hand. Most map preparation is now done on computers. The phrase "each electronic submittal shall be accompanied by metadata describing the submittal" is proposed for insertion to ensure that adequate documentation is provided for maps submitted in a digital format and included with an application. The language deletions are proposed because 1:24,000 topographic base maps are now available for all areas of the state.

In 17.20.1418(3), for the proposed insertion of the phrase "and an electronic equivalent acceptable to the department", see the rationale for (2) above. Deletion of the word "coal" as a modifier for storage facilities is proposed to broaden the applicability of this rule to address generation facilities other than only those using coal. For example, diesel fuel or propane might be used as startup fuels for a natural gas fired plant. The impacts of storage of these startup fuels need to be addressed in any environmental document the Department prepares. For the proposed deletion of "each alternative" and insertion of "the proposed", see the rationale provided under (1) above.

In 17.20.1418(4), for the proposed insertion of the phrase "and an electronic equivalent acceptable to the department" see the rationale provided for (2) above. The citation "ARM 17.20.1419" is proposed for deletion and the phrase "department Circular MFSA-1" is proposed for insertion because the detailed information requirements of the baseline study and impact assessment in this rule are proposed for transfer to the circular. Cites of "the exclusion areas listed in 17.20.1403, the sensitive areas listed in 17.20.1404, and the areas of concern listed in 17.20.1405 that" and the phrase "categories listed in 17.20.1420(3)(c) through (e) and (h) through (m)" are proposed for deletion to reflect changes to MFSA that no longer require consideration of alternative sites for a proposed generation and conversion facility.

In 17.20.1418(5), the phrase "black and white" is proposed for deletion and the word "color" is proposed for

insertion because more information can be interpreted from a set of color photos than can be derived from a set a black and white photos. The word "approximately" is proposed for insertion to clarify that submitted prints need not be exactly the specified scale because scale will vary somewhat with changes in ground elevation. For proposed deletion of the words "alternative" and "each alternative" and insertion of "proposed" and "the proposed" see the rationale provided under (1) above. Addition of the phrase "within a ½ mile buffer of" is proposed in order to provide the Department with sufficient information to complete its required study of associated facilities. One-half mile was selected in order to provide air photos showing vegetation types that might be used by nesting raptors. It is typical to use a ½ mile non-disturbance buffer around these nests until the young raptors have fledged. Lastly, the proposed deletion of "pursuant to ARM 17.20.1419(3)(b), (4) and (5)" and insertion of "by section 3.6 of department Circular MFSA-1" is necessary because the detailed information requirements of the baseline study and impact assessment in this section are proposed for transfer to the circular.

In 17.20.1418(6), new language is proposed to help ensure that the Department can identify where, along the proposed or any alternate locations for associated facilities, access has not been obtained. Denial of access could hinder completion of impact studies for off-site associated facilities. Deletion of "each alternative" and addition of "the proposed" reflects the Legislature's deletion of the alternative site requirement for generation and conversion facilities. The language regarding waivers is proposed for deletion because 75-20-304(3), MCA, applies only to linear facilities.

In 17.20.1418(7) and (8), language is proposed to be transferred from 17.20.1401(3) and (4).

In 17.20.1418(9), additions are proposed to ensure timely submittal of information necessary for air, water quality, and other Department permits.

In 17.20.1418(10), amendments are proposed to provide a bit of clarification to the range of mitigation measures that the Department needs to consider when making its determination under 75-20-301(3), MCA. The proposed language would require the applicant to identify potentially significant impacts and mitigation so that the Department can study the range of impacts and mitigating measures in order to make its determination under 75-20-301(3), MCA. Proposed amendments also provide that mitigating measures need to be identified for the proposed site and off-site associated facilities. Off-site associated facilities are within the scope of the Department's decision under 75-20-301(3), MCA. Addition of the term "waste disposal" is proposed because generation facilities create waste that, if not disposed of properly, can cause significant impacts.

In 17.20.1418(11), (12), and (13), new language is proposed to help ensure that the Department has sufficient information to make the finding required by 75-20-301(3), MCA,

which requires the Department to require cost-effective mitigation of significant impacts.

In 17.20.1418(14), new language is proposed to adopt Department Circular MFSA-1 that requires a baseline study and impact assessment found in 17.20.1419. The Board is proposing to transfer these requirements to a circular.

17.20.1426 LINEAR FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY (1) An application for a linear facility must contain an alternative siting study and baseline environmental data as specified in ARM 17.20.1426 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447.

(1) and (2) remain the same, but are renumbered (2) and (3).

~~(3) An application for a proposed generation or conversion facility as defined by 75-20-104(10)(a), MCA, must contain the applicable information required by ARM 17.20.1426 through 17.20.1431, and 17.20.1434 through 17.20.1438, to select and evaluate study corridors for proposed new or upgraded linear facilities that would be associated with the generation or conversion facility if it were located at the applicant's preferred or alternative sites, unless the applicant can demonstrate that less detailed information meets these requirements, based on considerations of voltage, capacity, or length of the linear associated facilities, the homogeneity of the geographic area that would be traversed or the likelihood that no impacts will result from these associated facilities. Linear associated facilities affected include those that transport major amounts of materials, including fuel and water, required by the generation or conversion facility to produce energy or other primary products, and those that transmit or transport the energy or primary products of a facility to load centers or to a point of interconnection with a transmission or transportation system. Based on the applicable information required by ARM 17.20.1426 through 17.20.1431, and 17.20.1434 through 17.20.1438, the applicant shall compare the study corridors and select a preferred corridor or corridors, as appropriate, for the linear associated facilities. An application must contain the following:~~

~~(a) a summary of the most important adverse impacts of each linear associated facility for each of the study corridors;~~

~~(b) a ranking of the study corridors from best to worst for each of the impact and cost categories listed in ARM 17.20.1446(3), including an indication of the relative differences among the study corridors for each category, and a comparative ranking of the study corridors considering all of the categories; and~~

~~(c) an explanation of the applicant's reasons for selecting the preferred corridor(s), and an explanation of the consideration given to the applicable preferred route criteria listed in ARM 17.20.1437, exclusion areas listed in~~

~~17.20.1428, sensitive areas listed in 17.20.1429, and areas of concern listed in 17.20.1430 or 17.20.1431.~~

(4) and (5) remain the same.

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

Rationale: 75-20-205, MCA, used to contain a provision that "centerlines", or the final location for a linear facility or a linear associated facility, would be determined in a second phase of the certification process. See 17.20.1702 and 17.20.1705. For a generation or conversion facility, an applicant was required to do a corridor level analysis initially and later fill in the detail during the centerline process. 17.20.1426(3), MCA, contains this corridor level analysis requirement. The separate centerline process was eliminated when 75-20-205, MCA, was repealed in 1997 and this corridor level analysis is neither appropriate nor necessary to make the determinations now required in 75-20-301(3), MCA.

17.20.1501 ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE FACILITY DESCRIPTION AND DESIGN

(1) An application for an energy generation or conversion facility must contain an engineering description of the facility in detail sufficient to enable the department to assess the environmental impacts of construction, operation, maintenance, and decommissioning, and to assess reliability and construction and operation costs of the proposed facility at the ~~preferred~~ proposed site as specified in ARM 17.20.1502 through 17.20.1505. These requirements apply specifically to fossil-fueled facilities and other facilities that utilize transportable energy resources. An equivalent description and design is required for all energy generation or conversion facilities defined by 75-20-104(8), MCA. Applicants for energy generation or conversion facilities that employ a nontransportable energy resource must consult with the department concerning facility description and design requirements.

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

Rationale: 17.20.1501(1) is proposed to be modified to delete "preferred" and insert "proposed" to reflect legislative changes that removed the requirement to consider alternative sites for generation and conversion facilities.

17.20.1502 ENERGY GENERATION AND CONVERSION FACILITIES, DESIGN CHARACTERISTICS

(1) An application must include a list of any reports, documents, studies, or calculations that indicate that the preliminary design specifications and performance objectives for the major components or process areas of the facility are adequate and



can be maintained in the continuous operation of the facility. Design peak operating volume or rate must be described, including the length of time the various levels of peak operation can be sustained.

(2) through (5)(a) remain the same.

(b) power lines transmission facilities: a description meeting the requirements of ARM 17.20.1509 and 17.20.1510, for facilities of 230 kV and larger; for facilities power lines smaller than 230 kV, a general description of the components listed in ARM 17.20.1509 is sufficient;

(c) communication installations; ~~microwave towers;~~

(d) fuel-handling systems: the proposed source of the fuel to be used by the facility and, if applicable, alternative fuel sources consistent with ~~17.20.1419(8)~~ department Circular MFSA-1, Section 3.11, and a description of equipment and portions of the site that will be used to store, prepare and transfer the fuel to the point of consumption;

(e) remains the same.

(f) waste-handling systems: all waste-handling systems, both on and off-site, including a description of the collection, storage, treatment, disposal processes and monitoring procedures and plans for each system, consistent with the requirements of ARM 17.20.1504(5) (Operation and Maintenance Analysis); and

(g) any other permanent structures or installations, and temporary structures or installations, both on- and off-site, that would be used only during the construction phase; and

(h) for water and fuel pipelines, a description meeting the requirements of ARM 17.20.1509 and 17.20.1511.

(6) An application must contain a topographic map at a scale of 1:4800 showing the proposed location of all facility structures and nonlinear associated facilities at or associated with the preferred proposed site.

AUTH: 75-20-105, MCA

IMP: 75-20-211, MCA

Rationale: 17.20.1502(1). The phrase "or rate" is proposed to better reflect the terminology used in describing the production of generation facilities.

17.20.1502(5)(b). The term "power lines" is proposed to require that a description of associated power lines is needed even if the power lines are not large enough or long enough to be considered transmission facilities in order to address potentially significant impacts from these lines. In addition the term "transmission facilities" is proposed to be changed to "power lines" in 17.20.1502(5)(b) to parallel the construction used in the first part of this rule.

17.20.1502(5)(c) is proposed to be amended to delete the term "microwave towers" because it is already included within communication facilities. The rule as proposed would require a description of any communication installation that would be constructed.

17.20.1502(5)(d) is proposed to be amended to coincide with the proposed repeal of 17.20.1419 and transfer of baseline information requirements for generation and conversion facilities to Department Circular MFSA-1.

17.20.1502(5)(g) is proposed to be amended to clarify that both on-site and off-site structures or installations must be considered when describing associated facilities. This description is necessary for the identification of any impacts associated with these facilities.

17.20.1502(5)(h) is proposed to be added to require a description of design characteristics for pipelines that handle water or fuel. These pipelines are typically not large enough or long enough to be considered as facilities by themselves, but impacts from construction of these facilities must be considered in making the determinations required in subchapter 16.

17.20.1502(6) is proposed to be amended to delete "preferred" and insert "proposed" to reflect legislative changes that removed the requirement to consider alternative sites for generation and conversion facilities.

17.20.1503 ENERGY GENERATION AND CONVERSION FACILITIES, CONSTRUCTION DESCRIPTION (1) An application for a generation or conversion facility must include a preliminary construction schedule, and a description of typical equipment, and a description of the sequential steps involved in carrying out major construction activities, including site preparation and an estimate of the amount of ground disturbance. The schedule must include associated facilities and relocations or development of transportation and other public use facilities necessitated by project construction, and methods of maintaining service during these activities.

(2) An application for a generation or conversion facility must contain a description of the following:

(a) plans for construction camps for the crew, if any, and any other temporary facilities used during construction;

(b) the methods the applicant will use to reclaim any temporary facilities;

(c) a schedule showing the anticipated timing of activities; and

(d) methods the applicant will use for fire control-;

(e) for associated powerlines, a description meeting the requirements of ARM 17.20.1510, for voltages of 230kV and larger. For voltages less than 230kV, a general description of the components listed in ARM 17.20.1510 is sufficient; and

(f) for associated pipelines, a description meeting the requirements of ARM 17.20.1511.

AUTH: 75-20-105, MCA

IMP: 75-20-211, MCA

Rationale: This amendment would add subsections (2)(e) and (2)(f) to ensure that construction of associated pipelines and power lines and any impacts resulting from their

construction are included in the project description. Language that differentiates information requirements for construction description by voltage parallels language found in 17.20.1502(5)(b) that differentiates requirements for design by voltage.

17.20.1504 ENERGY GENERATION AND CONVERSION FACILITIES, OPERATION AND MAINTENANCE ANALYSIS (1) An application must contain a general description of operation and maintenance of the proposed facility under normal conditions, including types and scheduling of expected maintenance and inspections.

(2) An application must contain a discussion of the ability of the proposed facility to withstand possible destructive natural phenomena such as earthquakes, floods, and accidents; equipment malfunction or failure; a description of structural problems, and safety problems, or adverse environmental effects that may result from facility failure due to natural phenomena or accidents, and design features that will be incorporated or contingency measures that will be taken to reduce the problems.

(3) An application must discuss the environmental effects, if any, of operating the facility at less than full capacity, including effects on the operation of associated facilities and the resulting effects on air and water quality due to changes in the levels or composition of emissions and waste streams.

(4) An application must contain a descriptive analysis of materials such as air, water, coal and chemical compounds that would flow into the proposed facility, including an analysis of fuel materials used for start-up of the facility. The analysis must include at least the following:

- (a) consumption rate;
- (b) detailed chemical and radiological content of all input materials;
- (c) heat content of fuel materials; and
- (d) material and energy flow diagrams, including heat and radiant energy flows, to illustrate the path of major materials through the facility, qualitatively and quantitatively.

(5) An application must contain a qualitative and quantitative analysis of all materials that are projected to flow out of the facility. The analysis must include detailed chemical content of all output material based on the best information available, including material with radiological content. The method of using, treating, dispersing and disposing of materials in each of the following categories shall be discussed, including the method of monitoring the use, treatment, dispersal, disposal and ultimate reclamation of waste sites, as applicable, for each of the following categories:

- (a) products and by-products such as gas and hydrocarbon liquid;
- (b) waste materials, including gases, liquids, and solids;

(c) energy forms such as heat that escape during processing; and

(d) for coal conversion facilities which are proposed to produce more than one major product, the capability for alternative fuels production or capacity to alter the product mix of facility outputs; and

(e) for associated powerlines and pipelines, a description meeting the requirements of ARM 17.20.1512.

(6) An application must contain an estimate of the on-line life of the facility and the projected operating capacity during the on-line life.

AUTH: 75-20-105, MCA

IMP: 75-20-211, MCA

Rationale: This amendment would add subsection (5)(e) to ensure that information related to the operation and maintenance of associated power lines and pipelines and any resulting impacts are included in the project description. This information is necessary to allow the Department to determine significant impacts, as is required in 75-20-301(3), MCA.

4. The proposed new rules provide as follows:

NEW RULE I ENERGY GENERATION AND CONVERSION FACILITIES, OPERATION UNDER CONTINGENT OPERATING CONDITIONS (1) An application must contain a description of the methods of operation that will be used under contingent operating conditions to avoid significant impacts or disruption or damage to the environment or to human or industrial facilities.

(2) Contingent operating conditions include but are not limited to:

(a) extraordinary environmental conditions such as extreme cold, heat, drought, flooding, or earthquake, or extensive wildland fires;

(b) technical contingencies such as failure of facility components; and

(c) external system conditions such as transmission or pipeline system outages that lead to excessive congestion or inadequate capacity to carry the full output of the facility or to provide needed energy for the facility.

AUTH: 75-20-105, MCA

IMP: 75-20-211, MCA

Rationale: This new rule would enable the Department to assess the impact risk of facility operation under conditions that are not normal or usual, but that are nevertheless reasonably likely to occur during the operating life of a proposed energy generation or conversion facility. This information is necessary to allow the Department to determine significant impacts, as is required in 75-20-301(3), MCA.

NEW RULE II ENERGY GENERATION AND CONVERSION FACILITIES,  
INTERCONNECTION AND TRANSMISSION AGREEMENTS (1) An application  
must include:

(a) either a copy of any and all interconnection and  
transmission agreements involving the proposed facility, or  
the following information for each such agreement:

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

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

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

(iv) a summary of the terms of the agreement; and

(v) the financial agreements; and

(b) a description of all current and planned  
negotiations with respect to interconnection of the facility  
and transmission of energy. The description must include a  
list of the parties to any negotiations and a general  
discussion of the history and current status of the  
negotiations.

AUTH: 75-20-105, MCA

IMP: 75-20-211, MCA

Rationale: This new rule would incorporate information  
previously required in sub-chapter 5 Long-Range Plans.  
Information submitted is necessary to make the findings  
regarding significant impacts for a proposed generation or  
conversion facility in 75-20-301(3), MCA.

5. The rules, as proposed to be amended, provide as  
follows. Text of present rule with matter to be stricken  
interlined and new matter underlined.

17.20.1509 LINEAR FACILITIES, DESIGN CHARACTERISTICS

(1) An application must contain an engineering  
description of the facility in detail sufficient to enable the  
department to assess the environmental impacts of  
construction, operation and maintenance and reliability of the  
proposed facility located on the preferred route.

(2) through (9) remain the same.

(10) For pipeline, an application must contain a  
description of the source of power for pump and compressor  
stations and indicate on maps at a scale of 1:24,000, the  
proposed and alternative location of power supply lines for  
these stations.

(11) An application must contain a description of  
communication facilities that will be used to control and  
monitor operation of the facility and their location,  
including but not limited to radio, microwave, or satellite  
antennas, and any fiber optic cables. If fiber optic cables  
are used, the application must describe the use of any excess  
communication capacity.

(10)(12) An application must contain a A specific  
engineering or design explanation of the opportunities and

constraints for paralleling or sharing existing utility or transportation rights-of-way, or portions thereof, and if such opportunities were not chosen for part of the preferred route, an explanation of the reasons, including insufficient right-of-way and/or other land use constraints.

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

Rationale: 17.20.1509(10). This information is needed to identify potentially significant impacts for linear facilities and for associated pipelines for generation and conversion facilities.

17.20.1509(11) is proposed to be added to provide a description of communication facilities used in the operation of linear facilities and associated facilities for energy generation and conversion facilities. This information is needed to identify potentially significant impacts for associated facilities for generation and conversion facilities and provide information for the finding of minimum adverse impact for linear facilities.

17.20.1509(12) is proposed to be amended to make grammatical corrections.

17.20.1511 LINEAR FACILITIES, PIPELINE FACILITIES AND ASSOCIATED FACILITIES, CONSTRUCTION DESCRIPTION

(1) through (3) remain the same.

(4) An application must contain a description of the methods that will be used to salvage topsoil, including:

(a) the width of the construction right-of-way where topsoil will be salvaged;

(b) the depth to which topsoil would be salvaged;

(c) the locations where alternative methods of topsoil salvage would be implemented; and

(d) the methods to be employed to remove coarse rock from surface soils following construction.

~~(4)~~ (5) An application must contain a description of the types and sizes of roads needed to build and maintain the facility, an estimate of the road mileage and preliminary road locations required in addition to the right-of-way, if any, in order to construct the facility on the applicant's preferred route or proposed location for an associated pipeline, and an estimate of how much the roads will be used.

(5) remains the same, but is renumbered (6).

~~(6)~~ (7) An application must contain a discussion of the proposed and alternative methods of ~~trenched~~ stream crossings, including:

(a) specification of equipment types<sub>TJ</sub>;

(b) estimates of the width and depth of trenching<sub>TJ</sub> and

(c) estimates of the scour depth supported by a discussion of the methods and calculations used to make the estimates<sub>TJ</sub>; and

(d) amount of ground disturbance adjacent to stream crossings.

(7) and (8) remain the same, but are renumbered (8) and (9).

~~(9)~~ (10) An application must contain a description of the reclamation methods that will be used to restore the right-of-way, including a description of the proposed method for segregating topsoils from the remaining excavated material on sidehills and over the ditch-, and the measures that will be implemented to address subsidence of soils over the trench after construction is completed.

(10) remains the same, but is renumbered (11).

AUTH: 75-20-105, MCA

IMP: 75-20-211, MCA

Rationale: The catchphrase for 17.20.1511 is proposed to be amended to clarify that associated pipelines are also addressed.

17.20.1511(4) is proposed to be added to provide a description of topsoil salvage techniques for pipelines. This information is needed to identify potentially significant impacts for pipelines. The information was formerly addressed in 17.20.1511(10).

17.20.1511(5). This amendment would add the phrase "or proposed location for an associated pipeline" to ensure that information needed to identify potentially significant impacts resulting from road construction is included in the project description.

17.20.1511(7). This amendment is proposed because there are a number of stream crossing techniques that could be used for pipeline construction, such as trenching, horizontal bores, directional drills and overhead crossings. Each has its own type of disturbance and resulting impact. The proposed amendments require the applicant to address the amount of disturbance near streams from all crossing types considered.

17.20.1511(10). This amendment would delete the phrase "including a description of the proposed method for segregating topsoils from the remaining excavated material". This information is included in proposed rule 17.20.1511(4). Because subsidence can occur if measures to prevent it are not implemented, language requiring it to be addressed has been added.

17.20.1512 LINEAR FACILITIES, OPERATION AND MAINTENANCE DESCRIPTION (1) through (4) remain the same.

(5) For pipelines, an application must describe the size and frequency of leaks that can be expected over the life of the proposed project.

(6) For pipelines, an application must describe leak detection systems to be employed during operations including sensitivity of the leak detection system, the time necessary to shut down the facility in the event of a leak, and expected time necessary to respond to a leak.

(7) For liquid pipelines, an application must include a detailed spill contingency plan describing:  
(a) immediate notification procedures;  
(b) the type and location of emergency response personnel and equipment;  
(c) any mutual aid agreements to supply personnel and equipment and respond in the event of a spill;  
(d) response procedures;  
(e) equipment testing procedures;  
(f) frequency of field training exercises; and  
(g) plan update procedures. The plan shall be sufficiently detailed so that the department can determine the likely environmental effects resulting from a spill.

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

Rationale: 17.20.1512(5) through (7). These proposed amendments would allow the Department to obtain basic information about pipeline operations so it can be assured that impacts of pipeline leaks and spills can be minimized.

17.20.1604 ALL LINEAR FACILITIES, UTILITIES, PUBLIC INTEREST, CONVENIENCE AND NECESSITY STANDARD (1) In order for the board to find that a proposed facility will serve the public interest, convenience and necessity as required by 75-20-301(1)(f), MCA, the board must find and determine that the discounted net present value of benefits (less costs) is greater for the facility than for any other reasonable alternative, based on a determination of the following:

(a) the findings required by ARM ~~17.20.1601~~ or ~~17.20.1602~~ 17.20.1606;

(b) the cumulative environmental impacts of the facility, as determined for ARM ~~17.20.1603(h)~~ 17.20.1607(1)(g);

(c) the benefits to the applicant, the state of Montana, the applicant's customers, and any other entities benefiting from the facility;

(i) benefits include internal benefits and external benefits; nonmonetary benefits must be quantified to the extent reasonably possible.

(d) the effects of the economic activity resulting from the proposed facility;

(e) the costs of the facility including internal costs of construction and operation and mitigation costs, plus other external costs and unmitigated environmental costs; nonmonetary costs must be quantified to the extent reasonably possible; and

(f) any other factors the board considers relevant.

(2) In making this finding the ~~board~~ department shall consider the effects of the facility on the public health, welfare and safety.

AUTH: 75-20-105, MCA



IMP: 75-20-301, 75-20-503, MCA

Rationale: 17.20.1604 is proposed to be amended to apply only to linear facilities because the determination of public interest, convenience, and necessity is no longer required for generation and conversion facilities but still is required for linear facilities.

17.20.1604(1)(a) is proposed to be amended to delete cross-references to 17.20.1601 and 17.20.1602 because these sections are proposed for repeal since they apply to need findings for generation and conversion facilities and to correct the cross-reference for a need finding/standard for a linear facility to 17.20.1606.

17.20.1604(1)(b) is proposed for amendment to correct the cross-reference for cumulative environmental impacts for a linear facility from 17.20.1603, which is proposed for repeal, to 17.20.1607(1)(g), which contains the cumulative impact requirement.

17.20.1604(2) is proposed for amendment to change "board" to "department" pursuant to changes in 75-20-301, MCA, concerning department approval of facilities.

6. The proposed new rule provides as follows:

NEW RULE III ENERGY GENERATION AND CONVERSION FACILITIES, DECISIONS (1) In making its decision under 75-20-301(3), MCA, the department shall identify all:

(a) significant environmental impacts; and  
(b) reasonable, cost-effective mitigation measures for those impacts.

(2) For those significant environmental impacts that cannot be mitigated below the level of significance, the department shall determine whether there is a threat of serious injury or damage to the environment, the social and economic conditions of inhabitants of the affected area, and the health, safety, or welfare of area inhabitants.

(3) In determining the reasonableness of mitigating measures under 75-20-301(3)(a), MCA, the department shall consider the factors listed in 75-20-301(4), MCA, and other appropriate factors including but not limited to whether the measure:

(a) is within or can reasonably be expected to be within an applicant's or the department's ability to implement;

(b) is technologically feasible as shown through research, successful prototype testing, or successful implementation in similar situations;

(c) is likely to succeed in mitigating the identified significant impact when implemented individually or in conjunction with other adopted measures; and

(d) can be monitored for implementation and effectiveness.

(4) In determining whether a mitigating measure is cost-effective under 75-20-301(3)(a), MCA, the department shall use the following analysis:

(a) estimate the net present value of the cost of implementing the mitigating measure;

(b) estimate the net present value of the benefits of implementing the measure, including:

(i) reductions in adverse environmental impacts of the facility and any other benefits, that are readily quantifiable and valued in monetary terms; and

(ii) reductions in adverse impacts, and any other benefits, that are not readily quantifiable or not readily valued in monetary terms.

(c) if (4)(a) is greater than (4)(b)(i), and (4)(b)(ii) is not deemed significant, the mitigating measure is not cost effective; and

(d) if (4)(a) is less than or equal to (4)(b)(i), or if (4)(a) is greater than (4)(b)(i) and (4)(b)(ii) is deemed to be significant and sufficient to outweigh the value of (4)(a) minus (4)(b)(i), the mitigating measure is cost effective.

(5) All mitigating measures upon which the department relies in its decision must be made conditions of the certificate.

(6) For each facility and associated facilities, a certificate of environmental compatibility must contain:

(a) an approved reclamation plan;

(b) an approved monitoring plan;

(c) any construction and reclamation bonds required by the department;

(d) a set of environmental specifications addressing measures to reduce impacts of construction, operation, and decommissioning; and

(e) a topographic map having a scale of 1:24,000 showing section lines, the site boundary, location of the facility, facility components, and any associated facility(ies).

(7) A certificate holder must comply with all terms of a certificate of environmental compatibility including but not limited to the items in (5) and (6) above.

AUTH: 75-20-105, MCA

IMP: 75-20-301, MCA

Rationale: Sections (1) and (2) are necessary to advise applicants of how the Board intends for the Department to administer 75-20-301(3), MCA. This statute is susceptible to two interpretations. The first is that the agency must identify significant environmental impacts, impose all reasonable cost-effective mitigations, and, if any significant impacts remain, determine whether they constitute a serious threat to the environment, socio-economic condition, or public health, safety, or welfare. If they do, the Department is to deny the application. The second possible interpretation is that the Department is to issue the certificate if: (1) all reasonable cost-effective mitigations are incorporated, whether or not serious damage or injury to the environment, socio-economic conditions, or public health, safety, or welfare would result; or (2) no serious damage or injury would

result, whether or not all reasonable cost-effective mitigations are incorporated. The Board believes that the former interpretation is more reasonable, more consistent with the Legislature in policy and findings as expressed in 75-20-102, MCA, and truer to the meaning intended by the 1997 Legislature when it adopted this language.

Section (3) is proposed to notify applicants of the factors the Department will use in determining reasonableness of mitigation. The term "reasonable" in this context means "sensible" or "not extreme". The Board believes that the factors listed implement this definition.

Section (4) would impose on the Department a methodology for determining "cost-effectiveness". This methodology was chosen because it is consistent with both the common understanding of the term and the technical definition of the term in the field of economics.

Section (5) is proposed because 75-20-301(3), MCA, requires that reasonable cost effective mitigation of significant environmental impacts be incorporated into the facility.

Section (6) through (6)(d) and Section (7) are proposed to ensure that the reclamation plan, monitoring plan, any required bonds, and environmental specifications are conditions of the certificate and are therefore required and enforceable. Section (6)(e) and section (7) are proposed so that the area over which the Department has jurisdiction is clearly laid out.

7. The rules, as proposed to be amended, provide as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.20.1701 CONDITIONAL APPROVAL OF ROUTES OR CORRIDORS

(1) Any certificate granted to build a linear facility in an approved route ~~or a linear associated facility in an approved corridor~~ is subject to final approval of the location of the centerline by the board. Unless a certificate states otherwise, a certificate holder may not begin building a linear facility ~~or linear associated facility~~ without having obtained the board's approval of the centerline.

(2) The precise boundaries of an approved route ~~or approved corridor~~ shall be delineated by lines approximately 1 millimeter wide on USGS topographic maps at a scale of 1:24,000 or USGS maps preliminary to the published 7.5 minute quadrangle maps. Where these are not available, USGS advance or final 7.5 minute orthophoto quad maps shall be used. Where none of these maps are available, USGS 15 minute topographic maps or the best available published maps with a scale of 1:125,000 or 1:100,000 shall be photographically enlarged to 1:24,000. As appropriate, the map may be derived from the base map submitted with the application, ARM 17.20.1440(2), or derived from an accurate overlay of it. The route ~~or corridor~~ may be described according to bearing descriptions, range, township and section numbers. The map and, if applicable, the

route ~~or~~ ~~corridor~~ description, shall be part of the certificate granted by the board.

(3) The procedural requirements of the centerline evaluation for a linear facility ~~or a linear associated facility~~ shall be specified in the certificate.

(4) The costs incurred by the board in evaluating and approving the centerline shall be reimbursed by the filing fee or by contract between the applicant and the department.

AUTH: 75-20-105, MCA  
IMP: 75-20-301, 75-20-302, MCA

Rationale: The centerline decision process is proposed to be eliminated for linear associated facilities necessary for generation or conversion facilities because 75-20-205, MCA, which provided for a centerline approval process, was repealed in 1997.

17.20.1702 CENTERLINE EVALUATION IN AN APPROVED ROUTE OR CORRIDOR--GENERAL REQUIREMENTS (1) The centerline evaluation is required to select a centerline for the linear facility in the approved route ~~or the linear associated facility in the approved corridor~~ that will result in less cumulative adverse environmental impact and economic cost than siting the facility on any alternative centerline.

(2) remains the same.

AUTH: 75-20-105, MCA  
IMP: 75-20-301, 75-20-302, MCA

Rationale: The centerline process is proposed to be eliminated for linear associated facilities necessary for generation or conversion facilities because 75-20-205, MCA, which provided for a centerline approval process, was repealed in 1997.

8. The rules proposed for repeal are as follows.

17.20.101 GENERAL PROVISIONS (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1025, Administrative Rules of Montana.

17.20.102 ELIGIBLE EXEMPTIONS FOR UPGRADES (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1026, Administrative Rules of Montana.

17.20.103 ELIGIBLE EXEMPTIONS FOR RELOCATIONS (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1033, Administrative Rules of Montana.

17.20.104 ELIGIBLE EXEMPTIONS FOR RECONSTRUCTION (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 1034, Administrative Rules of Montana.

17.20.105 NOTICE OF INTENT TO CONSTRUCT AN EXEMPT FACILITY (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1037, Administrative Rules of Montana.

17.20.106 BOARD ACTION (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1038, Administrative Rules of Montana.

17.20.107 CONSTRUCTION MONITORING BY DEPARTMENT (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1038, Administrative Rules of Montana.

17.20.108 LOCAL, STATE, AND FEDERAL PERMITS (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1038, Administrative Rules of Montana.

Rationale: Repeal of 17.20.101 through 17.20.108 Transmission Line Exemption. These rules implement 75-20-202, MCA. That statute was repealed in 1997.

17.20.501 GENERAL REQUIREMENTS (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1091, Administrative Rules of Montana.

17.20.502 IDENTIFICATION OF FACILITIES AND EXPECTED APPLICATION DATES (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1091, Administrative Rules of Montana.

17.20.503 SERVICE AREA UTILITIES, FORECASTED ENERGY DEMAND AND SUPPLY (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1092, Administrative Rules of Montana.

17.20.504 SERVICE AREA UTILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE AND SALE AGREEMENTS (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1092, Administrative Rules of Montana.

17.20.505 SERVICE AREA UTILITIES, NEGOTIATIONS OVER RESOURCE ACQUISITION OR SALE, POOLING, INTERCONNECTION, TRANSMISSION, EXCHANGE, PURCHASE OR SALE OF ENERGY (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1093, Administrative Rules of Montana.

17.20.506 COMPETITIVE UTILITIES AND NONUTILITIES, PROJECTED DEMAND (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1093, Administrative Rules of Montana.

Rationale: Repeal of 17.20.501 through 17.20.506. These rules implement 75-20-501, MCA, which was repealed in 1997.

17.20.701 PURPOSE OF NOTICE (Auth: 75-20-105, MCA; IMP, 75-20-214, MCA), located at page 17-1115, Administrative Rules of Montana.

17.20.702 CONTENT OF NOTICE OF INTENT (Auth: 75-20-105, MCA; IMP, 75-20-214, MCA), located at page 17-1115, Administrative Rules of Montana.

17.20.703 CHANGES OR ADDITIONS TO NOTICE (Auth: 75-20-105, MCA; IMP, 75-20-214, MCA), located at page 17-1115, Administrative Rules of Montana.

17.20.704 FILING FEE REDUCTION (Auth: 75-20-105, MCA; IMP, 75-20-214, MCA), located at page 17-1115, Administrative Rules of Montana.

Rationale: Repeal of 17.20.701 through 17.20.704. These rules implement 75-20-214, MCA, which was repealed in 1985.

17.20.812 ENERGY GENERATION AND CONVERSION FACILITIES, ESTIMATED COST OF ENERGY OR PRODUCT (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-215, MCA), located at page 17-1128, Administrative Rules of Montana.

Rationale: 17.20.812 is proposed for repeal because the information is no longer necessary to make the determinations in 75-20-301(3), MCA, for generation or conversion facilities. The information was necessary to make a determination of whether the facility minimizes adverse environmental impact. In Chapter 329, Laws of 1997, the Legislature eliminated this requirement for generation and conversion facilities.

17.20.816 ALL FACILITIES, SERVICE AREA UTILITIES, COPIES OF CONTRACTS FOR PURCHASE OF MATERIALS OR SALE OF ENERGY FROM THE PROPOSED FACILITY (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-215, MCA), located at page 17-1128, Administrative Rules of Montana.

Rationale: This rule is proposed for repeal because the information required for linear facilities was never used. Linear facilities do not involve the sale of energy but only involve the transport of energy. The information required for generation or conversion facilities was used in making a determination of need. The requirement for a determination of need for generation and conversion facilities was repealed in 1997. The information required by this rule is not necessary to make the determinations in 75-20-301(3), MCA.

17.20.902 GENERATION AND CONVERSION FACILITIES, RESOURCE FORECAST (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1151, Administrative Rules of Montana.

Rationale: This rule implements 75-20-211, MCA, as it read prior to its amendment in Chapter 329, Laws of 1997. Prior to 1997, an application was required to demonstrate the need for the facility. This rule requires information related to the need determination. In 1997, the Legislature eliminated the need requirement for generation and conversion facilities. The rule is therefore no longer authorized by statute and must be repealed.

17.20.903 GENERATION AND CONVERSION FACILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE AND SALE AGREEMENTS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA;) located at page 17-1152, Administrative Rules of Montana.

Rationale: The repeal is necessary because most of these materials, with the exception of interconnection agreements, are no longer necessary with the elimination of the finding of need for generation conversion facilities (see Chapter 329, Laws of 1997). Interconnection agreements have been moved to subchapter 15.

17.20.904 GENERATION AND CONVERSION FACILITIES, DATA REQUIREMENTS FOR ENERGY AND PEAK DEMAND (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1152, Administrative Rules of Montana.

17.20.905 GENERATION AND CONVERSION FACILITIES, ASSESSMENT OF THE ROLE OF THE PROPOSED FACILITY IN MEETING ENERGY NEEDS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1155, Administrative Rules of Montana.

17.20.906 GENERATION AND CONVERSION FACILITIES, UNCERTAINTY ANALYSIS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA) located at page 17-1155, Administrative Rules of Montana.

17.20.908 GENERATION AND CONVERSION FACILITIES, INTERRUPTIBLE AND CURTAILABLE LOAD DATA (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1156, Administrative Rules of Montana.

Rationale: 17.20.904, 17.20.905, 17.20.906 and 17.20.908 implemented 75-20-503, MCA, which dealt with long-range plans and the environmental factors that need to be evaluated when reviewing applications for certification. 75-20-503, MCA, was repealed in Chapter 329, Laws of 1997. These rules also implement part of 75-20-211, MCA but these requirements were aimed at information required in an application to show need for a facility. The showing of need is no longer required for generation and conversion facilities (see Chapter 329, Laws of 1997); therefore, these rules are proposed for repeal because they are no longer authorized by statute.

17.20.909 GENERATION AND CONVERSION FACILITIES, DESTINATION AND DISTRIBUTION PATTERNS OF ENERGY TO BE PRODUCED (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1159, Administrative Rules of Montana.

Rationale: The requirements of this rule are proposed to be moved to Department Circular MFS-1, Section 3.31.

17.20.910 GENERATION AND CONVERSION FACILITIES, ENERGY CONSERVATION PROGRAMS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1160, Administrative Rules of Montana.

Rationale: This rule implemented 75-20-503, MCA, which dealt with long-range plans and the environmental factors that need to be evaluated when reviewing applications for certification. 75-20-503(1)(f), MCA required examination of conservation activities which could reduce the need for more energy. 75-20-503, MCA was repealed in 1997 (see Chapter 329, Laws of 1997). This information is not necessary to make the determination required in 75-20-301(3), MCA; therefore, the rule is proposed for repeal because it is no longer authorized by statute.

17.20.911 GENERATION AND CONVERSION FACILITIES, CATEGORIES FOR REPORTING CUSTOMER END-USE DATA (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1160, Administrative Rules of Montana.

Rationale: This rule implemented 75-20-503, MCA, which dealt with long-range plans and the environmental factors that need to be evaluated when reviewing applications for certification. 75-20-503, MCA was repealed in 1997 (see Chapter 329, Laws of 1997). This information is not necessary to make the determination required in 75-20-301(3), MCA. Because the rule is no longer authorized by statute, it must be repealed.

17.20.1201 MARKET ANALYSIS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1201, Administrative Rules of Montana.

17.20.1202 MARKETABILITY FORECASTS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1201, Administrative Rules of Montana.

17.20.1203 UNCERTAINTY ANALYSIS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1202, Administrative Rules of Montana.

Rationale: 17.20.1201 through 17.20.1203 implement 75-20-503, MCA, which dealt with long-range plans and the environmental factors that need to be evaluated when reviewing applications for certification. 75-20-503, MCA, was repealed



in 1997. These rules also implement part of 75-20-211, MCA, which required an application to demonstrate need for the facility. The showing of need is no longer required for generation and conversion facilities (see Chapter 329, Laws of 1997). Because these rules are no longer authorized by statute, they must be repealed.

17.20.1303 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVE LOAD-RESOURCE BALANCES (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1214, Administrative Rules of Montana.

Rationale: This repeal is proposed to reflect deregulation of electrical generation by Chapter 372, Laws of 1999, which moved generation facilities into competitive wholesale markets. Information on load-resource balances was previously required for the determination of need for generation and conversion facilities. The determination of need requirement was repealed for generation and conversion facilities in 1997. The information required by this rule is not necessary to make the current determinations in 75-20-301(3), MCA.

17.20.1309 COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1221, Administrative Rules of Montana.

Rationale: This repeal is proposed because all generation and conversion facilities are proposed to be treated alike in 75.20.1301 regardless of ownership (whether they are service area utilities, competitive utilities, or non-utilities). The information formerly required by 17.20.1309 would be adequately covered in 17.20.1301.

17.20.1310 COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1221, Administrative Rules of Montana.

Rationale: This repeal is proposed because all generation and conversion facilities are proposed to be treated alike in 17.20.1302 regardless of ownership (whether they are service area utilities, competitive utilities, or non-utilities). The information formerly required by 17.20.1310 would be covered in 17.20.1302.

17.20.1401 ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY (Auth: 75-20-105; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1241, Administrative Rules of Montana.

17.20.1402 ENERGY GENERATION AND CONVERSION FACILITIES, PREFERRED SITE CRITERIA (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1242, Administrative Rules of Montana.

17.20.1403 ENERGY GENERATION AND CONVERSION FACILITIES, EXCLUSION AREAS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1243, Administrative Rules of Montana.

17.20.1404 ENERGY GENERATION AND CONVERSION FACILITIES, SENSITIVE AREAS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1243, Administrative Rules of Montana.

17.20.1405 ENERGY GENERATION AND CONVERSION FACILITIES, AREAS OF CONCERN (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1247, Administrative Rules of Montana.

17.20.1408 ENERGY GENERATION AND CONVERSION FACILITIES, DELINEATION OF THE STUDY AREA (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1251, Administrative Rules of Montana.

17.20.1409 ENERGY GENERATION AND CONVERSION FACILITIES, ANALYSIS OF DELIVERED COST OF ENERGY IN THE STUDY AREA (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1252, Administrative Rules of Montana.

17.20.1410 ENERGY GENERATION AND CONVERSION FACILITIES, IDENTIFICATION OF ECONOMICALLY FEASIBLE SITING AREAS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1253, Administrative Rules of Montana.

17.20.1411 ENERGY GENERATION AND CONVERSION FACILITIES, RECONNAISSANCE (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1253, Administrative Rules of Montana.

17.20.1412 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF CANDIDATE SITING AREAS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1254, Administrative Rules of Montana.

17.20.1415 ENERGY GENERATION AND CONVERSION FACILITIES, INVENTORY, GENERAL REQUIREMENTS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1257, Administrative Rules of Montana.

17.20.1416 ENERGY GENERATION AND CONVERSION FACILITIES, INVENTORY, ENVIRONMENTAL INFORMATION (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1258, Administrative Rules of Montana.

17.20.1417 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF ALTERNATIVE SITES (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1263, Administrative Rules of Montana.

17.20.1419 ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1267, Administrative Rules of Montana.

17.20.1420 ENERGY GENERATION AND CONVERSION FACILITIES, COMPARISON OF ALTERNATIVE SITES (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1285, Administrative Rules of Montana.

17.20.1421 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF THE PREFERRED SITE (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1286, Administrative Rules of Montana.

Rationale: In Chapter 312, Laws of 1987, the Legislature eliminated the requirement that an application for a generation or conversion facility contain alternative sites. In Chapter 583, Laws of 1995, the Legislature eliminated the requirement in 75-20-303, MCA, that the Department's certification opinion contain an analysis of the alternative to the proposed facility. 17.20.1401 through 17.20.1405, 17.20.1408 through 17.20.1412, 17.20.1415 through 17.20.1417, 17.20.1420, and 17.20.1421 implemented those now-repealed portions of MFSA. Certain environmental information required in 17.20.1404, 17.20.1405, 17.20.1411, and 17.20.1416 is, however, necessary to assess significant impacts at a proposed site for an energy generation or conversion facility and to make the findings and determinations required by 75-20-301(3), MCA. The Board is proposing to move those requirements to Circular MFSA-1 in order to shorten administrative rules and provide baseline study and analysis requirements in a convenient format for applicants. Because the requirements in these rules are either no longer authorized by statute or are proposed for relocation in the circular, the Board is proposing the repeal of these rules.

17.20.1419 is proposed for repeal because the Board is proposing to transfer the requirements contained in the rule to Circular MFSA-1 in order to shorten administrative rules and provide baseline study and analysis requirements in a convenient format.

17.20.1601 ENERGY GENERATION AND CONVERSION FACILITIES, SERVICE AREA UTILITIES, NEED STANDARD (Auth: 75-20-105, MCA; IMP, 75-20-301, 75-20-503, MCA), located at page 17-1376, Administrative Rules of Montana.

17.20.1602 ENERGY GENERATION AND CONVERSION FACILITIES, COMPETITIVE UTILITIES, NEED STANDARD (Auth: 75-20-105, MCA;

IMP, 75-20-301, 75-20-503, MCA), located at page 17-1377, Administrative Rules of Montana.

17.20.1603 ENERGY GENERATION AND CONVERSION FACILITIES, MINIMUM IMPACT STANDARD (Auth: 75-20-105, MCA; IMP, 75-20-301, 75-20-503, MCA), located at page 17-1377, Administrative Rules of Montana.

Rationale: 17.20.1601 and 17.20.1602 implement requirements in MFSA that the applicant demonstrate and the Department find a need for the facility. In Chapter 329, Laws of 1997, the Legislature eliminated this requirement for generation and conversion facilities. 17.20.1603 implemented the requirement in MFSA that the facility minimize adverse environmental impacts. In Chapter 329, Laws of 1997, the Legislature eliminated this requirement for generation and conversion facilities. Because these rules are no longer authorized by statute, they must be repealed.

17.20.1705 LINEAR ASSOCIATED FACILITIES, CENTERLINE EVALUATION IN AN APPROVED CORRIDOR, INFORMATION REQUIREMENTS (Auth: 75-20-105, MCA; IMP, 75-20-301, 75-20-302, MCA), located at page 17-1406, Administrative Rules of Montana.

Rationale: This rule is proposed to be repealed because 75-20-205, MCA, which authorized the centerline approval process, was repealed in 1997. A centerline determination is no longer authorized by statute. Centerlines for linear facilities associated with generation or conversion facilities are being addressed in the initial Department decision on the generation facility itself.

9. Concerned persons may obtain a copy of proposed Circular MFSA-1 by calling (406) 444-2544 or by writing to the Board at the address listed in 10 below. In addition, a copy of the circular is available at [www.deq.state.mt.us](http://www.deq.state.mt.us) under the rules and regulations link.

10. Concerned 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, PO Box 200901, Helena, Montana, 59620-0901, no later than March 13, 2001. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via e-mail addressed to Leona Holm, Board Secretary, at "[lhholm@state.mt.us](mailto:lhholm@state.mt.us)", no later than 5 p.m. March 13, 2001.

11. Katherine Orr, attorney for the Board, has been designated to preside over and conduct the hearing.

12. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this

agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., PO Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Board.

13. The bill sponsor notice requirement of 2-4-302, MCA, applies and has been fulfilled.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase  
Joe Gerbase, Chairperson

Reviewed by:

John F. North  
John F. North, Rule Reviewer

Certified to the Secretary of State January 26, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of ARM 17.8.101 and 17.8.301, )	PROPOSED AMENDMENT AND
and the repeal of ARM )	REPEAL
17.8.315, pertaining to odors )	
that create a public nuisance )	(AIR QUALITY)

TO: All Concerned Persons

1. On March 6, 2001, at 10:30 a.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment and repeal of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., February 26, 2001, to advise us of the nature of the accommodation you need. Please contact the Board at PO Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The rules, as proposed to be amended, provide as follows, stricken matter interlined, new matter underlined:

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) through (35) remain the same.

~~(36) "Public nuisance" means any condition of the atmosphere beyond the property line of the offending person which:~~

~~(a) affects, at the same time, an entire community or neighborhood, or any considerable number of persons (although the extent of the annoyance or damage inflicted upon individuals may be unequal), and~~

~~(b) is injurious to health, or offensive to the senses, or which causes or constitutes an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.~~

(37) through (44) remain the same, but are renumbered (36) through (43).

AUTH: 75-2-111, MCA

IMP: 75-2-111, MCA

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

(1) and (2) remain the same.

~~(3) "Animal matter" means any product or derivative of animal life.~~

(4) through (20) remain the same, but are renumbered (3) through (19).

~~(21) "Reduction" means any heated process, including rendering, cooking, drying, dehydrating, digesting, evaporating, and protein concentrating.~~

AUTH: 75-2-111, 75-2-203, 75-2-204, MCA  
IMP: 75-2-203, MCA

4. The rule proposed for repeal is as follows:

17.8.315 ODORS (AUTH:75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA), located at page 17-315, Administrative Rules of Montana.

5. The Board is proposing to repeal ARM 17.8.315, the odor nuisance rule. The Board also is proposing to amend ARM 17.8.101 and 17.8.301 to delete definitions of terms used in the odor rule that would no longer be necessary upon repeal of that rule.

ARM 17.8.315 prohibits operation of a business, or use of any equipment or facility, in a manner that creates a public nuisance through discharge of an odorous matter. Determining whether a particular odor violates the rule is difficult due to the subjectivity of this type of complaint. Because of this inherent subjectivity it is difficult to enforce the rule consistently in all situations. Also, odors are difficult to measure and cannot be compared to a known standard.

To determine whether an odor creates a public nuisance, the Department must determine whether the odor affects, at the same time, an entire community or neighborhood or a considerable number of persons and whether the odor adversely affects these persons' health, is offensive to their senses, or interferes with the comfortable enjoyment of their lives or property. To make these determinations, the Department must interview as many persons in the area of the odor as possible to determine the specific facts regarding the complaint. The Department must also determine the proximity of residences, businesses and other potentially affected property to the source of the odor, prevailing wind direction and air movement in the area, and whether there are a significant number of persons in the same proximity to the source of the odor as the complainants who do not believe a nuisance exists.

Repeal of ARM 17.8.315 would not remove all remedies for odor situations. The civil remedies for public and private nuisances in Sections 27-30-101 through 27-30-302, MCA, and the criminal remedies in sections 45-8-111 and 45-8-112, MCA, would still apply to odor situations. Also, for an odor caused by an activity otherwise regulated by the Department, the Department would still be able to address a complaint through ensuring compliance with other rules and permit conditions enforced by the Department.

The Board is proposing to amend ARM 17.8.101 by deleting the definition of the phrase "public nuisance." In addition

to being used in the odor nuisance rule, this phrase is used in ARM 17.8.401(4)(b)(ii), the definition of "excessive concentration," relating to stack height and dispersion techniques, and is used in ARM 17.8.615(1)(b), relating to open burning permits for firefighter training. However, the phrase is defined by statute in Sections 27-30-101 and 27-30-102, MCA, and the Board intends for the statutory definition to apply to the air quality rules.

The Board is proposing to amend ARM 17.8.301 by deleting the definitions of the phrase "animal matter" and the term "reduction." The phrase "animal matter" is not used in any air quality rule other than the odor nuisance rule.

The term "reduction" is used in several air quality rules in ARM Title 17, chapter 8, subchapter 3, other than the odor rule, including: ARM 17.8.301(4) and (13) ("degree of reduction for each air pollutant" and "degree of reduction in emissions"); ARM 17.8.310(3), 17.8.321(3), and 17.8.330(1), (3), (4) and (5) ("reduction cells of a primary aluminum reduction plant", "reduction achieved by thermal oxidation", and "electrolytic reduction"); and ARM 17.8.331(1), 17.8.333(1) and (4), and 17.8.334(2) and (3) ("primary aluminum reduction plant"). The intended meaning of the term "reduction" in ARM 17.8.301(4) and (13) is different than the meaning found in the definition in ARM 17.8.301(21), which refers to a heated process. It's necessary to delete this definition to avoid application of an incorrect definition to the phrase as used in ARM 17.8.301 and any other rules adopted in the future that may refer to reduction of air pollutants. Upon deletion of the definition, the Board intends that the term have the meaning indicated by the particular context of each rule.

6. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, PO Box 200901, Helena, Montana, 59620-0901, no later than, March 13, 2001. To be guaranteed consideration, the comments must be postmarked on or before that date.

7. Katherine Orr, attorney for the Board, has been designated to preside over and conduct the hearing.

8. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation;



strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., PO Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Board.

9. The bill sponsor notice requirements of Section 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase  
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State January 29, 2001.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption )  
of a new rule permitting )  
proportionate reductions in )  
crime victim benefits and the )  
amendment of ARM 23.15.103, )  
23.15.201, 23.15.302, )  
23.15.306 and 23.15.307 )  
affecting payment of benefits )  
to crime victims. )

NOTICE OF PUBLIC  
HEARING ON THE PROPOSED  
ADOPTION AND AMENDMENT  
OF RULES

To: All Concerned Persons

1. On March 9, 2001, at 1:00 p.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the adoption of new Rule I and the amendment of ARM 23.15.103, 23.15.201, 23.15.302, 23.15.306 and 23.15.307.

2. The Department of Justice 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 require an accommodation, contact the Department of Justice no later than 5:00 p.m. on Monday, February 26, 2001, to advise us of the nature of the accommodation that you need. Please contact Ali Sheppard, Department of Justice, Office of Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX 406-444-3549.

3. The proposed new rule provides as follows:

RULE I PROPORTIONATE REDUCTION IN CLAIMS PAID (1) The chairperson of the board of crime control shall appoint a committee composed of three members of the crime victims task force, one of whom must also be a member of the board of crime control, to review, no less than quarterly, payments made by the unit for claims in relation to available funds.

(2) If determined necessary by the committee, funds from the second year of each state fiscal biennium may be requested from the proper authority to offset shortages in available first year funds. There will be no reduction of payments in the first year of the biennium unless the request to transfer second year funds is denied.

(3) If second year funds are used in the first year of a biennium, benefit payments may be reduced in the second year in an amount proportionate to the percentage of funds transferred for use in the first year.

(4) The committee may initiate or change proportionate reductions in payments based on its review of remaining available funds.

(a) Any reduction determined to be necessary will apply to all bills paid by the unit after the initiation of proportionate reductions in payment.

(b) Pursuant to 53-9-108, MCA, legislative approval is required before retroactive payment of benefits lost through the implementation of proportionate reduction will be allowed.

(5) The intent of this process is to equitably serve as many victims as available funds will allow.

AUTH: 53-9-104, MCA  
IMP: 53-9-108, MCA

There have been several occasions in the past when it appeared that the need for funding from the Crime Victims Unit might exceed the funds available to the Unit. There is currently no process for determining allocation of funds when the demand exceeds available funds. This proposed rule sets out a fair process for the Unit to apply when necessary, and allows adjustment as the status in available funds changes.

The Unit is unable to determine an estimate of the possible decrease in compensation benefits. However, the Unit pays an average of 350 claims a year.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

23.15.103 GOOD CAUSE EXTENSIONS TO CLAIM FILING AND REPORTING TO LAW ENFORCEMENT LIMITS (1) remains the same.

(2) There is no good cause to extend the time limit if the claim is filed more than 5 2 years after the latest date the claim could have been filed in accordance with 53-9-125, MCA.

AUTH: 53-9-104, MCA  
IMP: 53-9-125, MCA

Mont. Code Ann. § 53-9-125(1) requires that a claim for crime victims compensation generally be filed within 1 year after the day the criminally injurious conduct occurred. The Crime Victims Unit may extend that time period "for good cause shown." Currently, good cause cannot exist if more than 5 years have expired since the claim should have been filed. The Unit proposes to reduce the 5-year period to 2 years. The information available to the Unit would be more current and the number of claims paid may be reduced, thus reducing the chance that the need for crime victims funds will exceed the funds available.

23.15.201 CLAIM AND INITIAL DETERMINATION (1) To initiate a claim, a claimant must complete either the appropriate form provided by the unit, or a form which substantially conforms to the unit's form. The unit may provide claimant with the unit's form and require its completion prior to processing of the claim.

(2) through (5) remain the same.

AUTH: 53-9-104, MCA

IMP: 53-9-121, 53-9-124, 53-9-127, 53-9-128, MCA

The proposed amendments bring this rule in compliance with Mont. Code Ann. § 53-9-121, which permits crime victims to initiate claims using forms other than those provided by the Unit if the Claimant's form substantially conforms with the Unit's form. If necessary, the Unit may still require that its form also be completed by the crime victim.

23.15.202 REQUEST FOR HEARING (1) The claimant has the right to request an informal hearing within 30 days of any written determination regarding compensability of a claim. The unit may request an informal hearing on its own initiative. The right to proceed further is waived unless the request for an informal hearing is either postmarked or received by the unit within 30 days after the initial determination is mailed.

(2) and (3) remain the same.

AUTH: 53-9-104, MCA

IMP: 53-9-122, 53-9-130, 53-9-131, MCA

The proposed amendment will eliminate problems which arise when a request for an informal hearing is mailed prior to the 30-day period but received by the Unit after the 30-day period. The term "received by" is not proposed to be deleted as some requests are delivered to the Unit in person.

23.15.302 PAYMENT OF CLAIMS (1) remains the same.

(2) ~~Medical~~ Reasonable medical and/or burial expenses are paid to the service providers, unless the claimant has paid the expenses, in which case payment is made to the claimant. ~~The amount of the payment is based on the usual and customary rates established by the insurance compliance bureau, division of workers' compensation.~~ Charges for private rooms and special nurses are paid only if ordered by the attending physician. The claimant is responsible for charges for treatment of conditions or injuries that are not a direct result of the criminally injurious conduct.

(a) through (3) remain the same.

(4) Payment will not be made for medical expenses for treatment obtained more than 5 3 years after the last date of treatment for the same criminally injurious conduct.

(5) remains the same.

AUTH: 53-9-104, MCA

IMP: 53-9-122, 53-9-130, 53-9-131, MCA

The proposed amendments are necessary as the Insurance Compliance Bureau, Division of Workers' Compensation, no longer exists. Its successor, the Employment Relations Division, Department of Labor and Industry, no longer uses the term "usual

and customary" as those rates have been replaced by relative values and reduced hospital rates. The Crime Victims Unit still pays the usual and customary rates charged by all providers except with respect to mental health claims. The word "reasonable" is proposed to ensure that the Unit need not pay a rate which is determined to be unreasonable. Such a determination would remain subject to review pursuant to ARM 23.15.202.

The Unit proposes to reduce from 5 to 3 the number of allowable years which may elapse between compensable subsequent treatments for the same injurious conduct. The purpose of this proposed amendment is to limit the possibility that benefits may be paid for treatments unrelated to the criminally injurious conduct and to increase the funds available for other treatments and claims.

23.15.306 MENTAL HEALTH THERAPISTS (1) and (2) remain the same.

(3) Payment for mental health counseling is limited to 12 consecutive months or \$2,000 billable services, whichever limit is reached first. Extension Primary victims may request an extension of the time or money limit may be requested by the claimant. An extension may be granted after review of the entire course of treatment, including but not limited to case notes and treatment plans. Claimants retain the right to request a hearing under ARM 23.15.202. The reviewer will be a qualified professional therapist chosen by the crime victims unit who which will make recommendations to deny or grant any extension of treatment and the length of the extension.

(4) Payment for mental health counseling to secondary victims is limited to 12 consecutive months or \$2,000 billable services, whichever limit is reached first. Secondary victims may not request an extension of the time or money limit.

(a) Secondary victims are:

(i) the spouse, parent, child, or sibling of a victim who is killed as a result of criminally injurious conduct; and

(ii) the parent or sibling of a minor who is a victim of criminally injurious conduct involving a sexual offense, provided the parent or sibling is not entitled to receive services under Title 41, chapter 3, MCA.

(b) Parent, child, and sibling of a victim include:

(i) the victim's natural and adoptive parents, natural and adopted children, and natural and adopted siblings; and

(ii) step-parents, step-children, and step-siblings. However, in the case of a sexually offended minor, the step-parent and the step-sibling must have resided with the victim at the time of the criminally injurious conduct and the step-parent must continue to reside with the victim in order to qualify for payment for mental health counseling.

(5) Primary victims retain the right to request a hearing under ARM 23.15.202. Secondary victims retain the right to request a hearing under ARM 23.15.202 if they have not been awarded their entire statutory entitlement.

AUTH: 53-9-104, MCA  
IMP: 53-9-128, MCA

The proposed amendments clarify that only primary victims, not secondary victims, have the right to apply for an extension of mental health counseling benefits to exceed 12 consecutive months of services or \$2,000 in billable services. The proposed amendments also clarify that secondary victims include step-relatives as step-parents are included in Title 41, chapter 3, MCA, which is referenced in Mont. Code Ann. § 53-9-128(9)(b). Finally, primary victims retain the right to a hearing on whether their mental health counseling benefits should be extended while secondary victims can request a hearing only if they have not been awarded the full statutory entitlement.

23.15.307 COMPENSATION BENEFITS (1) Compensation benefits payable to a claimant or on his behalf are computed by subtracting from the claimant's expenses any payments from made by the offender or another other collateral source from the expenses. The unpaid expense is subject to the statutory maximums and percentage of victim contribution.

(2) Payments from a collateral source for one type of expense may be used to offset other types of expenses once the initial original expense type has been paid.

(3) Payment by a collateral source to a claimant or a service provider by a collateral source for expenses also paid for by made after payment for that item has been made by the crime victims fund creates an immediate debt to the crime victims fund, regardless of the length of time between payments. The claimant is responsible for repayment of the debt. The collateral source of the benefit may pay directly to the fund directly rather than to the claimant or service provider.

AUTH: 53-9-104, MCA  
IMP: 53-9-103, 53-9-125, 53-9-128, MCA

The proposed amendments are grammatical in nature only, and do not change the substantive meaning of the rule.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Ali Sheppard, Assistant Attorney General, Attorney General's Office, P.O. Box 201401, Helena, MT 59620-1401, FAX (406) 444-3549, by surface mail, or be submitted electronically to [contactdoj@state.mt.us](mailto:contactdoj@state.mt.us) and must be received no later than March 9, 2001.

6. Ali Sheppard has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and

mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding crime victims compensation. Such written request may be mailed or delivered to the Attorney General's Office, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620, faxed to the office at (406) 444-3549, e-mailed to contactdoj@state.mt.us, or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

By: /s/ MIKE McGRATH  
MIKE McGRATH, Attorney General  
Department of Justice

/s/ ALI SHEPPARD  
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State January 26, 2001.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT  
of ARM 42.18.124 relating to )  
clarification of valuation )  
periods for class 4 property ) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 6, 2001, the Department proposes to amend ARM 42.18.124, relating to clarification of valuation periods for class 4 property.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on February 20, 2001, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax number (406) 444-3696; e-mail address canderson@state.mt.us.

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

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103, MCA:

(a) For the taxable years from January 1, 1997, through December 31, 2002, all property classified in 15-6-134, MCA, (class 4) must be appraised at its market value as of January 1, 1996.

(b) For the taxable years from January 1, 2003, through December 31, ~~2009~~ 2008, all property classified in 15-6-134, MCA, (class 4) must be appraised at its market value as of January 1, 2002.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-6-134, 15-7-103, and 15-7-111, MCA

4. The Department is proposing the amendment to correct a clerical error in the previous amendments to this rule that were adopted on December 22, 2000. The correct taxable years for property classified as class 4 are January 1, 2003, through December 31, 2008.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson  
Department of Revenue  
Director's Office  
P.O. Box 5805  
Helena, Montana 59604-5805  
no later than March 9, 2001.



6. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than March 9, 2001.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Kurt G. Alme  
KURT G. ALME  
Director of Revenue

Certified to the Secretary of State January 29, 2001

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE  
Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2000. This table includes those rules adopted during the period October 1, 2000 through December 31, 2000 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, 2000, 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 1999 and 2000 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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