# MONTANA ADMINISTRATIVE REGISTER



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

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TO: All Interested Persons:

1. On January 28, 1985, the Department of Administration proposes to amend rules 2.5.201, adding new definitions to the existing rule; 2.5.202, distinguishing certain responsibilities of several divisions within the Department; 2.5.301, raising the small purchase limit for agencies; 2.5.302, clarifying the use of requisitions; 2.5.401, clarifying that the Publications and Graphics Division maintains a bidders list separate from the list of bidders maintained by the Purchasing Division; 2.5.501, adding a suggested format for specifications; 2.5.503, clarifying how a purchasing agency may shorten a list of bidders; 2.5.602, clarifying that any one of the conditions listed in the current rule may render competitive sealed bidding not practicable; 2.5.603, defining the operational procedures for small purchases; and 2.5.605, clarifying that agencies must declare their own exigencies.

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

2.5.201 DEFINITIONS (1) - (9) remains the same.

(10) ~~"Purchase order" means a document used to formalize a purchase transaction with a vender.~~ "Publications and Graphics Division" means that Division of the Department of Administration responsible for supervising and attending to all public printing of the state.

(11) "Purchase order" means a document used to formalize a purchase contract with a vendor.

(12) "Purchasing Division" means that Division of the Department of Administration responsible for procuring or supervising the procuring of all supplies and services needed by the state.

(13) "Repair and maintenance" means those procedures related to the repair and maintenance of a building as defined

in the building construction codes.

(11) - (19) remains the same but will be renumbered.

AUTH: Sec. 18-4-221, MCA; IMP: Sec. 18-4-221, MCA

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES (1) - (2) remains the same.

(3) Purchasing for Agencies. The Department (Purchasing Division) shall process requisitions for using agencies, for items not delegated, in accordance with ARM 2.5.302.

(4) remains the same.

(5) Printing. The Department (Publications and Graphics Division) is responsible for all printing.

(6)(a) remains the same.

(6)(b) Data Processing, Word Processing and Filing Equipment--approval by the Information Services Division is required.

(6)(c) Communications Equipment--approval by Information Services Division is required.

(6)(c) - (8) remains the same.

AUTH: Sec. 18-4-221, MCA; IMP: Sec. 18-4-221 and 18-4-222 MCA.

Sub-Chapter 3

Procedures for ~~Venders~~ Agencies

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) A designee of the Department shall exercise delegated authority in accordance with the written delegation agreement described in ARM 2.5.202, with the Montana Procurement Act, and with these rules. Without a written delegation agreement each state agency is herein delegated authority to make "small purchases" up to $500.00 for non-controlled items and authority to make "exigency" purchases according to these rules.

(2) - (3) remains the same.

AUTH: Sec. 18-4-221, MCA; IMP: Sec. 18-4-221 and 18-4-222 MCA.

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DEPARTMENT (1) All using agencies of State government must complete the Department's requisitions when a State purchase order is required from the Department. The requisition must be signed by an authorized using agency official. Only quantities of items of a like nature (items ordinarily procureable from the same vendor) shall be combined on one requisition. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for supplies and services (not printing) shall be forwarded to the Purchasing Division. Completed requisitions for printing shall be forwarded to the Publications and Graphics Division.

(2) - (4) remains the same.

(5) Requisitions for supplies and services to be purchased with funds from a given fiscal year must be submitted to the Purchasing Division by May 1 of that fiscal year.

AUTH: Sec. 18-4-221, MCA; IMP: Sec. 18-4-221 and 18-4-222 MCA.

Sub-Chapter 4

~~Types of Bids~~ Procedures for Vendors

2.5.401 BIDDERS LIST (1) ~~The State Purchasing Division maintains a central State bidders list for all supply and service commodities.~~ The State Purchasing Division maintains a central State bidders list for all supply and service commodities except printing, which list is maintained by the Publications and Graphics Division. Names and addresses on bidders lists shall be available for public inspection but these lists shall not be used for private promotional, commercial or market purposes.

(2) remains the same.

AUTH: Sec. 18-4-221, MCA; IMP: Sec. 18-4-221, MCA.

2.5.501 SPECIFICATIONS (1) - (5) remains the same.

(6) A specification for a specific brand of supplies or equipment may be used if the requesting agency has a documented need to maintain a standard of performance and compatibility with existing supplies, equipment or staff experience.

(7) The suggested format for specifications is as follows:

(a) Name of Commodity;

(b) Purpose/Use for Commodity;

(c) Description of Commodity;

(i) Is each item of the description necessary to fulfull a functional or physical requirement of the State?

(ii) If brand names are necessary to indicate quality levels, list three acceptable brand names.

(iii) If a single brand is necessary, is justification provided and attached?

(iv) If the commodity is a sole source, is justification provided and attached?

(v) If a catalogue item is referenced, is a complete catalogue reference (catalogue name, date, page number) provided and attached?

(d) Description of other requirements, such as warranty, training, parts, manuals, service, etc.

(e) Description of any unusual conditions, such a installation, field tests, fiscal year funding source, etc.

(f) Date commodity is to be delivered. (On the average, an agency can expect delivery 60 to 90 days after submitting a requisition to Purchasing; however, vendor delivery schedules vary dramatically from product to product.)

(g) Location where commodity is to be delivered.

(h) Name, address and phone number of agency contact person.

(i) Receiving Procedures (if testing, sampling or other evaluation will be performed when commodity is delivered to determine acceptability, please describe.)

AUTH: Sec. 18-4-232, MCA; IMP: Sec. 18-4-231 through 18-4-234, MCA.

2.5.503 PUBLIC NOTICE (1) - (5) remains the same.

(6) In the event that it is either not practicable or not advantageous to the State to furnish bids to the number of

bidders listed on the central bidders list for a specific commodity, the purchasing agency may elect to shorten a bidders list by randomly selecting a number of bidders and adding to that list the names of past competitive vendors.

AUTH: Sec. 18-4-221, MCA; IMP: Sec. 18-4-303 and 18-4-304, MCA.

2.5.602 COMPETITIVE SEALED PROPOSALS (1)(a) remains the same.

(1)(b) Competitive sealed bidding is not practicable when one or more of the following conditions exist:

(i) - (v) - (8)(b) remains the same.

(9) If the Procurement Officer has elected to use a multi-step request for proposal which includes the submittal of "best and final" offers, the ~~The~~ Procurement Office shall establish a common date and time for the submission of best and final offers. The Procurement Officer shall then make a written award determination showing the basis on which the award was found to be most advantageous to the State based on the factors set forth in the Request for Proposals. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-304 MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83.)

AUTH: Sec. 18-4-221, MCA; IMP: Sec. 18-4-304, MCA.

2.5.603 SMALL PURCHASES OF SUPPLIES AND SERVICES (1) - (5) remains the same.

(6) ~~The Department shall adopt operational procedures for making small purchases of $500 and less. The operational procedures shall record for obtaining adequate and reasonable competition and for making records to properly account for funds and to facilitate auditing of the purchasing agency. (History: Sec. 18-4-221 MCA; IMP, Sec. 18-4-305 MCA; NEW 1983 MAR p. 1918, Eff. 12/30/83.)~~ For small purchases of supplies or services over $300 and up to $500, the Procurement Officer shall solicit a minimum of three businesses to provide telephone quotations, and shall record the quotations and place them in the procurement file. The Procurement Officer shall award to the business offering the lowest acceptable quotation.

(7) For small purchases of supplies and services of $300 and under, the Procurement Officer may choose a purchase technique, including cash purchase, that best meets the needs of the agency.

AUTH: Sec. 18-4-221, MCA; IMP: Sec. 18-4-305, MCA.

2.5.605 EXIGENCY PROCUREMENTS (1) remains the same.

(2) ~~The determination as to whether a procurement shall be made as an exigency procurement shall be made by the Department or as delegated by a written delegation agreement.~~ The determination as to whether a procurement shall be made as an exigency procurement shall be made by the Using Agency. The determination must be in writing and must state the basis for an exigency procurement and for the selection of the particular contractor.

(3) - (4)(d) remains the same.

AUTH: Sec. 18-4-221, MCA; IMP: Sec. 18-4-133, MCA.

3. Rules 2.5.201, 2.5.202 and 2.5.401 are being amended to clarify the purchasing related responsibilities administered by various Divisions within the Department of Administration. Rule 2.5.301 and 2.5.603 are being amended to make small purchase amounts and procedures consistent for agencies both with and without Purchasing Authority Agreements. Rules 2.5.501, 2.5.503, and 2.5.602 are being amended to incorporate procedures suggested by the Office of the Legislative Auditor. Rule 2.5.605 is being amended to allow agencies to declare "exigencies" for themselves, at the request of the Purchasing Task Force.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Laurie Ekanger, Administrator, Purchasing Division, Room 165, Mitchell Building, Helena, Montana 59620, no later than January 25, 1985.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Laurie Ekanger, Administrator, Purchasing Division, Room 165, Mitchell Building, Helena, Montana 59620, no later than January 25, 1985.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 398 persons based upon the 3989 vendors currently registered on the central bidders list.

By: Morris Brusett
Director, Department of Administration

Certified to the Secretary of State 12/14/84.

BEFORE THE STATE DEPARTMENT OF AGRICULTURE

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| In the matter of the amendment of Rule 4.12.1208 reducing the laboratory analysis fee from $25 to $20 for Alfalfa leafcutting bees | ) ) ) ) | Notice of Proposed Amendment of Rule 4.12.1208 concerning laboratory fees for samples of bees submitted for certification. No Public Hearing Contemplated |

TO: All interested persons.

1. On January 28, 1985 the Department of Agriculture proposes to amend 4.12.1208, concerning laboratory fee for bee samples.

2. The proposed rule reads as follows:

4.12.1208 SAMPLING/ANALYSIS FEES (1) Each person requesting certification or annual re-certification shall pay a laboratory analysis fee of ~~$25.00~~$20.00 per sample, for each official certification or re-certification sample submitted. The payment for each sample shall be transmitted at the time of sampling.

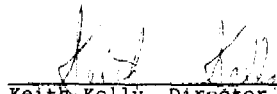
Authority 80-6-1109 MCA; IMP 80-6-1109 MCA.

3. The change is being made to adjust to the anticipated costs of providing the service .

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than January 27, 1985.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than January 27, 1985.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 persons, based on 100 Alfalfa Leafcutting Bee growers.



Keith Kelly, Director
Montana Department of
Agriculture

Certified to the Secretary of State December 17, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

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| In the matter of the proposed adoption of new rules under sub-chapter 5, interpretive rules for advertising | ) ) ) | NOTICE OF PROPOSED ADOPTION OF NEW RULES UNDER SUB-CHAPTER 5, INTERPRETIVE RULES FOR ADVERTISING NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons.

1. On January 26, 1985, the Board of Dentistry proposes to adopt interpretive rules concerning advertising.

2. The rules as proposed will read as follows:

"I. COVERAGE (1) ARM 8.16.716 defines advertising in a very broad manner. It includes any payment or sponsorship, directly or indirectly, of any form of public communication on behalf of one's self or a professional services facility under one's control. This includes not only the traditional print media of newspapers and phone directories and broadcast media of TV and radio, but such things as office signs, billboards or other such signs, pamphlets, flyers, brochures, letters, physical objects such as calendars and pens, and business cards."

Auth: 37-4-205, MCA Imp: 37-4-502, MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

"II. NAME AND OFFICE INFORMATION (1) ARM 8.16.717 states it is no violation of the Montana dental practice act for dentist to truthfully advertise the name, address, telephone number, and office hours of a dentist who will personally perform dental services upon a patient responding to that advertisement. The dentists may also use the name of a dentist formerly owning the practice, but only for a period of 12 months following the purchase of the practice, and providing that the former dentist would still be eligible to actively practice dentistry in the state of Montana. Where more than one dentist is practicing in association at a single location, it should be made clear in the advertising that there are other dentists available at the advertised location who may perform dental services on the patient."

Auth: 37-4-205, MCA Imp: 37-4-502, MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

"III. FEE INFORMATION (1) ARM 8-16-709 prohibits dentists from accepting or tendering 'rebates' or 'split fees'. The 1935 U.S. Supreme Court decision in Selmer vs Oregon Board of Dental Examiners clearly upheld the right of the board to prohibit the advertising of fees for professional service. Justice Holmes, in a concurring opinion, stated that

the advertising of fees for professional services cannot be placed in the same category as advertising prices for specific consumer goods. While the Bates decision and its progeny may have made clear that the board may not prohibit all advertising fees, Justice Holmes' belief that the advertising of professional fees is not the same as the advertising price of a pound of potatoes is still accepted by the Courts in that the board is free to regulate the advertising of fees. The board has set out three situations in which fees may be advertised:

(a) A dentist may advertise the fee for an initial consultation.

(b) A dentist may advertise a specific fee for a precisely described service. However, the fee must be fixed and the patient may not be required to purchase other materials or services in order to obtain the advertised service from the dentist.

(c) A dentist may advertise a range of fees, including materials, for precisely described dental services, provided that the advertisement contains a full disclosure of all relevant variables and considerations in establishing the fee for a particular patient; that the dentist does, in fact, charge the minimum fee advertised in substantial portion of these cases; and the patient is not required to purchase any other materials or services in order to obtain that service from the dentist.

(2) All other advertising of fees is presumed to be misleading by the board. However, the individual dentist may rebut this presumption by showing that the advertisement, as a whole, does not tend to mislead.

(3) In addition to the advertising of fees a dentist may also advertise the availability of credit. The advertising of credit as well as the advertising of fees is governed by the requirement that the credit arrangements of the advertised fee will be available to all patients throughout the effective life of the advertisement."

Auth: 37-4-205, MCA Imp: 37-4-502, MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

"IV. AREAS OF PRACTICE SPECIALIZATION (1) ARM 8.16.718, 719, and 720 allow a dentist to disclose to the public areas of dentistry in which the dentist practices. The dentist may not, however, state or imply that he is a specialist or that his practice is limited to a particular area of practice unless he meets the requirements for specialization as set out by the board in its rules. A general dentist may include in an advertisement an offer to perform services which fall within recognized and traditional areas of practice and/or commonly understood routine dental services, including those considered a specialty. A general

dentist who does so advertise must do so in the form of 'general dentistry including'. A general dentist's failure to word an advertisement in the above manner will be presumed to be misleading.

(2) As noted above, the board has approved the advertising of certain specialties. These specialties are oral surgery, orthodontics, periodontics, pedodontics, endodontics, prosthodontics, oral pathology, and oral roentgenology. The advertising of such a specialty may only be done if the dentist so advertising, shows to the satisfaction of the board, prior to such advertising, that he is, in fact, qualified to specialize in that particular field. In determining whether or not such qualifications exist, the board has listed specific requirements for each one of these specialties which includes membership in the specifically listed organizations, residencies, or the passing of a board examination.

(3) Recently, unrecognized specialties have been advertised, such as 'cosmetic dentistry', 'holistic dentistry', 'restorative dentistry', and 'craniomandibular orthopedics'. Since the phrases mentioned above are not recognized specialties, the advertisements are presumed to be false and misleading to the general public and, in some cases, appear to claim unverifiable superior knowledge and skill. A practitioner who wishes to advertise one of these areas should submit that advertisement to the board prior to any publication. In evaluating that claim, the board will follow the above guidelines in determining whether or not the advertisement as a whole is untruthful or tends to deceive or mislead the ordinary and prudent person."

Auth: 37-4-205, MCA Imp: 37-4-502, MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

"V. PERSONAL INFORMATION (1) A dentist should advertise personal information only to the extent that it reasonably would assist a consumer in the selection of a dentist.

(2) A dentist may advertise the following information: date and place of birth; date and place of licensure; schools attended with dates of graduation; degrees and other scholastic distinctions, and any teaching positions. A dentist may advertise membership in generally recognized professional organizations or associations and use their name or seal provided that the association or organization has given express consent to such use. Such advertising should be limited to the fact that an individual is a member. Use of 'fellow' or other such terminology may mislead the public. A photograph of the dentist may be used provided it is not more than two years old.

(3) A dentist may not use statistical data on past services performed or patients served in order to imply expertise, predict future success, imply low prices, or customer satisfaction. Great care should also be exercised in the use of any statements from patients. The rules of the board clearly prohibits the use of any testimonial or endorsement by a patient of another dentist. Use of a testimonial or endorsement by a patient of record, while not specifically addressed by board rules, is also prohibited in that it will imply in a manner not objectively verifiable, that the advertising dentist performs professional services in a manner superior to other dentists."

Auth: 37-4-205, MCA Imp: 37-4-502, MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

"VI. QUALITY OF SERVICE (1) The quality of dental services are difficult to accurately measure and any statements concerning the quality of services rendered tend to be misleading and are likely to create unjustified expectations on the part of the patient. Because of this high probability of misleading the public in the assertion of quality of service, the board broadly construes those rules dealing with this area. A dentist should not claim any superiority in the manner that he performs his professional services nor should he disparage directly or impliedly the professional competence or practice of any other dentist. This would include any endorsements or testimonials by a patient of the dentist contained in an advertisement. Additionally, it is presumed to be misleading for a dentist to claim to perform services in a superior manner based on the use of an appliance, drug, formula, material, medicine, method, or system of dentistry or pain reduction which is in general use or is available for use by another dentist.

(2) In general, subjective terms that describe either the nature of the practice or quality of services offered are difficult to verify objectively. An example of such terms is 'gentle dentistry'. Subjective terms such as this could be misleading to the public and, therefore, should not be used.

(3) There is also strong potential for misleading the public in the use of any guarantee, warranty, certification, assurance or words of similar import in connection with assertions of the quality, length of life, or usefulness of any dental service or dental appliance. Any representations concerning the absolute or comparative painlessness, degree of pain, or relief from pain is also presumed misleading, as is any promise concerning the beauty or naturalness of a patient's teeth following treatment.

(4) As noted above, a dentist is also limited in his use of statistical data on past dental services or patients served in attempting to imply a superiority of expertise, predict

future success, imply low prices, or customer satisfaction. The bottom line is that the dentist has a heavy burden of showing that any claim or superiority of service is truthful, verifiable, and not deceiving or misleading to the patient."

Auth: 37-4-205, MCA Imp: 37-4-502, MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

"VII. DENTAL ADVICE (1) Many advertisements contain general discussions about dentistry, dental problems, and the need for dental services or the advisability of contacting a dentist. This advertising may be in the nature of free dental advice or general educational information. A dentist utilizing such advertising should be careful that the content of the article does not serve as a vehicle for asserting matters that would be prohibited or presumed misleading or deceiving if done in other forms of advertising. Such advertising should also clearly state the source of authorship of the article as well as the name and address of the sponsoring dentist. The content of the article should be reviewed for compliance with existing board rules. Failure to state the source of the article as well as the name of the sponsoring dentist could be construed as a material misrepresentation of fact which is clearly prohibited under present board rules."Auth: 37-4-205, MCA Imp: 37-4-502, MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

"VIII. OMISSION OF MATERIAL FACTS, WARNINGS OR DISCLAIMERS (1) not only does a dentist have a duty to assure that his advertisements are free from false statements, material misrepresentations of fact or statements not capable of objective verification, there is also an affirmative duty on the part of the dentist to include in an advertisement all material facts, reasonable warning, or disclaimers necessary to keep the advertisement from being misleading or deceptive."

Auth: 37-4-205, MCA Imp: 37-4-502, MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

"IX. SOLICITATION (1) Advertising and solicitation are separate but very similar subjects. Advertising entails notice to the public of the availability of professional services, at a specific rate, for the purpose of informing the public and thereby assisting in making an informed choice.

(2) Solicitation is communication by or on behalf of a dentist which is directed at a particular person or particular group of persons, and which has, as its goal, the obtaining of particular business. The dental practice act prohibits such

solicitation where it takes the form of employing cappers or steerers.

(3) While the term capping and steering has its roots in the practice of the old circuit riding dentists who used the services of local town folks to solicit from door to door, under modern interpretation, it means simply the employment of an individual to solicit business in person. Therefore, a dentist should use great caution prior to entering into any contract with an individual or firm for the purpose of publicizing his services. Such a contract would be acceptable if it took the form of a referral service which merely advertised to the public its availability and passively awaited contact from the public prior to referring an individual to a dentist, as long as the advertising being used is neither false, deceptive or misleading. A violation of the dental practice act would exist, however, were that organization to take an active role in seeking out potential clients through in-person or telephonic communication.

(4) Capping and steering would cover the handing out of business cards and educational material at dental hygiene lectures given by a dentist or dental hygienist. The key in proper behavior is that the person handing out material identifying a particular dentist, should do so only at the request of the person receiving that material."

Auth: 37-4-205, MCA Imp: 37-4-502, MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

3. The Montana Board of Dentistry proposes to establish interpretive rules for the dentists in designing their advertising. Under these rules, it is clear that information such as a dentist's name, address, telephone number, office hours, fees for precisely described services, and the name of who will be performing those services, is information that aids the public in making an informed choice as to dental treatment. In addition, the advertising of a specialty is permissible as long as the individual advertising is, in fact, qualified as a specialist in that particular field. On the other end of the advertising spectrum are false statements, material misrepresentation of facts, and statements that are not capable of objective verification. These items are strictly forbidden under the board rules. Between these two poles lie a vast gray area of advertising statements which may or may not deceive the consumer, depending on the content in which they are used.

In addressing these concerns, the board proposes to establish a standard that requires that the advertising dentist show that, taking the advertisement as a whole, it is neither untruthful nor tends to deceive the ordinary prudent consumer. In order to assist the dental practitioner in

navigating this gray area, the board has developed the above interpretive rules.

4. Interested persons may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 24, 1985.

5. If a person who is directly affected by the proposed adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 24, 1985.

6. If the board receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 75 based on the 750 licensees in Montana.

BOARD OF DENTISTRY
JAMES OLSON, DDS, PRESIDENT

BY: _____
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 17, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

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| In the matter of the proposed amendments of 8.54.402 (3) concerning examinations and 8.54.411 (5) concerning inactive status. | ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENT OF 8.54.402 (3) EXAMINATIONS and 8.54.411 (5) EXPIRATION - RENEWAL - GRACE PERIOD |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 26, 1985, the Board of Public Accountants proposed to amend the above-stated rules.

2. The amendment of 8.54.402 will amend subsection (3) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1477 and 8-1478, Administrative Rules of Montana)

"8.54.402 EXAMINATIONS (1) ...

(3) Applications for the examination must be ~~filed~~ post-marked or received by the 15th day of the second month prior to each scheduled examination. Where the 15th day of the month falls on a Saturday, Sunday, or holiday, the postmark of the next business day will be accepted.

(a) ..."

Auth: 37-50-201 (2), MCA Imp: 37-50-308, MCA

3. The board is proposing the amendment as there is confusion among the candidates as to whether an application must be in the board office by the 15th or postmarked by the 15th. The amendment is to avoid future confusion on this point.

4. The proposed amendment of 8.54.411 will amend subsection (5) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1482, Administrative Rules of Montana)

"8.54.411 EXPIRATION - RENEWAL - GRACE PERIOD (1) ...

(5) Certificate or license holders that are fully retired from active employment will be exempt from paying annual renewal fees upon submitting an inactive status request form to the board and receiving approval."

Auth: 37-50-201 (2), MCA Imp: 37-50-317, MCA

5. The board is proposing the amendment as they feel that those licensees who retire may understand the rule to mean that they are automatically exempted from paying renewal fees, the way the present rule reads. The amendment is to clarify that a request for inactive status must be submitted and that inactive status is not automatic upon retirement.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Public Accountants, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 24, 1985.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Public Accountants, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 24, 1985.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 175 based on the 1750 licensees in Montana.

BOARD OF PUBLIC ACCOUNTANTS
CLINT FRAZEE, CHAIRMAN

BY: _____
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 17, 1984.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the proposed amendment of Rule 10.6.103 outlining the process for initiating the school controversy procedure | ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 10.6.103, INITIATING SCHOOL CONTROVERSY PROCEDURES PROCESS |

TO: All interested persons.

The notice of proposed amendment published in the Montana Administrative Register on November 29, 1984, page 1668, issue number 22, is re-published because the required number of persons designated therein have requested a public hearing.

1. On January 21, 1985, at 10:00 a.m., a public hearing will be held in the Capitol conference room at the offices of the Superintendent of Public Instruction, Room 106, State Capitol, Helena, Montana, to consider the proposed amendment of rule 10.6.103.

2. With minor word changes from the original proposal, the rule as proposed to be amended provides as follows:

10.6.103 INITIATING SCHOOL CONTROVERSY PROCEDURE PROCESS

(1) A person who has ~~exhausted all remedies available within a school district and who has~~ been aggrieved by a final decision of the ~~governing authority~~ board of trustees of a school district in a contested case is entitled to commence ~~such action~~ an appeal before the county superintendent, except as provided in subsection 2.

(2) A person who requests a due process hearing concerning special education may appeal to the county superintendent before receiving a final decision of the board of trustees. Upon receipt by the county superintendent of such notice of appeal of a special education controversy the county superintendent shall

(a) Promptly advise the board of trustees of the notice of appeal.

(b) Provide the board of trustees up to and including ten calendar days in which to address the special education controversy in the school district, and reach a final decision.

(c) Not later than 45 days after the receipt of a notice of appeal, a final decision must be reached by the county superintendent of schools and a copy of the decision mailed to each party. The parties to the school controversy case may waive this time limitation upon request of the county superintendent or upon request of the other parties and provided that all parties are in agreement of such waiver.

~~(2)~~(3) A school controversy contested case shall be commenced by filing a notice of appeal with the county superintendent within 30 days after the final decision of the governing authority of the school district is made. AUTH: Sec. 20-3-107(3) MCA; IMP: Sec. 20-3-107(3) MCA

3. The amendment is being proposed to bring Montana rules into compliance with Federal Public Law 94-142. The current rule jeopardizes federal funding for Montana school districts.

4. Interested parties 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 Rick Bartos, Attorney, Office of Public Instruction, State Capitol, Room 106, Helena, Montana 59620 no later than January 28, 1985.

5. Rick Bartos, Attorney for the Office of Public Instruction, will preside over and conduct the hearing.

ED ARGENBRIGHT
Superintendent of Public Instruction

Certified to the Secretary of State December 17, 1984.

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

| | | |
|---|---|---|
| In the matter of the adoption of a rule pertaining to youth foster home, foster parents. | ) ) ) ) | NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A RULE PERTAINING TO YOUTH FOSTER HOME, FOSTER PARENTS |

TO: All Interested Persons

1. On January 18, 1985, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the adoption of a rule pertaining to youth foster home, foster parents.

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

RULE I YOUTH FOSTER HOME, FOSTER PARENTS (1) Foster parents and other members of the household must be in good physical and mental health. To assist the department in evaluating the mental and physical health of applicants, foster parents and members of the foster home household, the applicant or licensee shall cooperate with the department in providing the following information:

(a) A CSD-SS-33, "Personal statement of health for licensure" form provided by the department must be completed for each person living in the household and submitted to the department with the initial application for licensure and annually thereafter.

(b) The applicant for licensure or relicensure shall complete the application form provided by the department, which shall include questions regarding whether the applicant or other member living in the household has received inpatient or outpatient treatment for mental illness, drug or alcohol abuse.

(c) Any applicant, any licensed foster parent or any member of the foster home household may be asked to obtain a psychological evaluation or medical examination by the department.

(d) Any applicant, any licensed foster parent or any member of the foster home household may be asked to sign an authorization of release of medical or psychological records allowing the department to obtain medical records concerning the applicant, licensed foster home parent or any other member of the household.

AUTH: Sec. 41-3-1103(2)(c) MCA
IMP: Sec. 41-3-1103(1)(b) and 41-3-1142 MCA

3. This rule provides the department with the authority to obtain information necessary to evaluate the physical and

mental health of persons who will be in contact with foster children. The rule will provide for the protection of foster children by allowing the department to screen applicants and to take licensing action when the mental or physical health of an applicant or foster parent is called into question.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 28, 1985.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1984.

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

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| In the matter of the amendment of Rule 46.12.3803 pertaining to the medically needy income level for medical assistance | ) ) ) ) | NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.3803 PERTAINING TO THE MEDICALLY NEEDY INCOME LEVEL FOR MEDICAL ASSISTANCE |

TO: All Interested Persons

1. On January 17, 1985, at 10:30 a.m., a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.3803 pertaining to the medically needy income level for medical assistance.

2. The rule as proposed to be amended provides as follows:

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS

(1) Notwithstanding the provisions found in subchapter 2, the following table contains the amount of net income protected for maintenance by family size. The table applies to SSI and AFDC-related individuals and families.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

| Family Size | Monthly Income Level | Quarterly Income Level |
|---|---|---|
| | $325.00 | $ 975.00 |
| 1 | ~~$314.00~~ | ~~$ 942.00~~ |
| 2 | 375.00 | 1,125.00 |
| 3 | 400.00 | 1,200.00 |
| 4 | 425.00 | 1,275.00 |
| 5 | 501.00 | 1,503.00 |
| 6 | 564.00 | 1,692.00 |
| 7 | 624.00 | 1,872.00 |
| 8 | 685.00 | 2,055.00 |
| 9 | 744.00 | 2,232.00 |
| 10 | 804.00 | 2,412.00 |
| 11 | 864.00 | 2,592.00 |
| 12 | 923.00 | 2,796.00 |
| 13 | 983.00 | 2,949.00 |
| 14 | 1,042.00 | 3,126.00 |
| 15 | 1,102.00 | 3,306.00 |
| 16 | 1,162.00 | 3,486.00 |

(a) All families are assumed to have a shelter obligation, and no urban or rural differentials are recognized in establishing those amounts of net income protected for maintenance.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. The Social Security Administration has given Supplemental Security Income (SSI) recipients a cost of living adjustment. The medically needy income level for the Medicaid Program is set by 42 CFR 435.812(1). The medically needy income level for a family size of one is based on the SSI benefit amount. The Department must follow the eligibility rules set forth by the Social Security Administration in the administration of the Medicaid Medically Needy Program. When there is an increase in the SSI benefit amount, the Department has the obligation to increase the Medically Needy Income level to match the benefit amount. The proposed rule change would bring the Department's rule into compliance with the SSI regulation.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 25, 1985.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1984.

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

| | | |
|---|---|---|
| In the matter of the amendment of Rules 46.5.909, 46.5.922, 46.5.924 and 46.5.938 pertaining to the registration of family and group day care homes and licensing of day care centers. | ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.5.909, 46.5.922, 46.5.924 AND 46.5.938 PERTAINING TO THE REGISTRATION OF FAMILY AND GROUP DAY CARE HOMES AND LICENSING OF DAY CARE CENTERS |

TO: All Interested Persons

1. On January 16, 1985, at 9:30 a.m., a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.5.909, 46.5.922, 46.5.924 and 46.5.938 pertaining to the registration of family and group day care homes and licensing of day care centers.

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

46.5.909 FAMILY DAY CARE HOME, GROUP DAY CARE HOME REGISTRATION, GENERAL ELIGIBILITY REQUIREMENTS, AND PROGRAM REQUIREMENTS Subsections (1)(a) through (1)(d) remain the same.

(e) Denial and Rrevocation of registration:

~~(i) a provider receiving 3 warnings of noncompliance shall be subject to revocation of their registration certificate;~~

~~(ii) should any one noncompliance place a child in danger, revocation will be immediate;~~

~~(iii) 30 days will be given to correct the noncompliance issue. This will be monitored by the social worker.~~

(i) The department, after written notice to the applicant or licensee, may deny, suspend, restrict, revoke or reduce to a provisional status a registration certificate upon finding that:

(A) the provider has received 3 warnings of noncompliance with the registration standards; however, should any one non-compliance place a child in danger of harm, revocation will be immediate. Where a warning of non-compliance is issued, the provider shall be given 30 days to correct the area of non-compliance; or

(B) the provider has made any misrepresentations to the department, either negligent or intentional, regarding any information requested on the application form or necessary for licensing purposes; or

(C) the provider or a member of the provider's household has been named as the perpetrator in a substantiated report of abuse or neglect.

Subsections (1)(f) through (1)(n) remain the same.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-508 MCA

46.5.922 DAY CARE CENTERS, STAFFING REQUIREMENTS (1) Child/staff ratio.

(a) 4:1 for infants 0-2 years~~,~~, and for developmentally disabled or physically handicapped children when more than 25% of the total population are developmentally disabled or physically handicapped children.

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

(4) The provider must assure that members of the staff are in good physical and mental health.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504, 53-4-506, 53-4-508 MCA

46.5.924 GROUP DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care provider's absence must be at least 18 years of age~~.~~ and must be in good mental and physical health.

(2) The applicant for licensure shall be required to complete the application form provided by the department, which shall include questions regarding whether the applicant or other member living in the household has received inpatient or outpatient treatment for mental illness, drug or alcohol abuse or whether the applicant or any member of the household has been involved in an incident of child abuse or neglect in the past.

(~~2~~3) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children within a group day care home.

(~~3~~4) The provider shall have experience in the care and supervision of children.

(~~4~~5) Family relatives in the day care home shall assure a safe and stable environment for the child.

(~~5~~6) Personal information about the child or his family must be kept confidential.

(~~6~~7) The provider shall attend a basic day care orientation or its equivalent within the first 60 days of certification.

(~~7~~8) It is strongly recommended that the provider have training in cardio-pulmonary resuscitation or multi-media first aid and be familiar with standard Red Cross first aid procedure.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

46.5.938 FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care provider's absence must be at least 18 years of age, and must be in good mental and physical health.

(2) The applicant for licensure shall be required to complete the application form provided by the department, which shall include questions regarding whether the applicant or other member living in the household has received inpatient or outpatient treatment for mental illness, drug or alcohol abuse or whether the applicant or any member of the household has been involved in an incident of child abuse or neglect in the past.

(~~2~~3) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children within a family day care home.

(~~3~~4) The provider shall have experience in the care and supervision of children.

(~~4~~5) Family relatives in the day care home shall assure a safe and stable environment for the child.

(~~5~~6) Personal information about the child or his family must be kept confidential.

(~~6~~7) It is strongly recommended that the provider have training in cardio-pulmonary resuscitation or multi-media first aid and be familiar with standard Red Cross first aid procedure.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

3. This rule is being amended to clearly specify that persons with a history of child abuse or mental or physical illness will not be registered as day care providers. This is necessary to provide adequate protection of Montana children in day care.

The rule also increases the level of staffing when the day care program serves a large percentage of developmentally disabled or physically handicapped children since such children usually require more supervision and attention.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 24, 1985.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1984.

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

| | | |
|---|---|---|
| In the matter of the amendment of Rule 46.12.3002 pertaining to determination of eligibility for medical assistance | ) ) ) ) | NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.3002 PERTAINING TO MEDICAL ASSISTANCE |

TO: All Interested Persons

1. On January 17, 1985, at 9:30 a.m., a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rule 46.12.3002 pertaining to determination of eligibility for medical assistance.

2. The rule as proposed to be amended provides as follows:

46.12.3002 DETERMINATION OF ELIGIBILITY Subsections (1) through (4)(a)(i) remain the same.

(b) For prospective coverage, eligibility is granted for ~~any full~~ the month provided the individual met all the eligibility ~~conditions at any time during that month~~ criteria the first moment of the first day of the month, except that:

Subsections (4)(b)(i) through (4)(c)(i) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-132 and 53-6-133 MCA

3. The Department is mandated to follow the eligibility guidelines as set forth by the Social Security Administration for the Supplemental Security Income (SSI) program. The regulations for the SSI program charge the Department to look at the first moment of the first day of the month for eligibility determination. The proposed rule change would bring the Department's rule in line with the SSI regulation.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 25, 1985.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State 12-11, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

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| In the matter of the amendment of 8.22.801 concerning general requirements. | ) ) ) | NOTICE OF AMENDMENT OF 8.22.801 GENERAL REQUIREMENTS |

TO: All Interested Persons:

1. On November 15, 1984, the Board of Horse Racing published a notice of amendment of the above-stated rule at pages 1601, 1984 Montana Administrative Register, issue number 21.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE HARD-ROCK MINING IMPACT BOARD

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| In the matter of the amendments of 8.104.203 concerning format of impact plans, 8.104.204 concerning notification and submission of a plan, 8.104.205 concerning proof of submission of plans, 8.104.210 concerning ex parte communications with board members and staff, and adoption of a new rule concerning objections filed during 30-day extension of a review period. | ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT OF 8.104.203 FORMAT OF PLAN, 8.104.204 NOTIFICATION AND SUBMISSION OF PLAN, 8.104.205 PROOF OF SUBMISSION OF PLAN TO AFFECTED COUNTIES, 8.104.210 EX PARTE COMMUNICATIONS WITH BOARD MEMBERS, and ADOPTION OF A NEW RULE 8.104.208A FILING OF OBJECTIONS DURING EXTENSION PERIOD |

TO: All Interested Persons:

1. On November 15, 1984, the Hard-Rock Mining Impact Board published a notice of amendments and adoption of the above-stated rules at pages 1602 through 1605, 1984 Montana Administrative Register, issue number 21.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: _____
ROBERT WOOD, ATTORNEY

Certified to the Secretary of State, December 17, 1984.

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

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|---|---|
| In the matter of the repeal of Rules 36.7.101 through 36.7.803 and the adoption of rules pertaining to administration of the Montana Major Facility Siting Act, long-range plans, waivers, notice of intent to file an application, application requirements, decision standards, centerlines, amendments, and monitoring. | NOTICE OF REPEAL OF RULES 36.7.101 THROUGH 36.7.803 AND THE ADOPTION OF RULES PERTAINING TO ADMINISTRATION OF THE MONTANA MAJOR FACILITY SITING ACT, LONG-RANGE PLANS, WAIVERS, NOTICE OF INTENT TO FILE AN APPLICATION, APPLICATION REQUIREMENTS, DECISION STANDARDS, CENTERLINES, AMENDMENTS, AND MONITORING--36.7.1501 - 36.7.5502. |

TO: All Interested Persons

(1) On September 13, 1984, the Board published notice of public hearings to consider the repeal of Rules 36.7.101 through 36.7.803 and the adoption of rules pertaining to administration of the Montana Major Facility Siting Act, long-range plans, waivers, notice of intent to file an application, application requirements, decision standards, centerlines, amendments, and monitoring. Public hearings were held on October 9, 11, and 16, 1984, and comments were accepted until October 19, 1984.

(2) The Board repealed Rules 36.7.101 through 36.7.803 and adopted Rules I through CXXVII except for the following which are listed with changes, and except for Rules CVII and CVIII which were not adopted:

RULE I 36.7.1501 DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) same as proposed.

(2) "Alternative technological component" means ~~any~~ a reasonable alternate design for a process area or component of an energy generation or conversion facility, including, but not limited to, cooling systems, fuel handling or transport systems, pollution control systems, coal combustion, and heat transfer systems.

(3) "Alternative transmission technology" means ~~any~~ a reasonable alternate design for a transmission facility including, but not limited to, underground construction, alternative voltage or conductor sizes, direct current transmission, and alternative circuit design or deployment.

(4) through (7) same as proposed.

(8) "Area of concern" means a geographic area or location specified in ARM 36.7.2505, ~~and Rule~~ ARM 36.7.2534, and ARM

36.7.2535 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) through (14) same as proposed.

(15) "Centerline" means: a location for a linear facility within an approved route accurately depicted to within 250 feet unless otherwise specified by the board by a line one millimeter or less in width drawn on a 1:24,000 map, and which may or may not be surveyed.

(a) "Alternative centerline" means ~~a nonsurveyed possible location for a linear facility which is determined following the granting of a certificate for the approved route~~ one of the alternative locations potentially suitable for construction of a linear facility that the applicant or the department has selected after study of the approved route described in the certificate and that has been depicted on overlays to the base map described in ARM 36.7.4003(1) ;

(b) "Approved centerline" means the precise location for a linear facility that is approved by the board ~~and accurately depicted to within 250 feet, unless otherwise specified, in the certificate on the map described in ARM 36.7.4006(3)~~ ;

(c) "Preferred centerline" means the applicant's desired location for a linear facility as depicted on overlays to the base map described in ARM 36.7.4003(1) after study of the approved route and the centerline for which board approval is sought.

(16) same as proposed.

(17) "Certificate holder" means an applicant that has been granted a certificate or an approved transfer by the board.

(18) through (19)(a) same as proposed.

(b) "Study corridor" means a geographical area of variable width within the study area that is potentially suitable for siting a linear facility as determined by the reconnaissance and that contains one or more ~~study~~ routes.

(20) and (21) same as proposed.

(22) "Demand" means the quantity of energy that customers would be willing to purchase in a specific time period ~~under given assumptions about the price of the energy and other economic factors~~.

(23) through (26) same as proposed.

(27) "End-use" means the ultimate use of energy ~~including, but not limited to,~~ such ~~categories~~ as space heating, water heating, electric motors, and process heat.

(28) through (33) same as proposed.

(34) "Impact zone" means the ~~geographic~~ study area ~~associated with a facility or associated facilities that would likely be affected by its~~ in which data is collected during

the baseline study in order to make a determination of the impacts from construction, operation, maintenance or decommissioning of a proposed facility or associated facility at the preferred and reasonable alternative locations.

(35) same as proposed.

(36) "Interruptible load" means a ~~capacity~~ load that by contract can may be interrupted in the event of a capacity deficiency on the supplying system ~~by a utility under contractual arrangement with a customer~~.

(37) through (49) same as proposed.

(50) "Paralleling" means locating a proposed linear facility ~~generally within the corridor established by~~ directly adjacent to or overlapping the right-of-way of an existing linear utility, transportation or communication facility.

(51) "Peak demand" means the maximum ~~instantaneous~~ 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, ~~under given assumptions about price and other economic variables~~.

(52) through (53) same as proposed.

(54) "Road" means a way or course that is constructed or formed by substantial recontouring of land, clearing, or other action designed to be permanent or intended to permit passage by most four-wheeled vehicles for a significant period of time.

(55) "Route" means a preliminary location for a linear facility accurately depicted to within 0.1 mile as specified by a line one millimeter or less in width drawn on a 1:24,000 ~~topographic~~ map ~~which is a strip of land approximately 80 feet wide~~.

(a) "Alternative route" means one of the alternative locations potentially suitable for the construction of a linear facility that the applicant has selected for baseline study and has depicted on the base map described in ARM 36.7.2543(2).

(b) "Approved route" means a linear strip of land of a width specified by the board on the map described in ARM 36.7.4001 that contains one or more alternative centerlines for a linear facility.

(c) "Preferred route" means the applicant's preferred location for a linear facility and the route for which a certificate is sought as depicted by the applicant on the base map described in ARM 36.7.2543(2).

~~(d) "Study route" means a preliminary location for a linear facility considered by the applicant within a study corridor.~~

(56) same as proposed.

(57) "Sensitive area" means a geographic area or location specified in ARM 36.7.2504, ~~and Rule~~ ARM 36.7.2533, and ARM 36.7.2535 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.

(58) "Service area utility" means a utility with a legally protected service area or body of customers for whom it has a conventional utility mandate to serve all loads or wholesale energy suppliers with requirements contracts, participation agreements, or similar arrangements with such utilities for the energy form to be produced by a proposed facility. This includes, but is not limited to, investor-owned utilities, rural electric cooperatives, municipal ~~electric~~ energy utilities and public utility districts, and ~~wholesale electricity suppliers with requirements contracts, participation agreements, or similar arrangements with these groups~~ generating and transmission cooperatives.

(59) through (63) same as proposed.

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

RULE VI 36.7.1603 SERVICE AREA UTILITIES, FORECASTED ENERGY DEMAND AND SUPPLY For a service area utility with a service area in Montana or a service area utility that is contemplating construction of a facility as defined by 75-20-104(10)(a), MCA, a long-range plan must include forecasted annual energy demand data and projected energy resources for each of the ensuing ~~20~~ 10 years beginning with the present year for each state in its service area. Should completion of a facility be scheduled to occur beyond this forecast period, the forecast period should be extended to include the time necessary for completion of the facility. Demand must be shown for each sector of demand as defined in ARM 36.7.1501. A long-range plan must include the following:

(1) and (2) same as proposed.

(3) Estimated costs of the planned facilities and a general discussion of their accuracy; and

(4) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-501, MCA

RULE VII 36.7.1604 SERVICE AREA UTILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE AND SALE AGREEMENTS (1) A long-range plan for a service area utility must include either a copy of any and all contracts with regional power marketing agencies, and each pooling, interconnection, and firm exchange, purchase ~~and~~ or sale agreement to which the

utility is a party, or the following information for each such agreement:

(a) through (e) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-501, MCA

RULE VIII 36.7.1605 SERVICE AREA UTILITIES, NEGOTIATIONS OVER RESOURCE ACQUISITION OR SALE, POOLING, INTERCONNECTION, TRANSMISSION, EXCHANGE, PURCHASE OR SALE OF ENERGY For a service area utility a long-range plan must include a description of all current and planned negotiations with respect to acquisition or sale of resources, pooling, interconnection, transmission, and firm exchange, purchase or sale 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: 75-20-501, MCA

RULE IX 36.7.1606 ~~PERSONS OTHER THAN SERVICE AREA UTILITIES; PROJECTED DEMAND~~ COMPETITIVE UTILITIES AND NONUTILITIES, PROJECTED DEMAND A long-range plan from ~~persons other than service area~~ competitive utilities and nonutilities contemplating construction of a facility as defined in 75-20-104(10), MCA, must include:

(1) through (3) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-501, MCA

RULE XIII 36.7.1804 CONTENTS OF NOTICE OF REQUEST FOR WAIVER PURSUANT TO 75-20-304(2), MCA For a waiver to replace or relocate a facility or associated facility that has been damaged or destroyed as described in 75-20-304(2), MCA, the notice of request for waiver must contain the following information~~:~~. ~~This rule does not, however, apply to emergency repairs to a facility or associated facility.~~

(1) through (5) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-304(2), MCA

RULE XV 36.7.1806 BOARD ACTION ON REQUEST FOR WAIVER

(1) and (2) same as approved.

~~(a) This rule does not apply to emergency repairs of a facility or associated facility.~~

AUTH: 75-20-105, MCA IMP: 75-20-304, MCA

RULE XVI 36.7.1807 CONTENT OF AN APPLICATION FOLLOWING RECEIPT OF WAIVER PURSUANT TO 75-20-304(3), MCA (1) An application for a facility which has been granted a waiver

pursuant to 75-20-304(3), MCA, must contain applicable information required by ARM 36.7.2511, ARM 36.7.2512, ARM 36.7.2514, and ARM 36.7.2515 for the preferred site only.

(2) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, 75-20-304(3) and 75-20-503, MCA

RULE XVIII 36.7.1902 CONTENT OF NOTICE OF INTENT In addition to the information required by 75-20-214, MCA, the notice of intent for a facility must contain the study plans, scopes of work, and study methods that have been or will be used to gather the information required by the following rules:

(1) and (2) same as adopted.

(3) ARM 36.7.2401 - ~~LXII~~ ARM 36.7.2417; and

(4) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-214, MCA

RULE XXII 36.7.2102 APPLICATION, NUMBER OF COPIES (1) The applicant shall submit 20 copies of the application at the time of filing to the department, capitol station, Helena, Montana 59620, and eight copies to the department of health, capitol station, Helena, Montana, 59620. The applicant may submit fewer copies, especially of maps, map overlays, exhibits, appendices, or attachments as defined in ARM 36.7.2103(3)(h) and (i), upon prior written approval from the department. For the contact prints providing ~~stereo~~ photographic coverage, required by ARM 36.7.2514(5) and ARM 36.7.2543(4), ~~two copies are~~ one copy is sufficient. The applicant shall promptly furnish one additional copy if requested by the department.

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

RULE XXIV 36.7.2104 ~~DOCUMENTATION OF INFORMATION SOURCES~~ DOCUMENTATION OF INFORMATION SOURCES AND OMISSION OF CERTAIN INFORMATION REQUIREMENTS (1) An application must contain a list of sources of ~~all~~ information used in preparing the application. An application must specify when ~~all~~ field investigations were conducted.

(2) An application should include only information relevant to the facility. The application requirements in these rules address a comprehensive range of issues for the wide range of facilities covered by the Act. The applicability or relevance of the requirements to a particular facility are dependent on its type, its design, how its output will be marketed, its size or length, and on the characteristics and complexity of the geographic area(s) where the facility may be located. An application shall contain the

information required by ARM 36.7.1902 - ARM 36.7.3913 unless specific provisions for submitting less information are contained in the rule, or unless the department gives written permission prior to filing the application to omit certain information. Unless a rule provides differently, an applicant desiring to omit information it considers irrelevant to the project shall submit to the department a written request to make the omission, along with documentation justifying its request. The department shall review the applicant's request and shall make a written determination of whether the information may be omitted. If there is a substantial cost to the department to verify the applicant's justification, the applicant shall contract with the department and reimburse it for expenses incurred pursuant to 75-20-106, MCA.

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

RULE XXIX 36.7.2109 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) As used herein, engineering costs include all direct costs related to planning, design, permitting, quality control, and land acquisition. Construction costs include costs related to site or route preparation, erection and assembly, and commissioning costs. Cost estimates must be itemized into relevant categories as follows unless other categories are agreed to by the department:

(a) engineering and overhead costs~~;~~ ~~itemized by the following:~~

~~(i) architecture and engineering;~~

~~(ii) other technical support;~~

~~(iii) management and administration;~~

~~(iv) permitting;~~

~~(v) quality control; and~~

~~(vi) other;~~

(b) land acquisition costs~~;~~, and ~~(c)~~ site or right of way preparation costs;

~~(d)~~ (c) plant costs, itemized by major process area and by major equipment. For propietary processes itemization by major process area is sufficient for the application;

~~(e)~~ (d) costs of transportation links;

~~(f)~~ (e) mitigation costs;

~~(g) contingency costs;~~

~~(h)~~ (f) front end royalty payments;

~~(i)~~ (g) initial ~~loadings~~ inventories of coal, chemicals or materials;

~~(j)~~ (h) startup expenses~~;~~ and ~~(k)~~ working capital; and

~~(l)~~ (i) any other costs necessary and incidental to the construction of the facility and preparation for initial operation.

(3) through (5) same as proposed.

(6) All costs must be estimated by instantaneous total cost of construction escalated to the date of the projected start of construction. ~~The total cost of construction~~ Escalated costs as of the projected start of construction must then be adjusted to the construction expenditure schedule based on percentages of total cost incurred in each period and escalated to the date of incurrence. Cost escalation must be based on the most appropriate Handy Whitman or other industry recognized and department approved construction cost index.

(7) The department may request additional detail on costs as necessary for comparison of alternatives.

AUTH: 75-20-105, MCA IMP: 75-20-215, MCA

RULE XXX 36.7.2110 ENERGY GENERATION AND CONVERSION FACILITIES, ESTIMATED COST OF ENERGY OR PRODUCT For purposes of comparing the proposed facility with alternatives, as required by 75-20-301(2)(c), MCA, a detailed analysis of the cost of energy or product from the facility must be presented in an application for an energy generation or conversion facility. This requires detail on the capital and operating costs and operational characteristics of the facility.

(1) and (1)(a) same as proposed.

(b) Information must be provided about the likely methods of financing the facility. ~~Financing plans must be submitted, including information on the~~ The likely debt equity ratio and projected interest rate for the debt must be submitted. Interest during construction on borrowed funds and accounting allowances for internally generated funds used during construction must be compounded throughout the construction schedule and capitalized in the cumulative facility cost up to the date of full operation.

(1)(b)(i) through (4)(d) same as proposed.

(e) expected, or planned, operating levels over the course of the year~~,~~; ~~and~~

(5) through (7) same as proposed.

(8) Expected net output during full operation shall not exclude output lost during downtime discussed in ~~6~~ 4(d).

(9) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-215, MCA

RULE XXXI 36.7.2113 LINEAR FACILITIES, ESTIMATED ANNUAL COSTS An application for a linear facility must contain a detailed analysis of the annual costs of the facility for purposes of comparing the facility with alternatives, as required by 75-20-301(2)(c), MCA, including detail on the capital and operating costs and operational characteristics of the facility.

(1) same as proposed.

(2) An application must contain information about the likely methods of financing construction of the facility. For facilities taking longer than one year to construct, allowance for funds used during construction must be added to the escalated construction costs to calculate the capital costs as of the date the facility is placed in ~~service~~ commercial operation.

(3) and (4) same as proposed.

(a) Annual costs must be disaggregated by relevant categories, including, but not limited to, amortization, depreciation, taxes, insurance, interim replacements, any other capital-related annual costs, operational labor costs, operational material costs, pumping costs, water costs, waste disposal costs, and maintenance costs~~, and levelized decommissioning costs~~. Assistance shall be specified. All assumptions used in estimating the costs must be explained.

(5) An application must contain a description of design capacity and expected operational characteristics of the facility~~, including the following information~~.

~~(a) design capacity;~~

~~(b) expected amount and timing of scheduled partial or total downtime for maintenance, rebuilding, or other purposes;~~

~~(c) estimated amount of unscheduled downtime based on historical data associated with similar facilities considering type, size, and location or based on probabilistic failure analyses; and~~

~~(d) expected or planned monthly operating levels.~~

(6) through (10) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-215, MCA

RULE XXXII 36.7.2114 ALL FACILITIES, SERVICE AREA UTILITIES, COPIES OF CONTRACTS FOR PURCHASE OF MATERIALS OR SALE OF ENERGY FROM THE PROPOSED FACILITY (1) An application must contain copies of any contracts covering periods longer than one year to which the applicant is a party for the purchase of equipment, fuel and/or water for the facility or for the sale of the facility's product or transportation services, or the following information for each such agreement:

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

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

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

(d) the amount to be purchased or sold and the rate and timing of delivery under the agreement; and

(e) the financial agreements.

For confidential treatment of contracts, see ARM 36.7.1502.

(2) If at any time after the date of the application but before receiving a certificate an applicant enters into any such contract, the applicant shall ~~immediately~~ within 30 days supply a copy of the contract or the information required by 1(a)-(e) to the department.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-215, MCA

RULE XXXIII 36.7.2115 ALL FACILITIES, PRICING POLICY An application 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

RULE XXXIV 36.7.2116 ALL FACILITIES, EVALUATION OF ECONOMIC COSTS AND BENEFITS To facilitate a comparison of the project and alternatives for the board's finding under 75-20-301(2)(c), MCA, an application must include information on the internal and external costs and benefits of the proposed facility.

(1) same as proposed.

(2) For external costs the information provided under ARM 36.7.2515 and ARM 36.7.2544 or ARM 36.7.2545 is sufficient.

(3) same as proposed.

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

RULE XXXVI 36.7.2202 GENERATION AND CONVERSION FACILITIES, RESOURCE FORECAST (1) An application from a service area utility must contain a resource forecast showing the existing and permitted resources and energy conservation which can be used to serve loads in the applicant's service area for the twenty-year period following the date of application for the proposed facility. Should the twenty year forecast period extend well beyond the scheduled completion date of the facility, the department may approve the applicant's use of a shorter forecast period. The resource

forecast must specify the following:

(1)(a) through (3) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XXXVIII 36.7.2204 GENERATION AND CONVERSION FACILITIES, DATA REQUIREMENTS FOR ENERGY AND PEAK DEMAND An application from a service area utility must contain demand data for the service area where the energy produced by the proposed facility would be marketed. Should the twenty year forecast period in (1) and (2) extend well beyond the scheduled completion date of the facility, the department may approve the applicant's use of a shorter forecast period.

(1) through (2)(c) same as proposed.

(d) The degree of uncertainty in the forecast assumptions must be explicitly indicated by providing a ~~reasonable~~ range of forecast scenarios including a most likely forecast and high and low forecasts and probabilities associated with each scenario using alternate sets of assumptions or by other methods agreed to by the department.

(2)(a) through (6)(a) same as proposed.

(b) An explanation ~~Explanation~~ of the terms of ownership ~~or sets of power from the facility and contracts~~ shall be provided.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XXXIX 36.7.2205 GENERATION AND CONVERSION FACILITIES, ASSESSMENT OF THE ROLE OF THE PROPOSED FACILITY IN MEETING ENERGY NEEDS An application from a service area utility must contain an assessment of the role of the proposed facility in meeting energy needs during its projected life, including the following:

(1) through (4) same as proposed.

(5) ~~A description~~ The relationship of all facilities, other resources, energy conservation and major energy purchases existing or planned by the applicant for the 20-year period following the date of application, ~~their relationship~~ to the proposed facility, and an explanation of why the planned facilities are being built or the planned purchases are being made in the order planned.

~~(a) Data must be provided on the existing and projected peak resources and average resources under average conditions and under worst case planning criteria if applicable.~~

(6) through (6)(b) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XL 36.7.2206 GENERATION AND CONVERSION FACILITIES, UNCERTAINTY ANALYSIS

(1) through (1)(c) same as proposed.

(d) the likely markets for sale of any temporary surplus energy or capacity ~~the output of the proposed facility in the event that~~ the applicant may have ~~has a surplus of energy~~ after the facility is placed in commercial operation ~~service~~;

(1)(e) and (1)(f) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLIV 36.7.2210 GENERATION AND CONVERSION FACILITIES, ENERGY CONSERVATION PROGRAMS An application from a service area utility must contain a general explanation of the applicant's efforts over the last 5 years, and current and planned efforts, to promote energy conservation. An application must ~~compare and contrast these energy conservation programs with~~ also evaluate the effect of any state, regional, and national energy conservation programs on future loads in the applicant's service area.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLV 36.7.2211 GENERATION AND CONVERSION FACILITIES, CATEGORIES FOR REPORTING CUSTOMER END-USE DATA (1) An application from a service area utility must provide demand data by end use for the most recent year prior to application for ~~end-uses which~~ the product ~~of~~ supplied by the proposed facility ~~could supply~~. Wholesale suppliers must provide this information for their contract customers. This information is required to provide a data base for the analysis of energy conservation and renewable energy alternatives in an applicant's service area. An applicant having difficulty obtaining any of this information should contact the department to reach agreement on the information to be provided.

(1)(a) through (3) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLVII 36.7.2213 ELECTRIC TRANSMISSION LINES, TRANSIENT STABILITY CONSIDERATIONS For electric transmission lines where transient stability considerations are a basis of need, an application must contain the following information:

(1) An explanation of the normal or contingent operating conditions, under which a transient stability problem exists, identification of the criteria used to determine these conditions, and an explanation of the rationale for their use. ~~Criteria for steady-state conditions include, but are not limited to, a single line outage during heavy winter or~~

~~summer peak loads. Criteria for outage conditions include, but are not limited to, one line out on maintenance and another tripping on fault~~; and

(2) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLVIII 36.7.2214 ELECTRIC TRANSMISSION LINES, POWER TRANSFER CAPACITY, VOLTAGE DROP For electric transmission lines where power transfer capacity or voltage drop is a basis of need, the application must contain an explanation of the problem situation including the following information:

(1) through (4) same as proposed.

(5) A minimum of ~~four~~ three load flow studies. The load flow studies must clearly indicate any assumptions made, including any relevant input data, and must include a single line diagram showing megawatts and ~~megavolt amp reactance~~ megavar loads and flows and voltage levels for each study. The studies must include the following unless otherwise approved by the department:

(5)(a) through (6)(a) same as proposed.

(b) if additional block loads equal to 10 percent or more of a given substation load are anticipated, a list of the total connected load and the after-diversity-maximum demand for each additional load. ~~The ratio of the after-diversity-maximum to total connected load for the anticipated additional load must be compared to the same ratio for similar existing customers to establish the validity of the after-diversity load estimate~~;

(6)(c) and (6)(d) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE IL 36.7.2215 ELECTRIC TRANSMISSION LINES, RELIABILITY OF SERVICE For electric transmission lines where reliability of service is a basis of need, an application must contain the following:

(1) same as proposed.

(2) A description of the planning assumptions and rules by which the applicant attempts to maintain its desired level of generation and transmission reliability, and an explanation of the rationale for the selection of the desired level of reliability ~~and the following information:~~ To the extent this information has been provided in ARM 36.7.2207 it need not be duplicated here.

~~(a)~~ (3) To the extent available 10 years historical line outage data in the area to be served by the proposed facility including the duration, location, and cause of the outage, the load lost, and the number and type of customers affected, if known~~;~~.

~~(b) a list of the types of customers in the area to be served or reinforced by the proposed facility that would be affected in the event of an outage on the existing transmission system, including identification of customers with special reliability requirements, and an indication of whether they have backup emergency generation.~~

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE I 36.7.2216 ELECTRIC TRANSMISSION LINES, ECONOMY CONSIDERATIONS For electric transmission lines where economy considerations are a basis of need, an application must contain the following, as relevant:

(1) same as proposed.

(2) An analysis of markets and prices for surplus energy or of the need for and alternative sources of firm energy to be transmitted over the proposed line;

(3) through (7) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LII 36.7.2218 ALL FACILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE, AND SALE AGREEMENTS An application from an electric utility must contain the information listed in ARM 36.7.1604 and ARM 36.7.1605 that is relevant to the proposed facility.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LVI 36.7.2401 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES

(1) same as proposed.

(2) An application must contain an evaluation of each alternative energy resource, energy conservation, or alternative energy technology that can ~~individually or collectively~~ produce or save at least one megawatt or one percent 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.

(2)(a) through (6) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LVII 36.7.2402 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 36.7.2401, 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) same as proposed.

(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 ~~50~~ 35 percent 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:

(2)(a) and (2)(a)(i) same as proposed.

~~(iii) financeability;~~

~~(iiii) conversion efficiency;~~

~~(iv)~~ (ii) the estimated on-line life of the alternative and the projected capacity factor during the on-line life of the alternative;

~~(v)~~ (iii) ~~reliability and~~ impact on reserve requirements;

~~(vi)~~ (iv) availability;

~~(vii)~~ (v) planning flexibility and resource commitment;

~~(viii)~~ (vi) operating flexibility; and

~~(ix)~~ (vii) amount of demand that can be provided for by the alternative;

~~(x)~~ (viii) constraints to implementation;

(2)(b) through (2)(b)(iii) same as proposed.

(iv) potential contribution of the alternative to the firming of existing secondary resources; and

~~(iv)~~ (v) impact on need for future expansion of the transmission and distribution system;

(2)(c) through (2)(c)(ii) same as proposed.

(3) In comparing the no action alternative with the other alternatives, the costs of no action shall include, if relevant, the net losses to consumers who would be deprived of the output of the facility and would have to obtain the energy or product of the facility from other sources.

(4) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LVIII 36.7.2403 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVE LOAD-RESOURCE BALANCES

(1) same as proposed.

(a) Alternative load-resource balances shall be constructed by varying the order in which the proposed facility and alternatives, including conservation, are constructed or employed, with additional resources added as necessary to balance loads for ~~a period of 20 years~~ the forecast period used in ARM 36.7.2202 and ARM 36.7.2204.

(1)(b) same as proposed.

(2) The alternative load-resource balances shall be evaluated by calculating the net present value of all costs for each alternative. Expected net present values for each alternative load-resource balance shall be calculated by ~~a probability~~ weighting ~~of~~ the ~~results across~~ alternative load growth scenarios by their associated probabilities, or by other methods agreed to by the department.

(a) The evaluation must account for differences in costs beyond the ~~20-year~~ analysis period, reflecting differences in the remaining useful life of the alternative resources.

(2)(b) and (2)(c) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LIX 36.7.2404 COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (1) An application must contain a discussion of reasonable alternative sources of fuel, alternate fuels and alternative energy technologies to produce the same output as that of the proposed facility and an explanation of the rationale for the selection of the proposed technology. Alternative energy technologies include, but are not limited to, alternative combustion technologies, alternative coal conversion technologies, combustion turbines, alternative boiler designs, cogeneration, and alternative uses of waste heat. Published tradeoff studies, if utilized in the selection process, may be cited by reference.

(2) same as proposed.

(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 costs 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 36.7.2525 (8) ~~and 2046(8)~~ and (9). 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.

(4) An application must contain an evaluation of alternate sized facilities of the same type as the proposed facility and alternate timing of such facilities.

(5) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LX 36.7.2405 COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY

(1) through (2)(a)(i) same as proposed.

~~(ii) financeability;~~

~~(iii)~~ (ii) the estimated on-line life of the alternative and the projected output levels, availability and capacity factor during the on-line life of the alternative;

~~(iv)~~ (iii) reliability;

~~(v)~~ (iv) conversion efficiency;

~~(vi)~~ (v) planning flexibility and resource commitment; and

~~(vii)~~ (vi) constraints to implementation.

(2)(b) through (2)(b)(ii) same as proposed.

(3) In comparing the no action alternative with the other alternatives, the costs of no action shall include, if relevant, the net losses to consumers who would be deprived of the output of the facility and would have to obtain the energy or product of the facility from other sources.

(4) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXI 36.7.2410 SERVICE AREA UTILITIES, ELECTRIC TRANSMISSION LINES, EVALUATION OF ALTERNATIVES An application must contain an evaluation of the nature and economics of relevant alternatives to the proposed facility, which could in whole or in part address the problem or opportunity as described in ARM 36.7.2212 that the proposed facility is designed to address, including transmission alternatives, alternative energy resources, alternative transmission technologies, alternative levels of reliability and nonconstruction alternatives. The no action alternative must be evaluated. The evaluation must also include a comparison of alternatives leading to the selection of a preferred alternative and an explanation of the reasons for the selection of the proposed facility.

(1) An application for an electric transmission line must include an evaluation of transmission alternatives, including alternative end points and intermediate substation locations for the transmission line and upgrading or replacing an existing facility that would serve to provide the needed reinforcement that would be provided by the proposed

facility. An application must also evaluate alternative timing of other electric transmission lines planned by the applicant, including those identified in the long-range plan filed with the department under ARM 36.7.1602 or in other planning documents, which in whole or in part would address the problem situation or opportunity or provide the needed reinforcement that would be provided by the proposed facility. For each transmission alternative, a minimum of ~~four~~ three load flow studies must be provided, as required by ARM 36.7.2014(5).

(2) through (4) same as proposed.

(5) Nonconstruction ~~nonconstruction~~ alternatives include the use of curtailable and interruptible load contracts with customers and load management. ~~Evaluation should be made of the cost and feasibility of direct payments for increased interruptibility or load management.~~

(6) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXII 36.7.2411 SERVICE AREA UTILITIES, ELECTRIC TRANSMISSION LINES, CRITERIA FOR EVALUATION OF ALTERNATIVES

(1) same as proposed.

(a) An application must include a detailed description of the methods and criteria used by the applicant to select a facility which best addresses the problem or opportunity situations identified as the basis of need (see ARM 36.7.2212) ~~at the lowest overall cost~~ given consideration of economics, engineering, and environmental concerns.

(2) In addition to the applicant's criteria for comparison, an application must include a ranking of all relevant alternatives which have no insurmountable environmental, technical or other problems serious enough to warrant elimination from further consideration, by levelized annual cost, including known mitigation costs. Alternatives whose levelized annual cost is not more than ~~50~~ 35 percent higher than the proposed facility or 25 percent higher when the proposed facility is a transmission line 230 kv or higher and at least 30 miles long, or which have significant environmental advantages over the proposed facility, must then be compared based on performance, system impact, and environmental impact as follows:

(2)(a) and (2)(a)(i) same as proposed.

~~(ii) financeability;~~

~~(iii)~~ (ii) reliability;

~~(iv)~~ (iii) duration of the solution; length of time before additional reinforcement is needed; and

~~(v)~~ (iv) constraints to implementation.

(2)(b) through (4) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXIII 36.7.2417 PIPELINE FACILITIES, EVALUATION OF ALTERNATIVES 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, and 75-20-503, MCA

RULE LXIV 36.7.2501 ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY An application for an energy generation or conversion facility must contain an alternative siting study and baseline environmental data as specified in ARM 36.7.2501-ARM 36.7.2517. These requirements apply specifically to fossil-fueled facilities and other facilities that utilize similar transportable energy resources. An alternative siting study and equivalent environmental baseline data is required for all energy generation or conversion facilities defined by 75-20-104(10), MCA. Applicants for energy generation or conversion facilities that employ nontransportable energy resources must consult with the department concerning the alternative siting study and baseline data requirements.

(1) through (3) same as proposed.

~~(4) An application should include only information that is relevant to evaluation of the impacts of and alternative locations for the facility. If any of the information required by RULE LXIV-LXXX or 75-20-503, MCA is not included, an application must contain a discussion of the rationale behind omitting them.~~

(4) 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 ARM 36.7.2501 - ARM 36.7.2517 but shall be subject to supplementation and shall be used by the department only to the extent it considers them applicable.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXV 36.7.2502 ENERGY GENERATION AND CONVERSION FACILITIES, PREFERRED SITE CRITERIA. Preferred site(s) conform to the criteria listed in 75-20-301(2)(i) and 304(3)(a), MCA and ~~are~~ achieve the best balance among the following by being located:

(1) and (2) same as proposed.

(3) Where there is probable general community acceptance and cooperative participation in the siting of the facility;

(4) through (11) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXVII 36.7.2504 ENERGY GENERATION AND CONVERSION FACILITIES, SENSITIVE AREAS Facilities should not be sited in sensitive areas unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or that siting the facility in a sensitive area would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information concerning the locations of sensitive areas are divided among the reconnaissance, the inventory, and the baseline levels of the siting study. Any sensitive areas initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative sites, and in the assessment of impacts required by the baseline study if any of these areas are within the impact zone of an alternative site.

(1) through (1)(g) same as proposed.

(h) designated critical habitat for state or federally listed threatened or endangered species; and

(i) national historic landmarks, and national register historic districts and sites; ~~and~~.

~~(j) rivers and streams in the state recreational waterway system;~~

(2) through (2)(b) same as proposed.

~~(c) designated visually sensitive areas;~~

~~(d)~~ (c) unique habitats and natural areas; ~~including areas~~ designated by the national park service, the USDA forest service, the bureau of land management, or the state of Montana as national natural landmarks, natural areas, research natural areas, areas of critical environmental concern, special interest areas, research botanical areas, and outstanding natural areas;

~~(e)~~ (d) national register ~~eligible~~ historic districts and sites nominated to or designated by SHPO (state historic preservation office);

~~(f)~~ (e) national trails;

~~(g)~~ [f] municipal watersheds;

~~(h)~~ [g] designated one hundred year floodplains;

~~(i)~~ [h] military installations, including, but not limited to, military bases, command centers, missile silos, and radar towers;

~~(j)~~ [i] agricultural experiment stations; and

~~(k)~~ [j] streams and rivers designated class I and II by the Montana department of fish, wildlife and parks.

(3) through (3)(c) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXVIII 36.7.2505 ENERGY GENERATION AND CONVERSION FACILITIES, AREAS OF CONCERN Facilities should not be sited in areas of concern unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or that siting the facility in an area of concern would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information about the locations of areas of concern are divided among the reconnaissance, the inventory and the baseline levels of the siting study. Any areas of concern initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative sites, and in the assessment of impacts required by the baseline study if any of these areas is within the impact zone of an alternative site.

(1) through (2)(d) same as proposed.

(e) any undeveloped land or water areas that contain known natural features of unusual scientific, or educational ~~or recreational~~ significance, and any undeveloped land or water areas that contain known natural features of unusual recreational significance that have public access provided;

(2)(f) and (2)(g) same as proposed.

~~(h) rivers and streams under active study for inclusion in the state recreational waterway system; and~~

~~(i)~~ [h] proposed national natural landmarks under active study; and

[i] areas where the presence of the facility would be incompatible with published visual management plans adopted by federal, state, or local governments.

(3) through (3)(g) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXIX 36.7.2506 ENERGY GENERATION AND CONVERSION FACILITIES, DELINEATION OF THE STUDY AREA

(1) through (1)(f) same as proposed.

(2) An application must ~~contact~~ contain a map of the study area depicting the locations listed in (1).

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXX 36.7.2507 ENERGY GENERATION AND CONVERSION FACILITIES, ANALYSIS OF DELIVERED COST OF ENERGY IN THE STUDY AREA

(1) same as proposed.

(a) The estimated costs of supplying coal to the proposed facility located at ~~any~~ representative points in the study area, from the lowest cost coal source for ~~that~~ such points.

(b) The estimated costs of providing cooling water to the proposed facility located at ~~any~~ representative points in the study area, from the lowest cost water source for ~~that~~ such points.

(c) The estimated costs of constructing, operating and maintaining the proposed facility at ~~any~~ representative points in the study area, based on the differences, if any, in labor costs associated with distances to population centers, any differences in facility design required to comply with air quality requirements, and any other differences in facility design associated with different locations for the proposed facility.

(d) The estimated costs of transmitting or transporting the energy or product of the proposed facility from ~~any~~ representative points in the study area to the load or market areas described in ARM 36.7.2506(1)(a),(b), or (c), including the costs of construction of any necessary transmission or transportation links and the present value of any line losses and wheeling costs, through the minimum cost transmission arrangements associated with ~~any~~ representative points in the study area.

(1)(e) same as proposed.

(2) An application must contain a composite of the delivered levelized cost of energy from the facility located at ~~any~~ representative points in the study area, based on the costs required by (1)(a)-(e).

(3) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXIII 36.7.2510 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF CANDIDATE SITING AREAS (1) The applicant shall select at least three geographically distinct candidate siting areas of at least 10 miles in minimum radius

with boundaries that lie within an economically feasible siting area identified in ARM 36.7.2508(3) or shall select one candidate siting area of at least 30 miles in minimum radius with boundaries that lie within an economically feasible siting area identified in ARM 36.7.2508(3), based on consideration of the following:

(1)(a) through (1)(e) same as proposed.

~~(2) If only one candidate siting area is selected, based on (1), that area shall be at least 80 miles in radius and be located within an economically feasible siting area identified in Rule XXX(3).~~

~~(3)~~ (2) The applicant shall delineate the boundaries of the candidate siting areas with lines on the base map required by ARM 36.7.2509 that are accurate to within 0.5 mile (0.80 km). For portions of the study area located outside Montana, any candidate siting areas shall be delineated on the map required by ARM 36.7.2506.

~~(4)~~ (3) An application must contain an explanation of the methods used to select the candidate siting areas, an explanation of how the considerations listed in (1) were incorporated, and a discussion of the rationale behind selecting the areas.

~~(5)~~ (4) If any portion of an economically feasible siting area is located outside Montana, the applicant shall select at least one candidate siting area outside Montana. An applicant choosing candidate siting areas outside Montana must select at least two candidate siting areas within Montana.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXV 36.7.2512 ENERGY GENERATION AND CONVERSION FACILITIES, INVENTORY, ENVIRONMENTAL INFORMATION An application must contain the following environmental information for the geographic area within each candidate siting area.

(1) through (6)(h) same as proposed.

(7) An application must characterize the nature and magnitude of public concerns about the facility based on contacts with representative groups of persons residing in the candidate siting areas and any areas potentially affected by population increases resulting from construction and operation of the facility, and/or comments received at any scoping and other public meetings the applicant may hold, and comments from local service providers and public officials. The application must also identify alternatives to the proposed facility suggested by the public and must identify man-made and natural environmental features the public feels would be affected by the facility.

(8) through (8)(d) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXVIII 36.7.2515 ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application must contain baseline data and an assessment of the projected ~~cumulative~~ short and long-term changes and impacts that would result from construction, operation and maintenance of the facility and associated facilities for each alternative site and the impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must identify general and site-specific mitigation measures to reduce or eliminate these impacts. This information shall serve as a basis for evaluating and comparing alternative sites as required by ARM 36.7.2516 and selecting a preferred site as required by ARM 36.7.2517. Baseline data that require mapping shall be presented on the minimum number of overlays to the base map required by ARM 36.7.2514(2) that will clearly portray the information.

(1) through (1)(a) same as proposed.

(b) communication facilities, including television and radio towers, microwave facilities, and law enforcement and emergency network facilities; ~~and~~

(c) beehives and apiaries~~.~~; and

(i) Locations of beehives, apiaries, and leaf-cutter bee boards for the field season prior to submitting the application must also be identified within the vegetation impact zones defined by (14)~~.~~; and

(d) residential dwelling units occupied in the year prior to the application being submitted.

(2) through (4) same as proposed.

(5) An application must contain an assessment of public attitudes and concerns about the potential impacts of the facility that is based on representative views of persons residing within approximately a 50-mile radius of each alternative site. The assessment must also include summaries of correspondence and summaries of personal interviews, if they are conducted, and other information the applicant has collected that records the comments and concerns public officials, local residents and other individuals and groups have raised about the facility. Summaries of issues and concerns identified at public meetings the applicant may hold or the results of any surveys the applicant may conduct must also be included. The applicant must conduct at least one public meeting that is accessible to the residents of the impact zone. The assessment must address the following:

(5)(a) through (5)(d) same as proposed.

(6) An application must contain the following earth resource baseline data:

(6)(a) through (10)(d) same as proposed.

(e) a description and evaluation of the opportunities for and effectiveness of available topographic screening; ~~and~~

(6)(f) same as proposed.

(g) a description of the methods used to categorize and describe the impacts risk to potential viewers, as required by (a)-(f).

(11) through (13)(c)(vii) same as proposed.

(14) An application must contain the following baseline data concerning cropping patterns and natural vegetation for each alternative site and an impact zone that includes the water intake, storage and/or discharge points and structures, and a one-mile buffer zone surrounding these associated facilities, areas receiving cooling tower salt deposition greater than 10 lbs/acre/yr, areas receiving the highest 10th percentile of one-hour, three-hour, 24-hour, growing season and annual sulfur dioxide concentrations and any other pollutants as depicted on the overlays required by (13), and areas within a one-mile radius of high one-hour, three-hour, 24-hour, growing season and annual sulfur dioxide or other pollutant deposition~~.~~ To avoid delays in preparing an application that may arise from the sequential analysis required by (13) and (14), an application may contain baseline vegetation data collected from areas that existing meteorological or other data suggests will contain the impact zone defined in this section, provided that the applicant submits all additional information necessary to fully comply with the requirements of this section within six months of filing its application.

(14)(a) through (15)(d) same as proposed.

(e) waterfowl production areas owned or managed by state or federal wildlife agencies and areas with high waterfowl population densities including prime waterfowl habitat as designated by the Montana department of fish, wildlife and parks and any areas identified by the Montana department of fish, wildlife and parks or the US fish and wildlife service as waterfowl concentration areas; and

(15)(f) through (16)(c)(iv) same as proposed.

~~(v) existing and potential recreational or commercial use;~~

~~(vi)~~ (v) any existing conditions that limit abundance, including pollution, irrigation runoff, withdrawals or dewatering effects, upstream flow regulation or depletion, barriers to movement, and/or overharvest;

~~(vii)~~ (vi) habitat requirements, including minimum flow requirements and suitability of habitats within the impact zone;

~~(viii)~~ (vii) food requirements and preferred sources;

~~(ix)~~ (viii) distribution and abundances of life stages that may be susceptible or fatally affected by project-related disturbances.

(16)(d) through (17)(a) same as proposed.

(b) an evaluation of the anticipated impacts to each species or habitat listed in (a), including a description of biological impacts that would occur in the sensitive areas or areas of concern listed in ARM 36.7.2504(1)(a)-(e), (h), ~~(j),~~ (2)~~(d)~~(c), (i), and (j) ~~and (k)~~, (3)(a) and (c), and ARM 36.7.2505(1)(a), (2)(b)-(e), (h), and (3)(d)-(g);

(c) identification of areas, in consultation with the Montana department of fish, wildlife and parks, where hunting or fishing pressure is likely to increase significantly as a result of the project, and a description of any impacts to game species or any changes in hunting or fishing regulations that might result from the increase in hunting pressure;

(d) identification of areas, in consultation with the Montana department of fish, wildlife and parks, where wildlife populations would be adversely affected by increased human population density, increased traffic, increased human activity, or by displacement, and a description of significant impacts to wildlife species that likely would result from these habitat changes, including changes in size, distribution and reproduction of aquatic and terrestrial wildlife populations;

(e) identification of areas, in consultation with the Montana department of fish, wildlife and parks and department of health, where pollutants may enter a stream or watercourse as a result of failure of dikes, dams, pipelines, or any other cause, and an assessment of the impacts to aquatic life and habitats that would result from any such failure;

(17)(f) through (18)(b)(iii) same as proposed.

(c) For any cultural resource sites or properties identified or more fully defined by the information required by (a) and (b), a discussion, based on consultation with the state historic preservation office, of the potential eligibility of these sites or properties for listing on the national register.

(19) An application must contain an assessment of the potential impacts of the facility on cultural resources for each alternative site. The assessment must address the potential for physical destruction or degradation during construction or operation of the facility. Cultural resource-related information required by (12) and (21) will satisfy the visual and recreation-related impact requirements of this section. In addition, for each potentially affected cultural resource property or site defined by ARM 36.7.2504(1)(i) and (2)~~(e)~~(d) or by ARM 36.7.2505(2)(f) and (g), and for any properties or sites identified by (18)(c) that may be potentially eligible for listing on the national register, the assessment must include a discussion of whether the facility would significantly affect the qualities for which these sites or properties were listed or could be listed.

(20) An application must contain baseline data concerning recreation areas for each alternative site and its impact

zones. For the recreation areas defined by ARM 36.7.2503, ARM 36.7.2504(1)(b)-(e), (i) ~~and (j)~~, and (2)~~(d)~~(c), national natural landmarks where recreation is listed as a current site use, (2)~~(e)~~(d) and ~~(f)~~(e), and by ARM 36.7.2505(1)(a) and (2)(e) and (h), the impact zone includes the area within a 30 mile radius of the facility if the facility is within view or within a ten-mile radius if not within view of the facility. For the recreation areas listed in (a) and (b) below, the impact zone includes the area within a 5-mile radius of each alternative site.

(a) Based on consultation with appropriate local, state, and federal agencies, an application must include an overlay identifying any recreational areas or locales which are provided with public access and where public recreational use occurs within the impact zone other than those specifically referenced above.

(20)(b) through (27) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXI 36.7.2530 LINEAR FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY An application for a linear facility must contain an alternative siting study and baseline environmental data as specified in ARM 36.7.2530-ARM 36.7.2547.

(1) through (1)(d) same as proposed.

~~(e) detection of study routes (see Rule XXIII);~~

~~(f)~~ (e) selection of alternative routes (see ARM 36.7.2541);

~~(g)~~ (f) a baseline study of alternative routes, including baseline data collection and impact assessment (see ARM 36.7.2543, ARM 36.7.2544, ARM 36.7.2545);

~~(h)~~ (g) a comparison of alternative routes (see ARM 36.7.2546);

~~(i)~~ (h) selection of the preferred route (see ARM 36.7.2547).

(2) The alternative siting study shall include any alternative routes for the facility which have alternative end points or combinations of end points identified according to ARM 36.7.2410 and ARM 36.7.2411 that would meet the need the proposed facility is intended to address, and would have a levelized annual cost no more than ~~50~~ 35 percent higher (25 percent higher for transmission lines 230 kV or greater voltage and 30 miles or longer) than the levelized annual cost of the facility or would have significant environmental advantages over the facility, with the end points proposed by the applicant.

(3) through (4) same as proposed.

~~(5) An application should include only information relevant to evaluation of the impacts of and alternative~~

~~locations for the facility. If any of the information required by Rule I.XXXI-XGVII or 75-20-503, MCA is not included, an application must contain an explanation that may include, but is not limited to, the length, voltage, capacity, and/or design of the facility, the homogeneity of the area that would be traversed or the likelihood that no adverse impacts would occur.~~

(5) An application may contain any valid and useful existing studies, reports, or data prepared on the linear facility and may be submitted by the applicant towards fulfilling the requirements of ARM 36.7.2530 - ARM 36.7.2547 but shall be subject to supplementation, and shall be used by the department only to the extent it considers them applicable.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE I.XXXII 36.7.2531 LINEAR FACILITIES, PREFERRED ROUTE CRITERIA Preferred routes conform to the criteria listed in 75-20-301(2)(i), MCA, and are achieve the best balance among the following by being located:

(1) same as proposed.

(a) where there is the greatest potential for general local acceptance of the facility;

(b) where they utilize or parallel existing utility and/or transportation corridors ~~to the greatest extent practicable~~;

(c) to allow for selection of a centerline, which, ~~to the greatest extent practicable~~ is located in nonresidential areas;

(1)(d) through (1)(g) same as proposed.

(h) so ~~they cross floodplains where~~ that structures need not be located on the floodplain;

(i) ~~in areas~~ where the facility ~~is~~ will create the ~~visually incompatible with the landscape~~ visual impact;

(1)(j) through (2) same as proposed.

(e) conform to the criteria listed in (1)(a), (b), (e), (f), (g), (i), (j) and (k); and

(b) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXIII 36.7.2532 LINEAR FACILITIES, EXCLUSION AREAS The following areas are exclusion areas within the study area and shall be eliminated from further consideration for siting the facility unless the legislative or administrative unit of government with direct authority over the area gives the applicant permission to locate the facility there. Information concerning the locations of exclusion areas is required by the reconnaissance and is considered throughout the alternative siting study.

(1) and (2) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXIV 36.7.2533 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, SENSITIVE AREAS ~~Sensitive~~ The following areas are sensitive areas and should not be crossed by a facility unless the applicant can demonstrate that no significant adverse impacts ~~would~~ are likely to result, or that mitigation of significant adverse impacts is possible, or that siting the facility in or through a sensitive area would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information concerning the locations of sensitive areas are divided among the reconnaissance, the inventory and the baseline levels of the siting study. Any sensitive areas initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative routes, and in the assessment of

impacts required by the baseline study if any of these areas is within the impact zone of an alternative route.

(1) through (1)(e) same as proposed.

~~(f) rivers and streams in the state recreational waterway system;~~

(2) through (2)(d) same as proposed.

~~(e) designated visually sensitive areas;~~

~~(f)~~ (e) state or federal waterfowl production areas;

~~(g)~~ (f) unique habitats and natural areas~~, including areas~~ designated by the national park service, the USDA forest service, the bureau of land management, or the state of Montana as national natural landmarks, natural areas, research natural areas, areas of critical environmental concern, special interest areas, research botanical areas, outstanding natural areas;

~~(h)~~ (g) designated critical habitat for state or federally listed threatened or endangered species;

~~(i)~~ (h) national historic landmarks, and national register historic districts and sites;

~~(j)~~ (i) national register ~~eligible~~ historic districts and sites nominated to or designated by SHPO (state historic preservation office);

~~(k)~~ (j) national trails;

~~(l)~~ (k) municipal watersheds; and

~~(m)~~ (l) streams and rivers designated class I and II by the Montana department of fish, wildlife and parks;

(3) through (3)(d) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXV 36.7.2534 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, AREAS OF CONCERN ~~Areas~~ The following areas are areas of concern and should not be crossed by a facility unless the applicant can demonstrate that no significant adverse impacts ~~would~~ are likely to result, or that mitigation of significant adverse impacts is possible, or unless siting the facility in or through an area of concern would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information about the locations of areas of concern are divided among the reconnaissance, the inventory and the baseline levels of the siting study. Areas of concern initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative routes, and in the assessment of impacts required by the baseline study if any of these areas is within the impact zone of an alternative route.

(1) same as proposed.

~~(a) for substations, switching stations, and/or terminus~~

~~points; active faults showing evidence of post-miocene movement;~~

~~(b)~~ (a) areas of rugged topography defined as areas with slopes greater than 30 percent; and

~~(c)~~ (b) specially managed buffer areas surrounding exclusion areas.

(2) same as proposed.

(a) cities, towns and unincorporated communities, and residential clusters of 5 or more dwelling units per 20 acres, based on a circle of approximately 1000 feet in diameter;

(b) mechanically irrigated land, other irrigated land, and dry cropland;

(c) prime ~~and~~ or unique farmland and orchards;

(2)(d) and (2)(e) same as proposed.

~~(f) limited access areas in mountainous or rugged terrain, defined as areas with slopes greater than 45 percent, located more than 1/2 mile from an existing road;~~

(f) areas where the presence of the facility would be incompatible with published visual management plans adopted by federal, state, or local governments;

(2)(g) through (2)(j) same as proposed.

(k) areas with high waterfowl population densities including prime waterfowl habitat ~~as~~ that have been designated on maps by the Montana department of fish, wildlife and parks and ~~any~~ other areas identified by the Montana department of fish, wildlife and parks or US fish and wildlife service as waterfowl concentration areas or low-level feeding flight paths;

(2)(l) through (2)(p) same as proposed.

(q) ~~rivers and streams under active study for inclusion in the state recreational waterway system~~ for substations, switching stations, and/or terminus points, active faults showing evidence of post-miocene movement.

(3) same as proposed.

(a) individual residences not included within one of the urban or residential clusters defined by (2)(a) and major farm support buildings ~~and~~ including ~~livestock~~ calving or lambing ~~areas~~ sheds;

(3)(b) same as proposed.

(c) mature riparian forests defined as a stand of ~~mature~~ cottonwood or mixed cottonwood-conifer forests greater than ~~400 meters~~ 300 feet long and ~~40 meters~~ 30 feet wide where average canopy height is 50 feet or more and average density of mature trees is greater than 20 stems per acre ~~that occurs along a waterway;~~

~~(d) old growth forests greater than 40 acres in size that have never been harvested and that contain at least 40 percent canopy coverage of conifers greater than 5 dm at breast height;~~

~~(e)~~ (d) nesting colonies, defined as 5 or more pairs within 40 acres, of white pelicans, great blue herons, double-crested cormorants, gulls, or terns;

~~(f)~~ (e) habitats occupied at least seasonally and critical to species listed as "species of special interest or concern" by the Montana department of fish, wildlife and parks, and the US fish and wildlife service; and

(f) limited access areas in mountainous or rugged terrain, defined as areas with slopes greater than 15 percent, located more than one-half mile from an existing road.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXVI 36.7.2535 LINEAR FACILITIES, PIPELINES, SENSITIVE AREAS AND AREAS OF CONCERN For pipelines, sensitive areas and areas of concern include:

(1) For the reconnaissance, the sensitive areas listed in ARM 36.7.2533(1) and the areas of concern listed in ARM 36.7.2534(1)~~(e)~~(b) ; and

(1)(a) through (2)(a) same as proposed.

(3) For the baseline study, the sensitive areas listed in ARM 36.7.2533(3) and the areas of concern listed in ARM 36.7.2534(3); and

(3)(a) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXVII 36.7.2536 LINEAR FACILITIES, DELINEATION OF THE STUDY AREA

(1) same as proposed.

(a) all reasonable end points for the facility within or outside Montana;

(1)(b) and (1)(c) same as proposed.

(2) An application must identify the factors used to determine the boundaries of the study area. Relevant information provided pursuant to ARM ~~XIII~~ 36.7.2212 - ARM 36.7.2216 and ~~36.7.2246~~ ARM 36.7.2410 - ARM 36.7.2417 may be referenced.

(3) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXIX 36.7.2538 LINEAR FACILITIES, SELECTION OF STUDY CORRIDORS

(1) through (1)(b) same as proposed.

(c) cost; and

(d) reliability and engineering concerns; and

(e) other factors important to the applicant.

(2) and (3) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XC 36.7.2539 LINEAR FACILITIES, INVENTORY, GENERAL REQUIREMENTS (1) An application must contain an inventory of the study corridors identified in ARM 36.7.2538 to select ~~study~~ alternative routes suitable for siting the facility.

(2) through (4) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCI 36.7.2540 LINEAR FACILITIES, INVENTORY, ENVIRONMENTAL INFORMATION An application must contain the following environmental information for the geographic area within each study corridor.

(1) An application must contain one or more overlays depicting the location of the following land use and land cover categories. A minimum map resolution of 20 acres is required unless otherwise specified in any individual category listed below. Linear features required by (c), (d), and (e), ~~and (f)~~ shall be accurately mapped to within one-tenth mile. The applicant may combine information on an overlay provided that mapped categories are clearly distinguishable. All overlays shall clearly show section lines or corners and township and range locations.

(1)(a) through (1)(d) same as proposed.

~~(e) pipelines 5 inches or greater in diameter;~~

~~(f)~~ (e) electric transmission lines of 50 kv or greater voltage design;

~~(g)~~ (f) nontimbered rangeland;

~~(h)~~ (g) industrial and commercial areas located outside of cities, towns and unincorporated communities; and

~~(i)~~ (h) forested lands.

(2) through (3)(a) same as proposed.

(b) ~~40~~15>30 percent; and

(3)(c) through (4) same as proposed.

(5) An application must contain a narrative description of existing social characteristics and characteristics of the local economy of the communities within and near the study corridors. Projected future social and economic conditions should the facility not be built must also be discussed. The following information is required in the description for facilities of 230 kv or greater voltage. For facilities of less than 230 kv, a cursory discussion of ~~the following~~ information ~~categories~~ required by (a), (b) and (g) is sufficient:

(5)(a) through (8) same as proposed.

(a) documentation that a file search has been conducted to identify the types of potentially significant historical, ~~archaeological~~ prehistorical, architectural, and paleontological resource sites likely to be encountered in the study corridors and a statement indicating the amount of previous survey work conducted in the corridors;

(b) a summary of the nature of the existing historical, ~~archaeological~~ prehistorical, or paleontological data base and identification of any inadequacies such as a lack of previous survey work in the study corridors that could complicate efforts to fully define all significant classes of sites or properties and to anticipate their occurrence;

(8)(c) and (8)(d) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCII 36.7.2541 LINEAR FACILITIES, SELECTION OF ALTERNATIVE ROUTES (1) The applicant shall select at least three reasonable alternative routes within the study corridors for baseline study based on consideration of the following:

(a) exclusion areas, sensitive areas and areas of concern identified by ARM 36.7.2532, ARM 36.7.2533(1), (2) and (3), and ARM 36.7.2534(1), (2) and (3) for transmission lines or ARM 36.7.2532 and ARM 36.7.2535 for pipelines;

(1)(b) through (1)(e) same as proposed.

(2) An application must contain an explanation of the methods used to select the alternative routes, an explanation of how the considerations listed in (1) were incorporated, and a discussion of the rationale for selecting the ~~study~~ alternative routes.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCIII 36.7.2543 LINEAR FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (1) An application must contain a baseline study of at least three reasonable alternative routes and their impact zones to gather baseline data describing the existing environment, to assess impacts associated with the proposed facilities, to identify mitigation strategies, and to select the preferred route.

(2) The applicant shall ~~depict~~ accurately map to within one-tenth mile each alternative route, the locations of any intermediate substations, compressor stations or pump stations (for pipelines), and all impact zones defined in ARM 36.7.2544 or ARM 36.7.2545 using lines one millimeter or less in width drawn on a 1:24,000 topographic base map. The line delineating each alternative route should identify a tentative, environmentally suitable location for the facility. These tentative locations need not be surveyed, but the applicant shall by reasonable effort, such as by air or by ground checking, determine the suitability of the location for a facility. The applicant shall provide one mylar copy of this base map to the department. 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 an overlay or overlays, as appropriate, to the base map required by (2) of depicting the baseline data required by ARM 36.7.2544 or ARM 36.7.2545 that can be mapped, and depicting the exclusion areas listed in ARM 36.7.3532, the sensitive areas listed in ARM 36.7.2533(1),(2), and (3) and the areas of concern listed in ARM 36.7.2534(1),(2), and (3) that are within the impact zones associated with each alternative route. For pipelines, the exclusion areas listed in ARM 36.7.2532, and the sensitive areas and areas of concern listed in ARM 36.7.2535(1),(2) and (3) that are within the impact zones associated with each alternative route shall be included. Cultural resource data required by ARM 36.7.2533(2)(i) and (j) and ARM 36.7.2534(2)(h) and (i) may not be mapped if the applicant obtains prior approval from the department. The applicant shall organize the information according to the categories listed in ARM 36.7.2546(3)(c)-(e) and (g)-(l) and shall present the information on the minimum number of overlays to the base map. The applicant shall provide one mylar copy of each overlay to the department. All overlays shall clearly show section lines or corners and township and range locations.

(4) An application must contain one set of black and white contact prints at a scale of 1:48,000 or 1:24,000 that provide complete physical aerial stereo coverage of the alternative routes. These photos shall be taken during a season of full foliage no more than three five 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 the assessment of social and economic impacts required pursuant to ARM 36.7.2544(4) and (5).

(5) and (6) same as proposed.

(7) An application must identify and discuss mitigation to reduce or eliminate significant adverse impacts of the facility along each alternative route, including where the applicant's assessment indicates that mitigation is necessary or desireble. For this purpose mitigation measures include, but are not limited to:

(7)(a) through (7)(f) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCIV 36.7.2544 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application must contain baseline data and an assessment of the projected ~~cumulative~~ short and long-term changes and impacts that would result from construction, operation and maintenance of the facility for each alternative route and the impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must identify general and route-specific mitigation measures to reduce or eliminate these impacts. This information shall serve as a basis for evaluating and comparing alternative routes as required by ARM 36.7.2546 and selecting a preferred route as required by ARM 36.7.2547. Baseline data that require mapping shall be presented on the minimum number of overlays to the base map required by ARM 36.7.2543(2) that will clearly portray the information.

(1) and (1)(a) same as proposed.

(b) major public buildings~~;~~ and

(c) pipelines 8 inches or greater in diameter.

(2) An application must contain a description of the approximate anticipated construction crew by size, skill, and wage levels, the variation in size as it relates to the construction schedule, and any significant variations in these factors among the alternative routes. If applicable, these data must also be provided for the permanent work force, except that variations in size, if any, must be described as they relate to the operation and maintenance schedule.

(3) and (4) same as proposed.

(5) An application must contain an assessment of public attitudes and concerns about the potential impacts of the facility, that is based on representative views of persons residing in the impact zone defined by the applicant pursuant to (4) for each alternative route. The assessment must include summaries of correspondence and summaries of personal interviews, if they are conducted, and other information the applicant has collected that records the comments and concerns public officials, local residents and other individuals and groups have raised about the facility. Summaries of issues and concerns identified at public meetings the applicant may hold or the results of any surveys the applicant may conduct must also be included. The applicant must conduct at least one public meeting that is accessible to the residents of the impact zone. The assessment must address the following:

(a) concerns about social, socioeconomic, taxation, and land use changes the facility could cause;

(5)(b) through (5)(d) same as proposed.

(6) An application must contain ~~an overlay depicting preliminary road locations for each alternative route, with particular emphasis on areas with slopes greater than 15 percent~~ a description of the access road requirements of each

alternative route and an assessment of the potential impacts of construction of access roads. The description and assessment shall be based on sufficiently accurate information to allow the department and the board to make a valid comparison of alternative routes with respect to the requirements of the baseline study. The applicant shall obtain this information from existing maps showing roads and other information in existence at the time the application is prepared, but shall also make reasonable effort to confirm the information such as by air or by ground checking. The information and assessment shall include:

(a) an estimate of road mileage of new or substantially upgraded access road requirements for approximately 30 mile segments, or portions thereof, of each alternative route, and a description of the sources of data used to develop the estimates;

(b) an assessment of the likelihood of constructing access roads across any of the sensitive areas listed in Arm 36.7.2533 and the areas of concern listed in Arm 36.7.3534, and identification of any such areas; and

(c) an assessment of impacts to the areas identified in (b). This assessment may be contained in a single section of the application, or may be contained within each of the resource categories in ARM 36.7.2544(1)-(5) and (7)-(18), and cross-referenced as appropriate.

(7) through (8)(d) same as proposed.

~~(e) for substation locations, a description of seismic risk, including the risk of damage from an event with a Richter magnitude greater than 5.5;~~

~~(f)~~ (e) an overlay depicting designated 100-year floodplains that would be crossed by the facility, a description of the potential for damage to the facility from construction in the floodplain, and an assessment of the potential for adverse impacts to the environment resulting from construction, operation and maintenance of the facility in the floodplain; and

~~(g)~~ (f) an assessment of aeronautical hazards created along each alternative route and an assessment of any applicable mitigation measures.

(9) An application must contain data concerning visual resource and viewer ~~sensitivity data~~ characteristics for any exclusion area, recreation area, national register or national register eligible site identified by ARM 36.7.2532 and ARM 36.7.2533(1)(b)-~~(f)~~(e), (2)~~(g)~~(f), (h), (i), (j), ~~(k)~~, and ~~(m)~~(l), and any residential area, highway or county road identified by ARM 36.7.2533(3)(c), ARM 36.7.2534(2)(a) and (3)(a) and ARM 36.7.2540(1) from which the facility would be clearly visible. The following baseline data are required only for the referenced areas, sites and state or federal highways and county roads located within an impact zone which is defined as within 5 miles of an alternative route for a

facility greater than 230 kv, or within 3 miles of an alternative route for a 161 kv to 230 kv facility or within 2 miles of an alternative route for a facility less than 161 kv:

(9)(a) same as proposed.

~~(b) identification and an overlay of areas where the facility would be visible from appropriately grouped observation points;~~

~~(c)~~ (b) a description and evaluation of viewer characteristics, including proximity to the facility, orientation, estimated number of viewers, and duration of view; where a characteristic does not warrant differentiation, an application shall contain an explanation of the reasons;

~~(d)~~ (c) a description and evaluation of the compatibility of the proposed facility with the viewed area of the landscape, including any visually sensitive areas identified by ARM 36.7.2540(7);

~~(e)~~ (d) a description and categorization of levels of sensitivity (the relative degree of viewer interest in the visual resource);

~~(f)~~ (e) a description and evaluation of the opportunities for and effectiveness of available topographic and vegetative screening; and

~~(g)~~ (f) a description of the methods used to categorize and describe impact risk to potential viewers, as required by (a)~~-(f)~~(e).

(10) through (11)(a) same as proposed.

(b) an evaluation of the anticipated impacts to each species or habitat listed in (a), including a description of biological impacts which would occur in the sensitive areas listed in ARM 36.7.2533(1), (2)(a)~~-(f)~~, ~~(h)~~(g), and ~~(m)~~(l), (3)(b) and (d) and the areas of concern listed in ARM 36.7.2534(1)~~(c)~~(b), (2)(g)~~-(l)~~ and ~~(q)~~, (3)(c)~~-(f)~~(e) located within the impact zone specified in (a);

(c) a general assessment of impacts ~~due to~~ from increased hunting and fishing pressure ~~and~~ if increased access to secure habitat ~~which may~~ would likely occur in the general vicinity of each alternative route ~~but~~ because new access roads would be constructed outside the impact zone specified in (a);

(11)(d) through (12) same as proposed.

(a) a detailed description of specific cultural resource properties ~~likely to be affected by the facility~~ that may pose problems at the route selection stage, based on the results of an in-depth archival and documentary research effort;

(b) based on the results of (a) and ~~appropriate~~ preliminary field checking of impact zones, a discussion of the accuracy of the overview ~~predictions~~ required by ARM 36.7.2540(8) concerning:

(12)(b)(i) through (13) same as proposed.

(a) for each potentially affected cultural resource property or site listed as a sensitive area or as an area of concern by ARM 36.7.2533(2)~~(i)~~(h) and ~~(j)~~(i) and ARM

36.7.2534(2)(m) and (n), and for any properties or sites identified by (12)(c) which may be eligible for listing on the national register, a discussion of whether the facility would affect the qualities for which these sites or properties were listed or could be listed; and

(13)(b) same as proposed.

(14) An application must contain the following baseline data concerning recreation areas and sites along each alternative route and their impact zones. The impact zone for recreation is defined by (9), except all recreation areas and sites within one mile of an alternative route for a facility 230 kv or less voltage, and all recreation areas and sites within two miles of an alternative route for a facility greater than 230 kv must be included regardless of whether the facility would be visible from the recreation area or site. Recreation areas and sites are listed in ARM 36.7.2532, ~~and~~ ARM 36.7.2533(1)(b)-~~(f)~~(e), (2)~~(g)~~(f) national natural landmarks where recreation is listed as a current site use, ~~(k)~~(i), and ~~(m)~~(l), and by (a) and (b) below.

(a) Based on consultation with appropriate local, state, and federal agencies, an application must include an overlay of any other public or private recreational areas or sites ~~where public recreational use occurs within the impact zone other than those specifically referenced above~~ receiving extensive public use.

~~(b) An application must include an overlay showing any~~ such as fishing access areas, public and private campgrounds and ~~intensive outdoor recreation sites such as~~ ski areas, local parks and picnic areas, located within the impact zones.

~~(c)~~ (b) An application must contain a list of the recreation areas and sites located within the impact zone for each alternative route cross-referenced to the overlays required by ARM 36.7.2539(3) and (a) and (b) above, a description of each area or site, including any prominent recreational facilities and aesthetic features, a description of how the area or site is used for recreation and, if available, identification of the types of users of the area or site and a use level estimate.

(15) An application must contain an assessment of the potential adverse impacts of the facility and access roads on the recreation areas or sites defined by (14) for each alternative route. The requirements of this rule are limited to recreation areas or sites that would be affected by the facility. Information provided in response to (10) concerning aesthetic impacts on recreation areas and sites should be cross-referenced as appropriate. For each recreation area or site that would be affected, an application must contain the following information:

(15)(a) through (18)(a) same as proposed.

(b) an assessment of potential noise impacts of the facility and substations, including an estimate of annual

average noise expressed on an A-weighted day-night scale ($L_{DN}$) at the right-of-way edge for facilities of 230 kv or greater voltage and at the property boundary of all substations located within 500 feet of residences or in subdivided areas. The data on frequency of rain which is necessary to account for wet weather may be obtained from the nearest weather station that has such data available. For purposes of these rules, "subdivided areas" shall be defined as a location within which a plat of a subdivision is on file with local governments.

(18)(c) and (18)(d) same as proposed.

(e) a description of mitigation measures if necessary to reduce noise, electric and magnetic fields, induced currents, and interference with communication systems.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCV 36.7.2545 LINEAR FACILITIES, PIPELINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application for a pipeline must contain baseline data and an assessment of the projected cumulative short and long-term changes and adverse impacts that would result from construction, operation and maintenance of the pipeline for each alternative route and the associated impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must identify general and route-specific mitigation measures to reduce or eliminate these impacts. This information shall serve as a basis for evaluating and comparing alternative routes as required by ARM 36.7.2546 and selecting a preferred route as required by ARM 36.7.2547. Baseline data that require mapping shall be presented on the minimum number of overlays to the base map required by ARM 36.7.2543(2) that will clearly portray the information. An application must contain the information required by ARM 36.7.2544(1)-(7), (8)(c) and ~~(f)~~(e), (10), (12), (13), and (15) and the following:

(1) through (3)(e) same as proposed.

(4) An application must contain a list of the noxious weeds that occur along the alternative routes, an assessment of the impact the facility would have on the dispersion of these weeds, and a description of the weed control measures that would be used to mitigate the impacts.

(5) through (7) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCVI 36.7.2546 LINEAR FACILITIES, COMPARISON OF ALTERNATIVE ROUTES An application must contain a comparison of the alternative routes which includes the following:

(1) A summary of the most important ~~adverse~~ impacts of the proposed facility for each of the alternative routes, and the impact zones as determined by the baseline study conducted pursuant to ARM 36.7.2544 or ARM 36.7.2545.

(2) through (4) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCVII 36.7.2547 LINEAR FACILITIES, SELECTION OF THE PREFERRED ROUTE The applicant must select a preferred route from the alternative routes selected in accordance with ARM 36.7.2541. An application shall contain a discussion of the rationale used to make the selection, including the following:

(1) through (5) same as proposed.

~~(6) A specific explanation of the opportunities for the facility to parallel or share existing utility or transportation rights-of-way, and if such opportunities were not chosen as part of the preferred route, an explanation of the reasons.~~

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCVIII ARM 36.7.3001 ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE FACILITY DESCRIPTION AND DESIGN 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 site as specified in ARM 36.7.3002-ARM 36.7.3005. 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(10), 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, and 75-20-503, MCA

RULE XCIX 36.7.3002 ENERGY GENERATION AND CONVERSION FACILITIES, DESIGN CHARACTERISTICS

(1) through (5)(c) same as proposed.

(d) fuel-handling systems: the proposed source of the fuel to be used by the facility and, if applicable,

alternative fuel sources consistent with ARM 36.7.2515(8) 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;

(5)(e) through (6) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CIII 36.7.3009 LINEAR FACILITIES, DESIGN CHARACTERISTICS

(1) through (5) same as proposed.

(6) For an electric transmission facility, an application must include an estimate of ~~potential noise levels~~, radio and television interference, and electric and magnetic field strengths ~~during wet and dry weather, if any.~~ This information on electric and magnetic fields must be provided for cross-sections of the right-of-way and must include maximum conditions under the conductors and at the edge of the right-of-way or easement, and attenuation rates beyond the edge of the right-of-way. This information is also required at the property boundaries surrounding each substation, which is proposed to be located in residential or subdivided areas and must include estimates of attenuation rates beyond the property boundaries.

(7) For an electric transmission facility, an application must contain a statement certifying ~~the information necessary to demonstrate~~ that the facility ~~can~~ will meet the standards of the national electric safety code.

(8) and (9) same as proposed.

(10) ~~An application must contain a topographic map at a scale of 1:4800 showing the locations of all proposed substations, compressor stations, or pump stations at the proposed end points of the facility if these points are in Montana, and along the applicant's preferred route~~ 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, and 75-20-503, MCA

RULE CIV 36.7.3010 LINEAR FACILITIES, ELECTRIC TRANSMISSION FACILITIES, CONSTRUCTION DESCRIPTION

(1) and (2) same as proposed.

(3) An application must contain a description of the types and sizes of roads needed to build and maintain the facility, ~~and an estimate of the road mileage and preliminary~~

~~road locations required to construct the facility on the preferred route.~~

(4) An application must contain ~~a description~~ estimates of the minimum and maximum right-of-way widths for which permanent easements would be purchased for the cleared right-of-way, estimates of the minimum and maximum widths of any additional construction easements, a description of the criteria used to determine right-of-way widths, ~~and~~ a description of any land use restrictions that would be placed on the permanent easement, and a general description of standard conditions in the easement agreement pertaining to protection of the facility from damage or pertaining to public safety and liability.

(5) through (7) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CVI 36.7.3012 LINEAR FACILITIES, OPERATION AND MAINTENANCE DESCRIPTION (1) An application must include a description of operation and maintenance procedures for the proposed facility under normal and emergency conditions, including types and scheduling of anticipated maintenance and inspections. For electric transmission facilities, an application must contain a description of methods the applicant will employ to resolve complaints from nearby residents regarding ~~unacceptable~~ noise and radio and television interference.

(2) through (4) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

~~RULE CVII LINEAR FACILITIES; DECOMMISSIONING METHODS. An application must contain a description of the projected method for decommissioning the proposed facility at the end of its useful life and environmental effects that would result from decommissioning, or explain why decommissioning the facility is not foreseen.~~

~~AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA~~

~~RULE CVIII STANDARDS FOR APPROVAL OF FACILITIES. In making the findings required by 75-20-301, MCA to grant a certificate under the act or determine substantive compliance with the act, the board must find that certain standards will be met. The board must make simultaneous findings that the proposed facility will meet all relevant standards in order to grant a certificate or determine substantive compliance.~~

~~AUTH: 75-20-105, MCA~~ ~~IMP: 75-20-804, and 75-20-508, MCA~~

RULE CIX 36.7.3502 ENERGY GENERATION AND CONVERSION FACILITIES, SERVICE AREA UTILITIES, NEED STANDARD In order to find that there is a need for an energy generation or conversion facility, as required by 75-20-301(2)(a), MCA, that is proposed by a service area utility as defined by ARM 36.7.1501, the board must find that the output of the facility is needed by finding and determining either:

(1) same as proposed.

(a) Adopt a forecast of energy and peak load growth in the applicant's service area ~~for at least the 20 year period following the date of application~~. In addition to the geographic territories that have historically constituted the service area, other areas may be added to the extent that firm sales for resale have been contractually made prior to the date of application for the proposed facility, providing that such sales for resale are continuing to be contractually served as of the date of application and there is no reason to expect the sales will not be continuing at the time the facility is expected to come on-line.

(1)(a)(i) through (1)(a)(iv) same as proposed.

(b) Adopt a resource forecast for the applicant's service area showing the existing and permitted resources that could be used to serve loads in the service area~~, for at least the 20 year period following the date of application~~.

(1)(b)(i) through (1)(b)(v) same as proposed.

(A) hydroelectric plants: at median water and critical water~~, as defined~~ Critical water can be determined using the guidelines in section 2, part 1, of the agreement for coordination of operations among power systems of the pacific northwest, contract no. 14-02-9822, as modified, if relevant by the Northwest Power Planning Council or for hydroelectric plants not covered by the above contract, as ~~specified~~ determined by the board based on the record;

(B) same as proposed.

(C) nuclear plants: 70 percent annual capacity factor unless the board shall determine another value based on the record;

(1)(b)(v)(D) through (2)(c) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CXI 36.7.3504 ENERGY GENERATION AND CONVERSION FACILITIES, MINIMUM IMPACT STANDARD In order for the board to find that an energy generation or conversion facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301(2)(c), MCA:

(1) same as proposed.

(a) That the facility will result in lower delivered cost of energy to customers than any other reasonable alternative identified and characterized in ARM 36.7.2401 and ARM 36.7.2402 that is relevant to the proposed facility, or if the board finds that another alternative would result in lower delivered costs of energy to consumers, that the advantages of the proposed facility outweigh the additional costs to consumers.

(b) That the net present value of costs, including monetary costs of construction, operation, and mitigation to the applicant, ~~any~~ external monetary costs, and the value of ~~all~~ reasonably quantifiable unmitigated environmental impacts is lower for the proposed facility than for ~~any~~ other alternatives. Other available alternatives include alternative energy resources, alternative technologies, alternative sizing and timing of facilities, nonconstruction alternatives, and the no action alternative. The cost of the no action alternative includes, if relevant, the costs to consumers of being deprived the output of the facility and of having to obtain the energy or product of the facility from other sources.

(i) same as proposed.

(c) That ~~nonquantifiable~~ unquantified environmental impacts are not significantly adverse to alter the finding required by (b).

(d) same as proposed.

(e) That the site for the facility achieves the best balance among ~~complies with~~ the preferred site criteria listed in ARM 36.7.2502 ~~in a manner that results in less cumulative~~ considering ~~adverse~~ environmental impact and economic cost ~~than siting the facility at any alternative location, unless the board finds and determines the reasons why any criterion should not be met.~~

(1)(f) through (1)(h)(iv) same as proposed.

(i) If in making the finding required by (h), the site for the facility will be located in one or more of the sensitive areas listed in ARM 36.7.2504 or the areas of concern listed in ARM 36.7.2505, either that no significant adverse impacts would result in the areas~~,~~ or,

(1)(i)(i) through (2)(c) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CXII 36.7.3505 ALL 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(2)(g), MCA the board must find and determine that the discounted net present value of ~~all~~ benefits (less ~~all~~

costs) is greater for the facility than for any other reasonable alternative, based on a determination of the following:

(1)(a) through (1)(c) same as proposed.

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

(1)(d) same as proposed.

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

(1)(f) and (2) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE XXIII 36.7.3506 ELECTRIC TRANSMISSION LINES, SERVICE AREA UTILITIES, NEED STANDARD In order to find that there is a need for an electric transmission facility as required by 75-20-301(2)(a), MCA, that is proposed by a service area utility as defined by ARM 36.7.1501, the board must find that the services of the facility are needed by finding and determining the following:

(1) For facilities ~~that~~ for which insufficient power transfer capacity at adequate voltage levels under normal operating conditions is a stated basis of need in the application, either that:

(1)(a) same as proposed.

(b) ~~that the proposed facility has a lower net present value of all future costs than any other alternative or alternatives that could resolve the problem situation the proposed facility is designed to resolve~~ if the finding in (a) cannot be met, that the expected benefits of constructing a transmission line with the transfer capacity of the proposed line, instead of one for which the finding in (a) can be met, warrant the resource commitment, based on a finding and determination of the following:

(i) the expected benefits of building the proposed line compared with one that would satisfy (a); and

(ii) the extra costs of building the proposed line compared with one that would satisfy (a).

(2) For facilities ~~that~~ for which insufficient power transfer capacity at adequate voltage levels under contingent operating conditions is a stated basis of need in the application, that:

(2)(a) and (2)(b) same as proposed.

(3) For facilities ~~that~~ for which transient stability under normal operating conditions is a stated basis of need in the application, that there is or will be a transient

stability problem under normal operating conditions, that will be rectified by the proposed facility within two years after the date the proposed facility is to be placed in service.

(4) For facilities ~~that~~ for which transient stability under contingent operating conditions is a stated basis of need in the application, that:

(4)(a) and (4)(b) same as proposed.

(5) For facilities ~~that~~ for which excessive voltage drop under normal operating conditions is a stated basis of need in the application, that:

(5)(a) and (5)(b) same as proposed.

(6) For facilities ~~that~~ for which excessive voltage drop under contingent operating conditions is a stated basis of need, that:

(6)(a) and (6)(b) same as proposed.

(7) For facilities ~~that~~ for which reliability of service is a stated basis of need in the application:

(7)(a) and (7)(b) same as proposed.

(8) For facilities ~~that~~ for which economy considerations are a stated basis of need:

(8)(a) through (8)(a)(ii) same as proposed.

(iii) the expected source, quantity and price of purchased economy energy; and

(8)(b) through (8)(c)(iv) same as proposed.

(9) For all facilities, that any forecast of loads ~~used to project need for the proposed facility is either consistent with the overall projected load growth for the entire service area of the applicant or if the forecast is different than the projected load growth in the service area, that it~~ is consistent with available information about loads and load growth in the area to be served by the proposed facility.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CXIV 36.7.3507 LINEAR FACILITIES, MINIMUM IMPACT STANDARD In order for the board to find and determine that a linear facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301(2)(c), MCA:

(1) The board finds and determines:

(a) that the expected net present value of ~~all~~ costs, including monetary costs of construction to the applicant, ~~any~~ external monetary costs, and the value of ~~all~~ reasonably quantifiable environmental impacts is lower for the proposed facility than for any other available alternative that would meet the need finding required by ARM 36.7.3506(1). Other available alternatives include transmission alternatives, alternative energy resources and energy conservation, alternative transmission technologies, alternative levels of

transmission reliability and the no action alternative;

(b) that ~~nonquantifiable~~ unquantified environmental impacts are not significantly adverse to alter the finding required by (a);

(1)(c) same as proposed.

(d) that the route for the facility achieves the best balance among ~~complies with~~ the preferred route criteria listed in ARM 36.7.2531 ~~in a manner that will result in less cumulative~~ considering adverse environmental impact and economic cost ~~than siting the facility in an alternative location, unless the board finds why any criterion should not be met;~~.

(1)(e) same as proposed.

(f) that reasonable alternative locations for the facility were considered in selecting the route, pursuant to ARM 36.7.2536, ARM 36.7.2538, ~~Rule XXII~~ and ARM 36.7.2541;

(g) that the route for the facility will result in less cumulative adverse environmental impact and economic cost than siting the facility on any reasonable alternative route, based on the following:

(1)(g)(i) through (1)(h) same as proposed.

(i) that any significant adverse environmental impacts affecting the environmental resources, qualities or characteristics ~~that~~ for which the sensitive areas or areas of concern are designated have been identified;

(1)(h)(ii) through (2) same as proposed.

(a) for electric transmission facilities, that average annual noise levels, as expressed by an A-weighted day-night scale ($L_{DN}$) will not exceed:

(2)(a)(i) and (2)(a)(ii) same as proposed.

(b) for electric transmission facilities, that appropriate mitigation has been identified to prevent unacceptable interference with stationary radio, television, and other communication systems and will be included in conditions to the certificate ~~the facility will not seriously degrade, obstruct, or repeatedly interrupt radio or television reception and that the facility will comply with federal communications commission standards~~;

(2)(c) same as proposed.

(d) for electric transmission facilities, that the electric field at the edge of the right-of-way will not exceed one kilovolt per meter measured one meter above the ground in residential or subdivided areas unless the affected landowner waives this condition, and that the electric field at road crossings under the facility will not exceed seven ~~kv~~ kilovolts per meter measured one meter above the ground.

(2)(e) through (2)(j) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CXVI 36.7.4001 CONDITIONAL APPROVAL OF ROUTES OR CORRIDORS

(1) same as proposed.

(2) The precise boundaries of an approved route or approved corridor shall be delineated by lines approximately one 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 36.7.2543(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) same as proposed.

(4) The costs incurred by the department and board in evaluating and approving the centerline shall be reimbursed by the filing fee or ~~other fee established~~ by contract between the applicant and the department.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXVII 36.7.4002 CENTERLINE EVALUATION IN AN APPROVED ROUTE OR CORRIDOR--GENERAL REQUIREMENTS

(1) same as proposed.

(2) Centerlines shall not cross sensitive areas or areas of concern specified by ARM 36.7.2533 and ARM 36.7.2534 or ARM 36.7.2535, unless the certificate holder can demonstrate that no significant adverse environmental impacts ~~would~~ are likely to result, or that mitigation of significant adverse environmental impacts is possible, or unless siting the facility in or through a sensitive area or area of concern would result in less cumulative adverse environmental impact and economic cost, including the cost of mitigation, than siting the facility in an alternative location.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXVIII 36.7.4003 ELECTRIC TRANSMISSION LINES, CENTERLINE EVALUATION IN AN APPROVED ROUTE, INFORMATION REQUIREMENTS The certificate holder shall prepare and submit the following information for its preferred centerline and any alternative centerlines that may be identified by the certificate holder ~~or the department~~ pursuant to conditions in

the certificate after study of the approved route. Upon request of the department, the certificate holder shall submit the following information on alternative centerlines identified by the department. The certificate holder may cross-reference any information required by ~~Rule I.XXXIV, I.XXXV, XCIV and I.XXXV~~ ARM 36.7.2530-ARM 36.7.4002 that was supplied in the application and that meets any of the following requirements.

(1) The certificate holder shall submit to the department a base map of the approved route which shall be derived from the base map submitted with the application and described in ARM 36.7.2543(2), or, as appropriate, be derived from the map contained in the certificate and described in ARM 36.7.4001(2). ~~USGS 7.5 minute topographic maps or USGS maps preliminary to the published 7.5 minute quadrangle maps shall be used to create the base map. 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.~~ The base map must contain the following information:

~~(i)~~(a) the boundaries of the route approved by the board;

~~(ii)~~(b) an overlay to the map of any sensitive areas or areas of concern listed in ARM 36.7.2533-ARM 36.7.2534 that are located within the approved route; and

~~(iii)~~(c) an overlay showing the boundaries and ownership of parcels of land 10 acres or more in size within the route.

(2) The certificate holder shall accurately depict to within 250 feet, unless otherwise specified by the board in the certificate, ~~submit to the department~~ a preferred centerline on an overlay to the base map required by (1). The centerline need not be surveyed unless specified by the board in the certificate, but the applicant shall by reasonable effort, such as ground and/or aircraft inspection, determine the suitability of the location for a facility. The certificate holder shall also submit to the department the following information:

(a) same as proposed.

(b) locations of alternative centerlines or portions of alternative centerlines ~~where any such deviations from the preferred centerline would be acceptable to the certificate holder and/or where any such deviations may result in less cumulative adverse environmental impacts and economic costs, including the costs of mitigation~~ identified by the applicant or by the department, as appropriate. Alternative centerlines shall be depicted with the same accuracy as the preferred centerline;

(c) preliminary locations for all access roads that would be required to construct and operate the facility along the preferred centerline and any alternative centerlines ~~that are~~

~~identified,~~ delineated by lines approximately one millimeter wide on an overlay to the base map required by (1); additions to the base map required by (1) shall be provided as necessary to include any access roads that may be located outside the boundaries of the route approved by the board;

(d) tentative locations of all structures that would be built in sensitive areas, areas of concern or areas where public concerns about the facility have been expressed; ~~and~~

(e) documentation that landowners whose property would be crossed by the preferred or alternative centerline and/or their associated access roads have been contacted or if a landowner could not be contacted that a reasonable effort was made to contact him; and

~~(e)~~ (f) a summary of any landowner, general public and government agency concerns or environmental issues or problems identified by the certificate holder and the mitigation measures the certificate holder proposes to address these concerns.

(3) An overlay to the base map required by (1) showing individual residences and major farm support buildings within ~~1/4 and~~ 1/2 mile of each alternative centerline, and a numerical tabulation of the data, cross-referenced appropriately to the overlay and separated into categories of structures located within one-fourth and one-half mile of the centerline.

(4) For areas identified by the department and areas where public concerns have been expressed, an overlay to the base map required by (1) showing all fence lines 1/4 mile or greater in length and an overlay showing ~~structures used for irrigation~~ mechanically irrigated farm land;

(5) For any preliminary access road locations that are identified pursuant to (2)(c), refinements of the earth resource information required by ARM 36.7.2544(7) and the water resource information required by ARM 36.7.2544(16) and (17).

(6) Identification and supporting documentation of any specific problems or concerns associated with crossings of streams and highways as determined through consultation with the Montana department of fish, wildlife and parks and the Montana department of highways.

(7) through (8) same as proposed.

(9) The results of an on-the-ground survey of cultural resources along the preferred and alternative centerline, based on the importance of the sites and the degree of potential adverse impact that ~~could~~ is expected to occur ~~identified~~ and based on the data and analysis conducted by the applicant pursuant to ARM 36.7.2544(12) and (13); ~~and an overlay of any historical, archaeological, architectural and paleontological sites identified.~~ The mapping requirements regarding cultural resource sites may be altered by conditions specified in the certificate. The survey results shall be

submitted on site survey forms that identify the adverse impacts.

(10) through (1C)(b) same as proposed.

(c) a description of existing radio reception at individual houses located within 1000 feet of each alternative centerline ~~considering existing interference conditions~~.

(11) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXXI 36.7.4006 FINAL CENTERLINE APPROVAL Although the board may deny the applicant's preferred centerline and any individual alternative centerline it considered, ~~The~~ the board shall issue an order approving a final centerline within the approved route. The approved centerline shall be included in the certificate.

(1) and (2) same as proposed.

(3) The precise location of the final centerline, preliminary locations for all access roads, and, for electric transmission lines, preliminary locations for the structures, shall be shown on plan-profile drawings or delineated by lines approximately one millimeter wide and by symbols, respectively, on USGS topographic maps at a scale of 1:24,000 and described according to range, township and quarter-section numbers.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXXV 36.7.5004 DECISIONS ON CERTIFICATE AMENDMENTS

(1) same as proposed.

(2) In making the findings required by (1), the board shall limit itself to consideration of the effects that the proposed change or addition to the facility contained in the notice for the certificate amendment may produce.

AUTH: 75-20-105, MCA IMP: 75-20-219, MCA

RULE CXXVII 36.7.5502 ELECTRIC TRANSMISSION LINES, MONITORING REQUIREMENTS

(1) and (2) same as proposed.

(3) The certificate holder shall submit to the department a notice of intent to begin construction and shall make a reasonable effort to notify or otherwise inform landowners whose property would be crossed by the facility and/or associated access roads at least ~~45~~ 15 days prior to the commencement of construction activities on the facility.

(4) The certificate holder shall submit the following information to the department at least ~~90~~ 15 days prior to the commencement of construction of any segment of the project.

Any information previously submitted in an application or during the centerline evaluation of the facility may be referenced.

(4)(a) through (5) same as proposed.

(6) If a construction bond is required by the certificate, the certificate holder shall submit to the department proof that the construction bond has been obtained ~~at least 45 days~~ prior to the commencement of construction. Pursuant to the certificate, this bond may be held until construction is complete and the board has determined that all environmental specifications have been followed, that cleanup is complete, that damage has been repaired, and that recontouring, site restoration, and revegetation are progressing satisfactorily.

(6)(a) through (10)(a) same as proposed.

(b) in forested land, revegetated land exclusive of the right-of-way or permanent roads, shall be planted with trees by the end of five years so that the approximate stand density of the adjacent forest will be attained at maturity~~.~~;

(c) on private lands the certificate holder may contract with the landowner for revegetation or reclamation which would release the certificate holder from the reclamation bond performance on the property upon showing the board that the property owner wants different reclamation standards from those specified in (a) and (b) applied on his property and that not reclaiming to the standards specified in (a) and (b) would not have adverse impacts on the public and other landowners; and

(d) on public lands the certificate holder may contract with the affected land management agency for revegetation or reclamation which would release the certificate holder upon showing the board that the land management agency wants different reclamation standards from those specified in (a) and (b) applied on its lands and that not reclaiming to the standards specified in (a) and (b) would not have adverse impacts on the public and other landowners.

(11) At the direction of the board, the department may formulate and carry out a plan to ensure that the standards in (10)(a)~~,~~ ~~and~~ (b), (c), and (d) are accomplished.

(12) through (12)(d) same as proposed.

AUTH: 75-20-105, MCA IMP: 75-20-301, 75-20-303, 75-20-402, MCA

(3) Leo Berry, Director of the Department of Natural Resources and Conservation conducted the hearings on these proposed rules upon order of the Board. The folloiwng is the response of the Board to the oral and written comments received:

COMMENTS AND RESPONSES
MAJOR FACILITY SITING ACT

RULE I:

1 COMMENT: In Rule I, the use of the word "any" in definitions (2) and (3) is too broad; it suggests that every alternative must be considered. It should be dropped.

RESPONSE: The comment is accepted. Rule I(2) is changed to read, in part, "Alternative technological component" means ~~any~~ a reasonable alternate...." Rule I(3) is changed to read, in part, "Alternate transmission technology means ~~any~~ a reasonable alternate...."

2 COMMENT: The use of the phrase "but not limited to" in various definitions in Rule I is redundant and should be dropped.

RESPONSE: The comment is not accepted. The phrase "including, but not limited to" is meant to give direction to an applicant as to what is required although the phrase is not all inclusive. The Siting Act and other statutes commonly use this phrase. See, for example, 75-20-105, MCA.

3 COMMENT: In Rule I(8), (32), and (57), retain the cross-reference to rules listing areas of concern, sensitive areas, and exclusion areas, but delete the rest of the definition because these areas are described elsewhere and the change would simplify the definition.

RESPONSE: The comment is not accepted because, while these three types of areas are listed elsewhere in the rules, they are not defined. The purpose in supplying definitions is to help an applicant and other users of the rules understand how each type of area must be treated during the siting study.

4 COMMENT: In Rule I(8), the phrase "will likely damage" provides an indefinite criteria which should be more specific.

RESPONSE: The comment is not accepted. The decisions made by an applicant, the Department, and the Board regarding damage to areas of concern will be based on best judgment prediction of damage from a proposed facility. There is no certainty about the accuracy of any such prediction; therefore, "likely" is an appropriate term.

4a In Rule I(8) a reference to the areas of concern listed in LXXXVI was inadvertently omitted. The rule has been changed to read as follows:

"Rule I ....(8) .... Rules LXVIII, ~~and Rule~~ LXXXV, and LXXXVI ...."

5 COMMENT: Delete Rule I(15)(a), the definition of "alternative centerline," because it is not possible to have a centerline which is not surveyed.

RESPONSE: The rules propose definitions of corridor, route, and centerline to correspond to the review process that occurs in the siting study, to prevent the confusion among the terms that has occurred in the past because the terms were used interchangeably, and to assist in defining the necessary level of detail in the data. The comment indicates that there is some remaining confusion of terms.

Use of the term "centerline" to indicate an unsurveyed location is sometimes necessary. An applicant must survey in order to build the facility, but for purposes of the Board decisions required by the Act, or for comparing possible centerlines, it is often acceptable to discuss "centerlines" that have not been surveyed. In some cases, such as areas of difficult terrain or intensive land uses, surveying may be necessary to meet the requirements of certain rules, but requiring surveying in all cases could lead to unnecessary expense.

In order to eliminate the confusion, additional definitions have been added to Rule I(15) and corresponding changes have been made in rules regarding centerlines (see comment 351). These definitions parallel the distinctions made in the definition of "route" (Rule I(55)), are consistent with the centerline evaluation described in Rules CXVII, CXVIII, CXIX, CXX, and CXXI, and are as follows: "(15) "Centerline" means a location for a linear facility within an approved route accurately depicted to within 250 feet unless otherwise specified by the board by a line one millimeter or less in width drawn on a 1:24,000 map, and which may or may not be surveyed. (a) "Alternative centerline" means a nonsurveyed possible location for a linear facility which is determined following the granting of a certificate for the approved route; one of the alternative locations potentially suitable for construction of a linear facility that the applicant or the department has selected after study of the approved route described in the certificate and that has been depicted on overlays to the base map described in Rule CXVIII(11); (b) "Approved centerline" means the precise location for a linear facility that is approved by the board and accurately depicted to within 250 feet unless otherwise specified in the certificate on the map described in rule CXXI(3); (c) "Preferred centerline" means the applicant's desired location for a linear facility as depicted on overlays to the base map described in Rule CXVIII(11) after study of the approved route and the centerline for which board approval is sought."

6 COMMENT: The definition of "certificate holder," in Rule I should include any person to whom a certificate has been transferred.

RESPONSE: The comment is accepted. Rule I(17) is changed to read "Certificate holder" means an applicant that has been granted a certificate ~~or an approved transfer~~ by the board."

7 COMMENT: The term "demand" used in definitions in Rules I(22), I(29), and I(51) conflicts with traditional usage in the utility industry; a different term should be used.

RESPONSE: The comment is not accepted. "Demand" may have a specific definition particular to the electrical industry. These rules must also apply to other types of facilities, which requires a broader definition of "demand" than that used by the electric utility industry. To clarify the definition of demand, Rule I(22) is changed as follows:

"(22) "Demand" means the quantity of energy that customers would be willing to purchase in a specific time period ~~under given assumptions about the price of the energy, and other economic factors~~.

Rule I(51) is amended as follows:

"(51) "Peak demand" means the maximum instantaneous energy demand by customers for kilowatts of electrical power, or thousand cubic feet per hour of gas, or other rates of delivery of energy ~~under given assumptions about price and other economic variables~~.

8 COMMENT: The definition of "end use" in Rule I(27) should end after energy.

RESPONSE: The comment is not accepted because it is useful to include examples for potential applicants. However, Rule I(27) is amended to read "...energy, ~~including but not limited to,~~ such ~~categories~~ as space heating..."

9 COMMENT: The definition of energy conservation in Rule I(28) is poor because turning down the thermostat is energy conservation, but does not increase efficiency in energy use. A period should go after "work" and the rest of the definition should be deleted.

RESPONSE: This comment is not accepted. The part of the definition that is requested to be deleted is used in P.L. 96-501, the Northwest Electric Power Planning and Conservation Act; it is essential to the definition.

10 COMMENT: The definition of "energy resources" in Rule I(30) should be expanded to include "conservation programs, including but not limited to, direct purchase, load management and negotiation or curtailable energy contracts."

RESPONSE: The comment is not accepted. Energy conservation is an important energy resource, but it should be dealt with separately rather than under this definition. This

is consistent with the treatment of energy resources and energy conservation throughout these rules.

11 COMMENT: Rule I(30) should be explicit about what is meant by "falling water."

RESPONSE: This comment is not accepted. The meaning of "falling water" is clear from the context of definition (30).

12 COMMENT: In Rule I(34), add the word "significantly" before "affected" in the definition of impact zone.

RESPONSE: "Impact zone" is a term that is used to define an area in which data are to be collected in order to make subsequent determinations regarding significance of impacts. Impact zone sizes were selected on the basis of generic information in the technical literature on types of impacts caused by the type of facility addressed by the rule. The suggested change would attempt to predetermine significance of impact before collection of site-specific data, and therefore is illogical. The comment points out a lack of clarity in the definition, however, and it has been re-written as follows: "(34) "impact zone" means the geographic study area ~~associated with a facility or associated facilities that would likely be affected by its~~ in which data is collected during the baseline study in order to make a determination of the impacts from the construction, operation, maintenance or decommissioning of a proposed facility or associated facility at the preferred and reasonable alternative locations."

13 COMMENT: In Rule I(34), remove "...at the preferred and reasonable alternate locations."

RESPONSE: The language regarding impacts at alternate locations is in the Act and is necessary for the Board's determinations.

14 COMMENT: "Interruptible load" should be defined in Rule I(36) as "a load that by contract can be interrupted in the event of a capacity deficiency on the supplying system." This is the standard definition.

RESPONSE: This comment is accepted. Rule I(36) is changed to read, "Interruptible load" means a ~~capacity~~ load that ~~by contract can~~ may be interrupted ~~in the event of a capacity deficiency on the supplying system~~ by a utility under ~~contractual arrangement with a customer~~.

15 COMMENT: In Rule I(44), the definition of "mitigation," replace the words "avoiding," "minimizing," "rectifying," and "eliminating" with "reducing" because impact mitigation can range from 0 to 100 percent. Also, define "compensation" separately because it is not the same thing.

RESPONSE: The use of the term "reducing" is not acceptable because it is not synonomous with the four words proposed to be deleted. Its use thus will reduce the clarity of the definition. Including "compensation" within the definiton of "mitigation" eliminates confusion over terms. The definition provided is identical to that used by the federal government, and unnecessary confusion would result from the use of different definitions at the federal and state level.

16 COMMENT: In Rule I(50), the definition of "paralleling" is imprecise and misleading because it contains the phrase "generally within the corridor...." This appears to negate the utility of the paralleling policy and in some cases, may result in selection of a high impact route.

RESPONSE: This comment is accepted, and the definition has been changed to: "(50) "Paralleling" means locating a proposed linear facility ~~generally within the corridor established by~~ directly adjacent to or overlapping the right-of-way of an existing linear utility, transportation, or communication facility."

17 COMMENT: In Rule I(51), peak demand should be measured over a 30 minute period, the industry standard, rather than instantaneously.

RESPONSE: This comment is accepted. Rule I(51) is changed to read in part, "Peak demand" means the maximum ~~instantaneous~~ 30 minute energy demand by..."

18 COMMENT: In Rule I(54), clarify the definition of "road."

RESPONSE: The rule as proposed contained a typographic error. It has been corrected as follows: "(54) "Road" means a way or course that is constructed or formed by substantial recountouring of land, clearing, or other action designed to be permanent or intended to permit passage by most four-wheeled vehicles for a significant period of time."

19 COMMENT: In Rule I(55)(a), the description of the width of the alternative route needs to be clearer in the definition.

RESPONSE: The comment is accepted. Comments on the definition of "centerline" (Rule I(15)) and other comments on mapping of routes (Rule XCIII(2)) indicate confusion between the "width" of a route and how accurately it must be mapped. The intent of the rules with respect to definitions of "route" and "centerline" and with respect to how they are to be mapped is to indicate to an applicant the degree of accuracy needed by the department to compare routes and analyze impacts. This distinction is an important one because, to an applicant,

"centerlines" are often surveyed. To clearly indicate that neither routes nor centerlines need necessarily be surveyed for purposes of the decisions to be made by the board, additions have been included in the definitions. The specification of how accurately routes and centerlines must be mapped is based on the accuracy needed for the decisions required of the board by the Act and on the fact that on a 1:24,000 scale map, features can accurately be located to within 40 feet (see also comments 5, 243, 351). The changes are as follows:

"(55) "Route" means a preliminary location for a linear facility accurately depicted to within 0.1 mile by a line one millimeter or less in width drawn on a 1:24,000 ~~topographic map which is a strip of land approximately 80 feet wide.~~

(a) "Alternative route" means one of the alternative locations potentially suitable for the construction of a linear facility that the applicant has selected for baseline study~~.~~ and has depicted on the base map described in Rule XCIII(2).

(b) "Approved route" means a linear strip of land of a width specified by the board on the map described in Rule CXVI that contains one or more alternative centerlines for a linear facility.

(c) "Preferred route" means the applicant's preferred location for a linear facility and the route for which a certificate is sought~~.~~ as depicted by the applicant on the base map described in Rule XCIII(2)."

19a In Rule I(55)(d), the term study route has been deleted because it was mistakenly retained from an earlier draft. To be consistent throughout the rules all references to "study routes" have been deleted in favor of "alternative route". See comment 193.

20 COMMENT: Although the co-ops report their sales by sector of demand (as in definition in Rule I(56)) to the REA, their wholesale suppliers do not, and therefore cannot report this information in long-range plans or applications.

RESPONSE: The comment is not accepted. This information is readily available to the wholesale suppliers from the distribution cooperatives' reports to the REA.

20a In Rule I(57), a reference to the sensitive areas listed in LXXXVI was inadvertently omitted. The rule has been changed as follows:

"Rule I ....(57) .... Rules LXVII, ~~and Rule~~ LXXXIV, and LXXXVI ...."

21 COMMENT: With regard to Rule I(58), it is unclear whether Basin Electric should be considered a service

area utility, since it has no legally protected service area. However, it must also be competitive with other suppliers so that members will enter and renew their contracts.

RESPONSE: The comment is accepted. The definition is unclear. The intent in separating service area and competitive utilities is to define a need analysis relevant to the circumstances in which they operate. Service area utilities build facilities to balance supply and demand in their service area or in their wholesale customers' service areas; competitive utilities build facilities when they perceive an opportunity for profit. The former category describes Basin Electric better than the latter. Therefore, Rule I(58) is amended to read:

"(58) "service area utility" means a utility with a legally protected service area or body of customers for whom it has a conventional utility mandate to serve all loads ~~or wholesale energy suppliers with requirements contracts, participation agreements, or similar arrangements with these entities~~ for the energy form to be produced by a proposed facility. Service area utilities include, but are not limited to, investor-owned utilities, rural electric cooperatives, municipal ~~electric~~ utilities, ~~and~~ public utility districts and ~~generation and transmission cooperatives, wholesale electricity suppliers with requirements contracts, participation agreements, or similar arrangements with these groups.~~

22 COMMENT: The definition in Rule I(58) of "wholesale electricity suppliers" should be changed to "wholesale energy suppliers."

RESPONSE: This comment is accepted, which for consistency requires that "municipal electric utilities" be changed to "municipal utilities." This change is made in the response to comment 21.

23 COMMENT: In Rule I(59), there is no definite guidance provided as to how to objectively measure "detrimental change" in the definition of "significant adverse impact."

RESPONSE: What is a "detrimental change" will have to be determined based on the facts of each case. An iron-clad, all-inclusive definition is therefore not possible. Precedent as to what the Board feels amounts to "detrimental change" will be developed by the Board as it is required to make these determinations. Applicants are given objective guidance as to methods of determining specific detrimental impacts in Rules LXIV through CVII, and there are large amounts of objective data in the scientific literature regarding detrimental impacts.

24 COMMENT: In Rule I(61), the definition of "siting study" should be deleted because it is the same as the definition of "baseline study" (Rule I(10)).

RESPONSE: The comment is not accepted because the terms are not equivalent. The siting studies as described in Rules LXIV and LXXXI are broader than baseline studies because they encompass the reconnaissance and inventory analyses, as well as the baseline study of sites or routes.

25 COMMENT: The definition of "utility facility" in Rule I(63) should parallel the definition of utility in the Act, and should be "a facility constructed by any person engaged in any aspect of the storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

RESPONSE: This comment is not accepted. The important distinction for a facility is why it is being built: how the output will be marketed and how costs will be recovered; not the nature of the person building it. Thus a synthetic ammonia plant whose output will be sold on the open market should be treated as a nonutility facility, even if it is built by an electric utility, which is the intent of the definition.

26 COMMENT: The distinction between competitive utilities (definition 13) and service area utilities (definition 58) has no statutory basis in the Act and should not be made.

RESPONSE: This comment is not accepted because there is a statutory basis for the distinction in the Siting Act. Section 75-20-105, MCA, states that the board may adopt "(2) rules further defining the terms used in this chapter" and "(4) any other rules the board considers necessary to accomplish the purposes and objectives of this chapter." Here the board will be doing exactly that, further refining the definition of utility found at 75-20-104(13), MCA, in a way it considers necessary to accomplish the purposes and objectives of the Siting Act. Even the comments that question the legal authority for this distinction acknowledge the distinction between competitive utilities and service area utilities. The distinction between the two must be recognized, and accordingly, these rules contain provisions to address those distinctions. The distinction between the two types of utilities is so great that nothing less than individual definitions and treatment in the rules is necessary to accomplish the purposes and objectives of the Siting Act. The Siting Act was purposely written in such a way to statutorily provide for this type of further defining of terms.

RULE II:

27 COMMENT: The rules should exempt historic and prehistoric sites because site locations must be kept confidential to prevent vandalism and to protect landowners from curiosity-seekers. Traditional religious site locations must also be kept confidential.

RESPONSE: The comment is accepted only to the extent that the mapping requirements of Rule CXVIII(9) has been modified to delete the requirement for the mapping of the exact locations. (See comments 244 and 357.) The comment regarding exemptions is denied in that any discussions of the sites required by these rules, or any site locations which may inadvertently be mapped, cannot be given confidentiality because of the dictates of 1972 Mont. Const., Art. II, Sec. 9. The Montana statutes on the Montana Historical Society and antiquities, 22-3-101, et seq., MCA, contain no express provisions concerning confidentiality. Section 22-3-424, MCA, concerning the duties of state agencies, does not grant state agencies authority to give confidentiality to such information. Section 22-3-435, MCA, however, requires that the discoverer of such sites shall "promptly report to the historic preservation officer the discovery of such findings and shall take all reasonable steps to ensure preservation of the heritage property or paleontological remains."

RULE IV:

28 COMMENT: The rules should only require long-range plans from utilities planning generating facilities or large, bulk system transmission projects 230 kV and higher. This would save the co-ops a lot of unnecessary effort.

RESPONSE: Section 75-20-501(1), MCA, requires that "each utility and each person contemplating construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities." Therefore the comment is not accepted as it is beyond the scope of these rules. However, no unnecessary burden is placed on the co-ops, as 75-20-501(4), MCA, indicates that co-ops may provide the reports they prepare for the Rural Electrification Administration (REA) in lieu of the long-range plan.

29 COMMENT: In Rule IV(3), the applicant should be required to submit 10-20 copies instead of the 5 required in the rule so that interested citizens can have copies.

RESPONSE: In the Department's experience, 5 copies usually suffice. If there is a need for more than five copies, the department provides them. The comment is not accepted.

RULES IV-IX:

30 COMMENT: The rules should encourage joint long-range transmission planning between investor-owned utilities and rural electric utilities.

RESPONSE: This encouragement is found in 75-20-501(2)(b), MCA which requires utilities to provide a description of efforts to coordinate planning with other utilities.

31 COMMENT: The rules on long-range plans should be generalized rather than require such extreme detail on every qualifying facility. If more information is needed in particular cases the Department can appropriately request it as additional information.

RESPONSE: The long-range planning requirements are sufficiently generalized. In response to other comments, some changes have been made to lessen the long-range planning requirements. Further, 75-20-501(4) provides that rural electric cooperatives may submit plans completed for the rural electrification administration in lieu of long-range plans.

RULE VI:

32 COMMENT: Rule VI requires energy resource projection for each of the ensuing 20 years from the base year. BPA does not use such yearly projections keyed to 20 ensuing years and simply notes that such a requirement would not apply to a federal agency.

RESPONSE: The comment is rejected because the Department and BPA are presently involved in litigation over the applicability of the Siting Act to BPA. The requirement does apply to a federal agency and this comment will not be accepted while litigation is continuing.

33 COMMENT: The requirement for a 20-year forecast in Rule VI and elsewhere in these rules is excessive; 10 years is sufficient. This would correlate well with the 10-year plan required by Rule IV.

RESPONSE: This comment is accepted in part. A 20-year forecast period may be unnecessarily long for some facilities, especially small transmission lines. However, there are many instances where planning and construction of a large generating facility may go beyond a 10-year forecast period. Therefore, the following changes are made in rules regarding forecast periods.

Rule VI is amended to read: "For a service area utility with a service area in Montana or a service area utility that is contemplating construction of a facility as defined by 75-20-104(10)(a), MCA, a long-range plan must include forecasted annual energy demand data and projected energy resources for each of the ensuing ~~20~~ 10 years beginning with the present year for each state in its service area. ~~Should~~

completion of a facility be scheduled to occur beyond this forecast period, the forecast period should be extended to include the time necessary for completion of the facility. Demand must....

A section is added to Rules XXXVI and XXXVIII that reads: Should the twenty-year forecast period in (1) extend well beyond the scheduled completion date of the facility, the department may approve the applicant's use of a shorter forecast period.

Rule LVIII is amended to read: (1)(a)...balance loads for ~~a period of 20 years~~ the forecast period used in rules XXXVI and XXXVIII.

(2)(a)...costs beyond the ~~20 year~~ analysis period,...

Rule CIX is amended to read: (1)(a) Adopt a forecast of energy and peak load growth in the applicant's service area, ~~for at least the 20 year period following the date of application;~~....

(1)(b) Adopt a resource forecast for the applicant's service area showing the existing and permitted resources that could be used to serve loads in the service area, ~~for at least the 20 year period following the date of application;~~

34 COMMENT: The accuracy of any forecast declines as it projects further in the future. A 20-year forecast as required by the rules must therefore be inaccurate.

RESPONSE: This comment is acknowledged. The inaccuracy of long range forecasts makes it essential to explicitly analyze the sensitivity of the forecast to changes in the assumptions, as required by Rule VI(1) and the effect of uncertainty on decision making as required by Rules XL, LV, and CIX(2).

35 COMMENT: In Rule VI(3) the required discussion of cost estimate accuracy should be general rather than detailed at this stage.

RESPONSE: This comment is accepted. Accordingly, Rule VI(3) is amended to read "Estimated costs of the facility and a general discussion of their accuracy...."

RULE VII:

36 COMMENT: The requirement in Rule VII that all power sales, pooling and interconnect contracts be provided would result in WAPA submitting over 1800 documents from the Billings area office. We recommend that a simple summary list of existing contracts be provided.

RESPONSE: This comment is not accepted because Rule VII(a)-(e) allows provision of a summary of the contracts rather than the full contracts. This rule also is amended to include only firm purchases and sales in response to comment 37.

37 COMMENT: Only contracts for firm exchange, purchase or sale should be required in Rule VII. Nonfirm transactions made to optimize the use of existing resources are not relevant for long term planning.

RESPONSE: Nonfirm transactions are relevant to long-term planning. However, the analysis of these transactions is beyond the scope of the long-range plans, therefore the comment is accepted. Rule VII is changed to read, in part, "...and each pooling, interconnection, and firm exchange, purchase or and sale agreement...." Rule VIII is changed to read, in part, "...interconnection, transmission and firm exchange, purchase...."

RULE VIII:

38 COMMENT: Rule VIII, requiring information on current and planned negotiations, can involve disclosure of sensitive information which could affect the outcome of the negotiations. Too much detail is requested in this rule.

RESPONSE: Rule VIII asks only for a summary description including a list of the parties and the history and current status of the negotiations. This is clarified by amending Rule VIII as follows: "The description must include a list of the parties and a general discussion of the history and current status of the negotiations." If this summary information is confidential then the provisions of Rule II provide for protection.

RULE IX:

39 COMMENT: Rule IX should be expanded to require additional information on the location of potential markets, identification of market sectors, plans for transportation to markets, an estimate of the time period during which the facility would serve the projected demand and a discussion of the extent to which the facility would be publicly financed.

RESPONSE: This comment is not accepted. The inclusion of this material was considered in drafting the long-range plan requirements but it was decided that it was not necessary at this stage. Information on the location of markets is required in the application (Rules LIII and LXIX), as is information on required assistance (Rule LIV), and on transport costs (Rule LXX). The question of the length of the time period during which the facility would serve the projected demand is not relevant for competitive utilities and nonutilities.

40 COMMENT: Rule IX is directed to "persons other than service area utilities." This term is not defined in Rule I and is unclear.

RESPONSE: The comment is accepted. The Act distinguishes between utility and nonutility applicants.

These rules further distinguish among service area and competitive utilities. Accordingly the term "persons other than service area utilities" refers to competitive utilities and nonutilities. To correct any confusion, the rule title is changed as follows: "Rule IX ~~PERSONS OTHER THAN SERVICE AREA~~ COMPETITIVE UTILITIES AND NONUTILITIES...and Rule IX is amended to read: A long-range plan from ~~persons other than service area~~ competitive utilities and nonutilities contemplating...."

41 COMMENT: If all of the 35 operating electric utilities in this state submit long-range plans, as specified by these rules, it would take a substantial staff of trained and experienced engineers to digest such information. It seems that this tremendous volume of documentation is being requested with the intent to set the stage for litigation whenever a utility demonstrates intent or seeks permission to build.

RESPONSE: This comment is not accepted. The long-range plans are a statutory requirement of the Act and are intended to provide advance notice to the state of plans for constructing major energy facilities, not to set the stage for litigation. Further, 75-20-501(4), MCA provides that rural electric cooperatives may furnish a copy of the plan they submit to the Rural Electrification Administration in lieu of a long-range plan.

RULE XII:

42 COMMENT: The rule should list the elements in the law (75-20-304(c), MCA) that allow a waiver to be pursued or the applicant will have to go back through the legislative history of the Siting Act to see if he qualifies.

RESPONSE: The comment is not accepted because the requirements of the statute on reading are clear on their face, and the Montana Administrative Procedures Act at 2-4-305(2), MCA, mandates that, "Rules may not unnecessarily repeat statutory language."

RULE XIII:

43 COMMENT: Replacement in-kind of damaged or destroyed facilities on the same route should be granted on automatic waiver rather than having the requirement of the filing of a request for waiver to replace or relocate a damaged or destroyed facility.

RESPONSE: The rule was not intended to require a waiver for emergency repairs, so the comment is accepted to that extent. Rules XIII and XV have been modified as follows:

"Rule XIII .. must contain the following information: This rule does not, however, apply to emergency repairs to a facility or associated facility."

"Rule XV .. (2) ... (a) This rule does not apply to emergency repairs of a facility or associated facility.

RULE XV:

44 COMMENT: Section (2) of the rule should be deleted.

RESPONSE: This comment is not accepted for the same reasons set out in the response to the comment to Rule XIII. Section 75-20-304(2), MCA, does not allow for any automatic waivers by the Board, and the Board will not make any decisions on waivers without an appropriate showing and hearing on a requested waiver.

44a In Rule XVI, a reference to the inventory general requirements contained in Rule LXXIV was inadvertently omitted. Rule XVI has been changed to read as follows:

"Rule XVI ....(1) ... by Rules LXXIV, LXXV, LXXVII, and LXXVIII ...."

RULE XVII:

45 COMMENT: The "notice of intent to file an application" encourages early consultation between the applicant and Department, but the rest of the rules go on to require every detail.

RESPONSE: The rules do specify detailed requirements; however, consultation does not negate the need for detail. In addition, Rules XXIV, LXIV(4), and LXXX(3) and (5) specifically describe how an applicant can make a case for not providing some of the information in the siting studies. (See also comment 387.)

RULE XXI:

46 COMMENT: Strike the word "reasonable" from the phrase "reasonable alternate locations."

RESPONSE: "Reasonable" is used in section 75-20-211 of the Act and using it consistently throughout the rules will avoid confusion.

RULE XXII:

47 COMMENT: The requirement in Rule XXII(1) for two copies of aerial photographs doubles the cost.

RESPONSE: The comment is accepted. The rule has been modified to require one set of photographs, but also requires the applicant to provide an additional set of photographs if the Department needs it. The rule is also changed to reflect the deletion of the requirement for stereo coverage in Rule XCIII(4), as follows: "For the contact prints providing ~~stereo~~ photographic coverage, required by Rule LXXVII(5) and XCIII(4), ~~two~~ one ~~copies~~ are is sufficient. The applicant shall promptly furnish one additional copy, if requested by the Department."

RULE XXIV:

48 COMMENT: In Rule XXIV, the use of the word "all" may be difficult to comply with due to the volume required.

RESPONSE: This comment is accepted. The purpose of the rule is to obtain a reasonable documentation of sources, and "all" is difficult to interpret. It has been deleted, as follows: "An application must contain a list of sources of ~~all~~ information used in preparing the application. An application must specify when ~~all~~ field investigations were conducted."

49 COMMENT: In Rule XXIV, reinstate language from an early draft requiring that the name of the person having responsibility for preparing the information be included in the application so that the Department or the public can direct inquiries to the person responsible.

RESPONSE: The comment is not accepted because requiring that names be included is cumbersome. Many documents of this type are team efforts and the "author" is not an individual. Frequently the Department learns the name of the person responsible for the information through informal contacts with the applicant and can direct the public to these persons. If it is important for the Department or the public to discover who the preparer is, the Act gives the Department adequate authority to discover it through section 75-20-213, MCA.

RULE XXV:

50 COMMENT: In Rule XXV(1), the time limit for submittal of supplemental information should be reduced from 30 to 15 days to allow diligent processing of an application. If this cannot be done, the applicant should be required to describe the material within 15 days of it becoming available.

RESPONSE: The comment is not accepted. The type of material that is classified as "supplemental" is unlikely to interfere with the diligent processing of an application. In addition, the applicant may have to rework the material to put it in the form required in the application, and 15 days is too little time as a general requirement.

RULE XXVIII:

51 COMMENT: Since projects that are not close geographically pose different impacts, they should be treated as separate facilities. Hence the words "in geographical proximity" should be inserted between "Related projects" and "which" (sic).

RESPONSE: The Board, in making the finding required by Rule CXI or Rule CXIV, must consider all probable significant impacts associated with the proposed facility including related projects that would be viewed as part of the facility under this rule. While impacts from related projects that are

geographically separate may be different and affect different groups of people, they would, nonetheless, receive consideration in the Board's determination that the facility would "...result in less cumulative adverse environmental impact and economic cost than siting the facility at any alternative site...." This benefits the state as a whole since the Board will have considered the broader nature of a facility in reaching its decision. The suggested change has, therefore, not been accepted.

RULE XXIX:

52 COMMENT: The Department should set standard costs in Rule XXIX, in terms of dollars per mile for different types of transmission lines and dollars per kVA for generating capacity. This would minimize conflict over who has the best cost estimate.

RESPONSE: The comment is not accepted. 75-20-215, MCA, requires that the filing fee be based on varying percentages of the estimated cost of the facility. Recent experience is that the calculation of estimated costs on a case-by-case basis is no particular problem for applicants or the department. The suggested procedure would be unwieldy because it would require revision of the proposed cost standards every year to adjust for cost escalation.

53 COMMENT: We suggest the cost itemization required by Rule XXIX(2) be limited.

RESPONSE: The comment is accepted although there must be the possibility of obtaining further detail on costs, if necessary. Therefore, Rule XXIX(2) is amended to read:

"...commissioning costs. Cost estimates must be itemized into relevant categories as follows unless other categories are agreed to by the department:

(a) engineering and overhead costs~~, itemized by the following:~~

~~(i) architecture and engineering;~~

~~(ii) other technical support;~~

~~(iii) management and administration;~~

~~(iv) permitting;~~

~~(v) quality control;~~ and

~~(vi) other;~~

(b) land acquisition ~~costs;~~ and

~~(c)~~ site or right of way preparation costs;

(c)~~(d)~~ plant costs, itemized by major process area and by major equipment. For proprietary processes itemization by major process area is sufficient for the application;

(e)(d) costs of transportation links;

(f)(e) mitigation costs;

~~(g) contingency costs;~~

(h)(f) front and royalty payments;

(f)(g) initial ~~loading~~ inventories of coal, chemicals or materials;

(g)(h) startup expenses; ~~and~~

~~(h)~~ working capital; and

(i) any other costs necessary and incidental to the construction of the facility ~~and operation for initial operation~~....

~~...(2) The department may request additional detail on costs as necessary for verification of comparison of alternatives.~~

54 COMMENT: Rule XXIX(6) is unclear as to intent; furthermore it is not clear what "total costs of construction" includes.

RESPONSE: This comment is accepted. The purpose of this rule is to clearly identify what year's costs are being discussed. The phrase "total costs of construction" in the second sentence of XXIX(6) refers to the escalated costs as of the start of construction. To clarify this the second sentence of XXIX(6) is amended to read "~~The total cost of construction~~ "Escalated costs as of the assigned start of construction must then be adjusted to the construction expenditure schedule based on...."

55 COMMENT: Rule XXIX(2) and (3) should require information on indirect as well as direct costs. Indirect costs may be substantial and must be included.

RESPONSE: This comment is not accepted. Indirect costs should not be included in the base cost for calculating the filing fee as required by 75-20-215, MCA. Indirect costs enter the evaluation in the comparison of alternatives and in the decision standards.

56 COMMENT: It is not clear, in Rule XXIX(2), that total labor costs should be included. Add language to the rule as follows: "labor costs including benefits, employment taxes and subsistence allowance."

RESPONSE: This comment is not accepted. The cost itemization required by Rule XXIX(2) breaks down costs by construction and planning phase and by major plant component, not by type of input to the construction process such as labor costs.

57 COMMENT: The cost of right-of-way acquisition should not be itemized separately in Rule XXIX(2)(b) because it will affect negotiations with landowners for easements.

RESPONSE: This comment is accepted. Categories 2(b) and (c) have been combined into "land acquisition and site or right-of-way preparation costs;" in response to comment 53.

58 COMMENT: Where is the method for calculating the filing fee listed? If the rules are to be comprehensive they should contain instructions both for calculating the base as in Rule XXIX, and for calculating the filing fee.

RESPONSE: This comment is not accepted. The filing fee calculation is contained in 75-20-215(1)(a), MCA. It is not necessary to repeat the formula in the rules.

Rules XXIX and XXX:

59 COMMENT: The cost estimates required by Rules XXIX and XXX are so detailed they can only be produced after detailed engineering of the plant is complete. Yet the comparison of alternatives, particularly as required by LVI(6) requires a tradeoff of cost and component and design alternatives, and the analysis of reliability required by XLI also affects the design and cost of equipment and structures.

RESPONSE: There is no conflict between the requirements for cost estimates and those requiring analysis of alternatives. The analysis of and comparison of alternatives is part of the process which, along with the alternate siting study, should lead the applicant to selection of the proposed facility. The trade-off analysis goes into the selection of the preferred technology, size, timing, location and design of the facility. The estimation of costs required by Rules XXIX and XXX logically comes after, not before, the analysis required by Rules LVI-XCVII.

Detailed engineering need not be complete before Rules XXIX and XXX can be complied with. The language used in these rules was developed after consultation with potential applicants and is intended to be based on standardized engineering designs for power plants, transmission lines and other established technologies, and on conceptual design for new technologies if no more detailed design is available.

Rules XXIX, XXX, and XXXI:

60 COMMENT: Rules XXIX, XXX, and XXXI require cost information that assumes detailed design is almost complete. Given the uncertainties in permitting it would be unwise for any applicant to proceed with detailed design until a permit is granted.

RESPONSE: This comment was raised several times in early discussions with potential utility and nonutility applicants. The rules were intended to base cost estimates on standardized engineering design information where available and the best estimate conceptual design costs otherwise. It is due to the inability to obtain detailed engineering design information that Rules XXIX(4), XXX(9), and XXXI(10) were written, requesting estimates of the accuracy of cost estimates. To clarify this intent, Rule XXIX(1) is amended to read "...commercial operation. Cost estimates may be based on

preliminary engineering or if available standardized engineering estimates.

RULE XXX:

61 COMMENT: Rule XXX(3)(a) should require the type of assistance to be specified. It should read, "Subsidies, including but not limited to tax credits, accelerated depreciation, loan guarantees or low interest loans, price supports, and price guarantees, shall be specified."

RESPONSE: This comment is not accepted. This wording is already present in Rule I(6) as the definition of assistance.

62 COMMENT: In Rule XXX(4)(d) the reference "For service area utilities" should be deleted. This information is relevant to all utilities.

RESPONSE: This comment is not accepted. Service area utilities can take advantage of the availability of low cost displacement energy to save on the operating costs of their plants. Their customers do not have this option. The customers of competitive utilities, on the other hand, can avail themselves of this opportunity, not being bound to a single supplier.

63 COMMENT: Rule XXX(8) contains a typographical error. The reference should be to 4(d), not 5(d).

RESPONSE: This comment is accepted. Rule XXX(8) is changed to read "(8) Expected net output during full operation shall not exclude output lost during downtime discussed in 4(d) ~~5(d)~~."

64 COMMENT: Rule XXX(1)(b) requires that financing plans be submitted in the application. This cannot be predicted because the method will be selected to take advantage of market opportunities at the time of financing. This information is not useful and the requirement should be deleted.

RESPONSE: This comment is not accepted. Information on likely means of financing is needed to estimate the annual amortization costs, to calculate annual energy costs, and for the comparison of the proposed facility with alternatives. While market opportunities may change by the time of financing, a best guess estimate must be made for analytical purposes in the application. However, to clarify the intent, the wording of the second sentence of Rule XXX(1)(b) is amended to read, "~~financing plans must be submitted including information on~~ the likely debt equity ratio and projected interest rate for the debt must be submitted."

65 COMMENT: How will the information in Rules XXX(2) and (3) be used?

RESPONSE: Rule XXX provides a major basis for the comparison of the proposed facility and alternatives which are not the same size or do not have the same operating characteristics as the proposed facility. This comparison is required for the Department's recommendation and the Board's finding on minimum impact given the nature and economics of alternatives pursuant to 75-20-301(2)(c), MCA.

The cost of energy from a facility is found by dividing its annual costs by its annual output. Annual costs to the applicant are composed of annual capital costs, operating costs, fuel costs and taxes less any assistance such as subsidies and tax benefits. Accordingly, detail is requested on each component of annual costs. Annual capital costs depend on the cost and type of financing, so an explanation of likely financing methods is required.

Section XXX(2) is required to specify the amortization period, and that amortization is required. Section XXX(3) requires annual costs calculated for the first, fifth and tenth operational years. This is necessary for understanding how real energy costs vary over time.

RULE XXXI:

66 COMMENT: The words "placed in service" in Rule XXXI(2) have a particular meaning to the Internal Revenue Service, which differs from common utility usage. We suggest the words "placed in commercial operation" be used instead.

RESPONSE: This comment is accepted. The second sentence of Rule XXXI is amended to read, "For facilities taking longer than one year to construct, allowance for funds used during construction must be added to the escalated construction costs as of the date the facility is placed in commercial operation ~~service~~."

67 COMMENT: The determination of need for competitive utilities requires the analysis of widely varying estimates of price and cost. Much cost information is proprietary. The Department cannot both do the analysis and protect the proprietary information.

RESPONSE: Price and cost estimates for some competitive utilities are subject to great uncertainty. There is probably no way around this problem other than to explicitly request estimates of accuracy and look at other cost analyses done on similar facilities. Further, Rule LV requires an explicit analysis of uncertainty for competitive utility applicants. The confidentiality provisions in Rule II will allow the Department to do its analysis if the applicant moves to protect the confidentiality of the information.

68 COMMENT: Rule XXXI(4)(a) requires estimates of maintenance costs and levelized decommissioning costs for

the life of the line. These are very difficult to estimate with any degree of accuracy.

RESPONSE: The comment is accepted in part. Decommissioning costs are difficult to project accurately, therefore, this item is deleted. Maintenance costs are generally part of every standard cost estimate and may be particularly important in the long-run comparisons of facilities with no fuel costs. It is difficult to project maintenance costs accurately far into the future; thus rule XXI(10) asks for an explicit estimate of the accuracy of the projection. Rule XXXI(4)(a) is modified to read "costs, ~~and~~ maintenance costs~~, and levelized decommissioning costs~~.

69 COMMENT: In Rule XXXI(2) delete the second sentence and add "Interest during construction on borrowed funds and accounting allowances for internally generated funds used during construction must be compounded throughout the construction schedule and capitalized in the cumulative facility cost up to the date of operation."

RESPONSE: This comment is not accepted. The existing language serves the same function as the language proposed in this comment.

70 COMMENT: The disaggregation of annual costs required by Rule XXXI(4)(a) is excessive for decision making on transmission lines.

RESPONSE: The comment is not accepted. The rule covers pipelines as well as transmission lines. The intent of the disaggregation is to assist in verifying the cost estimates and in comparing the facility with alternatives. Categories which are irrelevant for transmission lines may be excluded; that is the intent of the phrase "...disaggregated by relevant categories."

71 COMMENT: The information required in Rule XXXI(5)(b), (c) and (d) is not necessary for decision making.

RESPONSE: This comment is accepted in part. The detail is not necessary for every application, but may be requested as supplemental information should it be needed in specific cases. Accordingly, Rule XXXI section (5) is amended to read as follows:

"(5) An application must contain a description of ~~design capacity, and~~ expected operational characteristics of the facility,...."~~including the following information:~~

~~(a) design capacity;~~

~~(b) expected amount and timing of scheduled partial or total downtime for maintenance, rebuilding, or other purposes;~~

~~(c) estimated amount of unscheduled downtime based on historical data associated with similar facilities considering type, size, and location or based on probabilistic failure analyses; and~~

~~(d) expected or planned monthly operating levels."~~

RULE XXXII:

72 COMMENT: Some contracts may be proprietary. Rule XXXII(1) should be limited to statements of contracts.

RESPONSE: This comment is accepted. Accordingly, Rule XXXII is amended to read: "(1) An application must contain copies of any contracts covering periods longer than one year to which the applicant is a party for the purchase of equipment, fuel and/or water for the facility or for the sale of the facility's product or transportation services, or the following information for each such agreement:

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

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

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

(d) the amount to be purchased or sold and the rate and timing of delivery under the agreement; and

(e) the financial agreements."

(2) ...copy of the contract or the information required by 1(a)-(e) to the department.

For confidential treatment of contracts, see Rule II.

73 COMMENT: Rule XXXII(2) requires submission of any new contracts immediately. This should be within 30 days.

RESPONSE: This comment is accepted. Rule XXXII(2) is amended to read as follows:

"(2) If at any time after the date of the application but before receiving a certificate an applicant enters into any such contract, the applicant shall within 30 days ~~immediately~~ supply a copy of the contract or the information required by 1(a)-(e) to the department."

RULE XXXIII:

74 COMMENT: Rule XXXIII may be completely irrelevant to linear facilities.

RESPONSE: This comment is accepted as it applies to most transmission lines. However, cost recovery and pricing policy are relevant for pipelines and for transmission lines, such as interties, whose costs will be recovered through user charges. Therefore, Rule XXXIII is amended to read "...pricing method. This rule does not apply to transmission lines that recover costs through overall energy charges or similar methods."

RULE XXXIV:

75 COMMENT: The requirement for cost information in Rule XXXIV(1) and (2) should ask for information on costs to customers, costs to the applicant, and costs to Montana,

as is required for benefits in section (3).

RESPONSE: This comment is not accepted as the information is included in the requirements of (1) and (2) as written.

76 COMMENT: Why is information on benefits required by Rule XXXIV(3)? The rule needs to be further explained or defined.

RESPONSE: Consideration of benefits is mandated by 75-20-301(3)(b), MCA. Benefits are not defined in the rules because they may be different for different types of facilities. Examples of benefits are the benefits to consumers of the energy produced by the facility, or the reduction in outage frequency for electrical customers served by a transmission line.

RULE XXXV:

77 COMMENT: Rule XXXV should also ask for information on the role of resources for which regulatory approvals are being sought or which are being planned by the applicant.

RESPONSE: This comment is not accepted as this information is required by Rule XXXIX(5).

78 COMMENT: Delete the last sentence in Rule XXXV. Need is difficult enough to evaluate without developing special application requirements.

RESPONSE: This comment is not accepted. The intent of the sentence is not to develop special application requirements, but to recognize that the information requirements in the rule may not necessarily be appropriate for all prospective applicants and that guidance should be sought from the Department if an applicant believes this to be the case.

RULE XXXVI:

79 COMMENT Explicit recognition must be made in Rule XXXVI(3) of the uncertainty inherent in a 20-year forecast.

RESPONSE: This comment is not accepted as this information is required by Rule XL.

RULES XXXVI-XL:

80 COMMENT: Rules XXXVI, XXXVIII, XXXIX, and XL should be generalized and provide for special data requests specific to the particular application.

RESPONSE: Every attempt has been made to generalize the requirements for these sections. As discussed above in response to comments on rules IV-IX, information needed for the Department analysis must be available early enough to be incorporated in the analysis. Material that takes considerable time to develop cannot meet this requirement if

it is requested only after the application is submitted and will not be available to the decision process. Rule XXXV provides that if the circumstances of an applicant make any of these requirements inappropriate, the applicant should ask the Department for special information requirements.

The material required by rules XXXVI, XXXVIII, XXXIX and XL represents a process for collecting the information that is necessary for the Board to make its decision according to the decision standards.

RULE XXXVIII:

81 COMMENT: The requirement for a "reasonable range of forecasts" in XXXVIII(2)(d) is too open-ended; it should be made more specific.

RESPONSE: This comment is accepted. Rule XXXVIII(2)(d) is amended to read: "...by providing a ~~reasonable~~ range of forecast scenarios, including a most likely forecast and high and low forecasts and probabilities associated with each scenario, using...."

82 COMMENT: The requirement in XXXVIII(2)(e) for prompt resubmittal of new forecasts is unnecessary as these forecasts are routinely filed annually.

RESPONSE: This comment is not accepted. The intent of (2)(e) is to ensure that updated forecasts be provided as early as possible so they can be incorporated in the Department analysis for a recommendation to the Board. Since the time available for analysis is limited, routine annual submittal might not permit use of the latest information available.

83 COMMENT: The requirement of Rule XXXVIII(4) that forecasts be related to price and other economic variables is unjustified and will be subject to interpretation.

RESPONSE: This comment is not accepted. The requirements of XXXVIII(4) are consistent with long accepted tenets of economics and are essential to making forecasts meaningful.

84 COMMENT: Rule XXXVIII(6)(b) may duplicate the requirements of Rule XXXII.

RESPONSE: This comment is accepted. Rule XXXVIII(6)(b) is amended to read "(b) An explanation of the terms of ownership ~~or sets of power from the facility and contracts~~ shall be provided."

RULE XXXIX:

85 COMMENT: The information required by Rule XXXIX(1)-(5) duplicates the requirements of rules XXXVI, XXXVII and XXXVIII.

RESPONSE: This comment is accepted in part. Rather than duplicating the previous three rules, Rule XXXIX is intended to integrate them. Rule XXXVI requires a forecast of resources available for meeting loads. Rule XXXVII requires a discussion of interchange agreements. Rule XXXVIII requires a demand forecast. The integrating rule, Rule XXXIX, requires an explanation of how the information in the three previous rules was used, along with any planning, reliability and decision criteria used to decide to build the proposed facility.

However, Rule XXXIX(5) does, in part, duplicate the requirements of Rule XXXVI. Accordingly, subsection (5) is amended as follows:

"(5) the relationship of all facilities, other resources, energy conservation and major energy purchases existing or planned by the applicant for the 20-year period following the date of application, ~~their relationship~~ to the proposed facility, and an explantion of why the planned facilities are being built or the planned purcheses are being made in the order planned.

~~(a) Data must be provided on the existing and projected peak resources and average resources under average conditions and under worst case planning criteria if applicable.~~"

RULE XL:

86 COMMENT: Add to Rule XL a subsection (2) requiring estimation of retail rates calculated with and without the proposed facility after the date the proposed facility is planned to enter commercial operation.

RESPONSE: This comment is not accepted. The Department recommendation and Board decision may require an analysis of the relative effect on rates of different alternatives. The analysis does not extend to the prediction of actual rates in the applicant's service area.

87 COMMENT: Since analysis of uncertainty is required in previous rules, why does there need to be an additional separate Rule XL for it?

RESPONSE: The apparent confusion in Rule XL is with Rule XXXIX(3). However, the latter focuses on how the applicant's planning criteria attempt to deal with uncertainty. Rule XL, on the other hand, focuses on the effect of uncertainty on the outcome; for example, how lower or higher load growth will affect the target date for commercial service and how this will be affected by changes in the projected markets for outside purchase or sale of energy.

88 COMMENT: The surplus referred to in Rule XL(1)(d) should be keyed to a specific time frame.

RESPONSE: This comment is accepted. Rule XL(1)(d) is amended to read as follows: "(d) the likely markets for the

sale of ~~any temporary surplus energy or capacity~~ the output of the proposed facility on the event that the applicant ~~may have has a surplus of energy~~ after the facility is placed in ~~service~~ commercial operation."

89 COMMENT: How will the information in Rule XL(1)(d) be used in decision making?

RESPONSE: This information is keyed to the decision standard for the basis of need, in Rule CIX, in particular to the alternate finding of need in CIX(2). It will be used to evaluate the degree to which the facility is planned to account for the fact that loads and resources cannot be forecast accurately or perfectly matched.

RULE XLI:

90 COMMENT: Responsibility for defining reliability and quality of service is the domain of the PSC, FERC, WSCC, ICP and other contractual arrangements. It is irrelevant to the decision making process under the Siting Act. Rule XLI should be deleted.

RESPONSE: This comment is not accepted. All service area utilities operate under established criteria for system reliability. The purpose of this proposed rule is to obtain a discussion of the applicant's reliability criteria and how they are maintained, and an understanding of the economics of higher or lower reliability levels. This rule is needed to address the requirements of both 75-20-301(2)(a), (c), (e)(iii), and (g), MCA. Since any attempt to maintain a given reliability criteria will ultimately lead to a requirement to build new facilities, the reliability criteria are directly related to the need determination under the Siting Act. In addition, changing the reliability criteria will advance or delay the time when new facilities are required. Thus, alternate reliability criteria must be considered alternatives to a proposed facility.

91 COMMENT: While sections (1), (2) and (3) of Rule XLI are generally compatible with industry practice, sections (4) and (5) are not and should be deleted. Reliability criteria are based on deterministic, not probabilistic standards. Outage frequencies cannot be predicted and the economic value of reliability cannot be estimated. Any response to (4) and (5) must be highly speculative.

RESPONSE: This comment is not accepted. Reliability is a desirable attribute of power systems and greater reliability is attained only at a cost. Both from a consumer's perspective and a power supplier's perspective the value of increased reliability must be weighed against the cost of attaining it. The benefits of reliability are inherently probabilistic. Estimates of outage frequency and of the benefits of reliability based on historical experience will be

uncertain and this is recognized in these rules. Reliance on deterministic criteria that ignore the probabilistic nature of reliability and the relationship between costs and benefits of reliability cannot meet the requirements of the Siting Act and of the decision standards in Rules CVIII-CXV.

92 COMMENT: The analysis required by Rule XLI may affect the design features and costs of equipment and structures chosen.

RESPONSE: An evaluation of reliability is necessary to analyze the nature and economics of alternatives as required by 75-20-301(2)(c), including alternate equipment and structures.

RULE XLIII:

93 COMMENT: It is unclear whose alternate sites are referred to in the introduction to Rule XLIII.

RESPONSE: The alternate sites are those developed by the applicant in response to rules LXIV-XCVII of these rules.

94 COMMENT: In Rule XLIII sections (1) and (2) load flow studies should be required for a 10-year period after the facility comes into commercial service.

RESPONSE: This comment is not accepted. Load flow studies can only be performed for years which have base cases available. These base case load flow studies are developed by regional entities such as the Western Systems Coordinating Council for a limited horizon of approximately 10 years. Proposed facilities may not be constructed for several years after the date of application. Therefore, it is generally not possible to perform load flow studies for 10 years after a proposed facility comes on line.

95 COMMENT: How would a facility serving demands outside the state comply with Rule XLIII and with these regulations in general and how would costs and benefits be treated for such facilities?

RESPONSE: The rules do not distinguish instate and out-of-state demands except as they affect the alternate siting study. This is no change from the current practice. Benefits and costs would be weighed equally whether they accrue to Montana consumers or consumers in other states.

RULE XLIV:

96 COMMENT: The intent of the required comparison with national and state conservation programs in Rule XLIV is not clear.

RESPONSE: This comment is accepted. The intent of this comparison is to assist in estimating the impact of these programs on future loads. This is necessary to avoid double counting in estimating the potential for cost effective

conservation as an alternative to a proposed facility. To clarify that intent, Rule XLIV is amended to read as follows:

"...conservation. An application must ~~compare and contrast those energy conservation programs with~~ also evaluate the effects of any state, regional, and national energy conservation programs on future loads in the applicant's service area..."

RULE XLV:

97 COMMENT: While the state of the art of end-use forecasting may be less than perfect there is a real need to compel the utilities to begin attempting such forecasting. Doing so may well suggest alternate strategies for conservation and for curtailability programs. It should be required by Rule XLV.

RESPONSE: This comment is not accepted. The possible benefits to end-use forecasting are not sufficient to warrant mandating its implementation by applicants in these rules.

98 COMMENT: Rule XLV should specify what the applicant should do if the end-use information required is not available due to various factors.

RESPONSE: The comment is accepted. Rule XLV(1) is amended to read "...and renewable energy alternatives in an applicant's service area. An applicant having difficulty obtaining any of this information should contact the department to reach agreement on the information to be provided."

99 COMMENT: Specify the time frame better in Rule XLV(1).

RESPONSE: This comment is accepted. Rule XLV(1) is amended to read: "(1)...provide demand data by end use for the most recent year prior to application for end-uses which for the product ~~of~~ supplied by the proposed facility. ~~could supply~~. Wholesale...."

100 COMMENT: It is not clear how the information required by Rule XLV will be used in the decision process.

RESPONSE: This information is needed to provide for an evaluation of the applicant's load, in terms of the types of ultimate uses of the product from the proposed facility. This analysis is used to examine and compare the potential for energy conservation and use of renewable energy alternatives, required by 75-20-503(1)(b), (c), and (f), MCA, in the applicant's service area as an alternative to the proposed facility.

101 COMMENT: End-use information required by Rule XLV should be requested after an application is accepted, in specific cases where conservation and renewable energy alternatives are likely to have a high payoff.

RESPONSE: This comment is not accepted. This information, required by Rule XLV, requires lead time so long that it is not possible to obtain it in a timely manner after the application is submitted. There is no way of knowing if conservation is going to be a practical alternative without gathering the information required by this rule. Further, 75-20-503(1)(b), (c), and (f) require the Board to consider conservation and alternative sources of energy in lieu of the proposed facility.

RULE XLVI:

102 COMMENTS: Section (2) should be redefined as the thermal capability, rather than power transfer capability, under normal and contingent operating conditions. Then sections (1), (2), (3) and (4) will be parallel: stability problems, thermal capability limits, voltage drop problems and reliability considerations may all indicate a need to increase power transfer capability.

RESPONSE: This comment is not accepted. The meaning is clear in the current language.

RULES XLVI-L:

103 COMMENT: Rules XLVI, XLVII, XLVIII and L are too technical and too specific, leaving no room for experienced judgment. The data requirements should be more general and the Department should ask for detailed technical information only if essential.

RESPONSE: This comment is not accepted. The rules are written in part in response to requests from applicants for greater specificity so they know what will be required before an application can be accepted. The approach suggested in the comment is not compatible with the requests for greater specificity.

While experienced judgement is helpful for identifying the operational needs of a particular system, the use of judgment alone to determine the merits of proposed facilities cannot meet the requirements of 75-20-301, MCA, nor can it provide a record on which the Board can base its findings.

RULE XLVII:

104 COMMENT: The second and third sentences of Rule XLVII(1) are redundant, since the first sentence requires the applicant to identify and explain the rationale for the criteria used.

RESPONSE: This comment is accepted and Rule XLVII(1) is amended to read as follows:

"(1) An explanation of the normal or contingent operating conditions, under which a transient stability problem exists, identification of the criteria used to determine these conditions, and an explanation of the rationale for their use; ~~Criteria for steady-state~~

~~conditions include, but are not limited to, a single line outage during heavy winter or summer peak loads. Criteria for outage conditions include, but are not limited to, one line out on maintenance and another tripping on fault, and...."~~

RULES XLVII-IL:

105 COMMENT: Rules XLVII-IL are based on reliability criteria that have no relation to standard industry practice. These rules should be replaced by a general requirement that need be verified by adherence to reliability criteria established by WSCC, MAPP or the individual applicant.

RESPONSE: This comment is not accepted. As discussed in response to comments on Rule XLI, adherence to deterministic reliability criteria does not meet the intent of 75-20-301(2)(a), (c), (e)(iii) and (g), and 75-20-503(1)(b) and (c), MCA. The benefits of reliability are inherently probabilistic. This must be explicitly considered in evaluating costs and benefits of facilities proposed to maintain or enhance reliability, both in deciding whether the facility is needed and in comparing alternatives.

RULE XLVIII:

106 COMMENT: In section (5) of Rule XLVIII the phrase "megavolt amp reactance loads" should be simplified to "megavar loads." This is standard industry usage and is simpler.

RESPONSE: This comment is accepted and Rule XLVIII(5) is changed to read, in part, as follows: "...single line diagram showing megawatts and ~~megavolt amp reactance~~ megavar loads and flows and...."

107 COMMENT: Rule XLVIII(6)(b) requires a comparison of the ratio of after-diversity maximum load to total connected load for new block load customers with that of existing, similar customers. This is an invalid comparison. For example, a modern phosphate plant will be completely different than a 30-year-old one. This requirement should be deleted.

RESPONSE: This comment is accepted. Rule XLVIII(6)(b) is amended to read as follows:

"(b) if additional block loads equal to 10 percent or more of a given substation load are anticipated, a list of the total connected load and the after-diversity-maximum demand for each additional load. ~~The ratio of the after-diversity-maximum to total connected load for the anticipated additional load must be compared to the same ratio for similar existing customers to establish the validity of the after-diversity load estimate;~~"

RULE IL:

108 COMMENT: The information asked for in IL(2) duplicates information required by Rule XLI.

RESPONSE: This comment is accepted. Rule IL(2) is amended to read:

"(2) A description of the planning assumptions and rules by which the applicant attempts to maintain its desired level of generation and transmission reliability and an explanation of the rationale for the selection of the desired level of reliability. ~~and the following information. To the extent this information has been provided in response to Rule XLI it need not be duplicated here.~~

~~(a)~~(3)..."

109 COMMENT: Outage rates, as requested in Rule IL(2)(a) may in some cases not be applicable to proposed lines or to specific lines serving an area because of differences in location, design or other factors. In some cases some of the information may not be available (such as location and cause of outage) because of the number of circuits in a given area; the cost of gathering this information would be excessive.

RESPONSE: This comment is accepted. The intent of Rule IL(2)(a) is to use the best data available. Rule IL(2)(a) is renumbered IL(3) and amended to read "(3) To the extent available, 10 years historical line outage data...."

110 COMMENT: Wholesale suppliers would not have access to the information on ultimate consumers required by Rule IL(2)(a)

RESPONSE: This comment is not accepted. This information would be readily obtainable from its distribution co-op customer or member utilities if a wholesale power supplier should want to build a transmission line for reliability considerations.

111 COMMENT: Information on customers with special reliability requirements, should be required by Rule IL(2)(b) only as necessary, not required in all applications.

RESPONSE: This comment is accepted and Rule IL(2)(b) is deleted as follows:

~~(b) a list of the types of customers in the area to be served or reinforced by the proposed facility that would be affected in the event of an outage on the existing transmission system, including identification of customers with special reliability requirements, and an indication of whether they have backup emergency generation.~~

RULE L:

112 COMMENT: The word "surplus" in Rule L(2) restricts the abilities of firm wholesale suppliers to gain access to their customers.

RESPONSE: This comment is accepted, and Rule L(2) is amended to read as follows:

"(2) An analysis of markets and prices for surplus energy or of the need for and alternative sources of firm energy to be transmitted over the proposed line."

RULE LII:

113 COMMENT: Rule LII duplicates the information requirements of Rule VII and VIII for long-range plans.

RESPONSE: The intent is to ensure that an application contains all relevant material as copies of the application must be transmitted to other state agencies and local governments.

114 COMMENT: Rule LII requires the submission of a large volume of material that may be irrelevant to evaluation of an application.

RESPONSE: This comment is accepted. Rule LII is amended to read "An application from an electric utility must contain the information listed in Rule VII and VIII ~~that is relevant to the proposed facility~~."

RULE LVI:

115 COMMENT: The breadth of alternatives required by this rule can only be provided by a generalized treatment.

RESPONSE: The intent of the rule is to encourage a general treatment of a wide range of alternatives, followed by a more careful examination of those that have no fatal flaws and survive the cost screening in Rule LVII. Only a limited number of alternatives are likely to require comprehensive evaluation and comparison.

116 COMMENT: The 1 MW/1 percent criteria in Rule LVI(2) may result in studying an excessively large number of alternatives.

RESPONSE: A large number of 1 MW cost effective alternatives may well collectively be able to substitute for a large facility. However, on review the term "individually or collectively" is confusing. The rule's intent is that dispersed alternatives, such as conservation, be treated as a single resource and not dismissed because the individual site potentials are small. To clarify this intent Rule LVI(2) is amended to read:

"(2) An application must contain an evaluation of each alternative energy resource, energy conservation, or alternative energy technology that can ~~individually or collectively~~ produce or save at least one megawatt or one

percent 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 and not analyzed one site at a time."

117 COMMENT: Rule LVI(4) could be more succinctly stated by simply requiring a size optimization study.

RESPONSE: This comment is not accepted. The intent of LVI(4) is more than simply requiring a size optimization study for the proposed facility. It also is intended to require that in comparing the proposed facility with alternatives the latter are optimally sized, and to require the applicant to consider changing the order in which different planned facilities are built.

118 COMMENT: We question the use of the "threshold" in Rule LVI(4). If the threshold is to be ignored there should be clarifying language.

RESPONSE: This comment is not accepted. Some of the alternatives evaluated by the applicant may be smaller than the threshold set in 75-20-104(10), MCA, which is the definition of facility in the Siting Act. The threshold for the evaluation of alternatives is 1 MW/1 percent in Rule LVI(2).

119 COMMENT: The "no action" alternative required by LVI(5) means the load won't be met and customers will not be served.

RESPONSE: The comment is accepted. This situation is covered by Rule LVII(3).

RULES LVI-LXIII:

120 COMMENT: All applicants should have to examine all alternatives to a facility as well as alternate component designs. This is crucial to arriving at a good decision and eliminating plants for which better alternatives exist.

RESPONSE: This comment is not accepted. The Department and the Board must give full consideration of alternatives as required by 75-20-503(1)(b), (c) and (f), MCA, for all applicants. This is embodied in Rule CXI(1)(b)(i), which alerts applicants that alternatives that may not be relevent to them will be subject to evaluation by the Department and the Board.

121 COMMENT: Evaluation of conservation and renewable energy alternatives should be handled by the Department in its study and not required of the applicant.

RESPONSE: This comment is not accepted. Early consideration of all relevant alternatives is necessary to ensure that the applicant makes the best decision available. The purposes of 75-20-102, MCA are better served by early consideration of alternatives than by ultimate rejection of proposed facilities because the Board found a better alternative. The screening process in Rules LVII, LIX and LXIII is intended to focus the applicant's detailed evaluation of alternatives to those that make sense to the applicant based on cost, environmental concerns and technical constraints.

RULE LVII:

122 COMMENT: Rule LVII implies that each alternative must be studied. A more reasonable process would study an alternative until an insurmountable obstacle appears. At that point it would be abandoned and another alternative investigated. This process will occur over and over before the applicant even considers applying for a certificate.

RESPONSE: This comment is not accepted. The intent of the rule is that the applicant will, in complying, describe the process used to select the proposed facility. Rule LVII(4) contains a provision for rejecting alternatives found to contain fatal flaws. However, the process advocated in the comment is not reasonable. For example, if the first alternative examined was very costly but had no insurmountable obstacles, this process would not advance beyond the first alternative and the applicant would have no way of arriving at the alternative that meets the requirements of 75-20-301, MCA.

123 COMMENT: Rule LVII should require evaluation of all alternatives whose levelized cost is not more than 50 percent higher than the proposed alternative.

123a COMMENT: The 50 percent cost filter required by Rule LVII should be lowered to 25 or 35 percent to reduce the number of alternatives for which detailed evaluations must be carried out.

RESPONSE: The first comment is not accepted and the second comment is accepted. The intent of the language in Rule LVII(2) is to avoid requiring effort to be spent on alternatives that may survive the cost screen, but have obvious flaws from the beginning. A Department review of recent cost analysis of alternative resources done by Bonneville Power Administration indicates that no significant resources would be dropped from the detailed analysis by reducing the cost screen from 50 to 35 percent. Processing applications under the proposed criteria will provide

additional data upon which to base a rule modification, if necessary. Rule LVII(2) is amended to read: "...than ~~60~~ 35 percent...."

124 COMMENT: The cost screen for transmission line alternatives is too high. It should be lowered to 25 percent.

RESPONSE: This comment is accepted in part. The cost screen for large transmission lines is already 25 percent. The cost screen for smaller lines is lowered to 35 percent, parallel to the change made for generation and conversion facilities in Rule LVII. Rule LXII(2) is amended to read as follows: "not more than ~~60~~ 35 percent higher...." For consistency,, Rule LXXXI(2) is amended to read "...than ~~60~~ 35 percent...."

RULES LVII and LX:

125 COMMENT: The wording of LVII(3) and LX(3) should be changed to make it clear that if the facility is not built consumers will have to purchase energy elsewhere.

RESPONSE: This comment is accepted. The wording of LVII(3) and LX(3) are both amended to read as follows:

"(3) In comparing the no-action alternative with the other alternatives, the costs of no-action shall include, if relevant, the net losses to consumers who would be deprived of the output of the facility and would have to obtain the energy or product of the facility from other sources."

RULE LVII and CXI:

126 COMMENT: The use of combustion turbines, secondary purchases, voluntary curtailment and adjustment of maintenance schedules to convert non-firm existing resources to firm resources must be considered as an alternative to the construction of new electric generating resources in Rule LVII.

RESPONSE: This comment is accepted. Rule LVII(2) is amended to read as follows: "...or which have significant environmental planning or operational advantages over...." Rule LVII(2)(b) is amended to read as follows:

"(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

~~(iv)~~(v) impact on need for future expansion of the transmission and distribution system;"

In addition, Rule CXI(1)(a) is amended as follows:

"(a) That the facility will result in lower delivered cost of energy to customers than any other alternative identified and characterized in Rule LVI and LVII that is

relevant to the proposed facility, or if the board finds that another alternative would result in lower delivered costs of energy to consumers, that the advantages of the proposed facility outweigh the additional costs to consumers."

RULE LVIII:

127 COMMENT: Rule LVIII(2) should specify whose criteria are to be used in developing the "probability weighting."

RESPONSE: This comment is accepted. The intent is for the applicant to develop alternate load growth estimates with associated probabilities of occurrence, and to use these probabilites as the weights for the expected net present value calculation. To clarify this, Rule XXXVIII(2)(d) has been amended in response to comment 81 and the second sentence of Rule LVIII(2) is amended to read, in part "...shall be calculated by ~~a probability~~ weighting ~~of the results across~~ alternative load growth scenarios by their associated probabilities, or by other methods...."

RULE LIX

128 COMMENT: The requirements that competitive utilities and nonutilities evaluate nonconstruction alternatives, alternate technological components and subsystems, and alternate sized facilities greatly improve the rule. It is essential that these requirements be included in Rule LIX.

129 COMMENT: Rule LIX should require competitive utility and nonutility applicants to examine the full range of alternatives. There is no basis in the Siting Act for exempting some applicants from considering some alternatives.

RESPONSE: The first comment is accepted; the second comment is not accepted. Section 75-20-101 et.seq., MCA, does not specify what alternatives must be considered by any applicant, only what must be considered by the Board. The intent of rules LIX and LX, together with Rule CXI(1)(b)(i), is that all alternatives will be studied by the Department and considered by the Board, but in its evaluation leading to selection of a preferred alternative, an applicant must consider only those relevant to its situation.

130 COMMENT: A competitive utility applicant should examine alternative sources of fuel, alternative fuels, alternative energy sources, and alternative timing of construction. These alternatives are viable, available to the applicant, and should be examined by the applicant, the Department and the Board.

RESPONSE: This comment is accepted in part. Alternative energy sources are not relevant alternatives to the applicant, but are required to be evaluated by the Department and the Board in Rule CXI(1)(b)(i). Rule LIX is amended as follows:

"(1) An application must contain a discussion of reasonable alternative sources of fuel, alternative fuels and alternative energy technologies to produce the same....

"(4) An application must contain an evaluation of alternate sized facilities of the same type of the proposed facility and alternate timing of such facilities...."

RULE LX:

131 COMMENT: The performance criteria in LX(2)(a) should include some measure of the size of the alternative.

RESPONSE: This comment is accepted. LX(2)(a)(iii) is amended to read as follows: "(iii) the estimated on-line life of the alternative and the projected output levels, availability and capacity factor during the on-line life of the alternative;"

RULE LXI:

132 COMMENT: There is an infinite variety of alternative energy resources and conservation measures. Only practical alternatives should be required by Rule LXI(2).

RESPONSE: This comment is accepted. No change is required in LXI(2) because the issue is addressed in LXII(2).

133 COMMENT: The second sentence of Rule LXI(5) should be deleted.

RESPONSE: This comment is accepted. Rule LXI(5) is amended as follows:

"(5) nonconstruction alternatives include the use of curtailable and interruptible load contracts with customers and load management. ~~Evaluation should be made of the cost and feasibility of direct payments for increased interruptibility or load management.~~"

RULE LXII:

134 COMMENT: Rule LXII should simply permit the applicant to select the method of evaluation of alternatives.

RESPONSE: This comment is not accepted. Rule LXII(1)(a) requests a description of the applicant's method of evaluation. While the applicant's method may be completely satisfactory in most cases, there are some cases where the applicant's methods do not provide the Department or Board with sufficient information to allow them to conclude, as required by 75-20-301(2)(c), that the minimum impact alternative was selected. Rule LXII(2) is intended to inform applicants of the types of criteria that the Department and Board will use in comparing alternatives.

135 COMMENT: Rule LXII(1)(a) appears to require selection of the lowest cost alternatives. It should be rewritten to allow selection of the optimum alternative based on economics, engineering and environmental criteria.

RESPONSE: This comment is accepted. The intent of the term "lowest overall cost" is to include economic and environmental costs. To clarify this issue Rule LXII(1)(a) is rewritten as follows:

"(a) An application must include a detailed description of the methods and criteria used by the applicant to select a facility which best addresses the problem or opportunity situations identified as the basis of need (see Rule XLVI) ~~at the lowest overall cost~~ given consideration of economics, engineering, and environmental concerns."

138 COMMENT: The criteria listed in Rules LVII(2)(a)-(c), LX(2)(a)(b), and LXII(2)(a)-(c) are not specified by the Siting Act. They are excessive, and will not be used in making decision.

RESPONSE: This comment is accepted in part. 75-20-301(2)(c), MCA requires a finding that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives. The criteria listed in Rules LVII(2)(a)-(c), LX(2)(a) and (b), and LXII(2)(a)-(c) represent the "nature and economics of the various alternatives." The criteria will be used to ensure a valid comparison of alternatives. A review of the criteria indicates that some are superfluous. Accordingly, LVII(2) is amended 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;

~~(ii) financeability;~~

~~(iii) conversion efficiency;~~

~~(iv)~~(ii) the estimated on-line life of the alternative and the projected capacity factor during the on-line life of the of the alternative;

~~(v)~~(iii) ~~reliability and impact on~~ reserve requirements;

~~(vi)~~(iv) availability;

~~(vii)~~(v) planning flexibility and resource commitment;

~~(viii)~~(vi) operating flexibility; and

~~(ix)~~(vii) amount of demand that can be provided for by the alternative;

~~(x)~~(viii) constraints to implementation:"

Rule LX(2)(a) is amended as follows:

"(a) Performance criteria include:

(i) the first year and levelized delivered cost of energy or product, including incremental transmission or transportation costs calcualted with and without assistance;

~~(ii) financeability;~~

~~(iii)~~(ii) the estimated on-line life of the alternative and the projected availability and capacity factor during the

on-line life of the alternative;
~~(iv)~~(iii) reliability;
~~(v)~~(iv) conversion efficiency;
~~(vi)~~(v) planning flexibility and resource commitment; and
~~(vii)~~(vi) constraints to implementation."

Rule LXII(2)(a) is amended to read as follows:
"(a) performance criteria include:
(i) total construction cost and levelized annual cost;
~~(ii) financeability;~~
~~(iii)~~(ii) reliability;
~~(iv)~~(iii) duration of the solution; length of time before additional reinforcement is needed; and
~~(v)~~(iv) constraints to implementation.

137 COMMENT: Measures of "financeability" required in LVII(2)(a)(ii), LX(2)(a)(ii), and LXII(2)(a)(ii) are unnecessary; any alternative which is not financeable will drop out when evaluating "constraints in implementation" required in Rules LVII, LX and LXII.
RESPONSE: This comment is accepted. The requirement is struck for Rules LVII(2)(a)(ii), LX(2)(a)(ii) and LXII(2)(a)(ii) and the change is made in the response to comment 136.

138 COMMENT: It is virtually impossible to estimate the net losses to consumers for the no-action alternative as required by LXII(3). This section should be deleted.
RESPONSE: This comment is not accepted. A variety of methods are available for estimating the costs of the no-action alternative, including the costs to consumers of being deprived of the services of the facility. This is an estimation of benefits of the project. Evaluation of the no-action alternative is important for establishing the benefits of the proposed facility and for weighing the need for the facility as well as for consideration of a full range of alternatives.

RULE LXIII:
139 COMMENT: Pipeline facilities should be evaluated against alternative methods of meeting the need for the product or commodity being transported.
RESPONSE: This comment is accepted in the context of pipelines proposed by service area utilities. Rule LXIII is amended to read as follows:
"...no action alternative. Service area utilities shall also evaluate alternate methods of meeting the need for the energy being transported."

RULES LXIV - XCVII:

140 COMMENT: In Rules LXIV-XCVII, the detailed requirements of the alternative siting study should be replaced by two or three pages indicating general requirements and describing the Department's authority to request and study data. The intent should be to achieve simplicity, eliminate redundancy, recognize environmental jurisdiction of other state and federal agencies, preclude frequent changes in rules, and minimize frustrations to applicants.

RESPONSE: The goals as stated in the comment cannot be achieved by two or three pages of rules stating general requirements and statements of authority because such rules would lead to misinterpretations and confusion on the part of applicants and agency staff who process applications. The Act gives broad authority to the board and supersedes numerous state and local laws. Each rule has been written to help resolve siting issues previously encountered by the Department or routinely reported in the literature, and to give direction to applicants so that they can deal with these issues prior to filing an application. The length of the resulting set of rules is a reflection of the complexity and difficulty of siting major energy facilities (see also the section on general comments). The comment has consequently not been accepted.

141 COMMENT: In Rules LXIV-XCVII, impact zones of various sizes are specified throughout the siting study. Some of these areas may be too large, or do not conform to those in other regulations such as DHES's groundwater rules and air and water quality rules.

RESPONSE: The Department searched existing regulations for specified impact zones, and found very few. The comment regarding groundwater rules is incorrect: the groundwater impact zone of one mile in Rule LXXVIII(24) is identical to that found in DHES groundwater regulations. In addition, the size of the impact zones was selected on the basis of the scientific literature describing generic impacts, and on the Department's past experience with siting facilities. The impact zone is intended to limit the area in which data is collected so that subsequent decisions about significance of impacts can be made. According to the information available to the department, such as studies of other similar facilities, the impact zones specified will result in a reduction in the amount of data collected in some cases. Rules LXXVIII, XCIV, and XCV also allow the applicant to use smaller impact zones upon written approval of the Department. Thus, the comment has not been accepted.

142 COMMENT: In Rules LXIV-XCVII, specific rules for site screening of exclusion areas, sensitive areas, areas of

concern, and for protection of sensitive fish and wildlife habitats, if implemented as proposed, should protect many areas of major interest to the U.S. Fish and Wildlife Service.

RESPONSE: The decision standards require a balancing of conflicting values. Final determinations on specific mitigation measures affecting these areas are made by the Board.

143 COMMENT: In Rules LXIV-XCVII, the requirements in the siting studies for consultation with federal and state agencies during preparation of the application should be retained.

RESPONSE: No response is necessary.

144 COMMENT: In Rules LXIV-XCVII, assurance should be provided to the public about what chemicals will be used in a facility, and what waste products will be produced. The confidentiality clause should not prevent this information from being known.

RESPONSE: The applicant is required by Rules LXXVII(8),(9),(13),(27), and CI(4) and (5) to provide this information. Only a court of competent jurisdiction having been petitioned by the applicant can protect this information as a trade secret. In making its decision, the court will weigh the public's right to know against the applicant's proprietary interests. No changes have been made in response to this comment.

145 COMMENT: Rules LXIV-XCVII as proposed would result in many new employment opportunities for engineers because of the amount and type of detail required.

RESPONSE: The siting of a major facility should not be approached from an engineering perspective exclusively. An interdisciplinary view is required. Professionals with training in the biological, social, and earth sciences are essential partners in the process. The data requirements outlined in the rules can easily be addressed by a professional interdisciplinary approach. Each requirement was written with cost, reasonableness, and the requirements of the Act in mind. Excessive detail is undesirable from everyone's perspective and the rules have avoided this. The comment has, therefore, not been accepted.

146 COMMENT: In Rules LXIV-XCVII, the environmental information and analysis required of the applicant will be indispensable to the Board in making a finding on minimum adverse impact and is a primary strength of the rules. These sections should be retained.

RESPONSE: No response is necessary.

147 COMMENT: In Rules LXIV-XCVII, there are numerous requirements for applicants to provide the Department with study area base maps of specific scales with mylar overlays depicting particular resources. These requirements are excessive in the case of federal power marketing agencies such as the Western Area Power Administration (Western) which prepares numerous detailed maps. It is unclear why the Department needs additional detailed information.

RESPONSE: The map scales specified at each level of the siting study reflect the progressively more detailed information necessary at each level of the study. The map scales used at the route and centerline level--1:24,000 base maps--are the most appropriate maps available for picking preliminary and final locations for a facility. The Department modeled some of its rules on the route selection methods used by Western, and thus there should be few differences between state and federal practices. Some means of bringing together data from different resource areas must be used in route selection, and the use of myler overlays is common.

148 COMMENT: In Rules LXIV-XCVII, the requirements referring to productive agricultural land and rural residences are important and should not be deleted from the appropriate sections.

RESPONSE: The sections have been retained.

RULE LXIV:

149 COMMENT: In Rule LXIV, the language preceding subsection (1) apparently refers to hydropower facilities where it states applicants for energy generation or conversion facilities that employ nontransportable energy resources must consult with the Department concerning the alternative siting study and baseline data requirements. These proposed rules do not set criteria for judging hydro studies.

RESPONSE: The rules as written apply more appropriately to transportable than nontransportable energy resources, which would include hydroelectric facilities. The intent behind having applicants for energy generation or conversion facilities that employ nontransportable energy resources consult with the Department concerning the alternative siting study and baseline data requirements is to identify potentially inapplicable requirements that would apply mainly to transportable energy resources. Rulemaking specifically for nontransportable energy resources is already being considered, but the rule will remain as proposed.

RULE LXV:

150 COMMENT: In Rule LXV, the sentence introducing the list

of preferred site criteria refers to two sections in the Act which also contain criteria. These criteria should be repeated here so that someone does not have to go back to the Act to find them.

RESPONSE: The Administrative Procedures Act discourages repetition in rules of verbatim portions of the law. There are numerous items in the Act that are not found in rules but are relevant to the applicant's studies, and for this reason, familiarity with the Act is important. The comment has, therefore, not been accepted.

RULES LXV and LXXXII:

151 COMMENT: The lists of criteria in Rule LXV and Rule LXXXII are indefinite and subjective. The sentences introducing these lists would be clarified by the addition of the words "to the greatest extent practicable" and the removal of these words from individual criteria.

RESPONSE: The criteria provide guidance to applicants concerning the types of geographic areas that typically offer the most favorable conditions for siting a facility. The preferred site criteria have been developed based on the following: 1) areas specifically mentioned in the Major Facility Siting Act as preferable for facility siting; 2) areas defined by other agency regulations or management plans as most favorable for or having the least conflict with industrial development or with receiving the wastes from such development; 3) areas which past Board policies or decisions have favored for siting facilities; 4) areas that are most consistent with other statutes and state policies that affect facility siting, such as those concerning industrial water availability; and 5) areas where past experience with facility siting has shown that significant adverse impacts will be minimized. The Department's intent when writing the criteria assumed that a balancing would occur among them when used in siting because of the conflicts that would naturally occur. This should be made explicit. The comment has been accepted although the precise wording has been altered to be consistent with changes made in the decision standards. Rule LXV and Rule LXXXII have been modified to read as follows: "RULE LXV ENERGY GENERATION AND CONVERSION FACILITIES PREFERRED SITE CRITERIA. Preferred site(s) conform to the criteria listed in 75-20-301(2)(i) and 304(3)(a), MCA and achieve the best balance among the following by being ~~are~~ located:" and "RULE LXXXII LINEAR FACILITIES PREFERRED ROUTE CRITERIA. Preferred routes conform to the criteria listed in 75-20-301(2)(i), MCA and ~~are~~ achieve the best balance among the following by being located:.. (b) where they utilize or parallel existing utility and/or transportation corridors ~~to the greatest extent practicable~~; (c) to allow for selection of

a centerline, which ~~to the greatest extent practicable~~ is located in nonresidential areas;"

152 COMMENT: In Rule LXV(3) and Rule LXXXII(1)(a), what is meant by "probable community acceptance" and how is it measured? Does "acceptance" mean accepted by more than 50 percent of the people?

RESPONSE: Social scientists have developed methods such as polling, surveys, and conducting organized meetings to provide information about attitudes and community acceptance. In addition, other predictive methods can be found in social science literature regarding the probability of public acceptance of major facilities, based on case studies of projects that have already been built. The applicant's and Department's assessment of the impacts of the facility in the local area can be combined with data obtained from these sources to allow an informed judgment. This measure will be subject to a wider margin of error than certain other estimates of impact. Rules have been included in the inventory and baseline sections to obtain data that would allow estimates of how well this criterion is met (for example, see LXXV(1)(a-d), (5), (6), and (7), and LXXVIII (3), (4) and (5)). The comment about 50 percent acceptance points to a problem of interpretation of this criterion, and it has been changed as follows: LXV, "(3) Where there is probable general community acceptance..." and LXXXII,

"(1) For electric transmission lines:

(a) where there is the greatest potential for general local acceptance of the facility;"

153 Deleted.

RULES LXVI and LXVII:

154 COMMENT: "Class I" streams as designated by the Montana Department of Fish, Wildlife, and Parks should be added to the list of "exclusion areas" and "Class II" streams should be included in the "sensitive area" classification. Many of the "Class I and II" streams, while not having legal protection, are important to the economic and recreational base of Montana.

RESPONSE: "Class II" streams designated by the Montana Department of Fish, Wildlife, and Parks have already been listed as a "sensitive area" in these rules, Rule LXVII(2)(j). "Class I" streams were included as a "sensitive area" in the same rule. Since "Class I" streams are not legally protected, facility construction or operation has not been prohibited and they do not fall within the definition of an "exclusion area," Rule I(32). "Class I" streams have environmental values that may pose siting or construction problems and have received formal public recognition. They are, therefore, most properly treated as a "sensitive area"

under the definition provided by Rule I(57). The comment has not been accepted.

RULES LXVII, LXVIII, LXXXIV, and LXXXV:

155 COMMENT: In rules listing sensitive areas (LXVII and LXXXIV), and areas of concern (LXVIII and LXXXV), the state recreational waterway system is merely an administrative term recognizing the recreational values of certain rivers and streams. No legal protection is afforded the rivers and streams within the system. Rivers and streams comprising the state recreational waterway system should therefore either be treated as an "area of concern" rather than a "sensitive area" or be eliminated.

RESPONSE: The comment has been accepted. Rule LXVII(1)(j), LXXXIV(1)(f), LXVIII(2)(h) and LXXXV(2)(q) have been deleted as follows:

"RULE LXVII...(1)...

(h) designated critical habitat for state or federally listed threatened or endangered species; and

(i) national historic landmarks, and national register historic districts and sites; ~~and~~

~~(j) rivers and streams in the state recreational waterway system;~~"

and

"Rule LXXXIV...(1)...

~~(f) rivers and streams in the state recreational waterway system;~~"

and

"Rule LXVIII...(2)...

~~(h) rivers and streams under active study for inclusion in the state recreational waterway system; and~~

~~(i)~~(h) proposed national natural landmarks under active study."

and

"Rule LXXXV...(2)...

~~(q) rivers and streams under active study for inclusion in the state recreational waterway system;~~"

156 COMMENT: What is the definition of the phrase "less cumulative adverse environmental impact" defined in the introductory paragraph of each of rules LXVII, LXVIII, LXXXIV, and LXXXV?

RESPONSE: The phrase describes one of three conditions under which facilities could be sited in an area of concern. This condition recognizes that impacts cannot always be eliminated, and that circumstances may warrant siting or routing facilities in a particular sensitive area or area of concern in order to achieve lower overall impacts. This decision is ultimately the responsibility of the Board and will be based on the information contained in the hearing record.

RULE LXVII:

157 COMMENT: In Rule LXVII(2)(c), the Bureau of Land Management and U. S. Forest Service have no lands rated as "visually sensitive." Only BLM Management Class I and USFS Visual Quality Objective Preservation areas should be considered as sensitive areas.

RESPONSE: BLM and the Forest Service designate areas having specific visual management objectives. Consultation with the appropriate agency should be pursued to determine which areas are visually incompatible with the proposed project. This sensitive area has been clarified to read: "~~designated visually sensitive~~ areas where the presence of the facility would be incompatible with published visual management plans adopted by federal, state or local governments;" With this modification, it is more properly an area of concern. It has therefore been deleted from Rule LXVII(2)(c) and added to Rule LXVIII as (2)(i) as follows:

"Rule LXVII...(2) ..~~(c)~~ ~~designated visually sensitive areas~~" and "Rule LXVIII ..(2)...(i) areas where the presence of the facility would be incompatible with published visual management plans adopted by federal, state or local governments."

158 COMMENT: Local governments should not be included in Rule LXVII(2)(c).

RESPONSE: In addition to federal agencies which incorporate visual concerns into their comprehensive land use planning, other levels of government increasingly recognize the importance of visual qualities. Where designated areas have scenic values incompatible with the proposed project, they deserve attention as siting constraints. Although included as areas of concern, they may be crossed when no significant adverse impact would result, when mitigation of significant adverse impacts is possible, or when siting the facility in or through them would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location (Rule CXIV, Minimum Impact Standard). The comment has, therefore, not been accepted.

158a COMMENT: In Rule LXVII(2)(d), it is unclear what is meant by "unique habitats and natural areas."

RESPONSE: The intent of the rule is to include only areas designated by appropriate state or federal agencies. Therefore, the comment is accepted. For consistency, similar language in Rule LXXXIV has also been modified. The changes are as follows:

"Rule LXVII...(2) ..~~(d)~~(c) unique habitats and natural areas~~, including areas~~ designated by..."

"Rule LXXXIV...(2)...~~(g)~~(f) unique habitats and natural areas~~, including areas~~ designated by..."

158b COMMENT: In Rule LXVII(2)(e), the sensitive area as written might mean that many kinds of inappropriate sites will be considered "eligible."

RESPONSE: The comment is accepted. For consistency, Rule LXXXIV(2)(j), which contains the same language, has also been modified. The changes are as follows:

"Rule LXVII...(2) ... ~~to~~ (d) national register ~~eligible~~ historic districts and sites~~;~~ nominated to or designated by SHPO (state historic preservation offical);"

"Rule LXXXIV...(2)...~~(j)~~ (i) national register ~~eligible~~ historic districts and sites~~;~~ nominated to or designated by SHPO (state historic preservation offical);"

RULE LXVIII:

159 COMMENT: In Rule LXVIII(2)(e), the phrase "known natural features of unusual ...recreational significance" should be limited by restricting it to only areas for which public access is provided because otherwise it could be defined as being someone's favorite hunting spot.

RESPONSE: The comment is accepted because of the difficulty in defining such areas. The rule has been changed as follows:

"Rule LXVIII...(2)...(e) any undeveloped land or water areas that contain known natural features of unusual scientific or educational ~~or recreational~~ significance; and any undeveloped land or water areas that contain known natural features of unusual recreational significance that have public access provided." ~~and~~

RULE LXIX:

160 COMMENT: In Rule LXIX, there should be flexibility in the size of the study area because this affects the cost of preparation of the application. Consideration should be given to minimum size and minimum amount of information in order to reduce costs.

RESPONSE: The rule does not specify the study area size. Such an approach would lead to unnecessary expense for an applicant because the size would have to be set large enough to account for several types of facilities and siting circumstances to permit the Board to make the decisions required by the Act Further, a large study area does not necessarily lead to substantially more expense in application preparation because much of the information required by Rules LXIX through LXXIII is normally gathered by an applicant regardless of whether or not the facility is covered by the Act. The study area has been defined as a function of the kind of facility proposed, the load or markets to be served, and the adequacy of data necessary for the board to make an informed decision. It is consequently tailored to each facility and application. Thus, the comment has not been accepted.

161 COMMENT: There is a typographical error in LXIX(2).
RESPONSE: The rule is corrected to read "(2) An application must contactin a map of the study area depicting the locations listed in (1)."

162 COMMENT: In Rule LXIX, language from an earlier Department draft should be reinstated as section (3). This language required mapping of locations of inputs, outputs, and transmission and transportation systems.
RESPONSE: This requirement has been incorporated into sections (1) and (2) of the rule. The comment has not been accepted because it would result in redundancy.

RULE LXX:
163 COMMENT: The use of the term "any" in Rule LXX(1)(b)-(e) and (2) means an infinite number of studies and documentation could be required. This must be limited to a manageable level.
RESPONSE: This comment is accepted. As stated in LXX(1) the cost information is to be presented by "selected iso-cost lines, a cellular based format, or other methods approved in writing by the department." These examples clearly represent a limited amount of information to be presented. The intent of the rule is to require the development of general costing algorithms, from which costs can be drawn for representative points in the study area. The development of such algorithms is clearly a manageable task. To clarify the intent, Rule LXX is amended as follows:
"(a)...located at ~~any~~ representative points in the study area, from the lowest cost coal source for ~~that~~ such points
(b)...facility located at ~~any~~ representative points in the study area, from the lowest cost water source for such ~~that~~ points
(c)...proposed facility at ~~any~~ representative points in the study area, based on...
(d)...product of the proposed facility from ~~any~~ representative points in the study area...transmission arrangements associated with ~~any~~ representative points in the study area.
(2)...cost of energy from the facility located at ~~any~~ representative points in the study area, based on the costs required by (1)(a)-(e).

RULE LXXIII:
164 COMMENT: In Rule LXXIII(1), three candidate siting areas would contain more than 300 square miles.
RESPONSE: No response is necessary.

165 COMMENT: Rule LXXIII(2) appears to be in error. "Based on (1)" should read "based on Rule LXXI(3)." This change must be made.

RESPONSE: There was confusion between sections (1) and (2) of this rule because it was not clearly stated how to select three or more 10-mile candidate siting areas or one 30-mile area. With the following changes, it is not necessary to make the changes precisely as proposed in the comment:

"RULE LXXIII ENERGY GENERATION AND CONVERSION FACILITIES SELECTION OF CANDIDATE SITING AREAS. (1) The applicant shall either select at least three geographically distinct candidate siting areas of at least 10 miles in minimum radius with boundaries that lie within an economically feasible siting area identified in Rule LXXI(3) or shall select one candidate siting area of at least 30 miles in minimum radius with boundaries that lie within an economically feasible siting area identified in Rule LXXI(3), based on consideration of the following:...

~~(2) If only one candidate siting area is selected, based on (1), that area shall be at least 30 miles in radius and be located within an economically feasible siting area identified in Rule LXXI(3).~~"

~~(3)~~(2) The applicant shall delineate the boundaries of the candidate siting area(s) with lines...."

166 COMMENT: In Rule LXXIII(1), the allowance for a single candidate siting area must be changed. The intent of the Act is to ensure that facilities which are built are needed and that the facility represents the minimum adverse impact to the community in which it is sited. The provision allowing an applicant to select only one 30-mile radius candidate siting area will defeat this purpose. The Board would have no opportunity to compare the socioeconomic impacts on differing communities or the environmental impacts on differing biological communities if the rule is adopted as drafted. Studying one site is especially unacceptable when a facility is proposed in an agriculturally productive area. The applicant instead should be required to examine at least three geographically distinct areas. The applicant will likely, in effect, pick one site or three sites in a small area and justify them with the economic analysis required.

RESPONSE: The proposed changes regarding requiring geographically distinct candidate siting areas is not accepted. There is no requirement in the Act concerning geographically distinct locations, only the requirement for consideration of "reasonable alternate locations."

The phrase "reasonable alternate locations" in section 75-20-211 of the Act means, first, that the choice of site alternatives examined is to be judged on "reasonableness," and second, that a "site" means the actual land area needed for a facility rather than the general location as is logically implied from the comment (see Rule I(60)). Defining a "site"

as anything else would lead to unsurmountable problems in conducting environmental analysis because so much of the analysis of potential impacts depends on knowing precisely where the applicant intends to locate the facility.

It is a primary responsibility of the Board to find that the project would cause no more than minimum adverse environmental impact. This finding can only be made by assessing the proposal's environmental costs to society, which is primarily the responsibility of the Board rather than the applicant. On the other hand, it is the primary responsibility of the applicant to initiate selection of "reasonable" sites. Therefore, the rules regarding selection of candidate siting areas have been written largely to parallel an applicant's initial economic evaluation. To do anything else is to ask an applicant to be something other than a producer of energy and to expect it to make choices that are the statutory responsibility of the Board. The rules also should require the applicant to begin considering environmental issues early in its process of searching for sites, and the rules reflect this.

Another reason geographically separate and distinct areas cannot always be studied is because certain kinds of facilities are so closely tied financially to a single type and location of fuel that there are no "reasonable" alternative locations geographically removed from the preferred site. Requiring three geographically separate sites for the sake of obtaining environmentally distinct choices for the Board may lead to a situation where the three sites consist of the applicant's preferred site and two other economically infeasible sites, leaving the Board with no real choice.

It is incorrect that there is no consideration of social and environmental impacts in the selection of three minimum 10-mile radius candidate siting areas or the single 30-mile area. Rules LXXII and LXXIII require the applicant to consider certain exclusion and environmentally sensitive areas, areas of concern, the preferred site criteria, and require the applicant to refine cost estimates for associated facilities, such as rail spurs and transmission lines, pollution control, and mitigation. Such refinements would necessarily result in the applicant seeking lower impact sites because of the high costs associated with siting in high impact locations. The Act also contemplates siting facilities within the entire state, and the minimum adverse environmental impact finding must be made in this context, as well as it relates to a local area.

It seems likely that economic analysis for many types of facilities will result in three sites being selected in separate areas. If, however, by nature of the type of facility being proposed, the single candidate siting area is selected, it is 60 miles across. This should allow the Board

to make the choice envisioned in the Act.

Rule CXI(1)(g) requires that "the Board must find and determine...that reasonable alternative locations for the facility were considered in selecting the site pursuant to Rule LXIX, Rule LXXI, Rule LXXIII, and Rule LXXVI." This rule should provide adequate assurance that a legitimate site search was conducted.

167 COMMENT: In Rule LXXIII(5), the requirement for selecting a candidate siting area outside the state and two within the state may preclude a non-Montana firm from locating a facility within Montana.

RESPONSE: Practically speaking, this statement would only be true for the types of facilities that clearly have high negative impacts and low benefits to Montana because the rule requires a comparative analysis. The rule merely requires an applicant with multi-state interests to make a good faith presentation of evidence that a valid site search has been conducted. In addition, Rule XXIV(2) allows an applicant to make a case for modifying the form and content of the information provided to the Department.

RULE LXXIV:

168 COMMENT: In Rule LXXIV(3), exclusion areas should be included in the inventory requirements.

RESPONSE: Rule LXVI requires that the locations of exclusion areas be considered throughout the siting study, therefore it is not necessary to repeat the requirement. Consequently, the comment has not been accepted.

RULE LXXV:

169 COMMENT: In Rule LXXV(6), substitute "approximately 50 miles" for "a reasonable commuting distance". This language was contained in an earlier draft of the rule.

RESPONSE: The comment is not accepted. The language in the earlier draft was an effort to describe "a reasonable commuting distance." Fifty miles, however, would not be a reasonable commute in some parts of the state and applying this standard would be inappropraite and may result in increased costs to the applicant without benefitting the impact analysis. "A reasonable commuting distance" more accurately describes the area that should be studied.

170 COMMENT: In Rule LXXV(7), the amount of detail required in the characterization of the nature and magnitude of public concerns is not specified. Finding representative groups can be a problem; small vocal groups could skew the results. Requiring this analysis in "any" potentially effected area is burdensome.

RESPONSE: The intent of this requirement is to make the applicant aware of public concerns over the facility so that they can be considered in the selection of alternative

locations for the proposed facility. Vocal groups must be dealt with at some time during the siting process. The earlier their concerns are identified the greater the likelihood of resolving them without costly litigation. The applicant can use its discretion in determining the level of detail necessary to achieve this result, but thoroughness benefits everyone. The word "any" has been deleted and Rule LXXV(7) modified to read as follows:

"...representative groups of persons residing in the candidate siting areas and ~~any~~ areas potentially affected by population increases ..."

RULE LXXVI:

171 COMMENT: In Rule LXXVI(1), the requirement that three alternative sites be evaluated is too rigid if only two alternatives are feasible and worth investigating. The rule should specify a more flexible process where two or more alternative sites could be investigated.

RESPONSE: The comment is not accepted because the requested flexibility already is present in the siting study. Rule LXXIII allows an applicant to select one 30-mile radius candidate siting area should its economic analysis indicate that the facility can be sited in only one general area. The baseline studies that would occur within this area on three alternative sites would overlap and would result in lowered study costs. Even if the facility is closely tied to certain energy resources, there is likely to be no circumstances where only two sites would be feasible, given the definition of "site" in Rule I(60). Further explanation of the reasoning regarding the interpretation of "reasonable alternate sites" can be found in the response to comment 166.

RULE LXXVIII:

172 COMMENT: In the paragraph after the title of Rule LXXVIII, which changes are implied with the use of the word "cumulative?"

RESPONSE: The use of the word "cumulative" is both confusing and redundant in this sentence. It is deleted as follows: "RULE LXXVIII: ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT. An application must contain baseline data and an assessment of the projected ~~cumulative~~ short- and long-term changes and impacts that would ..."

For consistency, this change has also been made in the section on baseline studies for linear facilities, as follows;

"Rule XCIV...an assessment of the projected ~~cumulative~~ short and long-term..."

173 COMMENT: In Rule LXXVIII(1)(c), it is hoped that the locations of beehives would not change from year to year.

RESPONSE: The requirement specifying that the applicant

obtain these data in the field season before the application is submitted is intended to reduce uncertainty about the data's adequacy if the hives are moved after the application is submitted.

174 COMMENT: In Rule LXXVIII, add "residential dwelling units" to (1).

RESPONSE: This information is required by Rule LXVIII(3)(a). Adding this language would not provide any additional information and consequently, the suggested change has not been accepted.

175 COMMENT: In Rule LXXVIII(3)(a), does the requirement for assessing compatibility with existing land uses mean a power plant cannot be sited on farmland? Montana does not have much land set aside for industrial use, which is the only land use that will not be changed by siting a facility.

RESPONSE: The rule merely requires an assessment of compatibility with existing uses. Even if there are adverse impacts to existing uses, the Board can find and determine that these impacts are acceptable because of higher impacts and/or costs elsewhere.

176 COMMENT: In Rule LXXVIII(3) and (4) the 50-mile impact zone contains more than 7800 square miles.

RESPONSE: The 50 mile limitation is intended to define the area within which data is gathered. In this instance, the acreage of this area is largely immaterial because the data requirements are linked to demographics and the population's distribution rather than land area. For example, the applicant is required to make a good faith prediction of where population growth associated with the proposed facility will occur and to estimate where air quality changes will affect agricultural activities, if anywhere. These data are, subsequently, used to anticipate land use changes that might occur at the locations within the 50 mile area where impacts are likely to occur. The comment has not been accepted.

177 COMMENT: In Rule LXXVIII (3) and (4), the annotation provided in the Department's copy of the rules referred to an area somewhat larger or smaller than 50 miles. This flexibility should be put in the rule.

RESPONSE: The comment is not accepted. The flexibility is in the rule already, in the phrase "approximately 50 miles" in (3)(b) and (c), and (4).

178 COMMENT: In Rule LXXVIII(5)(b), the phrase "natural environmental features" is unclear.

RESPONSE: The comment has not been accepted. Section (5) of the rule contains a list (a) through (d) of items to be

included in the assessment of public attitudes and concerns. The meaning is clear in the context of the list of other items and emphasizes that the public has knowledge and opinions of the local landscape and environment.

179 COMMENT: In Rule LXXVIII(6), add the word "baseline" before the word "data."

RESPONSE: The comment has been accepted and Rule LXXVIII(6) has been modified to read as follows;

"Rule LXXVIII...(6) An application must contain the following earth resource baseline data:...."

180 COMMENT: In Rule LXXVIII(10), sites with no public use or access should not be analyzed for viewer-related data, but only for any potential effect the facility may have on the setting.

RESPONSE: The evaluation required by Rule LXXVIII(10) is already restricted to recreational areas, residential areas, and national register or national register eligible sites. These areas are, generally, open to the public and/or are used frequently. In addition, if one or more of these areas would afford a similar view, only data from a single observation point is required. This analysis represents a subset of all areas that provide public access. The proposed change is unnecessary since viewer-related data is not required outside specific limited areas noted above. The comment has, consequently, not been accepted.

181 COMMENT: In Rule LXXVIII(10), the 30-mile impact zone could result in inventory and analysis of about 8,000 square miles. This is excessive.

RESPONSE: The comment has not been accepted. The estimate of size of the area within the impact zone is correct but is largely immaterial with respect to cost and amount of data collection. Most facilities in most locations would not be visible from large parts of this area, and after determination of these locations, large parts of the area should be eliminated. In addition, the rule specifies types of features which require data collection, further reducing the area within which data are collected. The cost of data collection is justified for very large facilities that would be visible for these distances because of the value of such information to the Board in making an informed decision about a subject of great concern to the public and resource management agencies. The information would not be required in the application for smaller facilities that would not be visible for these distances.

182 COMMENT: Sections (11) and (12) of Rule LXXVIII regarding plume visibility data and impacts should be struck because they are already covered in the DHES

Prevention of Significant Deterioration requirements and the applicant can only cross reference this material.

RESPONSE: The comment has not been accepted. The DHES requirement pertains only to impacts to Class I areas and the Act requires the assessment of visual impacts as they occur. The rule allows flexibility on the applicant's part, however, and the data about plume visibility submitted to the DHES are likely to suffice. The rule requires the applicant to use this information to assess impacts to areas outside those designated Class I, if appropriate.

183 COMMENT: In Rule LXXVIII(13) and (14), add "nitrogen oxides and particulates" to (13)(c) and (14)(b) because these are major pollutants effecting air and water quality and human and plant life.

RESPONSE: The commentor is correct in saying that these are major pollutants, but the suggested change is not necessary because this information is already requested in Rule LXXVIII(13)(c)(vii). It is not necessary to ask for information on nitrogen oxides and particulates in section (14) because the information obtained about locations of highest sulfur dioxide concentrations can be used to predict areas of highest concentration of the other pollutants.

184 COMMENT: Sections (13)(b) and (c) of Rule LXXVIII appear to duplicate DHES requirements and standards, or to be requiring a different set of standards. How are these data to be used if the applicant demonstrates compliance with air quality standards? The DHES data should be adequate.

RESPONSE: The comment is not accepted because the requirements do not concern standards and do not duplicate DHES requirements. The sections referred to in the comment require the applicant to submit data gathered for the DHES to the department in a form more suitable to the Department's responsibilities to study impacts to land use and agriculture as described in section 75-20-503(2), MCA. The rule was written to allow the applicant and department to use data already collected for the DHES to select areas where data pertaining to natural vegetation and crops is collected rather than obtaining crop and vegetation data on a wider area. This approach is likely to reduce the total amount of data collected to the minimum necessary. The use of isopleths is common practice when analyzing air quality impacts. Numerous scientific research studies on air pollutant impacts to vegetation are being published, and the information is necessary to allow the board to make an informed decision on impacts to nearby land uses.

185 COMMENT: Gathering data to comply with Rule LXXVIII(13) and (14) could not be done concurrently. These sections

prescribe a sequential approach that unnecessarily extends the time required to prepare an application. Definition of the impact zone for vegetation studies should not require completion of air and meteorological monitoring. The impact zone for vegetation studies for a proposed generation or conversion facility should generally be the area downwind of the plant. If nearby weather service data are available, that data could be used to roughly define the impact zone. Any previously unstudied areas identified by the on-site meteorological data and refined dispersion modeling could be analyzed by the Department during the twenty-two month review process. The study should be designed as a limited effort, not a complete inventory.

RESPONSE: This rule does not require a complete inventory of the vegetation within the impact zones. Using air and meteorological monitoring to target the vegetation studies will reduce the size of the area studied and associated costs. However, the sequential arrangement of the studies may unnecessarily add to the time required to prepare an application. Rule LXXVIII(14) has been modified to include: "...other pollutant deposition~~.~~ In avoid delays in preparing an application that may arise from the sequential analysis required by (13) and (14), an application may contain baseline vegetation data collected from areas that existing meteorological or other data suggest will contain the impact zone defined in this section, provided that the applicant submits all additional information necessary to fully comply with the requirements of this section within six months of filing its application."

186 COMMENT: Section (16)(c)(v) in Rule LXXVIII is inappropriate because it refers to the recreational and commercial use of threatened or endangered species, or species of special interest or concern, and is otherwise vague.

RESPONSE: The comment has been accepted. This section has been deleted, as follows:

"(c) for the species required by (b), a description and overlays, as appropriate, including the following:...

~~(v) existing and potential recreational or commercial use;~~

(v+) any existing conditions that limit abundance, including pollution, irrigation runoff, withdrawals or dewatering effects, upstream flow regulation or depletion, barriers to movement, and/or over harvest;

(vi+) habitat requirements, including minimum flow requirements and suitability of habitats within the impact zone;

(vii+) food requirements and preferred sources;"

187 COMMENT: In Rule LXXVIII(16)(d), the information on fishing use, harvest, and economic importance should not be required because recreation economics is not a defensible science and is costly and time consuming. In addition, the information is requested in section (20) and is therefore unnecessary.

RESPONSE: This comment has not been accepted because it reflects a misunderstanding of what is required by the rule. An economic analysis has not been requested, simply "...a description...and discussion...". The methods for collecting the required data are in standard use in Montana and elsewhere. The applicant may cross reference any data that simultaneously fulfills one of the requirements of section(20), but the rules are sufficiently different to justify independent treatment.

188 COMMENT: Section (17)(c) and section (17)(d) of Rule LXXVIII seem redundant.

RESPONSE: The comment has not been accepted. Section (17)(c) specifies how impact assessment on areas receiving increased hunting and fishing is to be done while section (17)(d) requests a general analysis of how wildlife population are affected by all other aspects of the facility. The applicant can distinguish the data in the application as he wishes.

189 COMMENT: In Rule LXXVIII(20) the need for the impact analysis in unclear because there should be no need for evaluating impacts to recreational areas unless the facility is visible from the area.

RESPONSE: The comment has not been accepted. A wider impact zone is specified when the facility can be seen for long distances. Areas closer to the facility may receive increased use, or be within an area effected by the visibility of the plume or by associated facilities. If not, the applicant need not include the data. The intent of the rule is to establish a record that the applicant addressed the issue, and the application can state that the data indicate no impacts would occur.

190 COMMENT: Rule LXXVIII(20)(a) could be interpreted to include private hunting areas. It should be modified to require only areas with public access.

RESPONSE: The comment has been accepted. The rule has been modified to read:

"(a) Based on consultation with appropriate local, state, and federal agencies, an application must include an overlay identifying any recreational areas or locales which are provided with public access and where public recreational use occurs within the impact zone other than those specifically referenced above."

191 COMMENT: In Rule LXXVIII(24), the data requirement for groundwater information complicates and duplicates DHES regulations, which should take precedence.

RESPONSE: The comment is incorrect. As the Colstrip Units 3 and 4 project has shown, the Board, as well as DHES, has broad responsibilities with respect to groundwater issues. The rule was developed in consultation with DHES and is compatible with DHES groundwater regulations. For example, the 1 mile impact zone identified is the same as in DHES regulations.

192 COMMENT: In Rule LXXVIII (26)(a), it is not clear how the data on noise will be used since there are no enforceable noise standards, only guidelines.

RESPONSE: The comment has not been accepted. The information will be used to assess the applicant's ability to meet the condition placed on the certificate by Rule CXI(2)(a).

RULES LXXXI, XC, and XCII:

193 COMMENT: In Rule LXXXI(1), what does "study routes" refer to in section (1)(e)?

RESPONSE: This term was inadvertently left in the rule from an earlier draft. The rules have been corrected as follows:

"Rule LXXXI...(1)...

~~(e) selection of study routes (see Rule XCII)~~"

"Rule XC...(1)...to select ~~study~~ alternative routes..."

"Rule XCII...(3)...rationale for selecting the ~~study~~ alternative routes."

194 COMMENT: In Rule LXXXI, there should be some indication as to how much latitude the Department will allow individual utilities in project planning and modifying the methodology contained in the siting study. For example, in a fairly homogeneous study area with few environmental constraints the study might result in wide corridors requiring expensive and unnecessary inventory and baseline studies. In such a case, an applicant might select corridors 2 miles wide.

RESPONSE: It is not necessary to make any changes in this rule because the flexibility requested in the comment is already present. Clearly, the intent of the siting study is the deliberate setting out of a record as to how a utility selects a linear facility location. The rules do not specify a corridor width for precisely the reason discussed in the comment. Rule LXXXI encourages the applicant to make these kind of judgments in sections (3), (4), and (5). It would be cumbersome to specify how this flexibility is to be used by the applicant because rules cannot be written to cover all cases. In the example used in the comment, the rules would

require that the applicant document the choices that led to a selection of a 2-mile wide corrridor. In many cases this would be easily defensible, but an arbitrary use of a corridor that is always only 2 miles wide may not be defensible in urban areas or intensive land use areas. Rule XXIV has previously been modified to include a general provision specifying how an applicant may omit certain required data from the application. [See comment 387]

195 COMMENT: In Rule LXXXI(5), place a period after the word "explanation" in the second sentence and delete the rest of the sentence in order to clarify the rule.

RESPONSE: This rule has been deleted and a new subsection has been added. See comment 387 and 388 for an explanation.

RULE LXXXII:

196 COMMENT: The preferred route criteria in Rule LXXXII focus the analysis on such items as local acceptance and wildlands and, therefore, prejudges routing choices and closes consideration of valid alternatives and all other considerations of least overall and cumulative impact.

RESPONSE: The comment has not been accepted. The preferred route criteria focus the analysis on some of the most pervasive siting issues. Their existence will not interfere with the finding of least overall impact because other portions of the rules specifically provide for consideration of exclusion and sensitive areas, areas of concern, and data acquisition and analysis of impacts. Rule CXIV specifies clearly how all of these factors will be used to reach the finding that a facility represents the minimum adverse impact.

197 COMMENT: In Rule LXXXII(1), delete (a) because the criteria about public acceptance is already defined by the other ten criteria.

RESPONSE: The comment has not been accepted. It is unlikely that the specific criteria listed in (b) through (k) define all public concerns about a facility. All public concerns should be heard and addressed during the siting process. Experience shows that consideration of public interests throughout the process reduces the likelihood of costly and time consuming litigation.

198 COMMENT: In Rule LXXXII(1)(a), it is not clear how local acceptance is to be determined. In the experience of utilities this is difficult to determine because citizens are often not concerned about a transmission line until they know it will be located on their land, and meetings held before locations are suggested are poorly attended.

**RESPONSE:** Rules XCI(6) and XCIV(5) require an applicant to obtain information about public attitudes and concerns during its studies. Experience indicates that if people are put on notice that a facility might be located near them or on their property, they will attend meetings and express their concerns. The likelihood of public opposition, delay, and litigation is reduced if the applicant makes a good faith effort to obtain this information and include it in routing decisions at all levels.

199 **COMMENT:** In Rule LXXXII(1)(d), remove flood irrigated land from the criteria because it should be avoided by transmission lines.

**RESPONSE:** The comment has not been accepted. In certain instances flood irrigated land should be avoided because there are impacts if it is crossed. However, this criterion was intended as a general statement indicating preferences when choices must be made about how to cross agricultural lands. The criterion is based on the nature of impacts to farming practices in use at the time the transmission line is constructed, such as interference with machinery and with irrigation equipment, and not future use. The suggested change would not be consistent with information the department has available about impacts to flood irrigated land.

200 **COMMENT:** Change Rule LXXXII(1)(e) to read "(e) in open areas rather than in timbered areas" because it would simplify the rule.

**RESPONSE:** The comment has not been accepted. The change would cause confusion with (d). Further, the criterion applies to forested areas rather than open country.

201 **COMMENT:** In Rule LXXXII(1)(h), remove the unnecessary words "they cross floodplains where," and the criteria in Rule LXXXII(1)(i) would be better written if it read as follows: "(i) in locations where the facility will create the least visual impact."

**RESPONSE:** The comment has been accepted. Rule LXXXII(1) has been changed to read:

"... (h) so ~~they cross floodplains where~~ that structures need not be located on the floodplain;

(i) in ~~areas~~ locations where the facility ~~is~~ will ~~create~~ the least ~~visually incompatible with the landscape~~ visual impact.

202 **COMMENT:** Delete the criteria in Rule LXXXII(1)(j), and substitute "in compliance with the National Electric Safety Code."

**RESPONSE:** The comment has not been accepted. The National Electric Safety Code does not address the specific circumstances that would occur along a route or centerline,

and is not comprehensive with respect to safety in all circumstances. A commitment to meet the code by an applicant would be evidence that the criterion is at least partially met, however.

203 COMMENT: In Rule LXXXII(2), criteria for pipelines, add criteria (1)(a) and (d) to the listing because pipelines cause as much impact as transmission lines and should meet the same criteria.

RESPONSE: The comment concerning the addition of (1)(a) to the list is accepted because there are few differences between pipelines and transmission lines in how this criterion would be followed by an applicant or the department. However, pipelines and transmission lines do not have much the same impact. Transmission lines have permanent visual impacts, for example, while pipelines essentially disappear along many segments of a route if good reclamation practices are followed. Criterion (2)(b) is intended to be a statement of the types of land that are environmentally preferable for routing pipelines instead of (1)(d) because, for example, of the reclamation problems that occur on thin rangeland soils. These problems can lead to the right-of-way being a source of weed seeds to adjacent lands. The general criterion in (2)(d) regarding pipeline crossings of agricultural land cannot be consistently applied to agricultural land along a route. The change in the rule is as follows: "RULE LXXXII, LINEAR FACILITIES, PREFERRED ROUTE CRITERIA ....(2) For pipelines: (a) conform to the criteria listed in (1)(a), (b), (e), (f), (g), (i), (j), and (k) ...."

RULES LXXXIII, LXXXIV, and LXXXV:

204 COMMENT: In the paragraphs after the titles of Rules LXXXIII, LXXXIV, and LXXXV there are several changes that should be made for clarification. For example, it would be clearer if Rule LXXXIII were to read: "The following areas are exclusion areas within the study area and shall be ...." This change should also be made in Rule LXXXIV and Rule LXXXV. Secondly, the phrase "no significant adverse impacts would result" should read "no significant adverse impacts are likely to result" because, as written, this would be impossible to prove. Thirdly, in each of Rules LXXXIV and LXXXV, the last sentence of the paragraph should be ended at the first comma to simplify them.

RESPONSE: The first two suggestions are accepted for the reasons stated, but the third is rejected because the suggested deletion contains a further explanation of how these areas are to be used in the remainder of the siting study. The changes are as follows:

"RULE LXXXIII LINEAR FACILITIES, EXCLUSION AREAS. The following areas are exclusion areas within the study area and

shall be ...."

"RULE LXXXIV LINEAR FACILITIES ELECTRIC TRANSMISION LINES SENSITIVE AREAS. The following areas are sensitive areas and should not be crossed by a facility unless the applicant can demonstrate that no significant adverse impacts ~~would~~ are likely to result, ...."

"RULE LXXXV LINEAR FACILITIES ELECTRIC TRANSMISION LINES AREAS OF CONCERN. The following areas are areas of concern and should not be crossed by a facility unless the applicant can demonstrate that no significant adverse impacts ~~would~~ are likely to result ...."

RULE LXXXIV:

205 COMMENT: In Rule LXXXIV(2), add as a preface to the list of sensitive areas, "For items (a) through (d) the sensitive areas are only those lands owned or under easement for the facility" in order to prevent a buffer zone around a facility.

RESPONSE: It is not clear what the proposed change is intended to accomplish. There is indeed a zone around the kinds of facilities listed in (a) through (d) where it may not be advisable to site a transmission line, but the size of this zone would need to be determined by impact studies. The comment has, consequently, not been accepted.

206 COMMENT: In Rule LXXXIV(2)(c), delete the words "covered by conservation easements" in order to simplify the rule.

RESPONSE: The comment has not been accepted. The present language makes the rule more precise because the conservation easement and management plan would explain in detail what values are to be protected for the specific parcel of land, whereas a management plan without a conservation easement covers broad areas, species, or agency mandates.

207 COMMENT: For clarity, Rule LXXXIV(2)(e) should read: areas designated as visually sensitive by FS or BLM.

RESPONSE: In addition to federal agencies which incorporate visual concerns into their comprehensive land use planning, other levels of government increasingly recognize the importance of visual qualities. Inclusion of areas that have formal public recognition for their scenic values is appropriate. This sensitive area has been modifed to read: "~~designated visually sensitive~~ areas where the presence of the facility would be incompatible with published visual management plans adopted by federal, state or local governments." With this modification, it is more properly an area of concern. It has, therefore, been deleted from Rule LXXXIV(2)(e) and added to Rule LXXXV as (2)(f).

RULE LXXXV:

208 COMMENT: In Rule LXXXV, substitute "and" for "or" between "possible" and "unless" in the first sentence after the title. Areas of concern should not be crossed unless both of these conditions are met.

RESPONSE: The comment has not been accepted. If a proposed facility affects an area of concern and the impacts cannot be reasonably mitigated, the facility should not necessarily be precluded from the area. The rule as it is written allows flexibility to deal with a situation in which an area of concern must be crossed, whether or not the impacts can be mitigated, in order to make the minimum adverse impact finding required by Rule CXIV. These rules do not contemplate 100 percent mitigation; only reasonable mitigation of impacts is required. The proposed change could create de facto exclusion areas.

209 COMMENT: Delete (2)(f) in Rule LXXXV because the cost of obtaining the information is extremely high and cannot be justified at the inventory stage. This requirement is more appropriate at the baseline stage.

RESPONSE: The suggestion for deleting this requirement at the inventory stage and moving it to the baseline has been accepted. The requirement has been moved to Rule LXXXV(3), as follows:

"RULE LXXXV LINEAR FACILITIES - ELECTRIC TRANSMISSION LINES - AREAS OF CONCERN.

(2) For the inventory, the areas of concern are as follows:....

~~(f) limited access areas in mountainous or rugged terrain, defined as areas with slopes greater than 15 percent, located more than 1/2 mile from an existing road;~~....

(3) For the baseline study, the areas of concern are:....

and (a) limited access areas in mountainous or rugged terrain, defined as areas with slopes greater than 15 percent, located more than 1/2 mile from an existing road."

210 COMMENT: In Rule LXXXV(1) reinstate the following language that was contained in an earlier draft of this rule:

"(1)(p) Public airports, airfields, air hazard areas."

RESPONSE: This information requirement was eliminated from the earlier draft because it is duplicative of Rule LXXXIV(2)(d). Reinstating this language would not provide any new information. The suggested change has not been accepted.

211 COMMENT: In Rule LXXXV(2)(a), add "including all occupied dwellings."

RESPONSE: Individual residences not included in (2)(a) must be considered in the baseline study, Rule LXXXV(3)(a).

Requiring data on individual residences over the larger area still under consideration at the inventory level would be burdensome and costly. The suggested change has, therefore, not been accepted.

212 COMMENT: In Rule LXXXV(2)(c), substitute "or" for "and" between "prime" and "unique."

RESPONSE: Rule LXXXV(2)(c) has been modifed to read: "(c) prime ~~and~~ or unique farmland and orchards;."

213 COMMENT: In Rule LXXXV(2)(f), add "or" between "percent" and "located." If either condition exists, the area should be considered an area of concern.

RESPONSE: The comment has not been accepted. Grade is an important qualification that significantly affects the nature and magnitude of impacts associated with building a facility away from an existing road. Many linear facilities can be constructed without road construction or blading if the slope does not exceed 15 percent. Making the proposed change would be overly restrictive given the practical realities of constructing transmission facilities.

214 COMMENT: Delete (1)(a) in Rule LXXXV because the cost of obtaining such information is not justified.

RESPONSE: The comment is accepted with respect to obtaining this information at the reconnaissance level, but the information should be obtained later in the siting study where it will be less costly. Therefore, it has been deleted from section (1) and moved to section (2) as a new (q) where it would be obtained in the inventory of corridors, as follows:

"(1) For the reconnaissance, the areas of concern are as follows:

~~(a) for substations, switching stations, and/or terminus points, active faults showing evidence of post-miocene movement;~~

~~(b)~~(a) areas of rugged topography defined as areas with slopes greater than 30 percent; and

~~(c)~~(b) specially managed buffer areas surrounding exclusion areas....

(2) For the inventory, the areas of concern are as follows:....

~~(q) For substations, switching stations, and/or terminus points, active faults showing evidence of post-miocene movement.~~"

215 COMMENT: Change Rule LXXXV(1)(c) to read "federal or state specially managed areas."

RESPONSE: The comment has not been accepted. Such a change would not be workable because there are many kinds of specially managed areas, whereas buffer zones around exclusion

areas are easily defined by agencies responsible for managing the exclusion areas.

216 COMMENT: In Rule LXXXV(2)(a) add the words "based on a circle of 526.74 feet radius" to clarify how this is to be determined.

RESPONSE: The clarification is needed and the rule has been changed as follows:

"(a) cities, towns, and unincorporated communities, and residential clusters of 5 or more dwelling units per 20 acres, based on a circle approximately 1000 feet in diameter;"

217 COMMENT: In Rule LXXXV(2)(b), simplify the area of concern by replacing it with "(b) cultivated land."

RESPONSE: The comment has not been accepted. There are important distinctions among the categories of cropland listed with respect to the magnitude of the impact caused by a linear facility. The proposed deletion would not accurately reflect the state of knowledge about the impacts of linear facilities upon agricultural operations.

The Department's experience indicates that obtaining data on irrigated land at the inventory stage is important in reducing impacts to agricultural lands. The data can be largely obtained from existing soil conservation service maps, and field checked by the applicant when appropriate.

The rule contains a typographical omission, however, which is corrected as follows: "(b) mechanically irrigated land, other irrigated land, and dry cropland;"

218 COMMENT: Rules LXXXV(2)(h), (l), and (m) should be changed so that each of the areas of concern require the applicant to gather only data designated by appropriate state and federal officials because it is inappropriate for the applicant to be defining these areas.

RESPONSE: The comment has not been accepted. Section 75-20-222(3) of the Act states that "In a certificate proceeding held under this Chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-20-301 are met." In order to avoid conflict and confusion in the subsequent analysis by the Department and proceedings under the Act, the appropriate forum for this evidence is in the application. It is immaterial to the Board's decision whether the areas of concern in (h), (l), and (m) are designated by a state agency at the time the applicant selects its preferred location. What is important is whether the applicant wishes to build a facility in these areas, and whether the data can be obtained at a reasonable cost.

Each of the areas of concern require the applicant to map the area during the inventory of the corridor. In each case, however, the information can be obtained largely from existing

maps. For example, (2)(h) can be obtained by combining existing Montana Department of Highway cell maps and 1:62,500 topographic maps, field-checking by plane, and contacts with DFWP. Sections (2)(l) and (m) can be obtained by contacting Montana's universities, and scientists and state and federal officials who have knowledge of the local area.

219 COMMENT: In Rule LXXXV(2)(k), move the phrase "as designated by the Montana DFWP" to after the word "densities."

RESPONSE: The intent of the rule is to recognize that certain areas such as "prime waterfowl habitat" have been mapped and an applicant should map other areas such as "waterfowl concentration areas" or "low-level feeding flight paths" by contacting agency officials and field-checking the corridor. The rule has been clarified as follows:

"(k) areas with high waterfowl population densities including prime waterfowl habitat ~~as that have been~~ designated ~~on maps~~ by the Montana department of fish, wildlife and parks and ~~any other~~ areas identified by the Montana department of fish, wildlife and parks or US fish and wildlife service as waterfowl concentration areas or low-level feeding flight paths;"

220 COMMENT: In Rule LXXXV(2)(n), add the word "traditional" before "religious" and the phrase "on lands to which they have legal access" after "indians" to clarify the rule. Also, the citation to Rule XCI(8) is wrong.

RESPONSE: The addition of the word "traditional" would improve accuracy, but adding the phrase about "access" would make the area of concern impractical because it would cause needless legal complications concerning whether Indians have legal access to religious sites. It is not necessary to answer the sometimes complicated question about access in order to determine whether impacts would occur or whether the site should be avoided. Further, the use of the phrase "evidence of contemporary use" adds a presumption that such access is legal.

The citation to Rule XCI(8) is correct. This rule provides the applicant with a description of the method to be used in determining if the areas of concern in (n) occur within the corridors. There are other sections of the inventory that might yield such information, such as XCI(5), (6), and (7) and the applicant would be expected to use this information, but this is not a requirement. The change in Rule LXXV(2) is as follows:

"(n) sites with evidence of contemporary use that have ~~traditional~~ religious or heritage significance and value to Indians as defined by Rule XCI(8);"

221 COMMENT: Change Rule LXXXV(2)(a) to remove the reference to intermittent water bodies, internally drained basins, and the reference to one year in 10 in order to simplify the rule. It is also impossible to determine the criteria of one year in 10 without adequate records.

RESPONSE: The comment has not been accepted. The deletion would not reflect the current status of impact literature regarding linear facilities. In the last few years major expenses have been incurred by utilities that sited transmission lines across such areas when they contained no water, including Lake Broadview near Billings and Devil's Lake in North Dakota. These areas can be identified on topographic maps and, while written records may not be present, the information on frequency of high water can be obtained from landowners, resource managers, or local officials. The one year out of 10 criterion is intended as a guide, and a good-faith effort by the applicant to acquire this data would be sufficient to meet the requirement.

222 COMMENT: Reinstate the following language in Rule LXXXV(3) that was contained in an earlier draft of this rule:

"(e) locations of known active nests of prairie falcons, merlins, goshawks, osprey, ferruginous hawks, great gray owls or barred owls, or nesting colonies of white pelicans, great blue herons, double-crested cormorants, gulls, terns, or mountain plovers located within a radius of 500 feet;

(f) bald eagles winter roost sites where four or more wintering eagles per river kilometer have been documented by USFWS, USFS, BLM, or MDFWP during at least one year in the preceding five years;

(g) locations of known active nests of bald eagles, golden eagles, and peregrine falcons;"

RESPONSE: These information requirements were eliminated from the earlier draft because they were duplicative of Rule LXXXIV(2)(h) and 3(d) and Rule LXXXV(3)(e) and (f). Reinstating this language would not provide any additional information.

223 COMMENT: The addition of individual residences and farm support buildings to Rule LXXXV(3)(a) is appreciated.

RESPONSE: No response is necessary.

224 COMMENT: Clarify Rule LXXXV(3)(a) and add the word "sheds" after "lambing."

RESPONSE: The comment has been accepted and the area of concern now reads as follows:

"(a) individual residences not included within one of the urban or residential clusters defined by (2)(a) and major

farm support buildings ~~and~~ including ~~livestock~~ calving and lambing ~~sheds areas~~;

225 COMMENT: Rule LXXXV(3)(c) is unclear, has redundancies, and uses metric units when English units are used elsewhere.

RESPONSE: The comment has been accepted and the rule is changed to read as follows:

"(c) mature riparian forests defined as a stand of ~~mature~~ cottonwood or mixed cottonwood-conifer forests greater than 300 feet ~~400 meters~~ long and 30 feet ~~40 meters~~ wide where average canopy height is 50 feet or more and average density of mature trees is greater than 20 stems per acre. ~~that occurs along a waterway~~;"

226 COMMENT: In Rule LXXXV(3)(d), delete the references to "old growth forests" and how to measure them because the rule is impractical to interpret and implement. Also change 10 acres to 20 acres if it is kept.

RESPONSE: The comment has been accepted. The rule is deleted as follows:

~~"(d) old growth forests greater than 40 acres in size that have never been harvested and that contain at least 10 percent canopy coverage of conifers greater than 5 dm at breast height;~~

"(ed) nesting colonies, defined as 5 or more pairs within 40 acres, of white pelicans, great blue herons, double-crested cormorants, gulls, or terns;

(fe) habitats occupied at least seasonally and critical to species listed as "species of special interest or concern" by the Montana department of fish, wildlife and parks, and the US fish and wildlife service;"

227 COMMENT: To clarify Rule LXXXV(3)(e), add the words "as designated by USFWS, BLM, USFS, and MDFP."

RESPONSE: The comment has not been accepted. Generally these agencies do not designate such sites. These areas are included as areas of concern because there is always a presumption that they will be avoided if encountered during the routing of linear facilities. Data can be obtained during the applicant's normal inspection of the areas where it is considering construction of its facility because the habitats occupied by these species during nesting are distinct. The response to the comment on Rules LXXXV(2)(h), (l), and (m) also contains reasons for not accepting this comment.

228 COMMENT: Reinstate in Rule LXXXV(3)(h) the following language that was contained in an earlier draft of this rule.

"(h) species listed as "species of special interest or concern" by MDFWP and USFWS;"

RESPONSE: This information is required by Rule LXXXV(3)(f). The information required has been more narrowly defined than was originally done in the earlier draft to improve its utility in conducting the impact analysis.

RULE LXXXVII:

229 COMMENT: In Rule LXXXVII, add the words "or outside Montana" to this rule so that the Board can consider alternative routes outside the state.

RESPONSE: The comment has been accepted and the rule changed to read as follows:

"RULE LXXXVII LINEAR FACILITIES, DELINEATION OF THE STUDY AREA. (1) An application must identify the study area or areas that include the following, ....

(a) all reasonable end points for the facility within or outside Montana; ...."

230 COMMENT: In Rule LXXXVII(2), delete the second sentence because baseline data requirements are irrelevant. Also, the citation to 36.7.2216 is unknown.

RESPONSE: The citations in the second sentence are not intended to refer to baseline studies but rather to the applicant's studies of need and alternatives. The sentence proposed for deletion points out that the applicant's studies of need and alternatives are the essential determinant of the study area boundaries. However, the citation of "36.7.2216" is a typographical error which refers to the criteria for the evaluation of alternatives, and the other cross-reference is incorrect. The rule is corrected to read:

"(2) An application must identify the factors used to determine the boundaries of the study area. Relevant information provided pursuant to Rules ~~XLIV~~ XLVI-L and ~~36.7.2216~~ LXI-LXIII may be referenced."

RULE LXXXIX:

231 COMMENT: Delete Rule LXXXIX(1)(b) because application of the preferred route criteria is inappropriate at the selection of the study corridor phase.

RESPONSE: In some cases the route criteria may not be relevant in selection of the study corridors, but this is not generally true. The comment has, therefore, not been accepted. The criteria state broad policies and objectives, and the rule requires only that the applicant "consider" the criteria. For very large linear facilities, the criteria would almost certainly always have relevance at this stage of decision making, while for small facilities they may not, and the applicant could so state.

232 COMMENT: In Rule LXXXIX(2), delete the specification of accuracy of study corridor boundaries because it is beneficial to all concerned not to be too precise at this stage.

RESPONSE: The intent of the rule is to deal with the problems the Department has encountered with imprecise mapping, and to specify an area within which more detailed data are to be collected, rather than to make a statement about preciseness of facility location. For such purposes, the line drawn on the map needs to be reasonably precise. The comment has not been accepted.

RULES XC and XCI:

233 COMMENT: In Rule XC(3), add language at the end of the first sentence clarifying that the applicant is able to provide an application without this information in certain circumstances. Also add the same qualification to the end of the sentence which immediately precedes section (1) in Rule XCI. This would make Rule XC and XCI consistent with Rule LXXXI(5).

RESPONSE: The change suggested in the comment is not necessary because Rule LXXXI(5) was a general rule pertaining to the entire siting study, including Rule XC. It would be cumbersome and confusing to repeat the condition described in LXXXI(5) in each of the rules it covers. (See response to Comment 387 also.)

RULE XCI:

234 COMMENT: In Rule XCI, reinstate the following language that was contained in an earlier draft of this rule:

"(b) the following population centers:

(i) cities and towns, including developed areas within and adjoining city and town boundaries;

(ii) unincorporated communities, including residential concentrations of 30 or more dwelling units per 50 acres;

(iii) residential clusters, including residential concentrations of 5 or more dwelling units per 20 acres;

(h) dry cropland;

(i) sprinkler-irrigated land;

(j) other irrigated land;

(l) permitted surface mining areas;

(m) military installations;

(n) communication facilities;

(o) airports, airfields, air hazard areas;

(p) forested lands;

(q) recreation areas; and

(r) water bodies greater than 20 acres in size."

RESPONSE: These information requirements were eliminated from the earlier draft because they were duplicative of Rule LXXXIV(1)(b)-(e), (g), (2)(a), (b) and (d) and Rule

LXXXV(2)(a), (b), (d) and (e) and (3)(a), (c) and (k). Reinstating this language would not provide any additional information and, consequently, the suggested change has not been accepted.

235 COMMENT: In Rule XCI and LXXV it is inappropriate for the applicant to conduct what amounts to a public attitude survey regarding the proposed facility. Either the Department should conduct the survey or require the applicant to hire an independent third party. Further, the methodology for preparing the analysis should be submitted to and approved by the Department prior to any data collection.

RESPONSE: The comment has not been accepted. The intent of this requirement is to make the applicant aware of public concerns over the facility so that they can be considered by the applicant in the selection of alternative locations for the proposed facility. Experience shows that needless conflict can be avoided when applicants involve affected parties early in the siting process. The applicant does not benefit from biased reporting of the public perception of a facility since the Department and the Board will make independent assessments after the application has been filed.

236 COMMENT: In Rule XCI(1)(d), delete the requirement regarding railroad right-of-ways because they are impossible to map without a survey in the field.

RESPONSE: The comment has not been accepted. Most abandoned railroad right-of-ways appear on maps and provide important opportunities for routing linear facilities. Even if they do not appear on maps, right-of-ways are easily detected by the applicant's normal field surveys.

237 COMMENT: Delete Rule XCI(1)(d) because the locations of pipelines is not a factor until the centerline stage, and the cost of mapping sewers, water lines, and gas distribution lines would be tremendous.

RESPONSE: Pipelines normally are not confused with sewers, and most of the data on locations of pipelines is available from published maps. The location of pipelines is important when siting large transmission lines because they are adversely affected by electric fields, and tend to be routed along the same routes as transmission lines in restricted terrain. This information is not necessary at the inventory stage, however, and is deleted from XCI(1), placed in the baseline study, and the size of pipelines changed, as follows: "Rule XCI ....

~~(e) pipelines 6 inches or greater in diameter;~~

(fe) electric transmission lines of 50 kV or greater voltage design;

(gf) nontimbered rangeland;

(hg) industrial and commercial areas located outside of cities, towns and unincorporated communities; and

(ih) forested lands."

and "Rule XCIV....

(1) An application must contain an overlay depicting land use information required by Rule XCI(1) and the following data ....

~~(a) pipelines 8 inches or greater in diameter~~."

238 COMMENT: There is a typographic error in Rule XCI (3)(b). It should read "15% 30 percent; and...."

RESPONSE: The comment has been accepted. Rule XCI (3)(b) has been changed to read as follows:

"(b) ~~40~~ 15% 30 percent; and ...."

239 COMMENT: The cost of obtaining the information required by XCI(7) is too great; the information is completely subjective.

RESPONSE: The comment is not accepted. In the Department's experience, visual impacts are one of the most significant concerns raised during public hearings and in comments on transmission line studies. In response to these concerns, the Board has historically required location adjustments and other forms of mitigation to reduce visual impacts. Information required at the inventory stage is used in subsequent evaluation of study routes.

Though subjectivity is inherent to aesthetics, landscape architects have developed relatively standard methods for characterizing visual quality and assessing visual impacts. These techniques are described in the following: U.S. Department of Agriculture, Forest Service, 1974. National Forest Landscape Management, Volume 2: Chapter 1, "The Visual Management System" Handbook No. 462; U.S. Department of the Interior, 1980, Visual Resource Management, BLM Handbook; USDA. Visual Character Types and Variety Class Description. Forest Service Handbook, Northern Region; and Jones and Jones, 1976. Visual Impact of High Voltage Transmission Facilities.

240 COMMENT: In Rule XCI(8)(a) and (b) replace the word "archaeological" with "prehistorical" to clarify the rule.

RESPONSE: The comment has been accepted and the change is as follows: "Rule XCI...

(8) An application must contain an overview of the history and prehistory of the study corridors, including the following:

(a) documentation that a file search has been conducted to identify the types of potentially significant historical, ~~archaeological~~ prehistorical, architectural, ....

(b) a summary of the nature of the existing historical, ~~archaeological~~ prehistorical, or paleontological ...."

241 COMMENT: Delete XCI(8)(c) because this requirement is too theoretical to function as a decision making tool.

RESPONSE: The comment has not been accepted. The rule specifies a procedure that is in standard use when conducting cultural resource surveys for the purpose of putting the information to practical use in siting facilities. The prediction of the potential significance of undiscovered sites in inadequately surveyed areas is made from the known significance of sites nearby.

RULE XCII:

242 COMMENT: Rule XCII(1), when requiring three alternative routes, does not recognize the possibility that three routes may not exist. Retaining this requirement may result in forcing the applicant to acquire data for no purpose. The rule would be improved by changing the first sentence to read "(1) The applicant shall select at least three reasonable alternative routes, if they exist ...." In the case of federal facilities, this requirement should be deleted in deference to the environmental documents that will be prepared, and rules for scoping these federal documents are explicit in 40CFR1508.25.

RESPONSE: The suggestion in the comment to add the word "reasonable" has been accepted. However, the addition of the words "if they exist" is unnecessary since only "reasonable alternatives" need to be examined. If three reasonable alternate routes do not exist, the applicant must show the Board by "clear and convincing evidence" that this is the case (see Section 75-20-222 of the Act). In addition, the definitions of route and the procedures for selecting and depicting alternative routes and corridors described in Rules LXXXIX, XC, XCII, and XCIII allow the applicant to select alternative routes within a single corridor and within a small area if it is documented that there are no alternatives.

The suggestion for deleting the requirement for federal facilities is not accepted because the rule is entirely compatible with federal requirements. The citation regarding scoping federal documents either is not relevant or was made incorrectly; the federal regulation relevant to the study of alternatives, 40CFR1502.14, states that alternatives (are) "the heart of the environmental impact statement .... In this section agencies shall: (a) Rigorously explore and objectively evaluate all reasonable alternatives...."

Rule XCII(1)(a) also contains an incomplete reference.

Rule XCII(1) and Rule XCIII(1) have been changed as follows:

"RULE XCII - LINEAR FACILITIES - SELECTION OF ALTERNATIVE ROUTES. (1) The applicant shall select at least three reasonable alternative routes within the study corridors for baseline study based on considerations of the following:...(a)...Rule LXXXV(1), (2), and (3) for transmission lines or Rule LXXXIII and Rule LXXXVI for pipelines."

"RULE XCIII - LINEAR FACILITIES - BASELINE STUDY - GENERAL REQUIREMENTS. (1) An application must contain a baseline study of at least three reasonable alternative routes...."

RULE XCIII:

243 COMMENT: In Rule XCIII(2) delete the second sentence requiring applicants to identify a tentative, environmentally suitable location for the facility, because it is impossible to precisely locate a route 80-feet wide on a map without staking and surveying it. Also delete Rule XCIII(7)(c) and (e), which discuss local route adjustments and alternate designs to mitigate impacts, for the same reason.

RESPONSE: The suggested deletion is not accepted, but the definition of "route" (Rule I(55)) has been improved to correct the impression that it is 80 feet wide on the ground. It is not possible for the Department to assess the impacts of a proposed facility without having reasonably accurate knowledge of where the applicant intends to locate it. Section 75-20-211(1)(a)(i) requires "a description of the locations and of the facility to be built thereon." The practical procedure used in siting linear facilities is to progressively obtain more detail about a location, and the definitions of corridor, route, and centerline are modeled on these procedures. In certain restricted terrain, or areas of intensive land use, high impacts can be associated with one location while another location nearby could have substantially lower impacts. The intent of Rule XCIII(7)(c) and (e) is to provide the applicant an opportunity to make a case for a route that, for example, crosses an environmentally sensitive area. For this reason, (c) and (e) have been retained.

To clarify the accuracy and procedures required of the applicant when mapping alternative routes, changes have been made in Rule XCIII(2) based on the intrinsic accuracy of 1:24,000 topographic maps, which is about 40 feet, and based on the level of accuracy required by the Department to conduct baseline studies, as follows:

"(2) The applicant shall accurately ~~depict~~ map to within one-tenth mile each alternative route, the locations of any intermediate substations, compressor stations or pump stations (for pipelines), and all impact zones defined in Rule XCIV or XCV using lines one millimeter or less in width drawn on a 1:24,000 topographic base map. The line delineating each

alternative route should identify a tentative, environmentally suitable location for the facility. These tentative locations need not be surveyed, but the applicant shall by reasonable effort, such as by air or by ground checking, determine the suitability of the location for a facility. The applicant shall provide one mylar copy of this base map to the department. For any areas where 1:24,000 topographic . . ."

244 COMMENT: The first sentence of Rule XCIII(3) is confusing and should be clarified. Also, the rule should have a qualification exempting confidential cultural resource data from mapping.

RESPONSE: The comment has been accepted and the changes are as follows:

"(3) An application must contain an overlay or overlays, as appropriate, to the base map required by (2) depicting ~~of~~ the baseline data required by Rule XCIV or XCV that can be mapped and depicting the exclusion areas listed in Rule LXXXIII, the sensitive areas listed in Rule LXXXIV(1), (2), and (3) and the areas of concern listed in Rule LXXXV(1), (2), and (3) that are within the impact zones associated with each alternative route. For pipelines, the exclusion areas listed in Rule LXXXIII, and the sensitive areas and areas of concern listed in Rule LXXXVI(1), (2) and (3) that are within the impact zones associated with each alternative route shall be included. Cultural resource data required by Rule LXXXIV(2)(i) and (ii) and Rule LXXXV(2)(a) and (b) may not be mapped if the applicant obtains prior approval from the Department. The applicant ...."

245 COMMENT: In Rule XCIII(7), identification of all areas that may require mitigation to eliminate adverse impacts cannot be documented for some alternate routes. A more in-depth study would only be available after the preliminary line survey is completed.

RESPONSE: The rule does not require that "all" areas be identified. As described in Rule XCIII(2), the applicant will in fact have completed such a preliminary survey. The rule is intended to solicit information from the applicant as to how it intends to mitigate impacts to such commonly mitigated areas as rivers, highway crossings where marker balls may be needed, mechanically irrigated areas, and so forth. In order to clarify this intent, Rule XCIII(7) is modified as follows:

"(7) An application must identify and discuss mitigation to reduce or eliminate significant adverse impacts of the facility along each alternative route, where the applicant's assessment indicates that mitigation is necessary or desirable. For this purpose, mitigation measures including, but are not limited to:...."

246 COMMENT: It is not clear why Rule XCIII(4) requires the applicant to provide black-and-white photos with stereo coverage along with the other map requirements. This would be expensive.

RESPONSE: The rule contains sufficient flexibility to allow the applicant to hold costs down. For example, existing photos can be used, and orthophoto quads can be provided. Lack of information about routes causes delay and adds uncertainty to the Department's ability to make a clear recommendation to the Board. These photos provide information not provided on 7 1/2 minute topographic base maps, which may be more than 20 years old. Stereo coverage is not necessary, however. The cost of obtaining photos from the Soil Conservation Service for three separate alternative 50-mile routes would be about $225, if the rule is changed, as follows: :

"(4) An application must contain one set of black and white contact prints at a scale of 1:48,000 or 1:24,000 that provide complete ~~aerial~~ physical aerial coverage of the alternative routes. These photos shall be taken during a season of full foliage no more than ~~three~~ five years prior to filing the application unless otherwise approved by the Department."

247 COMMENT: A new (8) should be added to Rule XCIII such that an application must contain a discussion of system alternatives to the proposal.

RESPONSE: The comment is not accepted because this requirement is already contained in Rule LXI(5).

RULE XCIV:

248 COMMENT: A description of the construction crew by size, skill and wage levels as required by Rule XCIV(2) will vary among line contractors, especially between union and nonunion contractors. Since construction contracts are usually bid and awarded after final route approval is received, this type of information cannot be accurately detailed as requested. Variation of crew size according to the construction schedule cannot be addressed at this time for the same reason. This information has no role in decision-making. The requirement should be deleted.

RESPONSE: The Act requires consideration of the economics of the proposed facility and alternatives to it. Information on wages and skill levels is needed to predict socioeconomic impacts such as the expected portion of the work force to be locally supplied and the effect on local businesses. While this information does have a role in impact assessment and decision-making the commenter correctly points out the uncertainty associated with the data. Rule XCIV(2) has, therefore, been amended to read as follows:

"..... a description of the approximate anticipated construction crew by size, skill, and wage levels...."

249 COMMENT: It is impossible to predict the "what if" situations that Rule XCIV(3) requires and such predictions have no utility in the decision-making process. Amend Rule XCIV(3) to read as follows:

"(3) An application must contain an assessment of the impacts of the facility on agricultural, residential, commercial, industrial, mining, and public land uses in the impact zone that is within one mile of each of the alternative routes, based on the information required by Rule XCIII(3) and Rule XCIV(1). ~~The assessment of impacts on uses of land must address the compatibility of the facility with existing land use activities, potential changes in or interference with land uses that may occur as a result of the facility, nuisance effects, and potential inhibiting or preclusive effects of the facility on land use improvements or transitions from one type of land use to another. An application must specify any land uses for which there are no significant differences in impacts among the alternative routes.~~"

RESPONSE: The purpose of impact analysis is anticipating what would happen if a facility were constructed. Experience argues that observation of past events provides a basis for predicting what is likely to occur if similar conditions are present. All science, including the social sciences, rests on this premise. The comment has, therefore, not been accepted.

250 COMMENT: Rule XCIV(4) should be deleted since transmission lines have no social impacts.

RESPONSE: Some transmission lines have no social impacts. This situation is recognized in the rule through the inclusion of the words "if any." However, other transmission projects, particularly larger lines and their substations, may impact local economies and create additional demands for services. In instances where no social impacts are likely to result from a transmission line, the applicant need only document the reasons to fulfill the requirement. The suggested change has, therefore, not been accepted.

While the suggested change has not been made, Rule XCI(5) is modified as follows in recognition of the validity of this comment as it relates to smaller facilities and the consistency that should exist between rules:

"(5) An application must contain a narrative description of existing social characteristics and characteristics of the local economy of the communities within and near the study corridors. Projected future social and economic conditions should the facility not be built must also be discussed. The following information is required in the description for facilities of 230kv or greater voltage. For facilities of

less than 230 kv, a cursory discussion of ~~the following~~ information ~~categories~~ required by (a), (b), and (c) is sufficient: ...."

251 COMMENT: Insert the word "taxation" between "socioeconomic" and "and" in Rule XCIV(5)(a).

RESPONSE: The comment has been accepted and Rule XCIV(5)(a) has been modified to read as follows:

"(a) concerns about social, socioeconomic, taxation, and land use changes the facility could cause;"

252 COMMENT: Delete Rule XCIV(5) since similar information is required by Rule XCI(6).

RESPONSE: Public participation and perception should be obtained at each step in narrowing the potential locations for a facility. Public reaction will be directly linked to what is proposed and the nature of what is proposed will differ between the inventory and baseline studies.

253 COMMENT: Delete Rule XCIV(6), the requirement for depicting access road locations, because it is impossible to locate roads before structure locations are known or before actual construction begins. In addition, "preliminary access roads" could be considered to be any local, county, or state road which is open to public use.

RESPONSE: The comment is accepted in part, however, the Act states that the Board cannot grant a certificate unless it finds and determines, among other requirements related to access roads, "the nature of the probable environmental impact" of the facility. Clearly, construction of new access roads to linear facility construction sites in certain kinds of terrain and in previously unroaded areas has caused significant impacts to aquatic habitats, recreation, wildlife populations and other resources. This impact frequently exceeds the direct impact of the linear facility. It is the intent of the rule to strike a compromise between obtaining reasonable, accurate information about this important source of impact and keeping the applicant's costs to reasonable levels. Therefore, the rule has been changed as follows:

"Rule XCIV....

(6) An application must contain ~~an overlay depicting preliminary road locations for each alternative route, with particular emphasis on areas with slopes greater than 46 percent.~~ a description of the access road requirements of each alternative route and an assessment of the potential impacts of construction of access roads. The description and assessment shall be based on sufficiently accurate information to allow the Department and the Board to make a valid comparison of alternative routes with respect to the requirements of the baseline study. The applicant shall obtain this information from existing maps showing roads and

other information in existence at the time the application is prepared, but shall also make reasonable effort to confirm the information such as by air or by ground checking. The information and assessment shall include:

(a) An estimate of road mileage of new or substantially upgraded access road requirements for approximately 30 mile segments or portions thereof of each alternative route; and a description of the sources of data used to develop the estimates;

(b) An assessment of the likelihood of constructing access roads across any of the sensitive areas listed in Rule XXXIV and the areas of concern listed in Rule XXXV and identification of any such areas; and

(c) An assessment of impacts in the areas identified in (b). This assessment may be contained in a single section of the application or may be contained within each of the resource categories in Rule XCIV(1)-(5) and (7)-(18) and cross-referenced as appropriate."

254 COMMENT: Delete XCIV(8)(e). The costs are not justified, as this is too theoretical to function as a decision-making tool.

RESPONSE: The comment is accepted, and the rule has been deleted as follows: "Rule XCIV ....(8) ....~~(e) for substation locations; a description of seismic risk, including the risk of damage from an event with a Richter magnitude greater than 5.5;~~"

255 COMMENT: The costs of complying with Rule XCIV (9) and (10) are not justified. Modification is proposed to read: Section (9) should be deleted and replaced with "An application must contain general sensitivity data of the study area residents including attitudes toward the facility." Section (10) should be replaced with "An application must include a description of the visual character of the study area considering topography, land rise, water and unique physical features, and visual resource impacts for each alternative route. The impact assessment must integrate visibility, visual quality, mitigation potential, and visual contrast for each alternative route."

RESPONSE: The suggested changes are not accepted because they are not likely to accomplish a reduction in costs of data collection. In the Department's experience, visual impacts of transmission lines are an important issue to people living nearby and thus should be addressed by an applicant, the Department, and the Board. The language proposed in the comments is general and does not contain a specific impact zone or other such guidance to an applicant as to how much of an area should be studied nor does it indicate to an applicant what method of data collection is acceptable to the

Department. The rule as proposed gives specific guidance to an applicant about the kinds of areas that are visually sensitive, and specifies the methods that would be acceptable to the department. The items listed in (9)(a)-(g) are in standard use in analysis of visual impacts (see comment 239).

The rule should be changed to clarify what data is requested in the beginning of section (9), however, and section (9)(b) can be deleted because it may be more appropriate for the Department's analysis rather than the applicant's. The changes are as follows:

"Rule XCIV ....(9)....An application must contain data concerning visual resources and viewer ~~sensitivity data characteristics~~ for ....

~~(b) identification and an overlay of areas where the facility would be visible from appropriately grouped observation points;~~"

256 COMMENT: Delete Rule XCIV(11)(e) because it is too general, is not related to the project, and is not quantifiable by the applicant.

RESPONSE: The suggested deletion is not accepted. It is not necessary for the applicant to present an entirely numerical impact assessment. The rule is intended to obtain an assessment of the affects of new access roads, and is therefore modified as follows:

"(c) a general assessment of impacts ~~due to~~ from increased hunting and fishing pressure ~~and~~ if increased access to secure habitat ~~which may~~ would likely occur in the general vicinity of each alternative route ~~but~~ because new access roads would be constructed outside the impact zone specified in (a);"

257 COMMENT: In Rule XCIV(12)(a) and (b), clarify what the information is to be used for. In Rule XCIV(13) replace the word "assessment" with "estimation."

RESPONSE: The comment is accepted in part. "Assessment of potential impacts" has been used throughout the rules for consistency even though, "estimation" is also sometimes synonymous. The other portion of the comment is accepted, and Rule XCIV(12) has been changed as follows:

"(a) a detailed description of specific cultural resource properties ~~likely to be affected by the facility, that may pose problems at the route selection stage~~, based on the results of an in-depth archival and documentary research effort;

(b) based on the results of (a) and ~~appropriate~~ preliminary field checking of impact zones, a discussion of the accuracy of the overview ~~predictions~~ required by Rule XCI(8) concerning:"

258 COMMENT: In Rule XCIV(14) the definition of an impact zone should be eliminated for simplification, and the meaning of national natural landmarks should be clarified.

RESPONSE: The comment is not accepted. The impact zone was specified to limit the analysis to only those recreation resources likely to be affected by the proposed project. Its deletion will complicate the applicant's analysis. If the resource will clearly not be affected, the application does not need to address it, as stated in Rule XXIV. No modification has therefore been made.

A list of National Natural Landmarks and descriptions of each site are available from the National Technical Information Service, U.S. Department of Commerce, at nominal cost. Each site description includes a list of current site uses; if recreation is on the list, the site should be included on the overlay. No modification has been made.

259 COMMENT: In Rule XCIV(14)(a) and (b), the recreation sites listed are redundant.

RESPONSE: The comment is accepted. The intent of the rule was to obtain information about use of sites other than those previously identified. Rule XCIV(14)(a) and (b) have been combined to read: "(a) Based on consultation with appropriate local, state, and federal agencies, an application must include an overlay of any ~~other public or private~~ recreational areas or sites, ~~receiving extensive public use, where public recreational use occurs within the impact zone other than those specifically referenced above; (b) An application must include an overlay showing any~~ such as fishing access areas, public and private campgrounds, ~~and intensive outdoor recreation sites such as~~ ski areas, local parks, and picnic areas located within the impact zones."

260 COMMENT: In Rule XCIV(15), delete the second two sentences of the rule to simplify it.

RESPONSE: The comment is not accepted. This portion of the rule contains specific guidance to the applicant limiting the required assessment to only those areas affected by the facility, and cross-referencing other requirements so that duplication will not occur.

261 COMMENT: Delete Rule XCIV(15)(a) because access roads are unknown until the centerline phase.

RESPONSE: The comment is not accepted because it is not necessary to know the location of the access roads to meet the requirements of the rule. Knowledge of the location of access roads often is not necessary to allow a reasonable, accurate statement about impacts to recreation areas; instead, what is needed is an assessment by the applicant of whether roads will be constructed through previously unroaded areas, and specific identification of the areas.

262 COMMENT: Delete Rule XCIV(15)(d) because it is too hypothetical and delete the requirement for discussing the uniqueness of an affected site in (15)(e) to simplify it.

RESPONSE: These requirements generally only apply to linear facilities which cross or are near sensitive areas, areas of concern, or other intensively used outdoor recreation sites. There is a substantial body of literature in common use by state and federal agencies that allows assessment of impacts to such areas from linear facilities. (See, for example, "The recreational opportunity spectrum: a framework for planning, management, and research," U.S.D.A. Forest Service, General Technical Report PNW-98, Seattle: Pacific Northwest Forest and Range Experiment Station.)

263 COMMENT: Rule XCIV(15)(e) needs to be simplified.

RESPONSE: The rule gives specific requirements which can be used by an applicant to assess unique or unusual resources. If the rule was written as a general statement, it is more likely that an applicant would not be able to adequately address these issues. No modification has thus been made.

264 COMMENT: In Rule XCIV(16) and (17), delete the reference to the impact zone "as defined by (7)" in order to clarify the rule.

RESPONSE: The comment is not accepted. It is appropriate to use the same impact zone for impacts to water resources as for earth resources because the assessment of impacts overlaps.

265 COMMENT: In Rule XCIV(18)(b), add the word "yearly" before "average," to clarify the rule. It is also unclear how the calculation is to be made and unclear what the word "subdivided" means.

RESPONSE: The comment is accepted. The intent of the requirement was to calculate the noise on a yearly basis. These comments were also received on Rule CIV(2)(a), and wording has been added describing how the applicant may obtain the weather data necessary to make this calculation, and a definition has been added, as follows:

"(b) an assessment of potential noise impacts of the facility and substations, including an estimate of annual average noise expressed on an A-weighted day-night scale ($L_{DN}$) at the right-of-way edge for facilities of 230 kv or greater voltage and at the property boundary of all substations located within 500 feet of residences or in subdivided areas. The data on frequency of rain which is necessary to account for wet weather may be obtained from the nearest weather station that has such data available. For

purposes of these rules, "subdivided areas" shall be defined as a location within which a plat of a subdivision is on file with local governments."

266 COMMENT: In Rule XCIV(18)(d), use "estimation" instead of "assessment of potential impact," and in (e) add "if required" to clarify the rule.

RESPONSE: For consistency, "assessment of potential impact" has been used even though it appears to be nearly synonymous with "estimation." The suggested change in (e) is accepted as follows, although a different word has been used:

"(e) a description of mitigation measures, if necessary, to reduce noise, electric and magnetic fields, induced currents, and interference with communication systems."

267 COMMENT: In Rule XCIV(18), a new (f) should be added that requires the applicant to assess the potential electrical and magnetic effects of the facility on the production of agricultural products, operations, and livestock.

RESPONSE: The comment is not accepted. This addition to the rule is not necessary because such an assessment is already contained in (18)(a), (b) and (c) even though it is not specifically listed. Such as addition would, by inference, require listing the other elements of the assessment, which would make the rule far too cumbersome.

RULE XCIV and LXXVIII:

268 COMMENT: The applicant should be required to hold public meetings that are accessible to residents within the impact area. Agencies must be consulted. No less consideration should be given to affected residents.

RESPONSE: The comment is accepted. Rule Rule LXXVIII(5) and XCIV(5) are each modified to read as follows:

"...Summaries of issues and concerns identified at public meetings the applicant may hold or the results of any surveys the applicant may conduct also must be included. The applicant must conduct at least one public meeting that is accessible to residents of the impact zone...."

RULE XCV:

269 COMMENT: In Rule XCV(1)(a), add "or future upgrade or double-circuiting."

RESPONSE: The comment is not accepted because the term "double-circuiting" applies to transmission lines, and upgrading is already covered in (a) in the phrase "ability to accommodate future pipelines."

269a In Rule XCV(4), the word "alternative" was inadvertently left out. To be consistent with the rest of the section, the

rule is changed as follows:
"Rule XCV...(4)...along the alternative routes...."

RULE XCVI:

270 COMMENT: Delete the word "adverse" from Rule XCVI(1) because positive and negative impacts should be evaluated in the route comparison.

RESPONSE: The comment is accepted as follows: "(1) A summary of the most important ~~adverse~~ impacts of the...."

RULE XCVII:

271 COMMENT: In Rule XCVII, the specified selection process is not entirely satisfactory. Past experience has shown that the department looks for flaws in the preferred route, even if the route has been carefully selected. An option should be added to the rule which allows the applicant to not select a preferred route.

RESPONSE: Section 75-20-211(1)(a)(iv) of the Act requires that an applicant must submit "a statement of the reasons why the primary proposed location is best suited for the facility," and section 75-20-222(3) requires that the burden of proof is on the applicant to show that the certificate should be granted. Therefore, the comment has not been accepted.

272 COMMENT: Rule XCVII(6) gives the impression that sharing or paralleling existing utility or transportation corridors be given preference. If this is the intent, it should be made clear here and in Rule LXXXI(1).

RESPONSE: The comment is accepted. The intent of the rule was to obtain engineering information on opportunities and constraints for paralleling or sharing existing right-of-way. Therefore, the section has been moved to Rule CIII, as follows:

"Rule XCVII...~~(6) A specific explanation of the opportunities for the facility to parallel or share existing utility or transportation rights-of-way, and if such opportunities were not chosen as part of the preferred route, an explanation of the reasons.~~" and "Rule CIII....

~~(10) A specific explanation of 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.~~"

RULE XCVIII:

273 COMMENT: In Rule XCVIII, how will the Department assess reliability and what risk will the Department undertake in assuming this responsibility?

RESPONSE: The term "reliability" in this rule is used in the sense of "operating reliability." The Department has a relatively limited role in assessing those aspects of the site which may affect the ability of the facility to reliably operate as proposed but has a responsibility to assess such items as reliability and permanence of water sources, long-term capability of major waste disposal sites to accept the proposed waste volume, seismic risks, and so forth. This responsibility arises from section 75-20-301(3)(d) of the Act. Neither the Department nor the Board assumes any "risk" in evaluating this information.

RULE XCIX:

274 COMMENT: Rule XCIX(5)(d) may require that the source of fuel be specified well in advance. What happens if the exact source of fuel has not been decided?

RESPONSE: The comment is accepted, and the rule has been changed to read:

"(d) fuel-handling systems: The proposed source of fuel to be used by the facility and, if applicable, alternative fuel sources consistent with Rule LXXVIII(8), 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;"

RULE CIII:

275 COMMENT: In Rule CIII(6), the first sentence needs to be corrected because it is confusing and inappropriately requests calculations for wet weather. In the last sentence, the data requested for substations are not available.

RESPONSE: The comment is accepted in part. The reference to noise levels has been deleted because it is covered in Rule XCIV(18)(b). Information on substations can be estimated by evaluating existing substations; however, the rule has been restricted to substations proposed to be located in residential or subdivided areas because the data are needed only in these locations. The rule has been changed as follows: "Rule CIII....

"(6) For an electric transmission facility, an application must include an estimate of ~~potential~~ ~~noise levels~~, radio and television interference ~~levels~~, and electric and magnetic field strengths ~~during wet and dry weather, if any~~. The information on electric and magnetic fields must be provided for cross-sections of the right-of-way, and must include maximum conditions under the conductors and at the edge of the right-of-way or easement, and attenuation rates beyond the edge of the right-of-way. This information is also required at the property boundaries surrounding each substation, ~~which is proposed to be located in residential or~~

subdivided areas and must include estimates of attenuation rates beyond the property boundaries."

276 COMMENT: Rule CIII(7) would require the submission in the application of a voluminous set of design calculations in order to demonstrate compliance with the National Electric Safety Code.

RESPONSE: The comment has been accepted. This was not the intent of the rule, and it has been changed as follows:

"(7) For an electric transmission facility, an application must contain ~~a statement certifying the information necessary to demonstrate~~ that the facility ~~will~~ can meet the standards of the national electric safety code."

277 COMMENT: Delete Rule CIII(10) because it unreasonably requests very detailed information on the location of substations, compressor stations and pump stations.

RESPONSE: The comment is accepted. The map scale mentioned in the rule was an error. The rule has also been deleted because it is already covered by Rule XCIII(2), as follows:

"~~(10) An application must contain a topographic map at a scale of 1:4000 showing the location of all proposed substations, compressor stations, or pump stations at the proposed end points of the facility if these points are in Montana, and along the applicant's preferred route;~~"

RULE CIV:

278 COMMENT: In Rule CIV(3), delete the requirement concerning road mileage and preliminary road locations.

RESPONSE: The comment is accepted. This requirement is also addressed in Rule XCIV(6). The rule is deleted, as follows:

"Rule CIV ... (3) An application must contain a description of the types and sizes of roads needed to build and maintain the facility~~, and an estimate of the road mileage and preliminary road locations required to construct the facility on the preferred route~~."

279 COMMENT: In Rule CIV(4), the need for additional construction easements cannot be given in the application because there is no way of knowing what is required until construction begins. Also, the rule should be deleted because easements specify the right to build, maintain and operate a facility while right-of-way widths are not generally specified.

RESPONSE: The comment is partially accepted. The intent of the rule is to obtain estimates of the size of the area disturbed by construction for purposes of impact assessment. This information can be estimated on the basis of knowledge of the general type of terrain along the routes, and of the type

of equipment to be used, and can be expressed as maximum widths and "most-common" widths. The rule has been changed to reflect this.

The phrase "right-of-way." when used in constructing linear facilities, commonly has a width associated with it, whether it is used in landowner/utility negotiations to specify where construction may occur, or whether it is used by a land management agency in leases or easements, or whether it is used in the Rural Electrification Administration's Handbook on compliance with the NESC for land use restrictions. For this reason, the deletion suggested in the comment is not accepted. As written, the rule may require a builder of the facility to specify a right-of-way width for purposes of preparing an application in compliance with the Act, even though this may not be the normal practice of that particular builder. The use of the term and the practice of specifying a width is in such common practice in the industry that this requirment should not place an undue burden on the applicant. The rule has been modified to clarify that its intent is to obtain information for the impact assessment, as follows:

"Rule CIV ... (4) An application must contain ~~a description~~ estimates of the minimum and maximum right-of-way widths for which permanent easements would be purchased for the cleared right-of-way, estimates of the minimum and maximum widths of any additional construction easements, a description of the criteria used to determine right-of-way widths, and a description of any land use restrictions that would be placed on the permanent easement, and a general description of standard conditions in the easement agreement pertaining to protection of the facility from damage or pertaining to public safety and liability."

RULE CVI:

280 COMMENT: In Rule CVI(1), delete the word "unacceptable" because it is undefined.

RESPONSE: The comment is accepted, and the word is unnecesary. The rule has been changed as follows: "Rule CVI. (1) .... complaints from nearby residents regarding ~~unacceptable~~ noise and radio and television interference."

281 COMMENT: Delete Rule CVI(2) because the facility will be constructed to meet the requirements of the National Electric Safety Code (NESC).

RESPONSE: The comment is not accepted because NESC requirements do address some of the requirements but do not cover special cases. The rule is intended to focus the applicant's attention on circumstances that have been identified in the assessment, such as crossings of seismic risk zones, high mountain passes, floodplains, and so forth.

RULES CVII and CVIII:

282 COMMENT: Rule CVII regarding decommissioning methods should be deleted because decommissioning will be governed by standards in vogue at that time.

RESPONSE: The comment is accepted. Should circumstances arise where this information is needed, the Department can require that the applicant submit the information according to section 75-20-213 of the Act. The rule is deleted, as follows:

"RULE CVII LINEAR FACILITIES; DECOMMISSIONING METHODS; An application must contain a description of the projected method for decommissioning the proposed facility at the end of its useful life and environmental effects that would result from decommissioning; or explain why decommissioning the facility is not foreseen;"

282a COMMENT: Rule CVIII should be deleted because it overly restricts the Board and appears to be unnecessary. In certain circumstances, the requirement for "simultaneous findings" for "all relevant standards" may present a legal obstruction that will prevent the Board from making necessary decisions.

RESPONSE: This rule was added after the informal comment period because concern was expressed that it will be important that the Board make simultaneous findings because each standard is equally important. Commentors stated that this was not clear in the decision standards. However, the comment is accepted for the reason stated. The rule is unnecessary and it may obstruct the Board in certain circumstances. The decision standards are worded so that none is more important than any other. The rule has been deleted as follows:

"RULE CVIII STANDARDS FOR APPROVAL OF FACILITIES; In making the findings required by 75-20-301, MCA, to grant a certificate under the act or determine substantive compliance with the act, the board must find that certain standards will be met. The board must make simultaneous findings that the proposed facility will meet all relevant standards in order to grant a certificate or determine substantive compliance;"

RULE CIX:

283 COMMENT: The numerical need standard in Rule CIX has no basis in the Siting Act.

RESPONSE: This comment is not accepted. The Board, pursuant to 75-20-105, MCA, has the statutory authority to adopt rules further defining terms in the Siting Act and any other rules it considers necessary to accomplish the purposes and objectives of the Act. Since the Act gives the Board the authority to determine need, the Board certainly has the authority to further define need with numerical need standards

where it can in order to let the applicant know how it will be determining need.

284 COMMENT: The decision standard for need in Rule CIX is essential for the protection of the public which will in the end pay for the facilities.

285 COMMENT: A specific numerical standard for need as in Rule CIX is unnecessary and inconsistent with the Act. The Board must have the flexibility to decide what need means on an application-by-application basis, to determine, for example, that even a facility which meets the proposed numerical standard may not be needed.

RESPONSE: The first comment is accepted and the second comment is not accepted. A numeric standard provides guidance to applicants and intervenors as to how the Board will interpret need. A completely flexible determination of need, as suggested by the second comment, may lead to inconsistent treatment of similar facilities. A finding of need is required by 75-20-301, MCA. The most important factor for a need standard is to establish that there is a demand which justifies the size of a proposed plant.

286 COMMENT: The numerical standard of Rule CIX(1) is too narrow. It will constrain the utility planning process by forcing them to build plants that are smaller than they normally build, and also to build plants too frequently.

RESPONSE: This comment is not accepted. The necessary flexibility is provided for in Rule CIX(2). A plant not meeting the finding in CIX(1) can be built if it can be demonstrated to have net benefits greater than a plant that would meet the finding in CIX(1).

287 COMMENT: A set need standard as in Rule CIX restricts the essential balancing of benefits with impacts.

RESPONSE: This comment is not accepted. Need is only one of the findings the Board must make in 75-20-301, MCA. The need standard only specifies how the finding of need is made. 75-20-301, MCA, requires several findings be made prior to granting a certificate and Rule CVIII requires that these findings be made simultaneously in order for the Board to grant a certificate. It is in making these simultaneous findings that the balancing of benefits with impacts takes place.

288 COMMENT: Rule CIX(1)(b)(ii) should also include a requirement that surpluses from other public or private utilities available for purchase be part of the resource forecast.

RESPONSE: This comment is not accepted. Surpluses of the type mentioned are evaluated as alternatives in Rule CXI.

289 COMMENT: The phrase "If the finding required by (1) cannot be made" should be deleted from Rule CIX(2). This would allow the Board to find a plant to be not needed even if it meets the numerical criteria of Rule CIX(1), but does not satisfy CIX(2).

RESPONSE: This comment is not accepted. The intent of Rule CIX(1) is to relate the size of the plant being built to the growth of loads in the applicant's service area. Larger plants are allowed by CIX(2) only on a showing that economic benefits would warrant them. Implementation of the suggested change would prevent a larger plant from being justified by any possible degree of economies of scale and value of surplus sales. There is no evidence supporting the ruling out of such plants on a priori grounds.

290 COMMENT: Rule CIX(1)(b)(v)(a) indicates that firm output shall be as specified by the Board for hydroelectric plants not covered by the Pacific Northwest Coordination Agreement. This is open ended; applicants need to know how these plants will be evaluated before making an application.

RESPONSE: This comment is not accepted. The intent of Rule CIX(1)(b)(v)(a) is to ensure the use of both critical and median water planning criteria in evaluating hydroelectric facilities and to provide guidance to the applicant on what this means. Because of the diverse nature of the hydroelectric resource there is no single rule that is applicable to all facilities. The intent of the rule is to have the Board accept testimony as to what the appropriate figure is and to make a decision on the basis of the hearing record. Rule CIX(1)(b)(v)(a) is modified to have the contract used as a guideline rather than a requirement. There is no intention of leaving the value totally at the discretion of the Board. Accordingly CIX(1)(b)(v)(a) is amended to read as follows:

"(a) hydroelectric plants: at median water and critical water, ~~as defined~~ Critical water can be determined using the guidelines in section 2, part 1, of the agreement for coordination of operations among power systems of the pacific northwest, contract no. 14-02-9822, as modified, if relevant by the Northwest Power Planning Council or for hydroelectric plants not covered by the above contract, as ~~specified~~ determined by the Board based on the record;"

291 COMMENT: Instead of projecting loads for 20 years in Rule CIX it would be more realistic to evaluate load plateaus, at which time certain facilities would be required.

RESPONSE: This comment is not accepted. The suggested procedure would preclude evaluating the amount of energy needed or the size facility it would be appropriate to build. The 20-year forecasting requirement however, was modified in response to comment 33.

292 COMMENT: The proposed need standard in Rule CIX, requiring the Board to adopt a load forecast, will only work well if the state establishes ongoing, independent forecasting capability with full public scrutiny. There is insufficient time in a Siting Act application proceeding to fully explore and decide the issues involved in adopting a forecast.

RESPONSE: This comment is not accepted. The proposed process would require a statutory change as 90-4-301, MCA, prevents the state from establishing an independent state forecasting program. However, reference to regional forecasts developed under close public scrutiny, such as those of the Northwest Power Planning Council and the Bonneville Power Administration, combined with departmental analysis, intervenor studies and the applicant's efforts will, under contested case procedures, result in a complete public discourse on the issues involved.

293 COMMENT: The Board must balance the need for a facility with its environmental impacts in making its decision. The proposed rules would allow the Board to find need for the output of a proposed facility in Rule CIX and deny a permit for the facility on the basis that it did not represent the "minimum adverse impact" in Rule CXI. This would, however, lead to a situation where an applicant could argue that the Board said the facility was needed, but still wouldn't grant a permit. The political implications are significant.

RESPONSE: This comment is not accepted. Rule CVIII states that the Board must make simultaneous findings on all relevant standards in order to grant a certificate. Therefore, if all the findings cannot be made, the Board cannot grant a certificate. The issue is statutory in nature as several findings are required in 75-20-301, MCA.

294 COMMENT: The evaluation of firm hydro resources for the resource forecast in Rule CIX(1)(b)(v)(a) must also recognize monthly flow modifications mandated by the fishery enhancement responsibilities of the Northwest Power Planning Council for fish migrations.

RESPONSE: This comment is accepted. Rule CIX (1)(b)(v)(a) is amended as shown in response to comment 290.

295 COMMENT: The evaluation of hydro resources in Rule CIX(1)(b)(v)(a) should account for the possibility of using secondary purchases, combustion turbines, voluntary curtailment, adjustment of maintenance schedules, etc., to firm up secondary hydro resources, and use median rather than critical water conditions in evaluating the hydro system.

RESPONSE: This comment is not accepted. It is more appropriate to evaluate these possibilities as alternatives rather than as firm resources in the resource forecast. The alternatives section has been modified to accommodate these resources in response to comment 126.

296 COMMENT: The 70 percent annual capacity factor in Rule CIX(1)(b)(v)(c) is too high, and will result in understating the unit costs of a nuclear power facility.

RESPONSE: This comment is accepted. Capacity factors in Rule CIX(1)(b)(v) are not used to estimate costs but to evaluate the firm output of various resources in the resource forecast, for comparison with projected loads. Accordingly Rule CIX (1)(b)(v)(c) is amended to read as follows:

"(c) nuclear plants: 70 percent annual capacity factor ~~unless the Board shall determine otherwise based on the record~~;"

RULE CX:

297 COMMENT: The Department has separated service area utilities and competitive utilities in Rules CIX and CX. While the law makes no such distinction, service area utilities and competitive utilities may operate under different market constraints. As long as the rules follow the intent of the law in requiring comprehensive studies of alternative facilities and sites, as well as retain a strict need requirement, such a distinction may be alright.

RESPONSE: No response necessary.

298 COMMENT: The draft rules require both service area and competitive utility applicants to consider alternatives, such as nonconstruction, purchase of surplus energy, and no action in Rules LVI and LIX. The Board also is required in Rule CXI to consider additional alternatives. These requirements should be adopted.

RESPONSE: No response necessary.

299 COMMENT: Competitive utilities should be required in Rule CX to identify the type and source of financial assistance they will receive.

RESPONSE: This comment is not accepted. The information is required in the application by Rule LIV(4) and (5).

300 COMMENT: The Board should know the amount and type of subsidy in Rule CX in order to determine whether there is an actual need for the facility, especially for competitive utilities.

RESPONSE: The comment is accepted. No modification is necessary as this consideration is required by Rule CX(2)(d).

301 COMMENT: The five year period allowable for break even in Rule CX(1) may be desirable, but market conditions may result in a longer period.

RESPONSE: This comment is not accepted. Discussions with industry indicated a five year payback is longer than acceptable as a planning basis to commit company resources. The market outcome may require a longer time period; however, this issue will be treated as part of the uncertainty analysis.

302 COMMENT: Competitive utilities should be required to satisfy both CX(1) and (2). Therefore the word "or" at the end of CX(1) should be replaced by "and."

RESPONSE: This comment is not accepted. Applicants that satisfy CX(1) are risking their own financial resources in a market for the energy output that indicates consumers are willing to pay at least the full direct costs of production. Only if consumer demand is not sufficient to satisfy this condition should attention be focused on the sufficiency of financial reserves and assistance.

303 COMMENT: The types of assistance should be listed in Rule CX(2)(d).

RESPONSE: This comment is not accepted. The types of assistance are defined and examples given in Rule I(6).

304 COMMENT: Finding CX(2) should not be made unless there is a guarantee of any required assistance.

RESPONSE: This comment is not accepted. The finding required in CX(2) must be made based on an assessment of the likelihood of assistance actually being available and the risks if it is not. The Board has the authority to condition certificates on statutory and regulatory considerations, such as assistance being available.

RULE CXI:

305 COMMENT: If all environmental and social costs are internalized for all alternatives then what advantages of the proposed facility could outweigh the additional cost to consumers, as stated in CXI(1)(a)?

RESPONSE: It is not possible to internalize all environmental and social costs, so the second half of CXI(1)(a) permits a more expensive facility to be approved if it has lower overall impacts. This is consistent with the

finding required by 75-20-301(2)(c). There also may be different benefits associated with the output and operating characteristics of different alternatives.

306 COMMENT: The no-action alternative in CXI(1)(b) may mean consumers do nothing if no resource is needed, or that they acquire the output instead from the least costly other source.

RESPONSE: This comment is accepted. Rule CXI(1)(b) is amended in line with similar changes made in Rules LVII(3) and LX(3), and reads as follows:

"...action alternative. The cost of the no-action alternative includes, if relevant, the costs to consumers of being deprived the output of the facility and of having to obtain the energy or product of the facility from other sources."

307 COMMENT: Delete the word "environmental" from the first sentence of CXI.

RESPONSE: This comment is not accepted. The language is taken from 75-20-301(2)(c), MCA, which includes the word "environmental."

308 COMMENT: The mitigation costs required in Rules CXI(1)(d) and in CXI(1)(h)(iii) and CXI(1)(i)(iii) must be incorporated in the comparative cost analysis for alternatives. This must require at least a second round of analysis and hearings.

RESPONSE: This comment is accepted in part. Mitigation costs must be included in the comparative cost analysis for alternatives. This is explicit in the language of Rules CXI(1)(b) and (d) and no modification is required. However, there is no provision in the Siting Act for the suggested procedure recommended. The finding required by 75-20-301(2)(c) and the standards of Rule CXI must be met by the facility at the time the certificate is granted. Any recalculations of the comparative costs of alternatives and disputes regarding these must be made in the context of the Board hearings and deliberations leading up to the Board findings and the granting of the certificate.

309 COMMENT: Who will evaluate alternatives that were not evaluated by the applicant as in Rule CXI(1)(b)(i)?

RESPONSE: The Department and the Board will perform this evaluation. The intent of Rule CXI(1)(b)(i) is to alert the applicant and intervenors that 75-20-503(1)(b), (c) and (e), MCA, requires consideration of some alternatives that may not be relevant as alternatives for competitive utility and nonutility applicants. This evaluation will be part of the Board hearing and record.

310 COMMENT: Rules CXI(1)(a), (b), and (c), CXII, and CXIV(1)(a) and (b) require an excessive effort at quantifying and valuing intangible costs and benefits whenever possible.

RESPONSE: This comment is accepted. The intent of the original language was not to require quantifying all environmental impacts, which would be excessive. To clarify this intent, the following changes are made:

CXI(1)(a) is amended to read: "...cost of energy to customers than any other reasonable alternative identified in rule LVI and LVII that is relevant to the proposed facility...."

CXI(1)(b) is amended in part to read: "...and mitigation to the applicant, any external monetary costs, and the value of all reasonably quantifiable unmitigated environmental impacts is lower for the proposed facility than for any other alternatives...."

CXI(c) is amended to read, in part: "(c) that nonquantifiable unquantified environmental impacts...."

Rule CXI(h) is amended in part to read: "...siting the facility at any alternative sites...."

Rule CXII(1) is amended in part to read: "...the discounted net present value of all benefits (less all costs)...."

Rule CXII(1)(c)(i) is amended in part to read: "... nonmonetary benefits must be quantified to the extent reasonably possible."

Rule CXII(1)(e) is amended in part to read: "(e) the costs of the facility including all internal costs...and any mitigation costs, plus all other external costs...."

Rule CXIV (1)(a) is amended in part to read: "(a) that the expected net present value of all costs, including...any external monetary costs, and the value of all reasonably quantifiable environmental impacts...."

Rule CXIV(1)(b) is amended to read: "(b) that nonquantifiable unquantified environmental impacts are not significantly adverse to alter the finding required by (a)"

Rule CXIV(1)(g) is amended in part to read: "... than siting the facility on any reasonable alternate route,...."

311 COMMENT: In Rule CXI(1)(h)(i), the phrase "any probable significant" is too broad to be used.

RESPONSE: The comment is not accepted. In order for the impact to fall into the class identified in the rule it must be "probable" - not speculative - and also "significant" as determined by the Board. The baseline studies required of the applicant are designed to allow the Department to make defensible recommendations to the Board regarding the probabilities of impact occurrence and to reduce speculative elements.

312 COMMENT: In Rule CXI(1)(h)(ii through iv), the terms "reasonable" and "acceptable" have different meanings to different interest groups. More objective terms should be developed.

RESPONSE: The comment is not accepted because no entirely "objective" means are known by which the broad social decisions that accompany siting major facilities can be made. The rules describing the contents of the application, descriptions of methods of assessing impacts, selecting routes, and so forth describe the generally objective elements of social decisions. In the final analysis, however, the Board is the public body designated by the Act to define "reasonable" and "acceptable," and the decision standards connect the objective and subjective elements of the Board's decisions.

312a In Rule CXI(1)(i), the word "or" was inadvertently left out at the end of the paragraph. To make the rule grammatically correct and consistent with Rule CXIV(1)(h), it is changed as follows:

"Rule CXI...(1)...(i)...either that no significant adverse impacts would result in the areas, or..."

313 COMMENT: In Rule CXI(2)(a), where is the noise level of 55 dBa used? Only guidelines are available elsewhere, and this standard should be deleted until hearings before the appropriate agency.

RESPONSE: The comment is not accepted because the noise standard is the same as that recommended by the Environmental Protection Agency (EPA) to protect public health and welfare with an adequate margin of safety. The EPA standard has been used by numerous states in their adoption of noise standards. The evidence pertaining to the use and relevance of this figure is available in libraries, and the standard is in keeping with noise control practices in industries in the United States and elsewhere.

RULES CXI and CXIV:

314 COMMENT: Rules CXI(2)(c) and CXIV(2)(j) regarding "any other standards" should be deleted because they are too open-ended to be acceptable and they put an applicant in an untenable position.

RESPONSE: The comment is not accepted because the Board in certifying and conditioning facilities must be able to carry out the mandates of the Siting Act even in those unforeseen instances that rules cannot be expected to always cover. The Act confers broad powers on the Board to condition the certificate it grants for a facility. (See, for example, 75-20-301(1) and 75-20-301(3)(e).) The intent of the rule is to reflect this broad authority, and to avoid a situation where the Board is unable to condition a certificate on

standards the necessity of which has been clearly demonstrated by the Department's analysis or the Board's public hearing process.

RULE CXII:

315 COMMENT: Subsection (2) of Rule CXII where the Board considers the effects of the facility on the public health, welfare and safety should fall under decisions to be made by DHES, not the Board.

RESPONSE: This is a purely statutory requirement of the Board pursuant to 75-26-301(3)(d), MCA.

316 COMMENT: Rule CXII should be deleted. The public interest, convenience and necessity are a measure of the quality of service provided and cannot be measured by the discounted net percent value method described herein. No generally accepted method of evaluating and comparing the benefits has been developed.

RESPONSE: This comment is not accepted. The Act specifies that public interest, convenience and necessity is not a measure of the quality of service, but rather is a measure of the balancing of public benefits and costs as detailed in 75-20-301(3), which requires the Board to consider need, environmental impacts, benefits to the applicant and the state, the effect of economic activity caused by the facility and the effect of the proposed facility on public health, safety, and welfare. Rule CXII outlines a standard method that allows the Board to make the finding of public interest, convenience, and necessity that is a generally accepted measure of comparing public benefits and costs. This measure is the discounted present value of net benefits. Failure to include such a rule would provide no guidance to the applicant, the Board, the Department or the public as to how the finding required by 75-20-301(2)(g) is to be made.

317 COMMENT: Rule CXII(1)(c)(i) implies that monetary values will have to be assigned to intangible benefits. This is a nearly impossible task.

RESPONSE: This comment is not accepted. Evaluation of benefits is required by 75-20-301(3)(b), MCA. However, to clarify the intent of the rule, CXII(1)(c)(i) is amended to read as follows: "(i) benefits include internal benefits and external benefits; nonmonetary benefits must be quantified to the extent reasonably possible."

RULE CXIII:

318 COMMENT: Both CXIII (1)(a) and (1)(b) should be required to demonstrate that a facility is needed. Sections (2) and (3) should also require the same, simultaneous finding.

**RESPONSE:** This comment is not accepted. The intent of the wording is to allow the construction of a larger line than the minimum size that would solve the problem only on a showing that the benefits of doing so exceed the costs. Requiring simultaneous findings of (a) and (b) for a demonstration of need would preclude the possibility of reducing costs by building to meet future needs. Rule CXIII(1) already contains the proposed requirement. The finding is not appropriate for Rule CXIII(3) as the amount of capacity being added is not at issue.

315 **COMMENT:** The reliability criteria in Rule CXIII should be replaced by a determination of need based on adherence to established reliability criteria. There is no acceptable method of evaluating the benefits of reliability. Therefore sections 2(b), 4(b), 5(b), 6(b) and 7(b) of Rule CXIII should be deleted.

**RESPONSE:** This comment is not accepted. Simple adherence to established reliability criteria would not meet the intent of the requirements of 75-20-301 and 75-20-503, MCA. Adherence to established criteria for reliability is required by Rule CXIII(7)(a) but this must be supplemented by Rules CXIII(7)(b), and (2)(b), (4)(b) or (6)(b). These sections require an evaluation of the probable costs of not meeting the established criteria and a comparison with the costs of construction. Without this comparison the established reliability criteria may lead to expensive construction to forestall occurrences that would be unlikely and would have low impacts at worst. Committing scarce investment resources to such relatively low priority reinforcements as ensuring against low impact, low probability events is undesireable.

Comparisons of costs and benefits are implicitly made in such utility investment decisions as the serving of residential customers by single feeds and the serving of some areas by radial service. These are typically low density areas where an outage does not affect many customers and where reinforcement would be expensive.

Section 75-20-301(3)(b) requires the Board to consider benefits of a proposed facility. Although there are methods of quantifying the benefits of reliability, Rule CXIII does not specify such a method and Rule CXII has been modified to require benefits be quantified to the extent reasonably possible. Rule CXIII only requires that the Board find a reasonable correspondence between costs and benefits. The Board will make this finding based upon the record.

320 **COMMENT:** The requirement in Rule CXIV(1)(b) that the facility have the lowest net present value of costs of all alternatives discourages the construction of a larger facility to provide future capacity.

RESPONSE: This comment is accepted. Rule CXIII(1) is amended to read as follows:

"(1) For facilities ~~that~~ for which insufficient power transfer capacity under normal operating conditions is a stated basis of need in the application, that:

(a) the transfer capacity of the proposed facility will be required within two years of the date the proposed facility is to be placed in service; or

~~(b) that the proposed facility has a lower net present value of all future costs than any other alternative or alternatives that could resolve the problem situation the proposed facility is designed to resolve.~~

"(b) if the finding in (a) cannot be met, that the expected benefits of constructing a transmission line with the transfer capacity of the proposed line instead of one for which findings in (a) can be met warrant the resource commitment based on a finding and determination of the following:

(i) the expected benefits of building the proposed line compared with one that would satisfy (a); and

(ii) the extra costs of building the proposed line compared with one that would satisfy (a)."

321 COMMENT: It is not clear how Rule CXIII(1)(a) will deal with generation-related transmission. The cost of generation-related transmission must be included when analyzing alternatives.

RESPONSE: This comment is accepted. No modification is required. Generation-related transmission is included in Rule CXI(1)(a) which states in part "that the facility will result in lower delivered costs of energy...."

322 COMMENT: Add the phrase "at adequate voltage levels" to clarify the first sentence in Rule CXIII(1).

RESPONSE: This comment is accepted. Rule CXIII(1) is amended to read, in part, "(1) For facilities ~~that~~ for which insufficient power transfer capacity at adequate voltage levels under normal operating conditions is a stated basis of need...."

The same change is made in Rule CXIII(2), which is amended to read, in part, "(2) For facilities ~~that~~ for which insufficient power transfer capacity at adequate voltage levels under contingent operating conditions...."

323 COMMENT: The procedures in Rule CXIII(8)(c) should make clear that no utility can be denied a route solely on the grounds that capacity is available on another utility's system.

RESPONSE: This comment is accepted. No modification is required as the procedures in Rule CXIII(8)(c) require a finding, if capacity exists on another utility's system, that

it is not available at reasonable costs after reasonable efforts have been made to reach agreement with the owners.

324 COMMENT: Rule CXIII(8)(c) should state for simplicity merely that for lines based on economy considerations the need shall be justified on economic grounds.

RESPONSE: This comment is not accepted. The proposed simplification does not provide sufficient guidance to applicants, intervenors, the Department or the Board. Rule CXIII is needed to establish the basis for the Board's determination that a proposed facility represents the most cost effective choice available to the applicant to respond to favorable market conditions, considering the degree of uncertainty in projected market conditions. Section (c) is needed to clarify that new facilities should not be constructed if there is available existing capacity to meet the need without serious engineering disadvantages, unless every effort to obtain access to that capacity has failed. This provision is consistent with the overall purpose of the Act, to avoid unnecessary environmental impacts.

325 COMMENT: A simplification of CXIII(9) should be made as follows:

"(9) For all facilities, that any forecast of loads ~~used to project need for the proposed facility is either consistent with the overall projected load growth for the entire service area of the applicant or if the forecast is different than the projected load growth in the service area, that it~~ is consistent with available information about loads and load growth in the area to be served by the proposed facility."

RESPONSE: This comment is accepted. Rule CXIII(9) is amended as follows: "(9) For all facilities, that any forecast of loads ~~used to project need for the proposed facility is either consistent with the overall projected load growth for the entire service area of the applicant or if the forecast is different than the projected load growth in the service area, that it~~ is consistent with available information about loads and load growth in the area to be served by the proposed facility."

RULE CXIV:

326 COMMENT: The approach taken in Rule CXIV of selecting the most cost effective alternative to solving system problems from a set of alternatives which include nontransmission options is far preferable to simply considering engineering options with little or no regard for cost effectiveness.

327 COMMENT: There is an overemphasis on economic analysis in the rulemaking. Instead there should be a simple

reliance on established engineering criteria.

RESPONSE: The first of these comments is accepted; no modification is required. The second comment is not accepted. Reliance on established engineering criteria provides no opportunity for balancing environmental and economic costs and benefits, and is incompatible with the requirements of 75-20-301(2)(c), MCA.

328 COMMENT: It is impossible to assign quantifiable costs to environmental impacts, the value of reliability, widespread outages, provision for future load growth and other intangible benefits as required by Rules CXI, CXII, and CXIV.

RESPONSE: This comment is not accepted. It is possible in many cases to quantify benefits and environmental costs. Rules CXI, CXII, and CXIV have been modified in response to other comments to require quantification only where reasonably possible. Efforts to quantify the benefits and environmental costs of projects and alternatives will be addressed in the contested case hearings required under the Act. The quantification sections have been modified in response to comments 310 and 317.

329 COMMENT: The decision standard in Rule CXIV(1)(a) cannot work toward minimizing impacts addressing landowner concerns, etc. The cheapest facility will always be no-action or the minimal project which ignores impacts and fails to provide for growth.

RESPONSE: This comment is not accepted. The decisions required in Rule CXIV(1)(a) will not always result in the selection of the minimal facility or no action, at the expense of the environment, landowners or reliable service. It is only by explicitly addressing and balancing the relative size and importance of benefits and costs that the best alternative will be chosen.

330 COMMENT: Rule CXIV(1)(a) should simply require a subjective finding that the facility is the optimum choice based on engineering, environmental and economic considerations.

RESPONSE: This comment is not accepted. The proposed subjective finding provides no guidance to applicants, intervenors, the Department and the Board as to how the intangible factors will be weighed.

331 COMMENT: The order of the sections of CXIV should be changed: (e), (f), (g) and (h) should come first, followed by (a), (b), (c) and (d).

RESPONSE: This comment is not accepted. The order of the criteria is not significant as it does not reflect priority.

332 COMMENT: Rule CXIV(1)(a) should require a minimization of levelized annual cost rather than expected net present value.

RESPONSE: This comment is not accepted. While the calculations of levelized annual cost and net present value are closely related, the net present value criterion is preferable. Given the diverse nature of the alternatives, the levelized cost measure may not be appropriate for comparison, particularly for the no-action alternative.

333 COMMENT: In Rule CXIV(1)(a) it should be clear that alternatives should be limited to those that meet the need.

RESPONSE: This comment is accepted. Rule CXIV(1)(a) is amended to read in part as follows:

"(a) that the expected net present value of all costs, including monetary costs of construction to the applicant, any external monetary costs, and the value of all reasonably quantifiable environmental impacts is lower for the proposed facility than for any other available alternative ~~that would meet the need finding required by Rule CXIII(1)~~. Other available alternatives include transmission alternatives, alternative energy resources and energy conservation, alternative transmission technologies, alternative levels of transmission reliability and the no-action alternative;"

334 COMMENT: Rule CXIV(1)(d) should be written as follows: (d) that the route for the facility ~~represents the best compromise~~ ~~compties~~ with the preferred route criteria listed in Rule LXXXII ~~in a manner that will result in less cumulative adverse considering~~ environmental impact and economic cost~~, than siting the facility in an alternative location, unless the Board finds why any criteria should not be met;~~

RESPONSE: This comment is accepted with some modifications to the proposed language. Rule CXIV(1)(d) is amended to read:

"(d) that the route for the facility ~~achieves the best balance among compties with~~ the preferred route criteria listed in Rule LXXXII ~~in a manner that will result in less cumulative considering adverse~~ environmental impact and economic cost~~; then siting the facility in an alternative location, unless the Board finds why any criterion should not be met;~~"

For consistency, Rule CXI(1)(e) is amended to read:

"(e) That the site for the facility ~~achieves the best balance among compties with~~ the preferred site criteria listed in Rule LXV ~~in a manner that results in less cumulative adverse considering~~ environmental impact and economic cost~~; then siting the facility at any alternative location, unless~~

~~the Board finds and determines the reasons why any criterion should not be met.~~"

335 COMMENT: Rule CXIV(1)(g) should be eliminated because it duplicates (1)(a) and (1)(d), and (1)(h) should be eliminated because it depends on (1)(g).

RESPONSE: The comment is not accepted because the requirements are not duplicative. Rule CXIV(1)(g) specifies the identification and reduction of impacts while (1)(a) addresses net present value and alternatives and (1)(d) addresses balancing among route criteria. Rule CXIV(1)(h) is necessary because it addresses the approach to be taken by the Board when sensitive areas or areas of concern are to be crossed by a facility.

336 COMMENT: In Rule CXIV(2)(a), the method of calculating the noise standard is unclear. For a 500 kV line to achieve a 50 percent probability of meeting these standards during a precipitation event, it would be necessary to acquire a 500 foot right-of-way. The rule could also be written to use a median foul weather sound pressure of 55 decibels 100 feet from the centerline as a limit. The requirement for substations should be deleted.

RESPONSE: The portion of the comment pertaining to the lack of clarity in the method of calculation has been accepted. The noise standard in section (2)(a)(i) is intended to be the same as that recommended by the Environmental Protection Agency (EPA) to protect public health and welfare of nearby residents with an adequate margin of safety, except that it has been adjusted 5 dBa to account for high-frequency transmission line noise. A detailed explanation of the factors considered by the Department in developing this standard and a review of the reports considered is contained in the Department's draft and final reports to the Board on the Garrison-West 500 kV project, which were widely disseminated. The noise standard in section (2)(a)(ii) is the same as the EPA figure, and it has been used by numerous states elsewhere in the adoption of noise standards for industrial facilities. The Department received no technical refutation from any party of the 50 dBa limit that was described in the Garrison-West reports. The limit would only be relevant to transmission lines above 230 kV.

The intent of the rule was for the calculation to be made on a ~~yearly~~ basis rather than during a rain event. Therefore, the comment stating that a 500 foot right-of-way would be necessary is incorrect. The rule has been clarified. According to information available to the Department, a median foul-weather noise limit is somewhat comparable to the limit proposed in the rule; however, the method that is used in the rule is preferable because it takes into account the local

conditions of rain frequency, and because it uses the standard method in use in numerous states to calculate average noise levels in the vicinity of people.

The method of calculation can be obtained from the EPA and from any major publication on estimation of noise impacts. Rule XCIV(18)(b) has been changed to clarify the method of calculation (see comment 265), and Rule CXIV(2)(a) has been changed as follows: "(2).... (a).... facilities, that average annual noise levels, as expressed...."

No evidence or justification was presented in the comment for deleting the portion of the standard that relates to substations located in residential or subdivided areas.

337 COMMENT: Rule CXIV(2)(b) should be either deleted or rewritten because transmission lines are not covered by Federal Communication Commission standards, nor does the FCC have jurisdiction. If the Department wishes to use a standard for incidental radiation from transmission lines, then that standard should be written, supported, and addressed by the scientific community. It should also be made clear that the standard does not apply to mobile receivers. As written, the standard will prevent the construction of any transmission line.

RESPONSE: The comment is accepted in part. There is apparently some disagreement between electric utilities and the FCC with respect to jurisdiction over interference with communication systems caused by transmission lines. However, there is no need to address this jurisdictional issue to maintain the intent of the rule. In practice the FCC excludes most mobile receivers from the requirements of the standard, therefore this portion of the comment is also accepted. Rule CXIV(1)(b) has been modified to read as follows:

"(b) for electric transmission facilities, that ~~appropriate mitigation has been identified to prevent unacceptable interference with stationary radio, television, and other communication systems and will be included in conditions to the certificate the facility will not seriously degrade, obstruct, or repeatedly interrupt radio or television reception and that the facility will comply with federal communications commission standards;~~"

338 COMMENT: In Rule CXIV(2)(d), the 1 kV/m electrical field limit at the right-of-way edge should not be adopted because it is arbitrary and the need for it has not been established scientifically. The limit should be debated in the proper forum.

RESPONSE: The comment is not accepted. The standard was selected in a carefully considered manner. The limit at the edge of the right-of-way is adopted on the basis of an extensive review of scientific literature recently sponsored by the Department concerning adverse health effects resulting from exposures to low level electrical fields. The report,

"Biological Effects of High-Voltage AC Transmission Lines," was authored by Dr. Asher Sheppard, a recognized expert who conducts research in the field and who has extensive credentials in advising state and federal agencies and the World Health Organization. While indicating no overt ill effects, the review concluded that there was a need to limit exposure to the public because biological effects have been demonstrated. The Department presented this report and its interpretation of the results to the public and to the Board in 1983 in a report entitled "Preferred and Alternate Routes: BPA 500 Kilovolt Line from Garrison-West."

In establishing the limit proposed in the rule, the Department considered higher and lower limits, and concluded that the 1 kV/m standard was superior on the basis of the degree of protection and assurance to the public that it provides, and on the basis of the small degree of right-of-way enlargement necessary to achieve it. A more stringent limit was rejected because it would require substantial widening of the right-of-way without a corresponding substantial reduction of electrical field. A detailed explanation of the reasoning behind the limit is contained in the reports listed above.

The extent of testimony received by the Department on this standard has been limited to technically unsupported assertions that it should not be adopted. The Board held public hearings and received comments on the Garrison-West transmission line, including the two reports described above. No additional evidence which has not been considered in the two reports was presented during these hearings. The Department held informal meetings on these rules in July, 1984, and received no technical criticism of the logical basis of the 1 kV/m limit. Finally, no technical evidence was presented by the persons making the above comment during the present hearings in support of not adopting the standard, either on the basis that it is too costly, or on the basis of the need to prevent exposure of the general public.

339 COMMENT: In Rule CXIV(2)(d), the 1 kV/m limit should not be adopted because it is unduly restrictive and premature. Normal industry right-of-way standards are generally less than 200 feet for a 500 kV line, and meeting the 1 kV/m limit would require more than 200 feet. The establishment of a standard should be postponed until more definitie scientific reviews have been conducted by other states, the World Health Organization and the EPA.

RESPONSE: The comment is not accepted. As is explained in the reports referred to above, sound scientific evidence indicates electrical fields have biological effects. Circumstancial evidence from epidemiological research, such as small correlations with cancer and with chromosome damage indicate the need for caution with respect to general public

exposure. These findings also have led to demands from the public for a response from government agencies. In addition, it is impractical to wait for consensus to be reached in state and federal governments, and in the World Health Organization, on such an issue, nor is it unusual for one governmental jurisdiction to establish such a limit before some others.

With respect to the comment about right-of-way widths, it is correct that most 500 kV transmission lines would require additional right-of-way width to meet the limit. There is no standard right-of-way width, however, and in general, the 1 kV limit would require only a modest increase in width and this increase would be confined to populated areas along the routes. (See response to comment 344.) Very large transmission lines are unlikely to be close to people in most circumstances, and most new 230 kV lines, for example, could easily meet the 1 kV/m limit.

340 **COMMENT:** In Rule CXIV(2)(d), the 1 kV/m limit was set without consideration by the Department of a comment by the author of a World Health Report indicating that the 1 kV/m limit was arbitrary. The Bonneville Power Administration previously submitted to the Department a summary of this report and a letter from the author. The Department should explain why it is ignoring this important report.

**RESPONSE:** The comment is not accepted because the Department did consider the report referred to, and an explanation is contained on page 62 in the report entitled "Preferred and Alternate Routes: BPA 500 kV Line from Garrison-West" (1983), where it is pointed out that the World Health Organization subcommittee report is not reflective of current studies. The letter from the author of the report asserted that the 1 kV/m limit was arbitrary, but submitted no evidence refuting the basis for the limit.

341 **COMMENT:** In Rule CXIV(2)(d), the standard should be lowered from 1 kV/m to 0.3 kV/m in order to achieve a greater degree of protection. A .3 kV/m standard is obtainable for a 500 kV line, given present utility technology, and is precisely the margin recommended by the Department in 1982 on the BPA's 500 kV line from Townsend to Garrison.

**RESPONSE:** The comment is not accepted. The Department initially recommended the 0.3 kV/m limit, but subsequently commissioned the extensive review which led to the 1 kV/m standard. The 1 kV/m standard is based on later information. As is explained in the Sheppard report, the 0.3 kV/m limit is near the upper limit to that reached in the vicinity of some commonly used household items, and, in effect, constitutes a limit currently accepted by the public. Also, a limit of 0.3 kV/m would involve a substantial increase in right-of-way

costs for certain conductor configurations of large transmission lines, and would require wider right-of-way for smaller lines. Such an extensive departure from current practice is not currently warranted by the scientific findings regarding risk to people.

342 COMMENT: In Rule CXIV(2)(d), the Department should indicate why the 1 kV/m limit was selected when their consultant, Dr. Sheppard, identified an acceptable range of 1 to 3 kV/m.

RESPONSE: The comment is not correct. Dr. Sheppard discussed a range of 0.3 kV/m to 3 kV/m; not "1 to 3 kV/m." The report indicated that the limit selected was related to the degree of confidence in the margin of safety one wished to select. The 1 kV/m limit selected is in the middle of the range discussed in the report, and is consistent with the manner in which an electric field decreases as one moves away from a transmission line, as is explained in the Department's report on the Garrison-West project.

343 COMMENT: The Department should explain why they have been silent with regard to the effect of the 1 kV/m standard in Rule CXIV(2)(d) on existing lines in Montana.

RESPONSE: The comment is incorrect. The Department's report entitled "Preferred and Alternate Routes: BPA 500 Kilovolt Line from Garrison-West" describes electric fields at the right-of-way edge of numerous transmission lines in Montana on page 57, and lists conclusions about them on page 58.

344 COMMENT: The use of the 1 kV/m standard in Rule CXIV(2)(d) would drastically increase construction and right-of-way costs.

RESPONSE: The comment is not accepted because it is incorrect. For most 500 kV transmission lines, the increases in right-of-way width necessary to achieve the standard would most commonly be about 10-20 percent only in areas along the route that are residential or subdivided. (See Power Technologies, Inc. 1981. "Electric transmission lines: an assessment of rights-of-way compatibility." Report No. R82-81. Minnesota Environmental Quality Board, St. Paul.)

345 COMMENT: In Rule CXIV(2)(d), the condition allowing the effected landowner to waive the standard is a novel approach which should be removed. It allows the public to participate in the risk assessment and will cause complications in acquiring right-of-way.

RESPONSE: The comment is not accepted. It is appropriate for the public to be involved in making the necessary individual decisions in this case because, while the scientific community has provided guidance, no definitive

statement has been made as to risk to humans. If such were to occur, the rule could be changed. Right-of-way acquisition should not become more complicated because normal right-of-way acquistion procedures currently require individual negotiated contracts with landowners.

RULE CXVI:

346 COMMENT: The part of Rule CXVI(4) which states that costs incurred by the Department and Board in evaluating and approving the centerline shall be reimbursed by a fee (other than the filing fee) as established by contract between the applicant and the Department should be deleted because the filing fee is adequate to cover the Department's costs.

RESPONSE: The comment has been partially accepted, because "other fee" is misleading. Section 75-20-215 requires that the revenues derived from the filing fee must be sufficient to enable the state to carry out its responsibilities under the Siting Act. The filing fee may not be adequate in all cases. This rule simply recognizes the funding mechanisms provided in the Act to permit the State to complete its statutory mandates, including final centerline approval. (See 75-20-215, MCA.) The rule is changed as follows:

"Rule CXVI...(4)...the filing fee or ~~other fee established by~~...."

[Add: IMP: 75-20-215(2)(a), MCA]

RULE CXVII:

347 COMMENT: In Rule CXVII(2) change "...that no significant adverse environmental impacts would result ..." to "...that no significant adverse environmental impacts are likely to result ... ."

RESPONSE: The comment is accepted. Rule CXVII(2) is changed in part, to read, "...that no significant adverse environmental impacts are likely to result ... ."

RULE CXVIII:

348 COMMENT: In Rule CXVIII, the paragraph after the title contains an erroneous cross-reference.

RESPONSE: The comment is accepted. The intent of the rule was to point out to the applicant that information gathered within the Board-approved route during the applicant's siting study is to be resubmitted as appropriate in the centerline study. The rule has been changed as follows: "RULE CXVIII .... The certificate holder may cross-reference any information required by [~~Rule LXXXIV, LXXXV, XCIV and LXXXV~~ ]Rules LXXXI-XCVII that was supplied in the application and that meets any of the following requirements."

349 COMMENT: Rule CXVIII(1) contradicts Rule CXVI(2), and the references to what maps are required in the certificate and in the centerline evaluation are confusing.

RESPONSE: The comment is accepted in part. The intent of the rule was to point out that maps used in the centerline evaluation will usually be modifications of those used in the application to select a route. In all likelihood, the application base map would be used by the Department as the attachment to the certificate describing the approved route. Rules XCVI(2) and CXVIII(1), and (2) have been modified as follows: "RULE CXVI(2). . . (2) The precise boundaries of an approved route or approved corridor shall be delineated by lines approximately one 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, Rule XCIII(2), or be derived from an accurate overlay to it. The route or corridor may be described ..."

"Rule CXVIII . . . (1) The certificate holder shall submit to the department a base map of the approved route~~,~~ ~~USGS 7.5 minute topographic maps or USGS maps preliminary to the published 7.5 minute quadrangle maps shall be used to create the base map.~~ ~~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 which shall be derived from the base map submitted with the application and described in Rule XCIII(2), or as appropriate, be derived from the map contained in the certificate and described in CXVI(2).~~ The base map must contain the following information:"

350 COMMENT: In Rule CXVIII, references to alternative centerlines should be removed from sections (2), (3), (7), and (8) to simplify the rule.

RESPONSE: The suggestions for deleting references to alternate centerlines is not accepted, but there is a lack of clarity in the rule with respect to information requirements about alternate centerlines. In the Department's experience, most areas along a route approved by the Board will consist of only one "centerline," that preferred by the applicant. Along routes located in areas of intensive land use, however, this will not be the case because the linear facility conflicts with existing uses. In such situations, it will expedite the

siting process to specify in the rules a procedure as to how this is to be accomplished by the Department or the applicant. Rule CXVIII was not clear on how this is to be accomplished, however, and the following clarifications have been made:

"RULE CXVIII ELECTRIC TRANSMISSION LINES CENTERLINE EVALUATION IN AN APPROVED ROUTE INFORMATION REQUIREMENTS. The certificate holder shall prepare and submit the following information for its preferred centerline and any alternative centerlines that may be identified by the certificate holder or the department pursuant to the conditions of the certificate after study of the approved route. Upon request of the department the certificate holder shall submit the following information on alternative centerlines identified by the department..."

351 COMMENT: In Rule CXVIII(2), the width of "centerline" needs to be clarified. (2)(b) should be deleted because it appears to be all-inclusive and to require the certificate holder to identify trivial relocations of the centerline.

RESPONSE: Several changes have been made in response to comments on the width of routes and centerlines, and on the degree of accuracy required on the base maps used in each phase of approval. The intent of Rule CXVIII(2)(b) is to increase the efficiency with which alternative centerlines are examined by the Department and the applicant. The changes are consistent with the clarification now made in the definition of centerlines and routes, and with the accuracy appropriate for the Board decisions. (See comments 5, 19, and 243.) The changes are as follows:

"RULE CXVIII ...(2)... The certificate holder shall accurately depict to within 250 feet unless otherwise specified by the board in the certificate submit to the department a preferred centerline on an overlay to the base map required by (1). The centerline need not be surveyed unless specified by the board in the certificate, but the applicant shall by reasonable effort, such as ground and/or aircraft inspection, determine the suitability of the location for a facility. The certificate holder shall also submit to the department the following information:

(a) a list of all landowners within 1/4 mile of the preferred centerline, their addresses, and telephone numbers;

(b) locations of alternative centerlines or portions of alternative centerlines where any such deviations from the preferred centerline would be acceptable to the certificate holder and/or where any such deviations may result in less cumulative adverse environmental impacts and economic costs, including the costs of mitigation identified by the applicant, or by the department, as appropriate. Alternative centerlines

~~shall be depicted with the same accuracy as preferred centerlines.~~

(c) preliminary locations for all access roads that would be required to construct and operate the facility along the preferred centerline and any alternative centerlines ~~that are identified,~~ delineated by lines approximately one millimeter wide on ~~an overlay to~~ the base map required by ..."

352 COMMENT: In Rule CXVIII(2)(c) the reference to mapping access roads on alternative centerlines is all-inclusive and should be deleted. The reference to the base map should be changed to refer to an overlay.

RESPONSE: The suggested deletion is not accepted, but there should be flexibility provided in the rule because mapping of access roads for alternate centerlines is not always necessary. The changes that have been made in response to comment 350 will allow the Board to specify these requirements in the certificate or will allow the Department to ask for the information when alternate centerlines are identified.

353 COMMENT: In Rule CXVIII(3), delete "1/2 mile" and the requirement for tabulating the data in order to simplify the rule.

RESPONSE: The comment is not accepted, but it points out a lack of clarity in the rule. The information on residences and farm support buildings is important in the selection of the best location for a facility. It is more efficient for the applicant to get this objective information than to have the Department do it later and inform the applicant of the results. The rule is changed as follows:

"(3) An overlay to the base map required by (1) showing individual residences and major farm support buildings within ~~1/4 and~~ 1/2 mile of each alternative centerline, and a numerical tabulation of the data, cross-referenced appropriately to the overlay ~~and separated into categories of structures located within one-quarter and one-half mile of the centerline~~.

354 COMMENT: In Rule CXVIII(4), clarify what "structures used for irrigation" means.

RESPONSE: The rule has been corrected to read "(4)...and an overlay showing ~~structures used for irrigation~~ mechanically irrigated farm land:"

355 COMMENT: In Rule CXVIII(5), the requirements for mapping earth resource and water resource information as cross-referenced to the baseline study should be deleted because the requirements are not specified and are too open-ended.

RESPONSE: The suggested deletion is not accepted, but the rule is confusing. Its intent was to specifically request refinements of the data obtained on access roads during the baseline study. The rule has been modified as follows:

"(5) For any preliminary access road locations that are identified pursuant to (2)(c), refinements of the earth resource information required by Rule XCIV(7) and the water resource information required by Rule XCIV(16) and (17)."

356 COMMENT: In Rule CXVIII(7), add the words "from which the facility will be visible" after the word "centerline" in the first sentence.

RESPONSE: The comment is not accepted. The suggested language is unnecessary because it is implied, explicitly stated, or not relevent in each item of the list (a) through (g) of section (7).

357 COMMENT: In Rule CXVIII(9), the area where the required survey is to occur is unclear, and the exemption from mapping requirements to protect confidentiality of cultural resource sites is not included.

RESPONSE: The comment is partly accepted, but there is no such exemption (see comment 27). The rule has been modified as follows:

"(9) The results of an on-the-ground survey of cultural resources along the preferred and alternate centerlines, based on the importance of the sites and the degree of potential adverse impact that could is expected to occur identified and based on the data and analysis conducted by the applicant pursuant to Rule CXIV(12) and (13). and an overlay of any historical, archaeological, architectural, and paleontological sites identified The mapping requirements regarding cultural resource sites may be altered by conditions specified in the certificate. The survey results shall be submitted on site survey forms that identify the adverse impacts."

358 COMMENT: In Rule CXVIII(10)(c), delete the words after "centerline," because they are redundant.

RESPONSE: The comment has been accepted. The rule has been changed as follows:

"(c) a description of existing radio reception at individual houses located within 100 feet of each alternative centerline. considering existing interference conditions;"

359 COMMENT: In Rule CXVIII, the procedural requirements and schedule governing the evaluation of a centerline within the Board approved route that were contained in an earlier version of these rules should be reinstated. This is necessary to ensure adequate notice and public and agency participation in evaluating a centerline and

will lead to greater public acceptance of the project.

RESPONSE: Public and agency participation are encouraged throughout the siting process described in these rules including the centerline evaluation. However, prescribing a rigid procedural schedule is not necessary to ensure this. Flexibility should be provided to account for differences between projects. The Board is required under Rule CXVI(3)] to specify procedural requirements for the centerline evaluation in the certificate. This provides the flexibility to deal with differences between projects while simultaneously providing the framework to ensure adequate notice and public and agency participation. Tailoring the process to the project should expedite the process without sacrificing its substance. The suggested change has consequently not been accepted.

360 COMMENT: In Rule CXVIII(2), the applicant should be required to contact landowners whose property would be crossed by the transmission line. It is ridiculous for the applicant to suggest that this requirement would be too burdensome.

RESPONSE: The comment is accepted. Rule CXVIII(2) has been modified to read:

"[a] documentation that landowners whose property would be crossed by the preferred or alternative centerline and/or their associated access roads have been contacted or, if a landowner could not be contacted, that a reasonable effort was made to contact her or him; and

[(b)] a summary of any landowner, general public and government agency concerns or environmental issues or problems identified by the certificate holder and the mitigation measures the certificate holder proposes to address these concerns."

RULE CXXI:

361 COMMENT: Add "or denying" to make the rule read as follows:

"The board shall issue an order approving or denying a final centerline...." According to the Act, the board may approve or deny centerline approval and this must be reflected in the rules.

RESPONSE: The commenter is correct in asserting that the Board could approve or deny a route for a proposed linear facility. However, centerline approval within the Board-approved route is a condition on a certificate that the Board has already issued. In issuing the certificate the Board has to have made numerous findings including a determination under Rule CXIV(1)(i) that the approved route is wide enough to include an acceptable centerline. The board may deny the applicant's preferred and any particular alternative centerline, but it must approve some centerline.

Accordingly, the Rule CXXI has been modified as follows:

"RULE CXXI FINAL CENTERLINE APPROVAL. Although the Board may deny the applicant's preferred centerline and any individual alternative centerline it considered, the Board shall issue an order approving a final centerline within the approved route. The approved centerline shall be included in the certificate... ."

362 COMMENT: Rule CXXI should require construction and reclamation bonds in the certificate. This should be mandatory and not discretionary. Substitute "will" for "may" in the first line of (2).

RESPONSE: Requiring bonds on every project may add costs that may not be justified in some cases. The Board should make a judgment in each case concerning whether the benefits of being bonded justify the cost. Providing discretion to the board is therefore reasonable and the proposed modification has not been accepted.

363 COMMENT: Rule CXXI should permit the applicant to provide the information required by (3) on plan-profile drawings in lieu of USGS topographic maps at a scale of 1:24,000. This would eliminate unnecessary work.

RESPONSE: The comment is accepted. Rule CXXI(3) has been modified to read as follows:

"preliminary locations for the structures, shall be shown on plan-profile drawings or delineated by lines approximately one millimeter wide and by symbols respectively, on USGS topographic maps at a scale of 1:24,000 ... ."

RULE CXXII:

364 COMMENT: Reinstate the following language that was included in an earlier version of Rule CXXII.

"(5) For a linear facility, any modification to the centerline approved by the board affecting compliance with a condition of the centerline."

RESPONSE: Reinstating this language would be needlessly repetitive since subsection (3) of this rule expresses the same idea in more inclusive terms. The comment has, therefore, not been accepted.

365 COMMENT: In Rule CXXII the phrase "reasonably be expected" as found in subsection (1) and (2) should be better defined. Again, who determines "reasonable?"

RESPONSE: The comment is not accepted. As responded to elsewhere, the terms "reasonable" or "reasonably expected to" are needed to cover the endless possibilities than can exist in the situations that will develop under these rules. What is reasonable in one situation may not be reasonable in another. Many statutes use the term reasonable and case law has developed on the definition. The "reasonable man test" in

tort law is well known. As the Board makes determinations on what changes could "reasonably be expected" to result in a material increase in any environmental impact or result in impacts to new geographic areas, etc., it will be developing its own precedent that will have to be followed in similar future decisions.

RULE CXXV:

366 COMMENT: In Rule CXXV, delete (2). A proposed change or addition to the facility may alter other information or findings that would have to be considered by the Board.

RESPONSE: The entire certificate should not be reopened in order for the Board to grant an amendment for a proposed change or addition to a facility. Some limits must be established and (2) should not be deleted. The commenter is correct, however, in identifying that the proposed change or addition to a facility may directly affect another aspect of the facility and that these additional effects should be considered by the Board in making their finding under (1). Rule CXXV(2) is therefore modified to read as follows:

"(2) In making the findings required by (1), the board shall limit itself to consideration of the effects that the proposed change or addition to the facility contained in the notice for the certificate amendment may produce."

RULE CXXVI:

367 COMMENT: A new subsection (4) should be added to the rule allowing any person having an interest that is or may be adversely affected by the terms, specifications and conditions set forth in a Board certificate of public convenience and necessity to petition the Board for a declaratory ruling as to the interpretation, meaning and definition of any terms set forth under a certificate, or as to compliance with subsection (3).

RESPONSE: The comment is not accepted. Section 75-20-402, MCA, provides that the Board, Department, DHES and Board of Health shall monitor the operation of all certificated facilities to ensure continuing compliance with the Siting Act and certificates issued under the Act and discover and prevent noncompliance. Section 75-20-404, MCA, provides a statutory mechanism for residents of this state to force officials to enforce the requirements of the Siting Act and the certificates. This statutory scheme for the monitoring of certificated facilities by state officials, and the monitoring of state officials by state residents is seen as precluding the necessity of the proposed addition to Rule CXXVI.

RULE CXXVII:

368 COMMENT: In Rule CXXVII(3), add "and affected landowners" after the "department." Affected landowners should be notified of the certificate holder's intent to begin construction.

RESPONSE: The comment has been accepted although the precise language has been modified. In addition, the applicant should only be required to make a reasonable effort to contact affected landowners. Accordingly, Rule CXXVII is changed to read as follows:

"(3) The certificate holder shall submit to the department a notice of intent to begin construction and shall make a reasonable effort to notify or otherwise inform landowners whose property would be crossed by the facility and/or associated access roads that construction will begin at least..."

369 COMMENT: In Rule CXXVII(3) add "and a construction schedule" after "notice of intent to begin construction."

RESPONSE: The certificate holder is already required by Rule CXXVII(4)(b) to submit a construction schedule. No additional information would be provided if the proposed modification were accepted.

370 COMMENT: Delete "for each segment of line" from Rule CXXVII(4) to make its meaning clearer.

RESPONSE: The comment is not accepted. Large transmission lines are routinely broken into segments for bidding and construction purposes. Construction schedules for individual segments may vary. Consequently, the rules specify that information regarding each segment is required to avoid confusion.

371 COMMENT: Reduce the time frames prescribed in Rule CXXVII(3), (4), and (6). There is no reason to unnecessarily delay construction. The 45-day requirement in (3) and the 30-day requirement in (4) should be changed to 15 days and the 15-day requirement in (6) should be eliminated.

RESPONSE: The comment is accepted. Rule CXXVII(3), (4), and (6) has been changed to read as follows:

"(3) The certificate holder shall submit to the department a notice of intent to begin construction at least ~~45~~ 15 days prior to the commencement of construction activities on the facility.

(4) The certificate holder shall submit the following information to the department at least ~~30~~ 15 days prior to the commencement of construction of any segment of the project. Any information previously submitted in an application or during the centerline evaluation of the facility may be referenced....

(6) If a construction bond is required by the certificate, the certificate holder shall submit to the department proof that the construction bond has been obtained ~~at least 45 days~~ prior to the commencement of construction. Pursuant to the certificate, this bond may be held until construction is complete and the board has determined that all environmental specifications have been followed, that cleanup is complete, that damage has been repaired, and that recontouring, site restoration, and revegetation are progressing satisfactorily."

372 COMMENT: In Rule CXXVII(7) add the following:

"(f) local landowners; and (g) local government representatives"

RESPONSE: Local government representatives have already been included in this list under Rule CXXVII(7)(d). Affected landowners will have granted the certificate holder an easement to construct the facility or sold the land in fee prior to the commencement of construction. They will also be contacted by the certificate holder 15 days before construction commences (see comment 368 and 371). Their involvement in the preconstruction conference should, therefore, not be required. Any interested parties may attend, however, since these meetings will be open to the public. Consequently, the comment has not been accepted.

373 COMMENT: Add the following language to Rule CXXVII(10) and (11) to provide landowners and land management with flexibility to manage their land.

"(a) On private lands the land owner may contract with the certificate holder for revegetation or reclamation which would release the certificate holder from the reclamation bond performance on the property.

(b) On public lands the land management agency may contract with the certificate holder for revegetation or reclamation which would release the certificate holder from the reclamation bond performance on these lands.

(11) At the direction of the board, the department may formulate and carry out a plan to ensure that the standards in (10)(a), ~~and~~ (b), (a) and (b) are accomplished."

RESPONSE: The proposed addition has been accepted with a provision for Board review and determination where contracting may be sufficient for releasing the bond. Rule CXXVII(10) and (11) have been modified to include the following:

"(a) On private lands the certificate holder may contract with the landowner for revegetation or reclamation which would release the certificate holder from the reclamation bond performance on the property upon showing the board that the property owner wants different reclamation standards from those specified in (a) and (b) applied on his property and

that not reclaiming to the standards specified in (a) and (b) would not have adverse impacts on the public and other landowners.

(c) On public lands the certificate holder may contract with the affected land management agency for revegetation or reclamation which would release the certificate holder upon showing the board that the land management agency wants different reclamation standards from those specified in (a) and (b) applied on its lands and that not reclaiming to the standards specified in (a) and (b) would not have adverse impacts on the public and other landowners.

(11) At the direction of the board, the department may formulate and carry out a plan to ensure that the standards in (10)(a), and (b), (a) and (b) are accomplished."

GENERAL COMMENTS

374 COMMENT: Reasonable is used over and over without justification.

RESPONSE: The comment is not accepted because "reasonable" is to be determined under the circumstances, and all circumstances will be different. What is reasonable in one situation may not be in another. Many laws use the term reasonable and case law has developed on the term. The "reasonable man test" of tort law is well known. Furthermore, the board will be developing its own precedents on what is "reasonable" in specific situations as it acts on future applications.

375 COMMENT: The purpose of these rules should be the practical implementation of procedures and methods to ensure that the construction of additional power and generation conversion facilities meet the needs for electricity, energy and other products and that these facilities are located, constructed, and operated in a manner that will produce minimal adverse effects on the environment and upon the citizens of this state.

RESPONSE: No response required.

376 COMMENT: The State of Montana has a critical and legitimate responsibility to evaluate the reasonableness and economic feasibility of major energy facilities, which would have irreversible environmental and socio-economic impacts. This comprehensive evaluation requires a competent, "state of the art" analysis of forecasted energy requirements. Furthermore, such evaluation requires a complete economic analysis of the

level, timing and cost of all alternative resources available in order to ensure that only optimal economic and environmentally compatible facilities are allowed for construction.

RESPONSE: No response required.

377 COMMENT: It is essential to recognize that the State of Montana does not order, compel, mandate, or require the construction of privately owned facilities by virtue of the Major Facility Siting Act. It is, therefore, essential that nothing in the proposed rules indicate directly or indirectly that the state has assumed the investment risk, construction management, specific scheduling, contracting capacity, etc. for any investor-owned or nonstate facility.

RESPONSE: This comment is accepted. There are environmental impacts that can be mitigated by prohibiting construction at certain times of the year, such as sage grouse mating seasons or times of high erosion potential. It is appropriate for the Board to control construction scheduling as a mitigation measure.

378 COMMENT: The Board must balance energy needs with energy impacts in determining whether to site a facility. The rules must protect the Board's flexibility to balance these factors in order to make publicly responsible decisions.

RESPONSE: No response required.

379 COMMENT: The Board should retain need as a major criterion for siting.

RESPONSE: The need criteria is retained in Rules CIX, CX and CXIII.

380 COMMENT: We strongly endorse the plant certification process, which includes these major findings:

A. that the facility is needed;

B. that the facility represents the minimum adverse environmental impact;

C. and, a finding of Public Convenience and Necessity.

The weighting of these findings provides for a balancing of trade-offs. In other words: Do we need this facility enough to put up with its impacts?

RESPONSE: No response required.

381 COMMENT: Knowledge of the extent and type of subsidy or financial assistance given a utility is essential to making a factual determination of need.

RESPONSE: This comment is accepted in part. Rule LIV requires that competitive utilities submit information on financial assistance and that factor is considered in Rule CX,

the decision standard for competitive utilities. For service area utilities need is generally determined by balancing loads and resources.

382 COMMENT: The Act and rules impose documentation requirements and a need test which make it difficult, if not impossible, to certify energy facilities that are being built to serve regional loads.
RESPONSE: This comment is not accepted. BPA and the Northwest Power Planning Council have developed extensive forecasts for both loads and resources in the region. These are the essential elements in determining need for a facility.

383 COMMENT: Any valid economic analysis should be acceptable to the Department. If suggestions as to economic methodology are to be made, we recommend that the methods used for resource planning by BPA and the Northwest Power Planning Council be considered. This approach will promote consistency and comparability of Montana studies with other efforts in the region.
RESPONSE: This comment is accepted in part. These rules generally rely on BPA's and the Northwest Power Planning Council's resource planning methods, to the extent they are consistent with the Siting Act.

384 COMMENT: We support your efforts to clarify the administration of the Siting Act through the rulemaking process.
RESPONSE: No response required.

385 COMMENT: Several commenters responded that the rules must embody the intent and the integrity of the Major Facility Siting Act.
RESPONSE: No response required.

386 COMMENT: It is important to note that these rule were generated because many interested parties, especially utility and corporate entities, have been critical about the lack of specificity and the perceived ad hoc nature of the facility siting review process by the Department and the Board. Applicants have demanded to know what is required of them and whether the data they have accumulated give them a fighting chance for approval. The proposed rules quite clearly should dispose of that concern.
RESPONSE: The comment is noted.

387 COMMENT: The rules attempt to specify every detail as to how plans are to be conducted, alternatives considered, and every other detail that is to be required. This

results in collection of unnecessary data, increases in cost, and voluminous documents.

RESPONSE: The rules specify detail because to do otherwise results in time-consuming and expensive discussions and requests for additional data from other agencies, project delays, and subsequent litigation by the public when there is no public record that issues have been addressed. The most efficient facility siting occurs when a clear record of decision-making is established and when the interests of the public are clearly articulated in regulations.

The Act makes few distinctions with respect to facility size; therefore, the rules cover both relatively small facilities and very large facilities that have been proposed in the past in Montana. There are exceptions in the rules allowing applicants to exclude unnecessary data, and other exceptions requiring less detailed data for smaller facilities.

However, there was a lack of clarity in the rules with respect to how applicants may omit requirements that are irrelevant by nature of the facility's size or location. The intent of Rules LXIV (2) and (4) and LXXXI (5), rules in the general requirements sections of the alternative siting studies, was to describe how this would be accomplished. To make this clear, these rules have been deleted from the siting study sections and moved to the section on general application requirements, as follows:

"Rule LXIV...

~~(4) An application should include only information that is relevant to evaluation of the impacts of and alternative locations for the facility. If any of the information required by Rule LXIV-LXXX or 75-20-503, MCA is not included, an application must contain a discussion of the rationale behind omitting them."~~

and

"Rule LXXXI...

~~(5) An application should include only information relevant to evaluation of the impacts of and alternative locations for the facility. If any of the information required by Rule LXXXI-XCVII or 75-20-503, MCA is not included, an application must contain an explanation that may include, but is not limited to, the length, voltage, capacity, and/or design of the facility, the homogeneity of the area that would be traversed or the likelihood that no adverse impacts would occur."~~

They have been added to Rule XXIV, as follows:

"~~Rule XXIV DOCUMENTATION OF INFORMATION SOURCES AND OMISSION OF CERTAIN REQUIREMENTS.~~ (1) An application must contain a list of sources of all information used in preparing the application. An application must specify when all field investigations were

conducted.

(2) An application should include only information relevant to the facility. The application requirements in these rules address a comprehensive range of issues for the wide range of facilities covered by the Act. The applicability or relevance of the requirements to a particular facility are dependent on its type, its design, how its output will be marketed, its size, or length, and on the characteristics and complexity of the geographic area(s) where the facility may be located. An application shall contain the information required by Rules XVIII-CVII, unless specific provisions for submitting less information are contained in the rule or unless the department gives written permission prior to filing the application to omit certain information. Unless a rule provides differently, an applicant desiring to omit information it considers irrelevant to the project shall submit to the department a written request to make the omission along with documentation justifying the request. The department shall review the applicant's request and shall make a written determination of whether the information may be omitted. If there is a substantial cost to the department to verify the applicant's justification, the applicant shall contract with the department and reimburse it for expenses incurred pursuant to 75-20-106, MCA."

388 COMMENT: To avoid unnecessary duplication, the Rural Electric Cooperatives should be able to use existing guidelines as set forth by the Rural Electrification Administration (REA), which provide for meeting environmental requirements as set forth by the various state and federal agencies. With this in mind, it seems unnecessary for the department to require the detailed siting study specified in these rules.

RESPONSE: The comment is accepted to the extent that a Rural Electric Cooperative can submit existing studies, reports, or data prepared to meet guidelines as set forth by REA. According to section 75-20-216(2) of the Act, the department shall use such studies to the extent that they meet the requirements of the Act. Since REA documents may vary in quality and quantity, they cannot be accepted as a matter of course as complying with the Act. The rule has been written to use them to the extent possible, however. Any such information submitted to the department will be subject to requested supplementation. Any cooperative, though, that chooses to submit only the same information it supplies REA without also making sure those studies, reports, or data meet the requirements of these rules runs the risk of submitting a deficient application that may be voided pursuant to 75-20-217, MCA, especially where supplementation at a later date might be too late to be adequate.

To clarify that an applicant may submit other reports

that have been prepared, the following changes have been made in rules as follows:

"Rule LXIV (section (4) was previously deleted in response to comment 387)....

(4) 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 Rule LXIV - Rule LXX, but shall be subject to supplementation and shall be used by the Department only to the extent it considers them applicable."

and,

"Rule LXXXI (section (5) was previously deleted in response to comment 387....

(5) An application may contain any valid and useful existing studies, reports or data prepared on the linear facility and may be submitted by the applicant towards fulfilling the requirements of Rule LXXXI - Rule XCVII but shall be subject to supplementation and shall be used by the Department only to the extent it considers them applicable."

389 COMMENT: There are exhaustive data requirements on numerous topics that are irrelevent, or of marginal interest, to the siting process. The collection and publishing requirements are inordinate.

RESPONSE: The data requirements relate to the complexity of major energy facilities, and the public demand for careful facility siting. The data requirements specified in the rules were obtained from the public record established by siting of major energy facilities in Montana, and by practices in common use in resource management fields.

390 COMMENT: The rules should be adopted because they will give the applicants a clear "recipe" for what is needed by the Department, the public will have a good source of comprehensive information about the proposal, and the Board will have what it needs to make a decision about a large power plant, synfuels plant, or energy transmission corridor.

RESPONSE: No response necessary.

391 COMMENT: The cost of compliance with the new rules appears to be substantial, and there is no reason for requiring data that is not to be used. There will be a three-fold increase in costs of preparation of an application.

RESPONSE: Unnecessary data need not be included, and the rules contain exceptions that allow an applicant to omit information that is not needed.

Specifying the detail necessary to obtain a clear record

of the decisions made by an applicant will frequently reduce delay caused by obstacles such as public opposition and litigation. The cost of delay when an applicant has already committed substantial funds can far outweigh data collection costs. The comment provides no supporting evidence for the assertion that there will be a "three fold" increase in costs.

392 COMMENT: Detailed requirements could have been replaced by guidelines.

RESPONSE: The comment has not been accepted. Guidelines result in confusion over what is required, and may lead to extensive litigation on any major energy facility proposal subject to critical public review.

393 COMMENT: The proposed rules would result in 30-50 percent greater effort and expenses than the Montana Power Company's Salem application, which was compiled under the existing regulations, and cost about $5.5 million to complete. The existing regulations left some room for interpretation, and the applicant compiled the Salem application in hope of covering all aspects required by the regulations and the Act, but the Department and the DHES ruled it incomplete and had extensive deficiency lists. It is estimated that a Salem application prepared for three sites (rather than the one site contained in that application) under the new rules would cost $10-12 million.

RESPONSE: The Act requires the Department and Board to evaluate a comprehensive list of requirements. In the Department's experience, the most important causes of increased cost of application preparation and processing are 1) uncertainty as to what information is needed, which results in unnecessary data being collected, and 2) project delay caused by waiting for collection of important data that were missed.

The Department developed individual rules regarding acquisition of resource data in parallel with section 75-20-503 of the Act by using standard techniques for evaluating these resources, and by using the Department's extensive experience with estimating costs of these studies when contracting for resource studies. Few specific comments have been received regarding high cost of specific resource studies and these comments have received close attention.

The Department also has experience evaluating the Salem application, and, under the new rules adopted here, believes that preparation of such an application will proceed more efficiently and with greater assurance of acceptance by the Department and DHES. While it is correct that data would have to be collected on larger acreages in some cases, it is also true that in other cases some of the data submitted with the Salem application would not have to be collected.

394 **COMMENT**: Data should not be requested from an applicant unless it is quantifiable.

**RESPONSE**: The rules specify quantification of data to the extent possible. Section 75-20-222 places the burden of proof on the applicant for showing that an application should be granted. It is likely that this showing would not be possible if the data collection were limited to only that which is quantifiable, since many important siting concerns turn on nonquantifiable social issues.

395 **COMMENT**: The rules will impose excessive time requirements for preparing an application. It appears that the time frame for a linear facility can easily range from 90 to 114 months before construction can begin, based on the following schedule: 12 months for project analysis and determination of need, 24-36 months for application preparation, 3 months for the Department to accept an application, 22-36 months, 12 months for a Board decision, 12 months for a centerline review process, and 3 months for a Board centerline decision.

**RESPONSE**: The time estimates in this comment are excessive, especially for most of the transmission lines that would require certificates under the Act. Each of the steps in the process is apparently assumed to take the maximum amount of time allowed in the Act or to take maximum amounts of time for the applicant to plan, and all steps are apparently assumed to be done consecutively. The comment includes, for example, an erroneous estimate that four years are needed for a Board decision after an application is accepted by the Department. According to the Act, the maximum period for this decision is 2 years and 9 months. The comment also assumes that a centerline review and approval process will take 15 months. This is unlikely because the rules adopted herein shift substantial amounts of the necessary on-the-ground field work into the period before the Board certifies a facility, which will result in an expedited centerline process.

The time estimates in the comment also assume that it will take from 3 to 4 years for an applicant to prepare an application. The Department has no control over this, but would point out that the rules have been designed so that for a mid-sized project, and with planning, the baseline environmental data can be obtained in one field season after initial map work. For very large linear facilities several hundred or more miles long, it is conceivable that the environmental work could take 2 to 3 years, but this results from the complexity of the task rather than the complexity of the rules. It also is incorrect to assume that the maximum times specified in the Act necessarily apply to small to mid-size linear facilities.

396 COMMENT: Compliance with the rules will impose time elements and risks that will effectively prevent rural electric cooperatives from building transmission lines. For a 115 kV transmission line, more than 6 1/2 years will be required for the steps in the process to be completed. Without the rules, this size of facility could be completed within 2 1/2 to 3 years.

RESPONSE: See the response to the previous comment. At several points in the rules, there are references to lesser amounts of data required for facilities of less than 230 kV, or where exceptions permit facility builders to omit unnecessary data. An applicant can build a 115 kV facility within approximately 3 years of conception under the rules adopted herein if early consultation occurs between the Department and the builder. A rule clarifying how cooperatives may coordinate studies required by the Act with studies currently required by the REA has been added in response to another comment. (See comment 388.)

397 COMMENT: The National Environmental Policy Act (NEPA) defines a maximum administrative process timetable of about 18 months for most projects subject to federal law. This is more responsive to public interests than the 4-6 1/2 year minimum envisioned in these rules.

RESPONSE: It is unclear what the 18 months in the comment refers to. The Council on Environmental Quality regulations for NEPA do not specify time limits, and leave these up to individual federal agencies. On projects with which the Department is familiar, the 18-month federal environmental review period would be appropriate for small projects or a mid-size project. The Western Area Power Administration (Western), a federal agency which must prepare an EIS subject to the requirements of NEPA, took 32 months to prepare a draft and final EIS after the initial public scoping meeting in 1981 on its 75-mile Great Falls to Conrad 230 kV transmission line. The Department prepared a report on compliance with the Act within one month after the final EIS was noticed in the Federal Register, and the Board gave final approval the next month.

398 COMMENT: The Colstrip Units #3 and #4 process has taken over 11 years under administrative regulations which are considerably less complex and less expensive to follow than these rules.

RESPONSE: These rules have been drafted partially in an effort to avoid the timeframes associated with the Colstrip project. It should be noted, however, that the delays experienced by the Colstrip project were primarily a result of factors beyond the scope of the Siting Act.

399 COMMENT: There is a large amount of duplication and redundancy in the rules relating to the environmental

criteria derived from section 75-20-503 of the Act. This list, which is supposed to be considered where applicable, appears to be repeated throughout the rules.

RESPONSE: It is not possible to determine a priori in rules which considerations will be applicable to all facilities, large and small, or be applicable to any particular facility which could have low impacts if located in one place and high impacts if located in another. The comment is correct in pointing out that there is some duplication in the rules, however, this is a result of the siting study process, which contains reconnaissance, inventory, and baseline studies, each of which requires progressively more detailed information within smaller geographic areas about the same resources.

400 COMMENT: The rules for exclusion and sensitive areas, and areas of concern should conform more closely to the "criteria for identifying corridor exclusion areas, avoidance areas, and windows in Montana" jointly developed and approved in 1982 by the state, Forest Service, and Bureau of Land Management.

RESPONSE: There is no conflict between the rules and the document referred to. The Department reviewed these criteria and developed concepts found in them in more detail. For example, Rule LXXXII contains preferred route criteria that encompass the concept of "windows."

401 COMMENT: The present rules are outdated, and the proposed rules should be adopted because they contain the necessary changes resulting from changes in the Act.

RESPONSE: The comment is noted.

402 COMMENT: The rules represent a significant step in improving the clarity and specificity of the siting process that should be a benefit to decision-makers, the public, and energy developers. The rules do justice to the Act.

RESPONSE: The comment is noted.

403 COMMENT: Facility siting is important anywhere in Montana, but especially important in a place like Billings, where temperature inversions help cause air quality problems. The kind of analysis required under the Act and these rules would have made a big improvement because the present facilities would have been located elsewhere.

RESPONSE: The comment is noted.

404 COMMENT: The proposed regulations do not contain objective standards spelling out how to determine significant adverse impact, and the applicant thus has no

ability to make judgements to see if a certificate might be granted.

RESPONSE: The comment is not accepted. The rules as written do detail the criteria to be considered when making the determination of minimum adverse environmental impact. The Board must have before it, as must any applicant, the information detailed in these rules before that decision can be made.

405 COMMENT: There is a need throughout the rules for full scientific evaluation of reasoned and supported substantive standards. The few standards proposed are arbitrary and unsupported.

RESPONSE: The rules set out data and analysis requirements which are in standard use in Montana and elsewhere with respect to resource management of the diverse subjects included in the Act. The few comments providing a technical foundation opposing these requirements are addressed elsewhere in this document.

406 COMMENT: The rules should not provide detailed requirements for construction specifications of facilities. Rules should be written to cover general cases because it is sometimes impractical or impossible to provide data for every location or provision.

RESPONSE: The rules provide flexibility. The intent of the requirements is to help the Board make decisions about need, alternatives, and environmental impacts. Sometimes these raquirements can be misinterpreted as requiring detail sufficient to meet engineering or builder specifications. Frequently, a much less detailed facility description or less accurate location designation is adequate for assessment of impacts and/or comparison of sites. Consultation between the Department and applicant can eliminate these problems.

407 COMMENT: The Department should justify the costs necessary for data acquisition.

RESPONSE: Comments on specific costs of data acquisition are responded to elsewhere in this document.

408 COMMENT: The Department's acceptance of the applicants need analysis may be a mistake. The Department should make a serious commitment to seeking independent forecasting authority. Otherwise, the people of Montana are left dependent on information from the party that has a vested interest in the outcome. Unquestioning acceptance of applicants' forecasts is not a good faith effort by the state.

RESPONSE: This comment is not accepted. The comment on developing independent forecasting capability is beyond the scope of these rules. The state is precluded from

establishing an independent state forecasting program by 90-4-301, MCA. The Department and Board may, however, develop their own forecasts on an application-specific basis.

409 COMMENT: It should be stressed that the goal of the rules is to get the minimum amount of information necessary to make the determination of environmental compatibility and public need, not the maximum information.

RESPONSE: Section 75-20-222 of the Act, regarding rules of evidence and burden of proof, requires that the applicant "has the burden of showing by clear and convincing evidence" that the proposed project should be approved. The rules specify standard resource management techniques, along with requirements to submit up-to-date maps and other necessary information. No means exist to make *a priori* distinctions about whether this is more or less than the "minimum" necessary for the wide range of facility types and sizes covered by the Act.

410 COMMENT: The rules impose unduly restrictive environmental criteria for the siting of energy facilities. This will reduce the number of available energy sites and preclude the construction of facilities that could be critically needed.

RESPONSE: Neither the Act nor the rules impose restrictive environmental criteria. None of the lists of siting and routing criteria, exclusion and sensitive areas, and areas of concern contain geographic areas or issues that are not normally given careful attention in siting.

411 COMMENT: The agency procedures specified in the rules must recognize and incorporate the procedures of other state and federal jurisdictions involved in any project.

RESPONSE: These agency procedures and jurisdictions were reviewed during the development of the rules, and appropriate data and consultation requirements were written into the rules.

412 COMMENT: The purpose of the rules should be the practical implementation of construction of facilities which meet energy needs, and which are built and operated in locations which produce minimal impact to the environment and people of the state.

RESPONSE: No response is necessary.

413 COMMENT: The major points in the certification process and in the decision standards consist of a finding that the facility is needed, that the facility represents the minimum adverse impact, and a finding of public convenience and necessity. These should be retained.

RESPONSE: These findings have been retained.

414 COMMENT: It is absolutely essential that the rules as implemented must maintain the integrity of the major balancing principles mandated by the Act. The rules will apply to such facilities as large power plants, synthetic fuel plants and large transmission lines.

RESPONSE: The comment is noted. The balancing will be provided by the Board's use of the decision standards.

415 COMMENT: The proposed rules are written in a format that is difficult to read and understand. The use of Roman numerals is particularly confusing, and the lack of an index impedes understanding. Flow charts and diagrams would also aid in understanding.

RESPONSE: The Department was restricted by the requirements of the Secretary of State with respect to such format items as a table of contents and the use of Roman numerals. The Department intends to publish an annotated version of the rules conforming with the suggestions in the comment.

416 COMMENT: The rules address the environment with respect to wild animals, natural areas, air and water and so forth, but do not address the people environment.

RESPONSE: A number of sensitive areas and areas of concern are directly relevant to people. Rules LXXV(1), (2), (5), (6), (7), (8); LXXVIII(1)-(5), (10), (11); XCI(1), (2), (4), (5), (6), (7); and XCIV(1)-(5) all directly concern data and analysis of "people" impacts.

417 COMMENT: I strongly recommend that the Department and the Board eliminate the need for application on lines below 230 kV, as well as short sections (10 miles or less) of 230 kV line.

RESPONSE: The Major Facility Siting Act specifies the facilities that are required to comply; transmission lines less than 230 kV and less than 10 miles in length are exempt. There is no legal authority for the modifications proposed in the comment.

418 COMMENT: Additional rules should be drafted to establish criteria for judging the completeness of an application, to outline procedures for enforcing the conditions of certificates granted by the Board, and to implement 75-20-201(2)(b)(ii) which provides for exemptions to certain types of facilities.

RESPONSE: Rules were drafted to deal with matters that were felt to be most timely to the administration of the Major Facility Siting Act. It is recognized that the rules are not exhaustive though they deal comprehensively with the essence of the Act. In the future, rules will be drafted when necessary to address the areas that have been suggested.

419 COMMENT: The proposed regulations are applicant-oriented in that they primarily specify the duties of the applicant; little mention is made about what the Department and the Board are to do, if anything, with the voluminous information generated by the applicant and how that information is to be evaluated. Similarly, no mention is made of how the filing fee will be used. Regulations should not be so one-sided. The regulations derive from and are governed by the Act. They are to be used to guide the Board, Department, applicant, and other interested parties in complying with the Siting Act. If these proposed regulations contain language to formalize Board policy, it should be pointed out to the Board and the Department that such policies cannot be beyond what the Act mandates.

RESPONSE: The Siting Act clearly places the primary responsibility in the certification process on the applicant. Section 75-20-222(3), MCA, states: "In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-20-302 are met." The Department and the Board will be evaluating the information presented by the applicant and others to determine whether the standards specified in Rule CVIII-Rule CXV can be met by the proposed facility. The basis for reaching a decision concerning certification is clearly defined in these rules. The nature of the review is implicit in the decision that must be reached. The filing fee will be used to make the evaluation. The proposed regulations do not exceed the authority provided by the statute. The comment is not accepted.

420 COMMENT: The rules and the Act were not drafted with the options program planned by the Regional Council and Bonneville in mind. New legislation should be considered to facilitate such programs.

RESPONSE: This comment is not accepted. New legislation is beyond the scope of these rules.

421 COMMENT: These rules do not address renewal of certificates, which should be added to the rules.

RESPONSE: This comment is not accepted. There is no provision in the Act for a renewal process, so such a request is beyond the scope of these rules.

422 COMMENT: Several of the required impact studies, such as groundwater and visibility, are under Department of Health and Environmental Sciences (DHES) jurisdiction, so there is no need for additional information in these areas. Any additions by rulemaking to those existing standards is a responsibility for the DHES, not this department.

RESPONSE: Where the Board feels information is needed beyond what DHES requires because that information is needed for a decision different from the DHES's decision, the Board will request such information in order to make its final decision on an application as required by law. For an example, see comment 184. The Board recognizes the responsibilities of the DHES and does not duplicate them.

423 COMMENT: The proposed rules are, in many instances, beyond the authority granted by the Siting Act, and as such would be invalid and unenforceable.

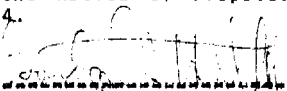
RESPONSE: This comment is not accepted. Where statutory authority has been specifically questioned by comments to these rules, those comments have been specifically addressed.

424 COMMENT: The proposed rules for linear facilities seek to regard the federal entities, Bonneville Power Administration (BPA) and Western Area Power Administration (WAPA), as "applicants," thereby purportedly requiring them to submit an application to the Board for a certificate of environmental compatability and public need. Recent federal court decisions have held that the federal power marketing agencies need not comply with the procedural requirements of the Siting Act such as filing an application because that would essentially give the Board a veto power over federal projects that have been authorized by Congress. Therefore, the federal power marketing agencies should be exempted from the application process and from need analysis. In light of this, a separate section of the rules should be drafted to apply only to federal agencies.

RESPONSE: The suggestion to draft a separate section applying to federal facilities is not accepted. The extent to which BPA is required to comply with the Siting Act, and so with these proposed rules, is still in litigation. Once litigation is concluded a full accounting of any impact on the Siting Act can be made. If the federal entities ultimately are able to assert federal preemption as claimed, the Siting Act and these rules would be superseded where preemption applies. The Siting Act was amended in 1983 at 75-20-201, MCA, to make clear that it applies to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(4) The new rules are assigned to the following numbers in the ARM: Rule I (36.7.1501); Rule II (36.7.1502); Rule III (36.7.1503); Rule IV (36.7.1601); Rule V (36.7.1602); Rule VI (36.7.1603); Rule VII (36.7.1604); Rule VIII (36.7.1605); Rule IX (36.7.1606); Rule X (36.7.1801); Rule XI (36.7.1802); Rule XII (36.7.1803); Rule XIII (36.7.1804); Rule XIV (36.7.1805); Rule XV (36.7.1806); Rule XVI (36.7.1807); Rule XVII (36.7.1901); Rule XVIII (36.7.1902); Rule XIX (36.7.1903); Rule XX (36.7.1904); Rule XXI (36.7.2101); Rule XXII (36.7.2102); Rule XXIII (36.7.2103); Rule XXIV); 36.7.2104); Rule XXV (36.7.2105); Rule XXVI (36.7.2106); Rule XXVII (36.7.2107); Rule XXVIII (36.7.2108); Rule XXIX (36.7.2109); Rule XXX (36.7.2110); Rule XXXI (36.7.2113); Rule XXXII (36.7.2114); Rule XXXIII (36.7.2115); Rule XXXIV (36.7.2116); Rule XXXV (36.7.2201); Rule XXXVI (36.7.2202); Rule XXXVII (36.7.2203); Rule XXXVIII (36.7.2204); Rule XXXIX (36.7.2205); Rule XL (36.7.2206); Rule XLI (36.7.2207); Rule XLII (36.7.2208); Rule XLIII (36.7.2209); Rule XLIV (36.7.2210); Rule XLV (36.7.2211); Rule XLVI (36.7.2212); Rule XLVII (36.7.2213); Rule XLVIII (36.7.2214); Rule IL (36.7.2215); Rule L (36.7.2216); Rule LI (36.7.2217); Rule LII (36.7.2218); Rule LIII (36.7.2301); Rule LIV (36.7.2302); Rule LV (36.7.2303); Rule LVI (36.7.2401); Rule LVII (36.7.2402); Rule LVIII (36.7.2403); Rule LIX (36.7.2404); Rule LX (36.7.2405); Rule LXI (36.7.2410); Rule LXII (36.7.2411); Rule LXIII (36.7.2417); Rule LXIV (36.7.2501); Rule LXV (36.7.2502); Rule LXVI (36.7.2503); Rule LXVII (36.7.2504); Rule LXVIII (36.7.2505); Rule LXIX (36.7.2506); Rule LXX (36.7.2507); Rule LXXI (36.7.2508); Rule LXXII (36.7.2509); Rule LXXIII (36.7.2510); Rule LXXIV (36.7.2511); Rule LXXV (36.7.2512); Rule LXXVI (36.7.2513); Rule LXXVII (36.7.2514); Rule LXXVIII (36.7.2515); Rule LXXIX (36.7.2516); Rule LXXX (36.7.2517); Rule LXXXI (36.7.2530); Rule LXXXII (36.7.2531); Rule LXXXIII (36.7.2532); Rule LXXXIV (36.7.2533); Rule LXXXV (36.7.2534); Rule LXXXVI (36.7.2535); Rule LXXXVII (36.7.2536); Rule LXXXVIII (36.7.2537); Rule LXXXIX (36.7.2538); Rule XC (36.7.2539); Rule XCI (36.7.2540); Rule XCII (36.7.2541); Rule XCIII (36.7.2543); Rule XCIV (36.7.2544); Rule XCV (36.7.2545); Rule XCVI (36.7.2546); Rule XCVII (36.7.2547); Rule XCVIII (36.7.3001); Rule XCIX (36.7.3002); Rule C (36.7.3003); Rule CI (36.7.3004); Rule CII (36.7.3005); Rule CIII (36.7.3009); Rule CIV (36.7.3010); Rule CV (36.7.3011); Rule CVI (36.7.3012); Rule CVII (36.7.3013); Rule CVIII (36.7.3501); Rule CIX (36.7.3502); Rule CX (36.7.3503); Rule CXI (36.7.3504); Rule CXII (36.7.3505); Rule CXIII (36.7.3506); Rule CXIV (36.7.3507); Rule CXV (36.7.3508); Rule CXVI (36.7.4001); Rule CXVII (36.7.4002); Rule CXVIII (36.7.4003); Rule CXIX (36.7.4004); Rule CXX (36.7.4005); Rule CXXI (36.7.4006); Rule CXXII (36.7.5001); Rule CXXIII (36.7.5002); Rule CXXIV (36.7.5003); Rule CXXV (36.7.5004); Rule CXXVI (36.7.5501); Rule CXXVII (36.7.5502).

(5) The authority and implementing sections were listed at the end of each rule in the Notice of Proposed Adoption, published in September 13, 1984.



Gordon Holte, Chairman
Board of Natural Resources
and Conservation

Certified by the Secretary of State December 14, 1984.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| IN THE MATTER OF THE AMEND- MENT of Rule 42.16.105 relating to penalties. | NOTICE OF THE AMENDMENT of Rule 42.16.105 relating to penalties. |

TO: All Interested Persons:

1. On November 15, 1984, the Department of Revenue published notice of the proposed amendment of rule 42.16.105 relating to penalties at pages 1608 and 1609 of the 1984 Montana Administrative Register, issue number 21.

2. The Department has amended rule 42.16.105 as proposed.

3. A public hearing was held on December 6, 1984, to consider the proposed amendment of this rule. No persons appeared to oppose the proposed amendment. Ken Morrison, Administrator of the Income Tax Division, appeared on behalf of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the rule is § 15-30-305, MCA, and the rule implements §§ 15-30-321 and 15-30-323, MCA.

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| IN THE MATTER OF THE ADOPTION of NEW Rules I (42.16.133) and II (42.16.134) relating to the payment of interest on refunds. | NOTICE OF THE ADOPTION of NEW Rules I (42.16.133) and II (42.16.134) relating to the payment of interest on refunds. |

TO: All Interested Persons:

1. On November 15, 1984, the Department of Revenue published notice of the proposed adoption of new rules I (42.16.133) and II (42.16.134) relating to the payment of interest on refunds at pages 1610 and 1611 of the 1984 Montana Administrative Register, issue number 21.

2. The Department has adopted new rules I (42.16.133) and II (42.16.134) as proposed.

3. A public hearing was held on December 6, 1984, to consider the proposed adoption of these rules. No persons appeared to oppose the proposed adoptions. Ken Morrison, Administrator of the Income Tax Division, appeared on behalf of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the rules is § 15-30-305, MCA, and the rules implement § 15-30-149, MCA.

IN THE MATTER OF THE AMENDMENT of Rule 42.17.103 relating to wages; the AMENDMENT of Rule 42.17.118 relating to the forms to file after termination of wage payments; and the REPEAL of Rule 42.17.119 relating to closing of withholding accounts.

NOTICE OF THE AMENDMENT of Rule 42.17.103 relating to wages; the AMENDMENT of Rule 42.17.118 relating to the forms to file after termination of wage payments; and the REPEAL of Rule 42.17.119 relating to closing of withholding accounts.

TO: All Interested Persons:

1. On November 15, 1984, the Department of Revenue published notice of the proposed amendment of rule 42.17.103 relating to wages, the proposed amendment of 42.17.118 relating to the forms to file after termination of wage payments, and the repeal of rule 42.17.119 relating to closing of withholding accounts at pages 1612 through 1614 of the 1984 Montana Administrative Register, issue number 21.

2. The Department has amended rules 42.17.103 and 42.17.118 and repealed rule 42.17.119 as proposed.

3. A public hearing was held on December 6, 1984, to consider the proposed amendment of rules 42.17.103 and 42.17.118 and the proposed repeal of rule 42.17.119. No persons appeared to oppose the proposed changes. Ken Morrison, Administrator of the Income Tax Division, appeared on behalf of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the amended and repealed rules is § 15-30-305, MCA, and the rules implement §§ 15-30-201 and 15-30-209, MCA.

IN THE MATTER OF THE AMENDMENT of Rule 42.15.504 relating to the investment tax credit.

NOTICE OF THE AMENDMENT of Rule 42.15.504 relating to the investment tax credit.

TO: All Interested Persons:

1. On November 15, 1984, the Department of Revenue published notice of the proposed amendment of rule 42.15.504 relating to the investment tax credit at pages 1615 and 1616 of the 1984 Montana Administrative Register, issue number 21.

2. The Department has amended rule 42.15.504 as proposed.

3. A public hearing was held on December 6, 1984, to consider the proposed amendment of this rule. No persons appeared to oppose the proposed amendment. Ken Morrison, Administrator of the Income Tax Division, appeared on behalf of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the rule is § 15-30-305, MCA, and the rule implements §§ 15-30-162, MCA.

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| IN THE MATTER OF THE ADOPTION of NEW Rule I (42.15.426) relating to the use of Montana adjusted gross income when calculating itemized deductions. | NOTICE OF THE ADOPTION of NEW Rule I (42.15.426) relating to the use of Montana adjusted gross income when calculating itemized deductions. |

TO: All Interested Persons:

1. On November 15, 1984, the Department of Revenue published notice of the proposed adoption of new rule I (42.15.426) relating to the use of Montana adjusted gross income when calculating itemized deductions at pages 1617 and 1618 of the 1984 Montana Administrative Register, issue number 21.

2. The Department has adopted new rule I (42.15.426) as proposed.

3. A public hearing was held on December 6, 1984, to consider the proposed adoption of this rule. No persons appeared to oppose the proposed adoption. Ken Morrison, Administrator of the Income Tax Division, appeared on behalf of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the rule is § 15-30-305, MCA, and the rule implements § 15-30-121, MCA.

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| IN THE MATTER OF THE ADOPTION of NEW Rule I (42.15.325) relating to the failure to furnish requested information on returns. | NOTICE OF THE ADOPTION of NEW Rule I (42.15.325) relating to the failure to furnish requested information on returns. |

TO: All Interested Persons:

1. On November 15, 1984, the Department of Revenue published notice of the proposed adoption of new rule I (42.15.325) relating to the failure to furnish requested information requested information on returns at pages 1619 and 1620 of the 1984 Montana Administrative Register, issue number 21.

2. The Department has adopted new rule I (42.15.325) with the following changes:

NEW RULE I (42.15.325) FAILURE TO FURNISH REQUESTED INFORMATION (1) The department, for the purpose of determining the correctness of any return, may request additional information to verify amounts or items on the return.

(2) If, after 30 days from the date of the second request for information, the taxpayer has not responded and the amounts or items still remain unverified, they will be disallowed.

(3) Failure to supply the information requested will result in the assessment of tax, and any interest, and or penalty as provided at 15-30-145, MCA.

3. The above changes to new rule I (42.15.325) are grammatical in nature only and are being made at the suggestion of John McMaster, a staff attorney for the Legislative Council. A public hearing was held on December 6, 1984, to consider the proposed adoption of this rule. No persons appeared to oppose the proposed adoption. Ken Morrison, Administrator of the Income Tax Division, appeared on behalf of the Department. No other comments or testimony were received. Therefore the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the rule is § 15-30-305, MCA, and the rule implements § 15-30-145, MCA.

IN THE MATTER OF THE ADOPTION) of NEW Rule I (42.15.324) ) relating to elderly homeowner) credit returns. )

NOTICE OF THE ADOPTION of NEW Rule I (42.15.324) relating to elderly homeowner credit returns.

TO: All Interested Persons.

1. On November 15, 1984, the Department of Revenue published notice of the proposed adoption of new rule I (42.15.324) relating to elderly homeowner credit returns at pages 1621 and 1622 of the 1984 Montana Administrative Register, issue number 21.

2. The Department has adopted new rule I (42.15.324) as proposed.

3. No comments or testimony were received.

4. The authority for the rule is § 15-30-305, MCA, and the rule implements § 15-30-174, MCA.

IN THE MATTER OF THE ADOPTION) of NEW Rule I (42.15.114) ) relating to the tax status of) federal obligations. )

NOTICE OF THE ADOPTION of NEW Rule I (42.15.114) relating to the tax status of federal obligations.

TO: All Interested Persons:

1. On November 15, 1984, the Department of Revenue published notice of the proposed adoption of new rule I (42.15.114) relating to the tax status of federal obligations at pages 1623 and 1624 of the 1984 Montana Administrative Register, issue number 21.

2. The Department has adopted new rule I (42.15.114) with the following changes:

NEW RULE I (42.15.114) TAX STATUS OF FEDERAL OBLIGATIONS (1) Pursuant to 15-30-111, MCA, interest income earned from obligations of the United States government is exempt from Montana income tax.

(2) For Montana tax purposes, an obligation of the United States must meet the following requirements:

(a) be issued by a governmental agency through its exercise of power given to it by congress; and

(b) must be borrowed on the credit of the United States which will pay specified sums at specified times ~~; and~~ .

~~(c)--the money borrowed must be for an essential governmental function.~~

(3) Effective January 1, 1984, interest earned on Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) securities are no longer exempt from taxation.

3. The above change is being made at the request of the Revenue Oversight Committee which held a meeting in Helena on December 8, 1984. A public hearing was held on December 6, 1984, to consider the proposed adoption of this rule. No persons appeared to oppose the proposed adoption. Ken Morrison, Administrator of the Income Tax Division, appeared on behalf of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the rule is § 15-30-305, MCA, and the rule implements § 15-30-111, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 12/17/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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| IN THE MATTER OF THE REPEAL of Rule 42.21.133 relating to oil field machinery and supplies; the AMENDMENT of Rules 42.21.101, 42.21.107, 42.21.123, and 42.21.151 relating to the market value of personal property; and the ADOPTION of NEW RULE I relating to leased and rented equipment; NEW RULE II relating to abstract record valuation; NEW RULE III relating to property reporting time frames; and NEW RULES IV through VII relating to oil field machinery and equipment. | NOTICE OF THE REPEAL of Rule 42.21.133; the AMENDMENT of Rules 42.21.101, 42.21.107, 42.21.123, and 42.21.151; and the ADOPTION of New Rules I through VII. |

TO: All Interested Persons:

1. On October 25, 1984, the Department of Revenue published notice of the proposed repeal of Rule 42.21.133, as well as the proposed amendment of rules 42.21.101, 42.21.107, 42.21.123, and 42.21.151, and the proposed adoption of new Rules I through VII. All of the foregoing rules relate to the valuation of personal property for ad valorem tax purposes. The notice was published at pages 1550 through 1559 of the 1984 Montana Administrative Register, issue number 20.

2. On November 16, 1984, a public hearing was held regarding the Department's proposed action on these rules. Sarah Power, Agency Legal Services, presided over and conducted the hearing. She prepared a report of hearing officer which was submitted to the Department and which the Department has considered in taking action on these rules. Mr. P. Jesse Munro appeared on behalf of the Department as the principal proponent thereof. Several persons appeared as opponents to the rules as proposed by the Department. They and several other persons submitted written comments relating to the rules. All oral testimony was fully considered by the Department as were the written comments.

3. The Department has repealed rule 42.21.133 relating to the valuation of oil field machinery and supplies as proposed. The Department has amended rule 42.21.101, relating to aircraft valuation, as proposed. The Department has amended rule 42.21.107, relating to trailer valuation, as proposed. The Department has amended ARM 42.21.123, relating to farm machinery and equipment valuation, as proposed. The Department has amended rule 42.21.151, relating to television cable systems, as proposed. There was no opposition to the amendment of these rules as proposed by the Department.

4. The Department has adopted Rule I (42.21.113) relating to leased and rented equipment and Rule IV (42.21.137) relating to seismograph units and allied equipment as proposed. There was no opposition to the adoption of these rules as proposed by the Department.

5. The Department has adopted Rule V (42.21.138) relating to the valuation of oil and gas field machinery as proposed. Opponents of the rule urged, in the alternative, that a 10-year life be established for all property, or that a 15-year life be established for all surface improvements with an accompanying 5-year life for all subsurface improvements. The Department rejects these suggestions because there was no credible evidence presented which would support a conclusion that these assets have anything other than a 15-year life.

6. The Department has adopted new rules II (42.21.114), III (42.21.158), VI (42.21.139), and VII (42.21.140), as proposed, except as follows:

RULE II (42.21.114) ABSTRACT RECORD VALUATION (1) ~~The market value for all abstract records will be the value at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.~~

~~(2)--If there is no market data available to the taxpayer, the value reported to the department must represent current replacement cost of the records. The current replacement cost shall be the total cost of replacing the records including the information contained on the record. The cost shall indicate that the record is in such a condition that it can be used in the normal day to day business.~~

~~(3)--At no time will the market value be less than one dollar per parcel. The number of parcels per county shall be determined by the previous year end parcel count as determined by the Residential-Commercial Bureau.~~ The market value will be one dollar per parcel. The number of parcels per county shall be determined by the previous year end parcel count as determined by the residential-commercial bureau.

~~(4)~~ (2) This rule is effective for tax years beginning after December 31, 1984.

RULE III (42.21.158) PROPERTY REPORTING TIME FRAMES (1) Taxpayers having property in the state of Montana on January 1 of each year must complete the statement as provided for in 15-8-301, MCA. With the exception of livestock owners who elect a March 1 reporting date, the taxpayer has 30 days from the date of receipt of any request for information to respond to the department of revenue or its agent's request for information. The department or its agent may grant a ~~10~~ 30 day extension if the taxpayer requests such an extension during the 30 day period.

(2) through (4) remain as proposed.

(5) A taxpayer who raises livestock and elects the March 1 reporting date has 5 14 days from March 1 to respond to the department or its agent's request for information. The department or its agent may grant a 10 day extension if the taxpayer requests such an extension ~~during the 5 day period~~ before March 15.

(6) This rule is effective for tax years beginning after December 31, 1984.

RULE VI (42.21.139) WORKOVER AND SERVICE RIGS (1) Each tax year bids for new rigs will be solicited from manufacturers of workover and service rigs to determine current replacement costs based on the depth rating listed below. For each depth rating listed below of workover and service rigs, there will be 2 replacement cost ~~value~~ categories. One ~~value~~ category will represent ~~average good quality~~ current replacement cost of a service rig and the second ~~value~~ category will represent ~~average fair quality~~ current replacement cost of a workover rig. Each rig as it is assessed will be placed in one ~~value~~ category or another based on its depth ~~and quality~~ .

DEPTH CATEGORIES

| Class | Depth Capacity |
|---|---|
| 1 ..... | 0 to 3,000 ft. |
| 2 ..... | 3,001 ft. to 5,000 ft. |
| 3 ..... | 5,001 ft. to 8,000 ft. |
| 4 ..... | 8,001 ft. to 10,000 ft. |
| 5 ..... | 10,001 ft. to 14,000 ft. |
| 6 ..... | 14,001 ft. and over |

These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in subsection (2).

(2), (3), and (4) remain as proposed.

~~(5)--The department of revenue shall annually prepare a trended depreciation schedule for workover and service rig components in addition to those components included in subsection (1) on the basic rig. The trended depreciation schedule shall be developed based on the methodologies mentioned in subsections (3) and (4).~~

~~(6)~~ (5) For self-propelled wheeled workover and service rigs an additional 80% wholesale factor shall be used in determining market value in conjunction with the schedules mentioned in subsection (2) and subsection (4).

~~(7)~~ (6) This rule is effective for tax years beginning after December 31, 1984.

RULE VII OIL DRILLING RIGS (1) Each tax year bids for new rigs will be solicited from manufacturers of oil drilling rigs

to determine current replacement costs based on the depth rating listed below. For each depth rating listed below for oil drilling rigs, there will be 2 replacement cost ~~value~~ categories. One ~~value~~ category will represent ~~average good quality~~ current replacement cost of a mechanical rig and the second ~~value~~ category will represent ~~average fair quality~~ current replacement cost of ~~a~~ an electric rig. Each rig as it is assessed will be placed in a value category based on its depth ~~and quality~~ .

DEPTH CATEGORIES

| Class | Depth Capacity |
|---|---|
| 1 ..... | 0 to 3,000 ft. |
| 2 ..... | 3,001 ft. to 5,000 ft. |
| 3 ..... | 5,001 ft. to 7,500 ft. |
| 4 ..... | 7,501 ft. to 10,000 ft. |
| 5 ..... | 10,001 ft. to 12,500 ft. |
| 6 ..... | 12,501 ft. to 15,000 ft. |
| 7 ..... | 15,001 ft. to 20,000 ft. |
| 8 ..... | 20,001 ft. and over |

The depth capacity for drilling rigs will be based on the "Manufacturers Depth Rating". These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in subsection (2).

(2) The department of revenue shall prepare a ~~15~~ 10-year depreciation schedule for oil drilling rigs. The depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company".

(3) remains as proposed.

(4) The department of revenue shall prepare a ~~15~~ 10-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule will be derived by using trend factors and depreciation factors published by "Marshall and Swift Publication Company". The trend factors shall be the most recent available from the "Chemical Industry Cost Indexes" listed in the above publication.

~~(5)--The department of revenue shall annually prepare a trended depreciation schedule for oil drilling rig components in addition to these components included in subsection (1) on the basic rig. The trended depreciation schedule shall be developed based on the methodologies mentioned in subsections (3) and (4).~~

~~(6)~~ (5) This rule is effective for tax years beginning after December 31, 1984.

7. The Department has adopted Rule II (42.21.114) relating to abstract record valuation, with certain modifications suggested by its opponents. The oral testimony and the written comments relating to the adoption evidenced three areas of concern: (1) The Department, by employing the market data

approach, was endeavoring to tax certain intangible assets of taxpayers, (2) the Department by employing the cost approach, could not accurately attribute market value to the records of the taxpayers, and (3) the Department should not rely on its in-house parcel count for purposes of applying a flat value on the records. The Department concedes that the first and second objections were well-taken and it accordingly, withdraws the first two approaches to valuation. The third approach to valuation - the flat value approach - is adopted as proposed for two reasons. First, it effectively places a value on the property, when the taxpayers have acknowledged that there is no other accurate method by which value may be ascertained. Second, if the taxpayers had a better approach than the parcel count as determined by the Department, they failed to express it.

The Department has adopted Rule III (42.21.158) relating to property reporting time frames, with certain modifications suggested by its opponents. The oral testimony reflected a concern that taxpayers were not being afforded an ample time in which to make their returns of property to the Department. Cognizant of those expressed concerns, the Department has extended the reporting time frames beyond those originally proposed.

The Department adopts Rule VI (42.21.139) relating to the valuation of workover rigs, with certain modifications suggested by its opponents. Opponents were concerned about how the conditions of the rigs were to be ascertained. In addition, they were opposed to the development of a trended depreciation schedule for rig components.

The Department adopts Rule VII (42.21.140) relating to the valuation of oil drilling rigs, with certain modifications suggested by its opponents. Those persons were concerned that the conditions of the rigs could not be accurately established. In addition, they expressed opposition to the development of a trended depreciation schedule for oil rig components.

8. The authority of the Department to repeal, amend and adopt these rules is found in § 15-1-201, MCA. The rules implement §§ 15-6-136, 15-6-138, 15-6-139, 15-6-140, 15-8-111, and 15-8-303, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 12/17/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | |
|---|---|
| IN THE MATTER OF THE AMENDMENT of Rules 42.22.101, 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.112, 42.22.114, 42.22.115, 42.22.121, and 42.22.122, all of which relate to the assessment and taxation of centrally assessed companies. | NOTICE OF THE AMENDMENT of Rules 42.22.101, 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.112, 42.22.114, 42.22.115, 42.22.121, and 42.22.122, all of which relate to the assessment and taxation of centrally assessed companies. |

TO: All Interested Persons:

1. On October 25, 1984, the Department of Revenue published notice of the proposed amendment of rules 42.22.101, 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.112, 42.22.114, 42.22.115, 42.22.121, and 42.22.122 relating to the assessment and taxation of centrally assessed companies at pages 1543 through 1549 of the 1984 Montana Administrative Register, issue number 20.

2. The Department has amended rules 42.22.103, 42.22.112, 42.22.115, 42.22.121, and 42.22.122 as proposed.

3. The Department has amended rules 42.22.101, 42.22.105, 42.22.106, 42.22.111, and 42.22.114 as proposed, except as follows:

42.22.101 DEFINITIONS (1) through (6) remain as proposed.

(7) "Correlate" as used in the unit method of valuation, is the blending of the indicator(s) of value THAT ARE AVAILABLE TO THE APPRAISER into one unit value with no specific weight applied to any indicator.

(7) through (16) remain as proposed.

New subsection (18) remains as proposed.

(17) and (18) remain as proposed.

42.22.105 REPORTING REQUIREMENTS (1) and (2) remain as proposed.

(3) In addition to the report each centrally assessed company must revise and update a ~~statement~~ statements of situs and mileage ~~printout~~ printouts provided by the department and return ~~it~~ them along with the report. ~~Telephone, telegraph, and microwave companies shall also include a list of Montana communications equipment and towers including book cost and the school and special districts in which they are situated.~~ The information on the printouts shall be reported by county and taxing units in which they are situated. The situs printouts shall contain the following additional information for operating situs property:

(a) ~~complete~~ GENERAL description of the property; and

(b) installed cost and date of installation if required under 42.22.122(3). If additions have been made to operating property then there should be a breakdown of installed costs and dates under the property listing.

42.22.106 ADDITIONAL REPORTING REQUIREMENTS FOR CENTRALLY ASSESSED RAILROADS (1) Each year all centrally assessed railroads shall submit by April 15 a report of operations for the preceding year containing in addition to that information required by 42.22.105 the following information and items:

(a) copies of all Montana valuation maps;

(b) copies of all Montana track charts;

(c) a statement setting forth by individual counties the total acreage of Montana real property and right-of-way;

~~(d)--a statement setting forth by individual state the total acreage of all system real property and right-of-way;~~

~~(e)--a statement of all track in Montana listing the pattern weight, number of miles, and location by railroad segment and milepost; and~~

~~(f)~~ (d) a statement of all agreements authorizing the longitudinal use of Montana right-of-way, including for each agreement the names of the parties to the agreement, a summary of its terms, the amounts paid thereunder, the longitudinal use contemplated, and the location and length of right-of-way covered ~~;~~ .

Subsections (g) through (o) remain as proposed.

(2) and (3) remain as proposed.

42.22.111 VALUATION METHOD (1) and (2) remain as proposed.

(3) THE VALUATION DETERMINED APPROPRIATE BY THE DEPARTMENT SHALL BE SUPPORTED BY A WRITTEN EXPLANATION OF THE INDICES EXAMINED AND THE METHOD BY WHICH THE VALUATION WAS DETERMINED.

~~(3)~~ (4) This rule shall be effective for all reporting years ending December 31, ~~1981~~ 1985 and thereafter.

42.22.114 INCOME INDICATOR (1) ~~The income indicator will be determined by the capitalization of the company's operating income, cash flow analysis, or capital asset pricing models. The capitalization rate used by the department may be determined by the band of investment theory or any other generally accepted method. In determining a capitalization rate the department shall consider the level of income to be capitalized. The income which the department capitalizes will normally~~ may be a ~~2-year historic average or a projected level of income; however, it may be a longer or shorter period, depending upon the department's analysis of future earning capacity.~~ THE INCOME INDICATOR MAY BE DETERMINED BY CONSIDERATION OF ONE OR MORE OF THE FOLLOWING METHODS DEPENDING ON THE DEPARTMENT'S ANALYSIS OF THE FUTURE EARNING CAPACITY OF THE COMPANY:

(a) CAPITALIZATION OF THE COMPANY'S HISTORIC INCOME OR AVERAGE OF HISTORIC INCOMES;

(b) CAPITALIZATION OF A PROJECTED LEVEL OF INCOME;

(c) DISCOUNTED CASH FLOW ANALYSIS;

(d) OTHER ACCEPTED METHOD.

THE CAPITALIZATION RATE UTILIZED WILL BE DETERMINED BY THE BAND OF INVESTMENT THEORY OR OTHER ACCEPTED METHODOLOGY.

4. On November 19, 1984, a public hearing was held regarding the Department's proposed action on these rules. Barbara Bozman-Moss, Agency Legal Services, presided over and conducted the hearing. She prepared a report of hearing officer which was submitted to the Department and which the Department has considered in taking action on these rules. Mr. John Nicolay appeared on behalf of the Department as the principle proponent thereof. Several persons appeared as opponents to the rules as proposed by the Department. They and several other persons submitted written comments relating to the rules. All oral testimony, was fully considered by the Department as were the written comments.

5. Public comment was received on various rules and will be addressed as follows:

42.22.101 - The Department adopts rule 42.22.101(7) as proposed. The new definition of the word correlate is set forth to enable the appraiser to fully consider and to apply all three indicators of value. In the past, the appraiser was locked into a specific weighting formula in order to apply the three indicators. The rigidity of such a formula often hindered the Department from accurately ascertaining market value of the assets. Affected taxpayers expressed concern that the Department was endeavoring to withhold a portion of the valuation process. The Department will make its valuation process, including the application of the three indicators, available in connection with each appraisal. This is required by the adoption of rule 42.22.111(3).

The Department adopts rule 42.22.101(18) as proposed. The purpose of setting forth their definition of taxable period is twofold: (1) to ensure that taxpayers understand that assessments of centrally assessed property are based upon business related activity during the preceding calendar year, and (2) to ensure that businesses ceasing operations during the preceding calendar year do not escape assessment. This definition is entirely consistent with assessment methodology prescribed by the Legislature in §§ 15-23-201, 15-23-301, and 15-23-402, MCA. Opponents of the new definition suggest that it is violative of §§ 15-16-403 and 15-8-301, MCA. These contentions lack merit in that the assessment of centrally assessed property is based upon the business related activities of the taxpayer during the preceding calendar year. Thus, there is sufficient nexus between the property and the taxing authority to afford a basis for assessment.

42.22.105 - The Department amends rule 42.22.105(3)(a) with a certain modification suggested by its opponents. Written comment reflected concern that the Department was creating an undue burden for taxpayers by requiring them to furnish a complete description of their property. In order to alleviate this concern, the Department will substitute the word general for the word complete in the definition.

The Department adopts rule 42.22.105(3)(b) as proposed. In order to apportion Montana value to the various taxing districts, it will be necessary for the Department to have information relating to installed cost and dates of installation for operating situs property. Opponents of the rule suggest that such information could not be supplied without great expense. They furthermore stated the benefits to be derived would not be commensurate with the costs required to produce the information. In order to produce accurate apportioned values, the Department will have to have the information.

42.22.106 - The Department repeals certain reporting requirements for operating railroads since it has determined that there is no longer a necessity to have the information.

42.22.111 - The Department amends rule 42.22.111(2) and (3) as proposed. The latter sentence of 42.22.111(2) is amended in order to provide consistency with 42.22.101(7), since the Department will no longer be relying upon fixed weights when it applies the three indicators. Furthermore, rule 42.22.111(3) is being adopted in order to alleviate the concern of taxpayers that the complete appraisal methodology be made available to them for review.

Rule 42.22.111(1) is amended in order to afford the Department the latitude to consider the true market data approach to value in the case of airlines. In the event sufficient market data does exist, it simply provides another valuation tool which may be considered.

42.22.112 - The Department amends 42.22.112 as proposed. It is amended in order to ensure that all commercial and industrial property, including centrally assessed property, is valued pursuant to the similar methodologies. In addition, there is some doubt that net book cost, as reported by centrally assessed companies to regulatory agencies, will yield market value for property tax purposes. Thus, the Department must have the opportunity to consider replacement cost if that approach is appropriate.

42.22.114 - The Department amends rule 42.22.114 based upon certain suggestions made by opponents to the original proposed rule. Several persons expressed concern that cash flow analysis and capital asset pricing models are controversial appraisal techniques. They suggested that the Department adopt income techniques which are more generally accepted by the appraisal profession.

42.22.115 - The Department adopts rule 42.22.115 as proposed. A review conference with the Director has become superfluous since the taxpayers have adequate administrative and judicial remedies, including the opportunity for an informal review conference with the appraiser who values their property pursuant to § 15-23-104, MCA. In addition, time constraints which must be met in order to meet statutory assessment deadlines militate against such a conference.

42.22.122 - The Department adopts rule 42.22.122 as proposed. In order to ensure that a true apportionment of value is made to the various taxing districts, the Department must have

this information. Net book costs which have been employed in the past as a basis for this procedure may not yield true value. Accordingly, the Department must have the authority to consider and to apply trended costs for this purpose.

6. The authority of the Department to make the proposed amendments is based on §§ 15-1-201 and 15-23-108, MCA. The rules implement §§ 15-23-102, 15-23-103, 15-23-201, 15-23-301, 15-23-402, 15-23-403, 15-23-502, 15-23-602, 15-23-701, MCA, and Title 15, chapter 23, part 1, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 12/17/84

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of rule pertaining to scheduled dates - Montana Administrative Register | ) ) ) | NOTICE OF THE AMENDMENT OF 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER |

TO: All Interested Persons.

1. On November 15, 1984, the Secretary of State published notice of a proposed amendment to rule 1.2.419 concerning the scheduled dates for the Montana Administrative Register for calendar year 1985.

2. The Secretary of State has amended the rule as proposed.

3. No comments or testimony were received.

JIM WALTERMIRE
Secretary of State

Dated this 17th day of December, 1984

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

| | | |
|---|---|---|
| In the matter of the amendment of Rule 46.12.513 pertaining to reimbursement for swing-bed hospitals; medical assistance | ) ) ) ) | NOTICE OF THE AMENDMENT OF RULE 46.12.513 PERTAINING TO REIMBURSEMENT FOR SWING-BED HOSPITALS; MEDICAL ASSISTANCE |

TO: All Interested Persons

1. On November 15, 1984, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.513 pertaining to reimbursement for swing-bed hospitals; medical assistance at page 1627 of the Montana Administrative Register, issue number 21.

2. The Department has amended Rule 46.12.513 as proposed.

3. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1984.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Known Subject Matter

1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1984. This table includes those rules adopted during the period October 1, 1984 through December 31, 1984, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1984, 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 1984 Montana Administrative Registers.

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