MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.10.1806 relating to fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 2, 2000, the Montana Department of Agriculture proposes to amend ARM 4.10.1806 relating to fees.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rule making process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on December 22, 1999, to advise us of the nature of the accommodation that you need. Please contact Gary Gingery at P.O. Box 200201, Helena, MT 59620-0201; Phone: 406-444-2944; TDD Phone: 406-444-4687; Fax: 406-444-7336.

3. The rule as proposed to be amended provides as follows (new material is underlined; material to be deleted is interlined).

4.10.1806 FEES (1) Participants in the disposal program must pay a fee of $1.00 ~~$2.00~~ per pound for disposal of acceptable pesticides in which the total quantity is less than or equal to 200 pounds. The minimum charge for participation in the program will be $5.00.

(2) Participants in the disposal program who dispose of total quantities of acceptable pesticides greater than 200 pounds must pay a fee of $1.00 ~~$2.00~~ per pound for the first 200 pounds and $.50 ~~$1.00~~ per pound for additional amounts over 200 pounds.

AUTH: 80-8-105, MCA
IMP: 80-8-111, 80-8-112, MCA

Reason: Participants in the pesticide disposal program pay a fee for disposal of unusable pesticides. Upon renewal of the hazardous waste contractor's contract the price for disposal was significantly reduced. The department is, therefore, proposing to reduce the participant disposal fee to reflect this reduction in operating cost. The current fee is $2.00 per pound for up to 200 pounds and $1.00 per pound for amounts over 200 pounds. The proposed fee is $1.00 per pound for amounts up to 200 pounds and $.50 per pound for amounts over 200 pounds. It is hoped by the department that this proposed fee reduction will increase participation in the program

resulting in greater quantities of unusable pesticides being disposed.

4. As required by 2-4-302(1)(a) and (b), MCA the department estimates the impact of the proposed fee reduction to result in a 50 percent cost savings to participate in the program compared to previous collection events. If the same number of participants and the same number of pounds are collected during the next 5 years, the estimated average collective savings to participants per year would be approximately $14,000.

The change in the number of participants in the next 5 years of the Pesticide Collection Program as a result of the fee reduction is unknown. It is hoped that participation and the amount of pesticide registered for disposal will increase because of the reduced cost of disposal. However, pesticide collection events were held throughout the state during the past 5 years, that may have resulted in the disposal of much of the stored pesticide inventory leaving fewer individuals with less pesticide in need of disposal. On the other hand, the cost of disposal during the previous 5 years may have been perceived to be too costly with unusable pesticides remaining in storage. The number of participants may now increase because of the significantly reduced cost for disposal under the proposed rule change.

5. Concerned persons may submit their data, views or arguments concerning this proposed action in writing to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201; FAX: 406-444-7336, or E-mail: agr@state.mt.us no later than December 31, 1999.

6. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 or E-mail: agr@state.mt.us. Any comments must be received no later than December 31, 1999.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review 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 200 persons based on 2000 licensed applicators and dealers.

8. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, feed, apiculture, fertilizer, commodity dealers and warehouseman, produce, mint, seed, alternative crops, agriculture heritage program, wheat research and marketing, rural development, and/or hail. Such written request may be mailed or delivered to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, faxed to the office at 406-444-7336, or E-mail agr@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

9. The bill sponsor notification requirements of 2-4-302, MCA do not apply. However, the department has taken appropriate steps to notify interested legislators.

DEPARTMENT OF AGRICULTURE

Ralph Peck
Director

Tim Meloy
Attorney

Certified to the Secretary of State November 22, 1999.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications for license, fees, minimum standards for licensure, continuing education requirements	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.13.301 APPLICATIONS FOR LICENSE, 8.13.303 FEES, 8.13.305 MINIMUM STANDARDS FOR LICENSURE, 8.13.306 CONTINUING EDUCATION

TO: All Concerned Persons

1. On January 24, 2000, at 9:00 a.m., a public hearing will be held in the Lower Level Conference Room, Arcade Building, 111 North Last Chance Gulch, Helena, Montana, to consider the proposed amendments of the above-stated rules.

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

"8.13.301 APPLICATIONS FOR LICENSE (1) through (4) remain the same.

(5) An incomplete application shall be returned to the applicant with a statement regarding incomplete portions. The applicant must correct any deficiencies and resubmit the application within 10 days of the date of the request for information unless extenuating circumstances are incurred by the applicant. Failure to resubmit the application shall be treated as a voluntary withdrawal of the application.

(6) remains the same."

Auth: Sec. 37-34-201, MCA
IMP: Sec. 37-34-201, 37-34-305, MCA

REASON: The proposed amendment will clarify the timeframe in which an applicant is required to return the application so that applications are not pending indefinitely.

"8.13.303 FEES (1) through (2)(b) remain the same.

(c) active renewal fee	45
(d) inactive renewal fee	25

(d) through (h) remain the same but will be renumbered (e) through (i)."

Auth: Sec. 37-34-201, MCA
IMP: Sec. 37-34-201, MCA

REASON: The proposed amendment will provide a separate fee for an inactive renewal as referred to in ARM 8.13.307. The fee is set commensurate with costs of the other fees respective to the program costs.

"8.13.305 MINIMUM STANDARDS FOR LICENSURE (1) remains the same.

(2) Examinations administered by the following national certification agencies are approved by the board:

(a) American association of clinical chemists (AACC);

(b) American medical technologist (AMT);

(c) American society of clinical pathologist (ASCP);

(d) American society of microbiology (ASM);

(e) international society for clinical laboratory technology (ISCLT); or

(f) national certification agency (NCA)."

Auth: Sec. 37-34-201, MCA
IMP: Sec. 37-34-303, MCA

REASON: The amendment will provide in the rules a listing of the national certification agencies that administer certifying examinations the board has approved and accepted.

"8.13.306 CONTINUING EDUCATION REQUIREMENTS (1) through (1)(b) remain the same.

(c) Ten hours of ~~All~~ continuing education credits must be germane to the profession. The remaining four hours can be non-germane, but ~~and~~ must contribute to the professional competence of a clinical laboratory science practitioner.

(2) remains the same.

(a) Any continuing education offered or approved by the following:

(i) American society of clinical pathologists (ASCP);

(ii) national certifying agency (NCA);

(iii) American medical technologists (AMT);

(iv) American society of clinical laboratory science (ASCLS);

(v) national laboratory training network (NLTN);

(vi) laboratory education for North Dakota (LEND);

(vii) Colorado association for continuing medical laboratory education (CACMLE);

(viii) American association of blood banks (AABB);

(ix) American association of clinical chemists (AACC);

(x) ~~the~~ American society for microbiologists (ASM);

(xi) ~~the~~ association of cytogenetic technologists (ACT);

(xii) ~~the~~ international society for clinical laboratory technology (ISCLT);

(xiii) ~~the~~ American association of bioanalysts (AAB);

(xiv) Mayo medical laboratories;

(xv) professional societies in any of the 50 states; or

(xvi) ~~the~~ clinical laboratory management association (CLMA).

(b) through (3)(d) remain the same."

Auth: Sec. 37-34-201, MCA
IMP: Sec. 37-34-201, MCA

REASON: The board is proposing to amend the continuing education requirement to allow four hours of continuing education that is non-germane to the profession. The board considers this to be beneficial to the licensee in his/her practice as a clinical laboratory science practitioner. The amendment in (2) just outlines the pre-approved providers of continuing education to make it easier to read.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., January 18, 2000, to advise us of the nature of the accommodation that you need. Please contact Becky Salminen, Board of Clinical Laboratory Science Practitioners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3561; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Becky Salminen.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Clinical Laboratory Science Practitioners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., January 24, 2000.

5. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Clinical Laboratory Science Practitioners administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Clinical Laboratory Science Practitioners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3561.

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

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
SONJA BENNETT, CHAIRPERSON

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 22, 1999.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to qualifying education requirements, adoption of USPAP) by reference, and the proposed adoption of a new rule pertaining to regulatory reviews	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.57.406 QUALIFYING EDUCATION REQUIREMENTS, 8.57.413 ADOPTION OF USPAP BY REFERENCE, AND THE ADOPTION OF NEW RULE I REGULATORY REVIEWS

TO: All Concerned Persons

1. On January 24, 2000, at 10:00 a.m., a public hearing will be held in the Lower Level Conference Room, Arcade Building, 111 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

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

"8.57.406 QUALIFYING EDUCATION REQUIREMENTS

(1) through (12) remain the same.

(13) Instructors of the uniform standards of professional appraisal practice (USPAP) course must provide proof to the board of annually attending the update course provided by the appraisal standards board of the appraisal foundation."

Auth: Sec. 37-1-131, 37-54-105, MCA
IMP: Sec. 37-1-131, 37-54-105, 37-54-202, ~~37-54-203,~~ MCA

REASON: The proposed amendment will provide clarification to the education providers that they need to attend the USPAP course each year to obtain updated materials. This requirement will ensure that the courses being taught contain the most recent standards of professional appraisal practice.

"8.57.413 ADOPTION OF USPAP BY REFERENCE (1) The board hereby adopts and incorporates by reference the uniform standards of professional appraisal practice (USPAP) of the appraisal foundation ~~as defined in ARM 8.57.401(6)~~. Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900, Washington, D.C. 20005-3317, or may be reviewed in the office of the board at 111 N. Jackson, Helena, Montana."

Auth: Sec. 37-54-105, MCA
IMP: Sec. 37-54-105, 37-54-403, MCA

REASON: The proposed amendment will remove a citation to an administrative rule that was repealed and provides an address where the incorporated reference can be obtained or reviewed.

3. The proposed new rule will read as follows:

"I. REGULATORY REVIEWS (1) The board may request, by a random selection, that licensed/certified real estate appraisers submit a copy of an appraisal report for review for compliance with the standards of professional appraisal practice.

(2) All licensed/certified real estate appraisers shall comply with a request of the board. Failure to comply with a request constitutes grounds for unprofessional conduct under 37-1-136, MCA."

Auth: Sec. 37-54-105, MCA
IMP: Sec. 37-1-136, 37-54-416, MCA

REASON: The board is proposing the new rule to set forth the process of conducting a random review of appraisal reports for licensed/certified real estate appraisers. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310 et seq., intends for states to supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals. This requirement will provide an avenue for the board to review the professional competence of licensees.

4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., January 18, 2000, to advise us of the nature of the accommodation that you need. Please contact Becky Salminen, Board of Real Estate Appraisers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3561; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Becky Salminen.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Real Estate Appraisers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., January 24, 2000.

6. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

7. Persons who wish to be informed of all Board of Real Estate Appraisers administrative rulemaking proceedings or other administrative proceedings may be placed on a list of

interested persons by advising the Board at the hearing or in writing to the Board of Real Estate Appraisers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3561.

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

BOARD OF REAL ESTATE APPRAISERS
JEANNIE FLECHSENHAR, CHAIRPERSON

BY: Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 22, 1999.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the mater of the proposed amendment, repeal and adoption of rules pertaining to the board of investments	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE BOARD OF INVESTMENTS

TO: All Concerned Persons

1. On January 4, 2000, at 9:00 a.m., a public hearing will be held in the conference room of the Board of Investments, 2401 Colonial Drive, Third Floor Conference Room, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to the Board of Investments.

2. The proposed amendment of ARM 8.97.1101, 8.97.1201, 8.97.1202, 8.97.1301, 8.97.1502 and 8.97.2102 will read as follows: (new matter underlined, deleted matter interlined)

"8.97.1101 ORGANIZATIONAL RULE ~~(1) The Montana board of investments and economic development board were merged in 1987 by chapter 581 to form a new board of investments.~~

~~(2)~~ (1) The board is a quasi-judicial board as defined in 2-15-124, MCA, consist~~s~~ing of nine members appointed by the governor ~~in the manner prescribed by 2-15-124~~, pursuant to 2-15-1808, MCA. The members consist of one member from the public employee~~'~~s' retirement board provided for in 2-15-1009, MCA, one member from the teachers' retirement board provided in 2-15-1010, MCA, and seven members who provide a balance of professional expertise, public interest, and public accountability, and who are informed and experienced in the subject of investment and who are representative of the financial community, agriculture, and labor.

~~(3)~~ (2) The board is allocated to the department of commerce for administrative purposes ~~as prescribed in~~ pursuant to 2-15-121, MCA. The board has authority to employ ~~an~~ chief investment officer, ~~an assistant investment officer~~, and an executive director who have general responsibility for selection and management of the board's staff and for direct investment and economic development activities. The chief investment officer, ~~assistant investment officer and~~ executive director and six professional staff are exempt from the state classification system pursuant to 2-18-103, MCA, and serve at the pleasure of the board. The board prescribes the duties and annual salaries of ~~the investment officer, assistant investment officer, executive director and three professional~~ staff positions exempt from the state classification system. A chart of the organization of the department can be found in ARM 8.1.101~~(5)~~, and the board hereby adopts and incorporates the chart by reference into its organizational rule.

~~(4)~~ (3) Inquiries ~~and applications~~ regarding the board may be addressed to the ~~chairman of the~~ Montana Board of

Investments, ~~Capitol Station,~~ PO Box 200216, Helena, Montana 59620-0126."

Auth: Sec. 2-4-201, 17-6-201, 17-6-324, MCA; IMP, Sec. 2-4-201, 17-6-201, 17-6-324, MCA

"8.97.1201 CITIZEN PARTICIPATION RULES (1) The board hereby adopts and incorporates by reference the citizen participation rules of the department of commerce as set forth in ARM 8.2.201 through 8.2.207. A copy of these rules may be obtained from the ~~chairman of the~~ Montana Board of Investments, ~~Capitol Station,~~ PO Box 200126, Helena, Montana 59620-0126."

Auth: Sec. 2-4-201, 17-6-324, MCA; IMP, Sec. 2-4-201, 17-6-324, MCA

"8.97.1202 PROCEDURAL RULES (1) The board hereby adopts and incorporates by reference ~~rules 1 through 28 of~~ ARM 1.3.204 through 1.3.233, the Attorney General's Model Procedural Rules. A copy of these rules may be obtained from the ~~chairman of the~~ Montana Board of Investments, ~~Capitol Station,~~ PO Box 200126, Helena, Montana 59620-0126. Hearings on applications shall not be considered contested cases."

Auth: Sec. 2-4-201, 17-6-324, MCA; IMP, Sec. 2-4-201, 17-6-324, MCA

"8.97.1301 DEFINITIONS ~~In addition to the definitions set forth in 17-5-1503 and 17-6-302, MCA, the following definitions apply in all subchapters contained in Title 8, chapter 97, of these rules:~~

~~(1) "ALTA" means American land title association.~~

~~(2) "Appraisal" means an opinion of an appraiser on the nature, quality, value or utility of specific interests in or aspects of identified real estate.~~

(3) will remain the same, but will be renumbered (1).

(2) "Loan program" means loans funded from the Montana permanent coal tax trust pursuant to 17-6-305 and 17-6-308, MCA.

(4) through (4)(b) will remain the same, but will be renumbered (3) through (3)(b).

~~(5) "Classified loan" means a loan which has been reviewed by a state or federal supervisory agency and determined to be an undue and unwarranted credit risk and classified as substandard, doubtful, a loss or in some other equivalent category.~~

~~(6) "Commercial bank" means any bank authorized by law to receive deposits of money, deal in commercial paper or make loans thereon, lend money on real or personal property, discount bills, notes or other commercial papers, and buy and sell securities, gold and silver bullion, foreign coins or bills of exchange.~~

~~(7) "Commercial loan" means a loan to a business, with location(s) in Montana or based in Montana, secured by real property, and which may be secured by personal property if funded with coal tax funds.~~

(8) will remain the same but will be renumbered (4).

~~(9) "Construction take-out loan" means a loan secured by a recently constructed dwelling or a recently remodeled dwelling which is finished and ready for occupancy.~~

~~(10) "Conventional offering" means loans secured by one to four family dwellings.~~

~~(11) "Day" means a business working day and excludes weekends and recognized state holidays.~~

~~(12) "FHA" means federal housing administration.~~

~~(13) "FHLMC" (Freddie Mac) means federal home loan mortgage corporation.~~

~~(14)~~ (5) "Financial institution" means an institution approved by the board that~~:~~

(a) is a state or federally-chartered bank, savings and loan association, credit union, mortgage company, mortgage servicing company, development credit corporation, investment company, trust company, savings institution, small business investment company, insurance companies, public and private pension funds, credit and finance companies, specialized financiers~~,~~ or sophisticated institutional investors~~, or qualified Montana capital company; and~~

~~(b) is approved by the board as provided in ARM 8.97.1302.~~

~~(15) "FmHA" means farmers home administration.~~

~~(16) "FNMA" (Fannie Mae) means federal national mortgage association.~~

(17) will remain the same but will be renumbered (6).

~~(18) "Investment company" means an investment company as defined in 32-1-108, MCA.~~

~~(19) "Investment officer" means the person employed in such capacity by the board, pursuant to 2-15-1808, MCA.~~

~~(20) "Insider" means an executive officer, director or principal shareholder of the seller/servicer further defined under 12 CFR 215.4, Regulation O, of the federal reserve system. Loans to an insider include loans to any "related interest" including any company controlled by the insider.~~

~~(21)~~ (7) "Job credit interest rate reduction" means the interest rate reduction ~~credit~~ allocated for the creation of any job which pays at least 100% of the average weekly wage as defined in 39-71-116, MCA.

~~(22) "Lender" means the approved financial institution that will originate the application for a financial transaction.~~

~~(23) "Loan value" means an amount of the loan as a percent of the lower of cost or appraisal.~~

~~(24) "Manufactured home" means a modular structure which meets the FHLMC required characteristics for manufactured homes.~~

~~(25) "Multi-family" means a dwelling which contains five or more housing units.~~

~~(26) "Person" means any individual, sole proprietorship, partnership, corporation or other entity which is authorized by law to transact business in Montana.~~

~~(27)~~ (8) "Permanent full-time employee," as cited in 17-6-309(2), MCA, means an employee who is scheduled to work full-time (i.e. a minimum of 35-40 hours per week) for an indefinite period of time. Temporary or part-time employees, and employees on contract or supplied by personnel supply companies, are not to be counted for purposes of qualification for the loan (i.e. the employer must provide a W-2 to its employee).

~~(28) "Pooled IDB program" means the program established in ARM 8.97.503(4)(a).~~

~~(29) "Primary residence" means a one-to-four single family owner occupied home including land which is the principal residence of one of the mortgagor(s) and which meets the FHLMC definition of primary residence.~~

~~(30) "Prime rate" means the base rate on corporate loans quoted at large U.S. money center commercial banks as published by the Wall Street Journal.~~

~~(31)(a) "Regulatory agency" means only the following:~~

~~(i) department of commerce financial institutions division;~~

~~(ii) office of comptroller of currency (OCC);~~

~~(iii) federal reserve board (FRB);~~

~~(iv) federal deposit insurance corporation (FDIC);~~

~~(v) national credit union administration (NCUA);~~

~~(vi) office of thrift supervision (OTS);~~

~~(vii) securities and exchange commission (SEC).~~

~~(b) Any reference in these regulations to "regulatory agency" shall refer only to the agencies listed herein or their successors.~~

~~(c) Any requirements in these regulations that an entity may meet conditions imposed by this act by supplying submissions previously provided to regulatory agencies, shall only apply if the submission is to one of the agencies defined in this rule.~~

~~(32) "Regulated financial institution" means any financial institution which is governed by one or more of the regulatory agencies defined herein.~~

~~(33) "Residential" means a home mortgage secured on a structure or structures designed principally for residential use by not more than four families which includes conventional, FHA and VA mortgage loans.~~

~~(34) "Savings and loan" means a corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans on real estate mortgage security under the supervision of the department of commerce.~~

~~(35) "Savings bank" means a bank organized only for the purpose of accumulating and loaning the funds of its members, stockholders and depositors, and which may exercise the powers set forth in 32-1-106, MCA.~~

~~(36) "SBA" means small business administration.~~

~~(37) "Seasoned loan" means any mortgage loan which has been closed and carried on the seller/servicer's books for more than one year.~~

(38) will remain the same but will be renumbered (9).

(10) "Service fees" means the fees charged by sellers/servicers as defined in 17-6-302(11), MCA, for servicing loans, including the collection of payments and remitting payments to the board.

(11) "Nonprofit corporation" means a corporation as per internal revenue service regulations.

~~(39)~~ (12) "Small-and medium-sized business," as used in 17-6-309(1)(f), MCA, means a those businesses defined by the board in written loan policy based on business net worth, average net income, number of employees or other criteria established by the board. ~~that has a net worth less than $6 million; has an average net income, after federal income taxes, for the preceding two years of less than $2 million (average net income to be computed without benefit of any carryover loss); and has less than 200 employees employed in Montana.~~

~~(40) "Stand alone program" means the program established in ARM 8.97.503(4)(b).~~

~~(41) "Sweat equity" means work performed or materials provided by the borrower as part of a down payment in lieu of cash.~~

~~(42) "USPAP" means uniform standards of professional appraisal practice adopted by the appraisal standards board of appraisal foundation.~~

~~(43) "VA" means veterans administration.~~

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section, Sec. 17-5-1503, 17-5-1521, 17-6-324, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1503, 17-6-201, 17-6-211, 17-6-302, MCA

"8.97.1502 INTEREST RATE REDUCTION FOR LOANS FUNDED FROM THE COAL TAX TRUST (1) The board will provide an interest rate reduction to for-profit borrowers and non-profit borrowers based on the number of jobs the loan generates over a two-year period. A borrower who used the proceeds of a loan made pursuant to 17-6-309(2), MCA to create jobs is entitled to a job credit interest rate reduction for each job created in the four-year period provided for in 17-6-311(4)(a), MCA. The reductions will be made pursuant to 17-6-318, MCA. ~~The date of the formal written interim or permanent loan application to the seller/servicer will be used as a beginning date for counting jobs created. Except for local government borrowers, the interest rate reduction shall be limited to a maximum loan size of 1% of the permanent coal trust fund as of the month end preceding the application date for the interest rate reduction and calculated as follows:~~

~~(a) .05% reduction for each job created up to a maximum of 2.50%;~~

~~(b) If the job pays more than the average wage, job credit will be allowed for each 25% increment above the average wage to a maximum of two jobs; and~~

~~(c) If the job pays less than the average wage, job credit will be allowed for each 25% increment below the average wage.~~

~~(d) No partial job credit will be given unless one whole job is created.~~

~~(e) The business must make application in writing, through its financial institution, to the board providing satisfactory evidence of the creation of jobs.~~

~~(i) The business may make application at the time the loan is delivered to the board or not later than 45 days after the first and second anniversary dates of the loan.~~

(f) and (g) will remain the same but will be renumbered (a) and (b).

~~(h) The investment officer or his designee has 15 working days to notify the business through its financial institution what action has been taken on its request to lower the interest rate on the board's portion of the note. Any reduction in the interest rate will be effective the next scheduled payment.~~

(2) through (4) will remain the same."

Auth: Sec. 17-6-308, 17-6-324, MCA; IMP, Sec. 17-6-304, 17-6-308, MCA

"8.97.2102 GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS (1) Section 75-1-201, MCA, requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare ~~a detailed statement~~ (an environmental impact statement ~~EIS~~) on each proposal for projects, programs, legislation, and other major actions of state government specifically affecting the quality of the human environment. In order to determine the level of environmental review for each proposed action that is necessary to comply with 75-1-201, MCA, the agency shall apply the following criteria:

(1) will remain the same, but will be renumbered (a).

(a) and (b) will remain the same, but will be renumbered (i) and (ii).

(2) will remain the same, but will be renumbered (b).

(a) through (e) will remain the same, but will be renumbered (i) through (v).

(3) will remain the same, but will be renumbered (c).

(a) through (c) will remain the same, but will be renumbered (i) through (iii).

(4) and (5) will remain the same, but will be renumbered (d) and (e).

(a) through (f) will remain the same, but will renumbered (i) through (vi).

(6) will remain the same, but will renumbered (f).

(a) through (e) will remain the same but will be renumbered (i) through (v).

~~(f)~~ (vi) the purchase of all residential loans made ~~pursuant to Title 8, chapter 97, subchapter 14 of the Administrative Rules of Montana, including but not limited to FHA, conventional and VA loans;~~ with pension funds;

~~(g)~~ (vii) the purchase of all federally guaranteed loans ~~made pursuant to Title 8, chapter 97, subchapter 14 of the Administrative Rules of Montana~~;

~~(h)~~ (viii) the purchase of all residential multi-family loans ~~made pursuant to Title 8, chapter 97, subchapter 14 of the Administrative Rules of Montana~~;

~~(i)~~ (ix) all deposits made under the linked deposit program pursuant to ARM Title 8, chapter 97, subchapter 14 ~~of the Administrative Rules of Montana~~; and

(j) will remain the same, but will be renumbered (x).

(7) will remain the same, but will be renumbered (g)."

Auth: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-103, 75-1-201, MCA

3. The Board is proposing to repeal the following rules: (any implied sections listed as authority are sections that the Board of Investments felt had implied rulemaking authority when first adopting the rules.)

8.97.1302 SELLER/SERVICER APPROVAL PROCEDURES - GENERAL REQUIREMENTS (Auth: Sec. 17-5-1521, 17-6-324, MCA; IMP, Sec. 17-5-1521, 17-6-211, MCA), located at pages 8-3552 through 8-3552.2, Administrative Rules of Montana.

8.97.1303 FORWARD COMMITMENT FEES AND YIELD REQUIREMENTS FOR ALL LOANS (Auth: Sec. 17-5-1504, 17-5-1521, 17-6-311, 17-6-315, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-5121, 17-6-211, 17-6-304, 17-6-308, 17-6-315, 17-6-324, MCA), located at pages 8-3552.2 through 8-3553, Administrative Rules of Montana.

8.97.1304 CONFIDENTIALITY OF INFORMATION (Auth: Sec. 17-5-1504, 17-5-1521, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-324, MCA), located at page 8-3555, Administrative Rules of Montana.

8.97.1305 APPLICATION PROCEDURE (Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA), located at page 8-3556, Administrative Rules of Montana.

8.97.1306 FALSE OR MISLEADING STATEMENTS (Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA), located at pages 8-3556 and 8-3557, Administrative Rules of Montana.

8.97.1307 REVIEW OF APPLICATION AND APPEAL PROCEDURES (Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA), located at pages 8-3557 and 8-3558, Administrative Rules of Montana.

8.97.1401 RESIDENTIAL LOAN PROGRAMS - GENERAL REQUIREMENTS (Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA), located at pages 8-3561 and 8-3562, Administrative Rules of Montana.

8.97.1402 APPRAISALS (Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA) located at pages 8-3562 and 8-3563, Administrative Rules of Montana.

8.97.1403 CONVENTIONAL LOAN PROGRAM - GENERAL REQUIREMENTS (Auth: Sec. 17-6-201, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA), located at pages 8-3563 and 8-3564, Administrative Rules of Montana.

8.97.1404 CONVENTIONAL LOAN PROGRAM - PURPOSE AND LOAN RESTRICTIONS (Auth: Sec. 17-6-201, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA), located at pages 8-3564 through 8-3566, Administrative Rules of Montana.

8.97.1405 CONVENTIONAL LOAN PROGRAMS - OFFERING CHECKLIST (Auth: Sec. 17-6-201, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA), located at page 8-3566 through 8-3568, Administrative Rules of Montana.

8.97.1406 FHA AND VA LOAN PROGRAMS - GENERAL REQUIREMENTS (Auth: Sec. 17-6-201, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA), located at page 8-3568, Administrative Rules of Montana.

8.97.1407 FHA AND VA LOAN PROGRAMS - OFFERING CHECKLIST (Auth: IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-5-211, MCA), located at pages 8-3568 and 8-3569, Administrative Rules of Montana.

8.97.1408 FEDERALLY GUARANTEED LOAN PROGRAMS - GENERAL REQUIREMENTS (Auth: IMPLIED, Sec. 17-6-201, 17-6-324 MCA; IMP, Sec. 17-6-201, 17-6-211, MCA), located at pages 8-3569 and 8-3570, Administrative Rules of Montana.

8.97.1409 FEDERALLY GUARANTEED LOAN PROGRAMS - OFFERING CHECKLIST (Auth: IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA), located at pages 8-3570 and 8-3571, Administrative Rules of Montana.

8.97.1410 LOAN PROGRAMS FOR COMMERCIAL, MULTI-FAMILY AND NON-PROFIT CORPORATIONS - GENERAL REQUIREMENTS (Auth: Sec. 17-5-1504, 17-5-1521, 17-6-308, 17-6-315, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-211, 17-6-308, 17-6-315, 17-6-324, MCA), located at pages 8-3571 through 8-3573, Administrative Rules of Montana.

8.97.1411 LOAN PROGRAMS FOR COMMERICAL, MULTI-FAMILY AND NON-PROFIT CORPORATIONS - TERM AND LOAN LIMITS (Auth: Sec. 17-5-1503, 17-5-1521, 17-6-308, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-211, 17-6-308, 17-6-324, MCA), located at page 8-3573, Administrative Rules of Montana.

8.97.1412 LOAN PROGRAMS FOR COMMERCIAL, MULTI-FAMILY AND NON-PROFIT CORPORATIONS - OFFERING CHECKLIST (Auth: Sec. 17-5-1504, 17-5-1521, 17-6-308, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-304, 17-6-305, 17-6-308, 17-6-314, 17-6-324, MCA), located at pages 8-3573 through 8-3575, Administrative Rules of Montana.

8.97.1413 ECONOMIC DEVELOPMENT LINKED DEPOSIT PROGRAM - GENERAL REQUIREMENTS (Auth: Sec. 17-6-324, MCA; IMP, Sec. 17-6-324, MCA), located at pages 8-3575 and 8-3576, Administrative Rules of Montana.

8.97.1414 CONVENTIONAL, FHA, VA, COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS - ASSUMPTIONS (Auth: Sec. 17-5-1504, 17-5-1521, 17-6-201, MCA; IMPLIED, Sec. 17-6-201, 17-6-315, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-5-201, 17-6-211, 17-6-315, 17-6-324, MCA), located at page 8-3576, Administrative Rules of Montana.

8.97.1415 SELLER/SERVICER - LOAN DELINQUENCY FOR RESIDENTIAL, COMMERCIAL AND MULTI-FAMILY (Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMPLIED, Sec. 17-5-201, 17-6-324, MCA; IMP, Sec. 17-5-1501, 17-5-1521, 17-6-201, 17-6-324, MCA), located at pages 8-3577 through 8-3578, Administrative Rules of Montana.

8.97.1416 SELLER/SERVICER - LOAN FORECLOSURE FOR RESIDENTIAL, COMMERCIAL AND MULTI-FAMILY (Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1501, 17-5-1521, 17-6-201, 17-6-324, MCA), located at page 8-3578, Administrative Rules of Montana.

8.97.1501 INVESTMENT POLICY, CRITERIA AND PREFERENCES (Auth: Sec. 17-6-308, 17-6-324, MCA; IMP, Sec. 17-6-304, 17-6-305, 17-6-308, 17-6-314, 17-6-324, MCA), located at pages 8-3581 and 8-3582, Administrative Rules of Montana.

8.97.1503 LOAN PROGRAM FOR INFRASTRUCTURE LOANS - GENERAL DESCRIPTION (Auth: Sec. 17-6-308, 17-6-324, MCA; IMP, Sec. 17-6-304, 17-6-308, MCA), located at pages 8-3583 and 8-3584, Administrative Rules of Montana.

8.97.1504 APPLICATION PROCEDURE FOR INFRASTRUCTURE LOANS (Auth: Sec. 17-6-308, 17-6-324, MCA; IMP, Sec. 17-6-304, 17-6-308, MCA), located at pages 8-3584 and 8-3584.1, Administrative Rules of Montana.

8.97.1505 APPLICATION PROCEDURES FOR INFRASTRUCTURE LOAN PROGRAM - LOAN AGREEMENT, CLOSING FUNDING (Auth: Sec. 17-6-308, 17-6-324, MCA; IMP, Sec. 17-6-304, 17-6-308, MCA), located at page 8-3484.1, Administrative Rules of Montana.

8.97.1603 PURCHASE OF DEBENTURES OF QUALIFIED MONTANA CAPITAL COMPANIES (Auth: Sec. 17-6-324, MCA; IMP, Sec. 17-6-324, MCA), located at pages 8-3585 and 8-3586, Administrative Rules of Montana.

4. The proposed new rules will read as follows:

"I AUTHORIZED LOAN TYPES (1) The loan program includes the following types of loans for the Montana coal tax trust fund:

(a) federally guaranteed loans up to 100% of the guaranteed interest of loans guaranteed by the United States or any agency or instrumentality of the United States, including, but not limited to, the small business administration, the U.S. department of agriculture and the federal aviation administration;

(b) participation loans up to 80% in loans to Montana businesses. The board's security in a participation loan must be in the same proportion as the loan participation amount;

(c) linked deposit loans with financial institutions that utilize the deposits to fund loans to businesses. The financial institution retains all risk on loans financed with the proceeds of a linked deposit and the deposits are subject to the collateral and pledging requirements provided in 17-6-101 through 17-6-105, MCA, or such other collateral and pledging requirements as may be necessary to secure the deposits;

(d) infrastructure loans to local governments to finance infrastructure provided to businesses creating permanent, full-time jobs in the basic sector of the Montana economy. The local government borrower must demonstrate that the business for whom the infrastructure is provided has the ability to repay the loan upon the terms and conditions set by the board."

Auth: Sec. 17-6-342, MCA; IMP, Sec. 17-6-308, MCA

"II AUTHORIZED APPLICANTS (1) Except for infrastructure loans, the board is precluded from lending directly to borrowers by 17-6-201(3)(d), MCA. Financial institutions are authorized to apply for federally guaranteed, participation and linked deposit loans. Borrowers, including non-profit corporations, may only access these loans through a financial institution. Local governments may apply directly for infrastructure loans."

Auth: Sec. 17-6-324, 17-6-308, MCA; IMP, Sec. 17-6-308, 17-6-313, MCA

"III LOAN PROGRAM POLICIES (1) The board shall adopt underwriting policies, procedures and criteria for the various

types of loans it authorizes in the loan program. All policies, procedures and criteria must be approved at regularly scheduled board meetings. Policies and procedures developed and approved by the board may include, but are not limited to:

(a) seller/servicer approval criteria and procedures, including the application form;

(b) seller/servicer agreement forms, providing for loan servicing, loan monitoring, foreclosure procedures and suspension/revocation of seller/servicer approval;

(c) loan application forms and the type of information required on the application;

(d) how loan commitments are made and for what periods of time;

(e) the establishment of commitment fees, when those fees may be waived and what, if any, portion of the fee is retained if the loan application is rejected or withdrawn;

(f) the parameters and criteria for setting loan interest rates;

(g) the development and approval of loan underwriting policies for the various types of loans authorized by the board, including the level of authority granted staff to approve loans, and any appeals process available to loan applicants whose application is rejected;

(h) the setting of fees of interest rate buy-downs, loan assumptions and/or loan modifications;

(i) a definition of small and medium sized businesses, if required; and

(j) criteria for consideration of loans to non-profit corporations."

Auth: Sec. 17-6-324, 17-6-308, MCA; IMP, Sec. 17-6-308, 17-6-309, MCA

REASON: The section of rules being revised include rules applying to loans made from pension funds and the permanent coal tax trust. Many of the rules being repealed are rules promulgated for pension fund residential loans, for which there exists no legal authority for promulgating rules. The rationale for revising the permanent coal tax trust "in-state investment" rules is to provide the Board of Investments more flexibility in underwriting commercial loans from the trust and to make the loan program more user friendly.

The legislature recently enacted House Joint Resolution 6 which requests that the Board loan up to 25% (currently $150 million) of the trust in in-state loans. Outstanding loans are approximately only $90 million. Underwriting policies will be approved by the Board at its public meetings and be permanently attached to the loan application so all financial institutions will have ready access to the application and policy.

5. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish who wish to participate in this public hearing. If you wish to request

an accommodation, contact the Department no later than 5:00 p.m., December 20, 1999, to advise us of the nature of the accommodation that you need. Please contact Carroll South, Board of Investments, 2401 Colonial Drive, PO Box 200126, Helena, Montana 59620-0126; telephone (406) 444-0001; Montana Relay 1-800-2534091; TDD (406) 444-2978; facsimile (406) 449-6579. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Carroll South.

6. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data views or arguments may also be submitted to the Board of Investments, 2401 Colonial Drive, PO Box 200126, Helena, Montana, 59620-0126, or by facsimile number (406) 444-6579, to be received no later than 5:00 p.m., January 12, 2000.

7. Bob Pancich has been designated to preside over and conduct this hearing.

8. Persons who wish to be informed of all Board of Investments administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board at 2401 Colonial Drive, PO Box 200126, Helena, MT 59620-0126 or by phone at (406) 444-0001.

BOARD OF INVESTMENTS
TROY McGEE, CHAIRMAN

BY:

Anne M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Anne M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 22, 1999.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed repeal, amendment, and adoption of rules relating to school funding, budgeting, and transportation	NOTICE OF PUBLIC HEARING

TO: All Concerned Persons

1. On January 11, 2000, at 9:30 a.m., in the Superintendent's Conference Room (upstairs), 1227 11th Avenue, Helena, Montana, a public hearing will be held to consider the proposed repeal, amendment, and adoption of rules relating to school funding, budgeting, and transportation.

2. The Office of Public Instruction (OPI) will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this document. If you need accommodations, please contact Pat Reichert, (406) 444-4402, to advise OPI of the nature of the accommodation you need.

3. Statement of Reasonable Necessity. The OPI is proposing to repeal, amend and adopt administrative rules concerning school funding, budgeting, and transportation. These rule changes are necessary to clarify ambiguities in existing rule language, to conform to the changes in school funding enacted by the 1999 Legislature, and to adopt new rules on investment pools.

4. The rules proposed for repeal follow. Full text of the rules are found at pages 10-313, 10-329 and 10-338, Administrative Rules of Montana.

10.21.101A EXPLANATION OF THE PURPOSE OF STATEWIDE, AND DISTRICT GTB RATIOS
(AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

10.22.107 PETITION TO APPROPRIATE REVENUE TO FUND A PRIOR YEAR BUDGET AMENDMENT
(AUTH: 20-9-102, MCA; IMP: 20-9-168, MCA)

10.23.105 EXEMPTION FROM I-105
(AUTH: 20-9-102, MCA; IMP: 15-10-412, MCA)

5. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows.

10.7.101 INTRODUCTION (1) remains the same.

(2) The following list briefly states in chronological order the administrative steps for school transportation. This list is not a substitute for the more detailed requirements stated in these rules:

(a) through (e) remain the same.

(f) By the second Monday in September ~~1~~ the county superintendent must send the final budgets for the ensuing year to the superintendent of public instruction.

(g) through (y) remain the same.

(z) Whenever necessary, new transportation contracts ~~for students that become eligible~~ received by the school district after final budget adoption are completed by the board of trustees. The original contract is transmitted to the county superintendent. The county superintendent forwards the original to the superintendent of public instruction.

(aa) remains the same.

(ab) Whenever required, but no later than June 30, budget amendment proceedings must be completed to provide budget authority for ~~any transportation the district must provide for pupils who become eligible~~ additional pupil transportation obligations arising after final budget adoption and for which the contingency item is inadequate.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-9-134, 20-9-166, 20-10-101, 20-10-124, MCA)

10.7.106 CONTENTS AND LIMITATIONS OF PUPIL TRANSPORTATION CONTRACTS (1) remains the same.

(2) A school district may enter into a contract for the provision of individual transportation only if the student being transported is an eligible transportee of the district.

(a) An eligible transportee, as defined in 20-10-101, MCA, is deemed by law "to reside with a parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school."

(i) An emancipated minor may also be considered an eligible transportee if the other criteria of 20-10-101(2), MCA, are met.

(ii) Prekindergarten pupils with disabilities are considered eligible transportees regardless of distance between home and school or bus stop.

(b) through (d) remain the same.

(e) ~~In accordance with 20-10-124(2), MCA, with sufficient notice, a school district may refuse to approve an individual contract that is submitted to the district after the fourth Monday in June unless the pupil is an eligible transportee who establishes residence in the district after the fourth Monday in June.~~ The state may honor valid individual contracts which are approved by the district after ~~that date~~ the budget has been adopted as per ARM 10.7.107.

(f) remains the same.

(3) through (8) remain the same.

(9) If the distance from the student's home to the nearest bus stop or school decreases during the term of the individual contract, the district must amend the contract to reflect the lower mileage and must notify the superintendent of public instruction and the county superintendent of the date the lowered mileage became effective. The superintendent of public instruction will recalculate the daily reimbursement rate and will ~~apply that rate to the number of days the student is transported after the effective date the distance changed~~ assign a new contract number to the amended contract. The school district must claim the number of days that transportation occurs at each distance on the TR-5 school district claim for individual transportation reimbursement.

(10) and (11) remain the same.

(12) The district clerk transmits each transportation contract to the county superintendent ~~no later than~~ by July 1, or as received and accepted by the board of trustees.

(13) By July 10, or as received from the district, the county superintendent transmits the original copy of each transportation contract to the superintendent of public instruction. All individual contracts made between the same parent or legal guardian and different school districts (in the same county or in different counties) are gathered by the superintendent of public instruction and allocation of district responsibility for payment is made in compliance with the law and the board of public education policy. (20-10-111 and 20-10-112, MCA.)

(14) By mid-October, the superintendent of public instruction provides approved contract rates to the county superintendent and ~~the~~ to each district ~~official of the district providing the contract~~ clerk of a district providing individual contracts for transportation.

(15) remains the same.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-9-166, 20-10-101, 20-10-124, MCA)

10.7.107 CONTINGENCY TRANSPORTATION AND BUDGET AMENDMENTS FOR TRANSPORTATION (1) through (3) remain the same.

(4) The on-schedule costs associated with the contingency transportation, in excess of the contingency amount, are reimbursable by the state and county only upon adoption of a budget amendment ~~for unusual enrollment~~ increase as provided by 20-9-161 through 20-9-168, MCA, and, either county transportation committee approval of new or altered bus routes or district approval of new individual transportation contracts, and state approval of such transportation.

(a) and (b) remain the same.

(5) The over-schedule costs of the contingency transportation shall be paid by the district~~.~~ and

~~(a) The district costs shall be~~ funded by:

~~(i)~~ (a) ~~t~~The district's transportation reserves;

~~(ii)~~ (b) ~~b~~Budget transfers from other line items in the transportation fund as provided in 20-9-208, MCA, if available; and

~~(iii)~~(c) aAny levy assessed against the taxpayers of the district for purposes of funding the budget amendment. (AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-9-166, MCA)

10.7.110 STANDARDS FOR SCHOOL BUSES (1) Section 20-10-141, MCA, establishes a schedule of bus transportation expenditures reimbursable from state funds. Reimbursable bus transportation shall be made on vehicles that are in compliance with 20-10-101, MCA, and that meet the definition of school bus under state and federal law. ~~Vans that carry 9 passengers or fewer~~ Motor vehicles designed to carry 10 or fewer persons do not meet the definition of a school bus and are not eligible for route reimbursement. To be eligible for reimbursement, ~~vans that carry 10 passengers or more~~ motor vehicles that carry more than 10 persons must meet the school bus standards set by the board of public education for school buses in Montana and must pass semiannual inspection by the highway patrol.

(2) through (5) remain the same.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-101, 20-10-141, MCA)

10.7.112 SUMMARY OF REQUIREMENTS FOR BUS TRANSPORTATION FOR ELIGIBILITY FOR STATE REIMBURSEMENT (1) remains the same.

(2) The route must be approved by the county transportation committee. (20-10-132, MCA.)

(a) ~~If a district's bus route crosses the district boundary into another district's transportation service area~~ A district may not extend a bus route to transport pupils from outside its transportation service area unless the district has a written agreement with the district that the county transportation committee has assigned to transport the pupils. ~~wWithout~~ a written agreement between districts authorizing the route, the county transportation committee must withdraw its approval of the entire route. (20-10-126, MCA.)

(b) remains the same.

(3) through (7) remain the same.

(8) When the board of trustees changes a route's mileage per day, or if a different school bus is used on the route, the trustees must amend the TR-1 bus route form, show the effective date of the change, submit it first to the county transportation committee for approval and then to the superintendent of public instruction. When the claims for payments are submitted, the district will report the number of days the route operated at each mileage amount or number of days that each bus operated on the route. The superintendent of public instruction will adjust the reimbursement for the route and will pay the adjusted rate for days the route operates after the date the change in mileage or bus became effective, subject to constraints of the budget or budget amendments.

(9) remains the same.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-126, 20-10-141, MCA)

10.7.113 "TWO CONTRACT AMOUNT" REGULATION (1) The law which establishes the schedule governing payments to families prohibits paying more than one contract amount to any family. (An exception is noted in 20-10-142, MCA.) To comply with this law, the following rules have been adopted:

(a) and (b) remain the same.

(c) If, because of a half-day preschool or kindergarten program, a parent or guardian must make a separate trip to transport an eligible preschool or kindergarten transportee from the school or bus stop, the parent or guardian is eligible for reimbursement for this trip. A separate TR-4 form shall be used for this trip.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-142, MCA)

10.7.116 ISOLATION ALLOWED TO INCREASE THE INDIVIDUAL TRANSPORTATION RATE (1) through (3) remain the same.

(4) The board of trustees must consider and approve or disapprove all requests for an increase in an individual transportation rate due to isolation. All board of trustee decisions must be reviewed by the county transportation committee and the superintendent of public instruction who both have final authority over any decision of the board of trustees. The increased rate is 1 1/2 times the rate prescribed in 20-10-142, MCA. The board of trustees is not required to approve requests for increased rates because of isolation, and the county transportation committee is not required to approve increased payments because of isolation. State approval is required for all increases in rates granted locally.

(5) remains the same.

(AUTH: Sec. 20-3-106, 20-10-112, MCA; IMP: 20-10-142, MCA)

10.7.118 SCHOOL TRANSPORTATION FORMS LISTED BY FORM NUMBER (1) Form TR-1, Combined School District Application for Registration of School Bus and State Reimbursement:

(a) remains the same.

(b) Copies of forms mailed to ~~county superintendents~~ district officials by September 10 of each year;

(c) through (e) remain the same.

(2) remains the same.

(3) Form TR-4, Elementary and High School Individual Transportation Contract:

(a) through (c) remain the same.

(d) Forms completed by families and district officials by fourth Monday in June or as accepted by the district;

(e) Completed forms due in the county superintendent's office by July 1 or as received from the district;

(f) Original copy of each contract transmitted by the county superintendent to the superintendent of public instruction by July 10 or as received from the county;

(g) remains the same.

(4) through (9) remain the same.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-9-166, 20-10-112, MCA)

10.10.206 INSUFFICIENT CASH AVAILABLE (1) If the sum of the cash available in all funds of the district is insufficient to finance the transfers to the clearing accounts, a warrant must be issued from the depleted budgeted fund(s) for transfer to the clearing accounts. This transfer warrant must be registered by the county treasurer as outlined in ~~section~~ 20-9-212~~(9)~~, MCA.

(2) As an alternative, the district may temporarily abandon use of the clearing accounts, draw warrants against each fund, and register warrants as provided in ~~section~~ 20-9-212~~(9)~~, MCA. School districts may also issue revenue anticipation notes through the economic development board of the department of commerce to provide temporary financing to pay warrants issued against budgeted funds. In addition, ~~section~~ 7-6-2701, MCA, allows counties to invest in the registered warrants of school districts.

(AUTH: 20-9-102, 20-9-201, 20-9-220, MCA; IMP: 20-9-220, MCA)

10.10.301 CALCULATING TUITION RATES (1) The maximum regular education tuition rate a district may charge for the ensuing school year is ~~40%~~ equal to 80% of the maximum per ANB entitlement less the state's share of the maximum per ANB entitlement established in 20-9-306, MCA, as of March 15th. For a kindergarten student and a pre-school child with disabilities the rate is one-half the rate for an elementary student.

(2) through (4) remain the same.

(5) The calculations in this rule are the maximum tuition rates that a district may charge.

(a) Pursuant to 20-5-320 and 20-5-321, MCA, the trustees may waive any or all of the calculated tuition amount, but any waiver must be applied equally to all students in the district's elementary or high school program. Trustees may set different tuition rates for elementary and high school programs, including programs offered by an elementary district and high school district operated under a combined board or a K-12 district.

(i) and (ii) remain the same.

(b) remains the same.

(AUTH: 20-5-305, 20-5-312, 20-9-102, 20-9-201, MCA; IMP: 20-5-323, MCA)

10.10.306 BANK ACCOUNTS OR OTHER DEPOSITORIES (1) As provided by 20-9-212 and 20-9-504, MCA, the county treasurer is the custodian and depository of all school district monies except student extracurricular funds. Other bank accounts or depositories outside the control of the county treasurer shall be limited to accounts with the state board of investments or investment firms maintaining a unified investment program in accordance with [RULE I], petty cash accounts, interim depository accounts for school lunch or driver's education

fees, and gifts or endowments if such accounts are required by the donor. The county treasurer shall be the custodian for all other school district monies, including gifts, donations, endowments, interlocal agreements, direct federal or state revenues and district administered self-insurance programs. (AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-212, MCA)

10.10.308 COUNTY INVESTMENT OF SCHOOL DISTRICT FUNDS - ~~PENALTY~~ (1) and (2) remain the same.
(AUTH: 20-9-102, MCA; IMP: 20-9-212, MCA)

10.10.311 BUS DEPRECIATION RESERVE FUND (1) through (4) remain the same.

~~(5)~~(6) The bus depreciation reserve fund shall not be used to depreciate or replace ~~vans~~ motor vehicles designed to carry 10 or fewer ~~than 10 passengers~~ persons ~~that do not meet bus standards~~.

(6) remains the same but is renumbered (7).

(7) remains the same but is renumbered (5).

~~(8) A district may not increase the total number of operational buses owned by the district by purchasing a bus from the depreciation fund.~~

~~(9)~~(8) ~~The bus depreciation fund may only be used to replace buses owned by the district.~~ The trustees of a district may use the bus depreciation reserve fund to replace or purchase an additional school bus as defined in 20-10-101(4)(a), MCA. Additional buses that do not meet the definition of a school bus in 20-10-101(4)(a) and that result in expansion of the district's fleet must be purchased from the general, transportation, student activity, or other fund as allowed by law.
(AUTH: 20-9-102, MCA; IMP: 20-10-147, MCA)

10.10.401 DEFINITION (1) remains the same.

(2) The primary authoritative source on the application of GAAP to school districts is the governmental accounting standards board (GASB). The basic accounting principles are explained in detail in the "Codification of Governmental Accounting and Financial Reporting Standards" published by GASB. ~~In Statement 1, GASB sets forth the authoritative status of the statements and interpretations promulgated by financial reporting guidelines contained in the "Industry Audit Guide, Audits of State and Local Governments Units" (revised edition), issued by the American institute of certified public accountants (AICPA) in 1986. These pronouncements will remain in force until altered, amended, supplemented, revoked, or superseded by subsequent GASB pronouncements.~~

(3) remains the same.
(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-201, MCA)

10.10.502 FINANCIAL REPORTS FILED WITH THE SUPERINTENDENT OF PUBLIC INSTRUCTION (1) Monthly, quarterly, and annual financial reports shall be prepared by the administration of each school district and the county

superintendent of schools on paper forms or electronically as provided by the superintendent of public instruction. If a district or county superintendent chooses to generate their own paper forms, they will be accepted only if the format ~~and color coding~~ duplicates the pre-printed forms provided by the superintendent of public instruction.

(2) remains the same.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-213, MCA)

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) remains the same.

(2) "Attachment" means the combining of functions of a public elementary and a public high school district with the same boundaries or moving the territory of an elementary abandoned district to an adjacent district in the county.

(3) through (6) remain the same.

(7) "BASE budget" means the minimum general fund budget a district is allowed to adopt. It is the sum of: 80% of the district's basic and per-ANB entitlements; up to 140% of the district's special education allowable cost payment; and, up to 40% of the district's related services block grant payment to cooperatives. ~~Until FY 1998 some districts may adopt a general fund budget that is less than their BASE budget.~~

(8) through (10) remain the same.

(11) "Certified countywide elementary ANB" or "certified countywide high school ANB" means the number certified by OPI ~~on or before the fourth Monday in July~~ using the previous fiscal year countywide enrollment count. It is used to calculate mill values per ANB.

(12) "Certified statewide elementary ANB" or "certified statewide high school ANB" means the number certified by ~~OPI on or before the fourth Monday in July~~ using the previous fiscal year statewide enrollment count.

(13) through (17) remain the same.

(18) "Direct state aid" means state equalization aid paid to each district. The amount paid is equal to ~~40%~~ the percentage of the district's basic entitlements ~~and 40% of the district's per-ANB entitlement~~.

(19) "District guaranteed tax base (GTB) ratio" means the measure for determining if a district is eligible for general fund GTBA from the state to help fund the district's BASE budget. The ratio compares the district's tax base to the portion of its general fund BASE budget that must be funded with local revenue. As defined in 20-9-366, MCA, for the FY 199X+1 general fund budget the GTB ratio is the district's CY 199X-1 taxable valuation divided by the ~~sum of the district's FY 199X direct state aid, 40% of its special education allowable cost payment and 40% of its related service block grant payment to cooperatives~~ GTBA budget area.

(20) through (26) remain the same.

~~(27) "General bonus payment" means the amount of financial assistance received during a fiscal year by a school~~

~~district that reorganized under the voluntary consolidation and annexation incentive plan.~~

(28) and (29) remain the same but are renumbered (27) and 28).

~~(30)~~(29) "GTBA budget area" means the portion of a district's general fund BASE budget ~~between 40 and 80% of the basic and per ANB entitlement, plus up to 40% of the district's special education allowable cost payment and related services block grant payment to cooperatives~~ minus direct state aid and minus state special education allowable cost payments. For districts with lower than average tax bases, GTBA is paid to subsidize mills levied to fund the GTBA budget area.

(31) through (33) remain the same but are renumbered (30) through (32).

(33) "Motor vehicle reimbursement payment" means the distribution made by OPI to each school district, in accordance with 61-3-509, MCA, for the amount of the difference between light vehicle tax received by the district's general fund in FY 1999 and the amount of light vehicle tax received by the district's general fund in the prior fiscal year.

(34) through (47) remain the same.

(48) "State technology aid" means the amount distributed to schools in accordance with 20-9-343, MCA.

~~(48)~~(49) "Special education allowable cost payment" means the amount of the state special education appropriation distributed to a district for its special education program. It includes the district's instructional block grant payment, the related service block grant payment if the district is not a member of a cooperative, and the district's reimbursement for excess disproportionate costs under 20-9-321, MCA. When used in ARM Title 10, the term "special education allowable cost payment" does not include the related services block grant payment if a district is a member of a cooperative.

~~(49) "State payments" means direct state aid, GTBA paid to districts and to counties, state transportation aid, special education allowable cost payments, and related services block grant payments to cooperatives.~~

(50) remains the same.

(51) "Statewide elementary GTB ratio" or "statewide high school GTB ratio" for GTBA funding of eligible districts' FY 199X+1 BASE budgets means the ratio of 175% of the CY 199X-1 statewide taxable valuation to the statewide elementary or high school total of FY 199X ~~direct state aid plus 40% of 199X special education allowable cost payments plus 40% of related services block grant payments to cooperatives~~ GTBA budget area.

(52) through (55) remain the same.

(56) "Total per-ANB entitlement" means the sum of a district's per-ANB entitlements based on the previous fiscal year enrollment count certified by OPI ~~on or before the fourth Monday in July~~.

(57) remains the same.

(AUTH: 20-9-102, MCA; IMP: 20-9-321, 20-9-368, MCA)

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB) (1) through (13) remain the same.

(14) For the purposes of determining the BASE funding program of a district, ANB will be calculated using the following method:

(a) the enrollment reported by the school district on the October and February enrollment report forms to the office of public instruction, pursuant to 20-9-311, MCA, will be averaged by budget unit. After subtracting the prekindergarten enrollment and one-half of the kindergarten enrollment and adjusting for part-time enrollment from each report, the average will be multiplied by the total of PIR days plus PI days and divided by 180 to determine ANB;

By budget unit: [(enrollment for first Monday in October + enrollment for February 1) - (one-half the kindergarten enrollment) - (prekindergarten enrollment) - (one-half of part-time enrollment by grade category)] divided by 2 to get the average of the two enrollment counts by budget unit;

Then: average of two enrollment counts by budget unit, multiplied by the sum of PIR days plus PI days, divided by 180, rounded up to the next whole number, equals ANB.

(b) remains the same.

(AUTH: 20-9-102, 20-9-346, 20-9-369, MCA; IMP: 20-9-311, MCA)

10.20.103 CIRCUMSTANCES UNDER WHICH THE REGULAR ANB MAY BE INCREASED FOR THE ENSUING SCHOOL FISCAL YEAR (1) remains the same.

(2) A district that experiences an unanticipated enrollment increase after the beginning of the school fiscal year may apply to the superintendent of public instruction for an increase in the district direct state aid amount provided the unanticipated enrollment increase meets the requirements of ARM 10.20.105, and the district has adopted a budget amendment for the unanticipated enrollment increase in accordance with the provisions of 20-9-161 through 20-9-165, MCA, and ARM 10.22.201 through 10.22.206.

(a) remains the same.

(b) In order to be eligible to receive additional state assistance, the district must submit ~~the adopted~~ a petition for permission to adopt a budget amendment resolution due to an unanticipated enrollment increase to the superintendent of public instruction no later than May 31 of the school fiscal year to which the enrollment increase applies.

(3) remains the same.

(AUTH: 20-3-106, 20-9-102, MCA; IMP: 20-9-314, MCA)

10.20.104 ANTICIPATED UNUSUAL ENROLLMENT INCREASE - ANB CALCULATION (1) remains the same.

(2) The eligibility for ANB for the ensuing school fiscal year due to anticipated unusual elementary or high school enrollment increases will be computed as follows pursuant to 20-9-314, MCA:

(a) remains the same.

(b) Determine the enrollment counts for October and February of the current school year adjusted to remove one-half of the kindergarten enrollment and one-half of the part-time enrollment. ~~This~~ The average of the October and February adjusted enrollment counts is current year enrollment (CYE).

(c) remains the same.

(d) Determine the anticipated increase in enrollment as a percentage of the current year~~'s~~ enrollment by dividing the AEI calculated in (2)(c) by the current year enrollment. AEI/CYE = % increase.

(e) If the anticipated increase in enrollment as a percentage of the current year~~'s~~ enrollment calculated in (2)(d) exceeds 6%, the superintendent of public instruction shall approve increased ANB used to establish the ensuing year's BASE funding program and entitlement calculations in accordance with 20-9-314(5), MCA.

(3) remains the same.

(4) In accordance with 20-9-314(6), MCA, ~~after the next October enrollment count~~ the office of public instruction reviews the ANB of a district that used anticipated enrollment figures. ~~ANB is recalculated in accordance with ARM 10.20.104(2), using actual enrollment as of the 1st Monday in October in place of the anticipated enrollment. If the recalculated ANB based on the actual enrollment is less than the ANB used for funding, ARM 10.20.104(2) will be used to recalculate ANB using actual enrollment as of the next February count in place of the anticipated enrollment.~~, as follows:

(a) ANB is recalculated in accordance with (2), using actual enrollment as of the 1st Monday in October in place of the anticipated enrollment.

(b) If the ANB recalculated in (4)(a) based on the actual October enrollment equals or exceeds the ANB calculated in (3)(e), the anticipated unusual enrollment increase materialized and the district is entitled to the increased BASE funding and entitlements approved by the superintendent of public instruction in (2)(e).

(c) If the ANB recalculated in (4)(a) based on the actual October enrollment is less than the ANB used for funding, (2) will be used to recalculate ANB using actual enrollment as of the next February count in place of the anticipated enrollment.

(d) If the ANB recalculated in (4)(c) based on the actual February enrollment equals or exceeds the ANB calculated in (3)(e), the anticipated unusual enrollment increase materialized and the district is entitled to the increased BASE funding and entitlements approved by the superintendent of public instruction in (2)(e).

~~(a)~~(e) If the ANB recalculated ~~ANB~~ in (4)(c) based on the actual February enrollment ~~as of the 1st Monday in October or official February count~~ is less than the ANB used for funding, the anticipated unusual enrollment increase did not

materialize and the office of public instruction makes the following adjustments:

(i) the district's general fund budget of the current year will be adjusted, as needed, to comply with legal limitations and requirements ~~based on~~ using the ~~actual~~ higher of the ANB ~~as~~ recalculated in (4)(a) or (4)(c); and

(ii) direct state aid and guaranteed tax base subsidies will be adjusted to reflect the amount which should be paid on the district's adjusted budget.

(AUTH: 20-3-106, 20-9-102, MCA; IMP: 20-9-314, MCA)

10.20.105 UNANTICIPATED ENROLLMENT INCREASE (1) remains the same.

(2) The increased ANB for the current fiscal year is calculated as follows:

(a) through (c) remain the same.

(d) Add the ~~CYE~~ PYE by budget unit and the EI in excess of 6% by budget unit as calculated in (2)(c)(ii).

(e) remains the same.

(f) Round the result calculated in (2)(e) up to the next whole number to determine ANB ~~up to the nearest whole number~~.

(AUTH: 20-9-102, MCA; IMP: 20-9-314, MCA)

10.21.101B CALCULATION OF STATEWIDE RATIOS (1) The statewide elementary or high school GTB ratio for purposes of calculating FY 199X+1 general fund GTBA is: 1.75 x calendar year 199X-1 statewide taxable valuation / ~~[~~Total FY 199X elementary or high school ~~direct state aid + .40(total FY 199X elementary or high school special education allowable cost payments + related services block grant payments to cooperative)]~~ GTBA budget area.

(2) The statewide elementary or high school mill value per ANB for purposes of calculating FY 199X+1 retirement fund GTBA is: [(calendar year 199X-1 statewide taxable value x 1.21) / 1,000] / 199X statewide elementary or high school ANB certified for the adopted budget.

(AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

10.21.101C CALCULATION OF MILL VALUES PER ANB AND GTB RATIOS (1) through (3) remain the same.

(4) The notice to each district will also show the ~~direct state aid and special education instructional and related services block grant amounts~~ GTBA budget area used in the ~~numerator of the GTB ratio~~ determination of the general fund GTB subsidy per BASE mill for the district.

(5) remains the same.

(6) By April 25 OPI must be notified if two or more districts intend to consolidate or annex in the ensuing fiscal year. OPI will combine the districts' ANB, ~~direct state aid, special education entitlements,~~ GTBA budget area, and taxable values to calculate the combined district's final debt service GTB mill value per ANB and weighted GTB subsidy per mill(s) in the BASE budget levy.

(7) ~~By May 1~~ If material differences in statewide ratios are documented or legislative changes occur regarding the calculation, OPI will recalculate and notify all districts and counties by May 1 of the final state, county, and district mill values per ANB, final district general fund weighted GTB subsidy per mill(s) in the BASE budget levy, and final state GTB ratios.
(AUTH: 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

10.21.101D CALCULATION OF DISTRICT RATIO (1) A district's GTB ratio for purposes of calculating FY 199X+1 eligibility is: calendar year 199X-1 district taxable value / ~~[~~district's FY 199X ~~direct state aid + (40% of district's FY 199X special education allowable cost payment and related services block grant payment to cooperatives)]~~ GTBA budget area.
(AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

10.21.101E WHICH DISTRICTS QUALIFY FOR GTBA ON GENERAL FUND MILLS (1) and (2) remain the same.

~~(3) Districts that adopt general fund budget amendments in accordance with 20-9-168, MCA, are eligible for GTBA aid on mills levied to pay the amount of the budget amendment, if:~~

~~(a) the district is eligible for GTBA in the year the budget amendment mill levy is imposed; and~~

~~(b) the amount to be raised by the budget amendment mill levy when combined with the district's general fund budget for the current school year is less than or equal to the district's current year BASE budget.~~
(AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

10.21.101F CALCULATION OF GTBA TO QUALIFYING DISTRICTS (1) After receiving the certified BASE budget levies ~~and budget amendment mill levies meeting the requirements of ARM 10.23.103A~~, OPI will determine the amount of general fund GTBA a qualifying district will receive in FY 199X+1 using the following calculations:

(a) 199X+1 state elementary or high school GTB ratio * ~~(D~~district's 199X ~~direct state aid + 40% of district's 199X special education allowable cost payment and related services block grant to cooperatives~~ GTBA budget area~~)~~ = "A"

(b) remains the same.

(c) "B"/1000 = ~~D~~dollar amount of 199X+1 GTBA per mill levied. The ~~product~~ result will be rounded to the nearest whole dollar to determine the amount of the subsidy payment.

(2) remains the same.
(AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

10.21.101G SCHOOL DISTRICT BOUNDARY CHANGES (1) If the boundaries of a school district will change in the ensuing year, the office of public instruction must be notified by

April 25 of the year prior to the change. Upon notification of the change OPI will recalculate the district mill value per ANB and subsidy per mill for the ensuing year using the sum of the current year taxable valuations, ~~of the territories within the district and~~ the sum of the current year ANB, ~~direct state aid, and special education entitlements~~ and the sum of the GTBA budget areas of the territories within the district(s). (AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

10.21.101I SCHOOL FACILITY REIMBURSEMENTS (1) through (10) remain the same.

(11) Eligibility for a district with multiple bonding jurisdictions will be based on district ANB, district debt service mill value per ANB, and total district entitlement and obligations.

(11) remains the same but is renumbered (12).

(13) If a district refunds more than one bond and at least one of these original bonds is eligible for facilities reimbursement, the underwriter must provide schedule amounts representing the eligible proportion of the total of the refunded bonds.

(AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

10.21.102A GTBA ON GENERAL FUND AND RETIREMENT MILLS AND SCHOOL FACILITY AID (1) remains the same.

(2) A district qualifies for GTBA ~~or school facility reimbursement~~ if its taxable value relative to its funding obligation that must be met by local effort is less than the corresponding statewide mill value. A county qualifies for retirement fund GTBA and a district qualifies for school facility reimbursement if its mill value per ANB is less than the corresponding statewide mill value.

(3) remains the same.

(4) Retirement fund GTBA is paid to qualifying counties on the mills levied to support their countywide school retirement funds. A county qualifies for retirement fund GTBA if its mill value per ANB as calculated in ARM ~~10.21.101A~~ 10.21.102B is less than the corresponding statewide mill value per ANB as calculated in ARM 10.21.101B(2).

(5) remains the same.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

10.22.102 GENERAL FUND SPENDING LIMITS ~~(1) The trustees of an equalized district must adopt a general fund budget for the ensuing year that is at least equal to the ensuing year's BASE budget, but not greater than the ensuing year's maximum general fund budget.~~

~~(a) With voter approval, the trustees may adopt a general fund budget up to the greater of 104% of the current year's general fund budget or 104% of the current year's general fund budget per ANB times the ensuing year's ANB, but not more than~~

~~the ensuing year's maximum general fund budget and not less than the ensuing year's BASE budget.~~

~~(2) For a school district that was not equalized in the current year and whose current year general fund budget is at or between the BASE budget and maximum general fund budget established for the ensuing fiscal year, the trustees of the district must adopt a general fund budget that is at least equal to the ensuing year BASE budget and not more than the ensuing year's maximum budget. With voter approval, the trustees may adopt a general fund budget up to the greater of 104% of the current year's budget or 104% of the current year's budget per-ANB times the ensuing year's ANB, but not more than the ensuing year's maximum general fund budget.~~

~~(3) For a school district that was not equalized in the current year and whose current year general fund budget is greater than the maximum general fund budget established for the ensuing fiscal year, the trustees of the district must adopt a general fund budget that is at least equal to the ensuing year's BASE budget but not more than the ensuing year's maximum budget, without voter approval. With voter approval, the trustees may adopt a general fund budget up to the current year general fund budget.~~

~~(4) For a school district that was not equalized in the current year and whose current year general fund budget is greater than the maximum general fund budget established for the ensuing fiscal year, the trustees of the district must adopt a general fund budget that is at least equal to the ensuing year's BASE budget but not more than the ensuing year's maximum budget, without voter approval. With voter approval, the trustees may adopt a general fund budget up to the current year general fund budget.~~

~~(5) For purposes of determining the spending limit for a school district participating in a full service cooperative for special education programs, the BASE budget amount and maximum general fund budget may include a portion of the payments received by the full service cooperative in support of special education programs. OPI will notify each school district participating in a cooperative of its payments for use in setting its BASE budget and maximum general fund budget for the ensuing school fiscal year.~~

~~(6) OPI shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in 20-9-308, MCA. The superintendent of public instruction may request a revised budget from any district whose general fund budget is not within the limits using the guidelines established in ARM 10.10.503.~~

(1)(a) The trustees of a district that's current year budget does not exceed its ensuing year's maximum budget must adopt a budget for the ensuing year that is at least equal to the ensuing year's BASE budget, but not greater than the ensuing year's maximum budget.

(b) With voter approval for any increase in the over-BASE levy amount, the trustees may adopt a budget up to the greater of 104% of the current year's budget or 104% of the

current year's budget per-ANB times the ensuing year's ANB, but not more than the ensuing year's maximum budget and not less than the ensuing year's BASE budget.

(2)(a) The trustees of a district that has always adopted a budget above maximum since FY 2000, and whose current year budget exceeds the maximum budget for the ensuing fiscal year, must adopt a budget that is at least equal to the ensuing year BASE budget and not more than the lesser of either:

(i) the district's current year budget; or

(ii) the ensuing year's maximum budget plus the difference between the current year budget and the current year maximum budget amount.

(b) The trustees must obtain voter approval for the over-maximum budget amount.

(3)(a) The trustees of a school district that was equalized in the current year and whose current year budget exceeds the ensuing year's maximum budget due to an enrollment decrease of less than 30%, must adopt a general fund budget that is:

(i) at least equal to the ensuing year's BASE budget; and

(ii) not more than the greater of either:

(A) the current year budget times 94%; or

(B) the ensuing year maximum budget.

(b) The trustees must obtain voter approval for the over-maximum amount of budget.

(c) Within 5 years of first adopting a budget which exceeds maximum due to an enrollment decrease of less than 30%, the trustees must adopt a budget which does not exceed the district's maximum budget amount.

(4)(a) The trustees of a school district that was equalized and whose current year general fund budget is greater than the maximum general fund budget established for the ensuing fiscal year due to an enrollment decrease of 30% or more must adopt a general fund budget that is:

(i) at least equal to the ensuing year's BASE budget; and

(ii) not more than:

(A) in the first year following the enrollment decline, the ensuing year maximum plus [the prior year budget less the ensuing year maximum, times 80%];

(B) in the second year following the enrollment decline, the ensuing year maximum plus [the prior year budget less the ensuing year maximum, times 75%];

(C) in the third year following the enrollment decline, the ensuing year maximum plus [the prior year budget less the ensuing year maximum, times 66.7%];

(D) in the fourth year following the enrollment decline, the ensuing year maximum plus [the prior year budget less the ensuing year maximum, times 50%];

(E) in the fifth year following the enrollment decline, the ensuing year maximum.

(b) The trustees must obtain voter approval for the over-maximum budget amount.

(c) Within 5 years of first adopting a budget which exceeds maximum due to an enrollment decrease of 30% or more, the trustees must adopt a budget within the limits of (1).

(5) The percentage of enrollment decrease for purposes of (4) and (5) is calculated by subtracting the ensuing year's ANB from the current year's ANB, dividing the result by the current year's ANB, and rounding up to the nearest whole number.

(6) For a non-operating district that is reopening, budget limitations for the general fund shall be based on the last operating year's budget for the general fund. This budget will be considered the prior year's budget and used in calculations to determine budget limitations for the year of reopening. These budget limitation calculations may not allow a general fund budget below BASE or above maximum as calculated for the year of reopening.

(7) For purposes of determining the spending limit for a school district participating in a full service cooperative for special education programs, the BASE budget amount and maximum general fund budget may include a portion of the payments received by the full service cooperative in support of special education programs. OPI will notify each school district participating in a cooperative of its payments for use in setting its BASE budget and maximum general fund budget for the ensuing school fiscal year.

(8) A district that, after adopting a budget at or below the maximum general fund budget for at least one year, subsequently adopts a budget exceeding the maximum general fund budget under the provisions of 20-9-308, MCA, for declining enrollment, shall budget within the restrictions of same the mandatory 5 year phase-in for that category provided in 20-9-308, MCA, until the district budget is at or below the maximum general fund budget.

(9) OPI shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in 20-9-308, MCA. The superintendent of public instruction may request a revised budget from any district whose general fund budget is not within the limits using the guidelines established in ARM 10.10.503.

(AUTH: 20-9-102, MCA; IMP: 20-9-308, MCA)

10.22.103 RESERVE LIMITS (1) through (3) remain the same.

(4) Reserves are reidentified each year when budgeting for the ensuing year. After the fund balance for the general fund budget is determined and the operating reserve is fully met, the trustees may determine any revenues that have been received by the district in the current year according to 20-9-104(5), MCA. This amount must only include revenues received that were protested and/or delinquent from a prior tax year. The amount must not include revenues received which were protested and delinquent taxes from the current tax year. Current year interest earned on money held as excess reserve amounts may not be included as additional excess reserves.

Interest on excess reserves is general fund non-levy revenue. However, cCurrent year receipts of penalties and interest on protested and delinquent taxes from the current or prior years may be included in the reserve. The amount identified may be added to the current year's identified excess reserves, minus amounts used in the current year for budget amendments for deferred projects, minus amounts used to fund the ensuing year's budget. Total operating and excess reserves must not exceed the fund balance available for those reserves.

(5) remains the same.

(AUTH: 20-9-102, MCA; IMP: 20-9-104, MCA)

10.22.105 OVEREXPENDED BUDGETS (1) and (2) remain the same.

(3) Section 20-3-332, MCA, states that if the trustees of a district fail or refuse to be responsible for the proper administration and utilization of all district money, it shall constitute grounds for removal from office. ~~Trustees consenting to illegal use of district money can be jointly and individually liable to the district for any losses the district has realized.~~

(4) and (5) remain the same.

(AUTH: 20-9-102, MCA; IMP: 20-9-133, MCA)

10.22.204 BUDGET AMENDMENT LIMITATION (1) When the budget amendment is for increased enrollment, the maximum amount of the budget amendment for each fund affected must be determined as follows:

(a) and (b) remain the same.

(c) Determine the total enrollment increase for the current year in accordance with ARM ~~10.20.104(3)~~ 10.20.105(1) (a) through (c). The enrollment count for the current year that will be used to calculate an increase in enrollment will be the October enrollment count as reported to OPI on the fall report (FR-4) or, for petitions received after February 1, the February count reported to OPI on the spring enrollment report.

(d) remains the same.

(e) In no case may the district adopt a budget amendment for an enrollment increase that causes the district to exceed the maximum general fund budget as adjusted by the superintendent of public instruction in accordance with 20-9-163, MCA. The maximum general fund budget will be adjusted as follows:

(i) Determine ~~the total enrollment increase in accordance with ARM 10.20.105(1)(a) through (c) and~~ the enrollment increase for each budget unit within the elementary level or the high school level in accordance with ARM 10.20.105(2)(b).

(ii) Prorate the total enrollment increase for the current year determined in ~~ARM 10.20.105~~(1)~~(a) through~~(c) to each budget unit by multiplying the total enrollment increase by the ratio of the enrollment increase by budget unit determined in ~~ARM 10.20.105(2)(b)~~ (1)(e)(i) to the total

enrollment increase determined in (1)(c). Round the result of the calculation to the nearest hundredth (.xx).

(iii) Determine the current year's adjusted ANB used to adjust the maximum general fund budget for each budget unit by:

(A) summing the ~~current~~ prior year enrollment as defined in ARM 10.20.105(1)~~(a)~~(b) by budget unit and the enrollment increase by budget unit as calculated in (1)(e)(ii);

(B) and (C) remain the same.

(iv) through (vi) remain the same.

(2) remains the same.

(AUTH: 20-9-102, MCA; IMP: 20-9-165, MCA)

10.22.205 BUDGET AMENDMENT PREPARATION AND ADOPTION (1) and (2) remain the same.

(3) Whenever a budget amendment has been adopted for:

(a) the general fund ~~or the transportation fund~~ to finance the cost of increased enrollment, the trustees may apply to the superintendent of public instruction for an increase in direct state aid as provided in ~~20-9-306~~ 20-9-166, MCA, and ARM ~~10.20.201,~~ 10.20.103(2) ~~an increase in state transportation aid, or both.~~; or

(b) the transportation fund, the trustees may apply to the superintendent of public instruction for additional state transportation aid as provided in 20-9-166, MCA, and ARM 10.7.107.

(4) The superintendent of public instruction shall approve or disapprove each application for increased direct state aid or additional transportation aid made in accordance with ~~20-9-314~~ 20-9-166, MCA~~, and ARM 10.20.104~~.

(AUTH: 20-9-102, MCA; IMP: 20-9-165, MCA)

10.23.102 FUNDING THE BASE BUDGET LEVY (1) remains the same.

(2) To determine the BASE budget levy requirement needed to help fund the BASE budget area, the county superintendent shall first subtract the other revenues available to fund the district's BASE budget. The remaining amount is the BASE budget levy requirement.

(a) For purposes of calculating the general fund BASE budget levy requirement, non-levy revenues must be estimated at an amount equal to the current year's actual collections, with the following exceptions:

(i) remains the same.

(ii) Anticipated tuition revenue for out of district pupils under the provisions of 20-5-321 through 20-5-323, MCA, except the tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disabilities as calculated under 20-5-323(2), MCA.

(iii) Anticipated revenues for light vehicle and local option tax, which for fiscal years beginning on or after July 1, 2000, may not be estimated at less than 75% of the previous year's revenue from these sources.

(iv) Anticipated oil and natural gas production taxes.

(v) Anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702, MCA.

~~(ii)~~ (vi) Revenue from one-time funding sources, including prior year protested taxes, tax audit receipts, penalties and interest on taxes, distributions of prior year county equalization revenues, ~~state consolidation/annexation bonus payments,~~ and federal payments in lieu of tax, may be estimated in the ensuing year's budget in an amount that is based on the most current information available to the district.

(3) and (4) remain the same.

(AUTH: 20-9-102, MCA; IMP: 20-9-141, 20-9-145, MCA)

10.23.103 VOTED AMOUNT ~~(1) The highest general fund budget that the trustees of an equalized district may adopt without a vote of the electorate is as follows:~~

~~(a) If the district's current year budget is less than the ensuing year's BASE budget, the highest budget that can be adopted without a vote is the ensuing year's BASE budget.~~

~~(b) If the district's current year budget is between the ensuing year's BASE budget and maximum general fund budget, inclusive, the highest budget that can be adopted without a vote is the lesser of:~~

~~(i) the current year's budget, or~~

~~(ii) the current year's budget divided by current year ANB, times the ensuing year's ANB but no less than the ensuing year's BASE budget.~~

~~(c) If the district's current year budget is above the ensuing year's maximum general fund budget, the highest budget that can be adopted is the ensuing year's maximum general fund budget. No vote is required.~~

~~(2) The highest general fund budget that the trustees of a district that is not equalized may adopt without a vote of the electorate is as follows:~~

~~(a) If the district's current year budget is less than the ensuing year's BASE budget, the highest budget that can be adopted without a vote is the ensuing year's BASE budget.~~

~~(b) If the district's current year budget is between the ensuing year's BASE budget and maximum general fund budget, inclusive, the highest budget that can be adopted without a vote is the lesser of:~~

~~(i) the current year's budget, or~~

~~(ii) the current year's budget divided by current year ANB, times the ensuing year's ANB but no less than ensuing year's BASE.~~

~~(c) If the district's current year budget is greater than the ensuing year's maximum general fund budget, the highest budget that can be adopted without a vote is the ensuing year's maximum general fund budget.~~

~~(3) The portion of the budget that, in order to be adopted must be approved by voters, is the difference between the district's proposed budget, as limited by ARM 10.22.102,~~

~~and the district's highest budget without a vote, as determined under (1) and (2).~~

(1) If adopting a general fund budget that is less than or equal to the ensuing year's maximum general fund budget and is within limits of 20-9-308, MCA, the trustees of a district must obtain voter approval for any dollar increase in the over-BASE levy budgeted for the current year.

(2) If adopting a general fund budget that exceeds the ensuing year's maximum general fund budget and is within limits of 20-9-308, MCA, the trustees must obtain voter approval for any amount budgeted above the ensuing year's maximum budget.

(AUTH: 20-9-102, MCA; IMP: 20-9-353, MCA)

10.30.403 TRANSITION TO K-12 DISTRICTS

(1) through (3) remain the same.

(4) The elementary and high school district officials shall prepare a single budget per fund for the K-12 district for the effective year of formation of the K-12 district, and for each year thereafter, using the forms and procedures established by the office of public instruction.

(a) The school district general fund budget limitations established by 20-9-308, MCA, shall be determined for K-12 districts in the following manner:

(i) remains the same.

(ii) In order to determine equalized status of a transition K-12 school district for the ensuing fiscal year, the district shall make the following calculation:

Current FY 199X Elementary BASE Budget Limit	1a
Current FY 199X High School BASE Budget Limit	1b
Combined BASE Budget Limit (1a+1b)	1c
Current FY 199X Elementary Maximum General Fund Budget Limit	2a
Current FY 199X High School Maximum General Fund Budget Limit	2b
Combined Maximum General Fund Budget Limit (2a+2b)	2c
FY 199X Elementary Adopted General Fund Budget	3a
FY 199X High School Adopted General Fund Budget	3b
FY199X Combined Adopted General Fund Budget (3a+3b)	3c

If 3c is ~~greater than or equal to the BASE Budget (line 1c) and~~ less than or equal to the Maximum General Fund Budget (line 2c), the K-12 district will be considered "equalized" in the ensuing school year (FY 199X+1). If not, then the K-12 district will be considered "not equalized" for the ensuing school year.

(b) For the purpose of determining guaranteed tax base aid, the BASE budget levy amount for a K-12 district will be prorated between elementary and high school programs using the

ratio of the elementary GTBA budget area to the high school GTBA budget area.

(i) The ratio for prorating the BASE budget levy will be determined in the following manner:

Calculation of ratio for proration of GTBA budget area

	Elem.	H.S.	K-12
(A) through (F) remain the same.			
(G) Direct Aid Payment [(A+B) ~~divided by 2~~ times the direct state aid percentage in 20-9-306, MCA]	G1	G2	G3
(H) GTBA Budget Area [~~(G)+(E)~~ (F)-(G)-(C)]	H1	H2	H3

(I) remains the same.

(ii) remains the same.

(c) remains the same.

(5) and (6) remain the same.

(AUTH: 20-3-106, MCA; IMP: 20-6-703, MCA)

10.30.404 DISTRICT EQUALIZATION FUNDING (1) and (2) remain the same.

~~(3) County equalization funds will be distributed to K-12 districts from the county basic special tax for high schools account. In the event all elementary and high school districts in one county are K-12 districts, equalization funds will also be distributed to K-12 districts from the basic county tax for elementary programs.~~

(ARM: 20-3-106, MCA; IMP: 20-6-702, MCA)

6. The new rule, as proposed to be adopted, provides as follows:

RULE I INVESTMENT POOLS (1) For purposes of this rule, "investment pool" is defined as a unified investment program established under 20-9-213(4), MCA, by a Montana school district and one or more other school districts or other local governmental entities. "Investment pool" does not include an investment program hosted by the county as a countywide investment pool.

(2) A school district participating in an investment pool shall enter into a written agreement with other participants, including one or more other school districts or local governments involved in the program. In addition to terms required by 7-11-105, MCA, the agreement must state:

(a) The manner in which participants will share gains, losses, interest distributions and fees;

(b) That only the types of investments allowed by 20-9-213(4), 7-6-202, and 7-6-213, MCA, will be purchased;

(c) The procedures for dissolving the pool and distributing the ending balance to participants;

(d) The details specific to procedures necessary when more than one county treasurer is involved in funds combined in the investment pool;

in the investment pool;

(e) The party authorized to direct the purchase and redemption of investments (i.e. a representative of the host entity, investment pool committee or board, school district official, etc.); and

(f) That all elected officials, school district employees, and investment pool employees with duties related to the investment pool must be bonded.

(i) The bond may cover an individual or a blanket bond of the investment pool may cover all elected officials and employees or any combination.

(ii) The investment pool participants shall determine the amount for which an elected official or employee shall be bonded based on the amount of money or property handled and the opportunity for defalcation.

(3) Before participating in an investment pool a school district must have written documentation that the investment firm or entity contracted to administer the pool:

(a) Complies with 20-9-204, MCA, Article VIII, section 13, Mont. Const., and is qualified and competent to provide investment services to the school districts;

(b) Is either the state board of investments or an investment firm that is licensed by the state auditor under the provisions of Title 30, chapter 10, MCA;

(c) Acquires pledged securities in the same manner and amount as required in 7-6-202 and 7-6-213, MCA, for investments which are not guaranteed or uninsured investments; and

(d) Provides each investment pool participant and associated county treasurer with a monthly report detailing:

(i) investment and redemption dates;

(ii) investment and redemption amounts, by school district fund;

(iii) fees charged for administering the investment pool;

(iv) the amount of interest accrued, reinvested and distributed, by fund;

(v) the balance of the district's investments, by fund; and

(vi) at fiscal year-end, the amount of interest accrued as of June 30 and the fair value of the district's share of pooled investments as of June 30 as prescribed by Governmental Accounting Standards Board (GASB) No. 31.

(4) A school district participating in an investment pool shall reconcile the district's records of investment balances and interest income to the county treasurer's reports and the investment firm's reports each month.

(5) When directed by a school district participating in an investment pool, a county treasurer shall invest the district's money within 3 days in an investment pool by issuing a treasurer's check, warrant, or wire transfer of funds to the state board of investments or licensed investment firm administering the investment pool.

(a) When directing investments, the school district must provide written notification to the county treasurer stating

the amount to invest and the fund making the investment.

(b) A school district shall not purchase investments using district warrants.

(6) A school district will direct the licensed investment firm or state board of investments to deposit redeemed investments and interest income with the county treasurer, to the credit of the specific and appropriate school district fund.

(a) The school district will require that the investment firm or state board of investments informs the county treasurer in writing stating the funds to which the proceeds should be deposited and the amount of the interest earnings and principal contained in the proceeds.

(b) The school district shall not pay operating expenses from an investment pool without first returning the funds to the county treasurer. Operating expenses include but are not limited to salaries, service or construction contracts, and supplies and equipment.

(7) Each school district participating in an investment pool will monitor its cash balances maintained with the county treasurer and will promptly redeem investments to pay district warrants and bond principal and interest in a timely manner. (AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-212, MCA)

7. Any person/party may be placed on OPI's list of interested persons/parties for rulemaking by contacting Pat Reichert, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, telephone number (406) 444-4402.

8. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, no later than 5:00 p.m. on January 25, 2000.

9. Geralyn Driscoll of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

10. The notice requirements of 2-4-302, MCA, have been satisfied. OPI has reviewed these rules in light of 20-1-502, MCA, and believes these rules have no impact on Indian heritage or culture. Copies of these rules have been sent to all tribal governments located in Montana.

Geralyn Driscoll
Rule Reviewer
Office of Public Instruction

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State November 22, 1999.

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

In the matter of the proposed amendment of ARM 12.9.602 and 12.9.604 pertaining to the pheasant enhancement program	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 4, 2000, at 7:00 p.m. a public hearing will be held in the Fish, Wildlife and Parks commission room, 1420 East Sixth Avenue, Helena, Montana, to consider the amendment of ARM 12.9.602 and 12.9.604.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 16, 1999, to advise us of the nature of the accommodation that you need. Please contact John McCarthy, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620;(406) 444-2612; FAX (406) 444-4952.

3. The department proposes to amend the rules as follows, stricken matter interlined, new matter underlined:

12.9.602 REQUIREMENTS OF PROJECTS (1) The department will not authorize participation in the pheasant enhancement program unless the proposed project meets the following requirements:

(a) all birds must be at least ~~8~~ 16 weeks of age at the time of release;

(b) not less than 40% of the birds in a release under this program must be cocks;

(c) all birds must be fully feathered and cocks must have at least 50% of their adult plumage;

~~(b)~~ (d) applications for releases must be postmarked prior to May 1, and all releases must be made between ~~March~~ September 1 and September 15;

(e) groups or individuals releasing birds on property they do not own must provide the department with written documentation from the landowner giving permission for the release and acknowledging the requirement of allowing free public hunting;

~~(c)~~ (f) releases may not be made in Fergus, Richland or Roosevelt counties in order to provide a basis for evaluating the success of the program;

~~(d)~~ (g) all releases must be on land open to public hunting without the imposition of any monetary charge for such hunting privilege during the year of release. Release sites may be subject to ~~reasonable~~ use limitations but no fee may be charged in connection with the privilege to hunt on any release site;

(h) payments will be made only to the landowners on whose property birds are released;

~~(e)~~(i) all release sites should contain a minimum of 160 contiguous acres under the ownership of the applicant or the person authorizing release. Release sites as small as 80 contiguous acres will be considered on a case-by-case basis and may be authorized if the acreage involved would provide a viable habitat base for the number of birds ~~proposed~~ authorized to be released;

~~(f)~~(j) all release sites must contain at least 10% winter cover, 10% idle cover and 25% food sources to be considered for authorization;

~~(g)~~(k) certification of the genetic strain must be available from the commercial source of the eggs or chicks and must be provided, upon request, to the department by the applicant;

(l) all source stock must be purchased from an authorized national poultry improvement plan (NPIP) hatchery;

~~(h)~~(m) no ~~single project~~ individual, family, company, corporation, organization or other entity may release more than 200 birds;

(n) no more than 200 birds may be released on any approved site;

~~(i)~~(o) banding of birds will be required in specified study areas and will be done by the department prior to release;

~~(j)~~(p) all releases must be verified by a department employee at the time of release~~.~~;

(q) no site may be stocked more than twice in a 5 year period.

(2) For good cause shown the department may waive any requirement listed in ~~subsection~~ (1).

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

12.9.604 PAYMENT BY DEPARTMENT (1) The department will pay authorized projects ~~$1.50 per cock and~~ $3.00 ~~per hen~~ for each bird released in compliance with all the provisions of ARM 12.9.601 through ~~ARM~~ 12.9.603.

AUTH: 87-1-249, MCA
IMP: 87-1-247, MCA

4. These rule amendments are reasonably necessary to make the department's rules consistent with the statutes authorizing the pheasant release program and pheasant enhancement program as contained in 87-1-246 through 87-1-250, MCA. The rule changes are also necessary to avoid potential abuses of program funds by ensuring that pheasants that are released have a reasonable chance of survival as required by 87-1-248(1), MCA.

When the legislature made changes to the pheasant program in 1989, the rules were not amended to reflect the changes. The rules still state that the department will pay $1.50 for cocks released and $3.00 for hens released. Currently, the department pays $3.00 for any gender pheasant that is released under the program. ARM 12.9.604 needs to be changed to be accurate.

In addition, the 1999 legislature severely cut back the pheasant enhancement program. Since the department can no longer administer a program at the previous level of activity, the program rules need to reflect the change to a leaner, more effective program.

Finally, the original intent of lawmakers regarding the pheasant enhancement program was to give service and educational groups opportunities to participate in the program. Section 87-1-248, MCA states that "[p]reference must be given for project applications submitted by youth organizations, 4-H clubs, sportsmen's groups and other associations of sufficient size to guarantee completion of all project requirements." Over the life of the program, the majority of payments have gone to one pheasant rearing facility that regarded participation in the program as a business opportunity. The department needs to change the program rules to better carry out their intended purpose.

5. Concerned persons may submit their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to John McCarthy, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620, no later than January 4, 2000.

6. John F. Lynch or another hearing examiner designated by the department will preside over and conduct the hearing.

7. The Department of Fish, Wildlife and Parks maintains a list of persons interested in both department and commission rulemaking proceedings. Any person wishing to be on the list must make a written request to the department, providing name, address and description of the subject or subjects of interest. Direct the request to Montana Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, Helena, MT 59620-0701.

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

BY: _____ _____

PATRICK J. GRAHAM
Director

JOHN F. LYNCH
Rule Reviewer

Certified to the Secretary of November 22, 1999.

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

In the matter of the amendment of ARM 12.6.901, limiting the motor-propelled water craft to no-wake speed on the Fort Peck Dredge Cut Trout Pond	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

To: All Concerned Persons

1. On January 12, 2000, the Montana Fish, Wildlife and Parks Commission (commission) proposes to amend ARM 12.6.901, limiting motor-propelled water craft to no-wake speed on the Fort Peck Dredge Cut Trout Pond.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you request an accommodation, please contact the department no later than 5:00 p.m. on January 5, 2000, to advise us of the nature of the accommodation that you need. Please contact Marie Rauch, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620; (406) 444-3186; FAX (406) 444-4952.

3. The proposed amendment provides as follows, new matter underlined, deleted matter interlined:

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish, wildlife and parks commission.

(a) and (b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Bighorn through Missoula County remain the same.

Valley County: (A) Fort Peck Dredge Cut Trout Pond

(d) The following waters are closed to water skiing:

Lewis & Clark County: (A) on Saturday and Sunday of each week and on all legal holidays from the mouth of the canyon on upper Holter Lake to Gates of Mountains near Mann Gulch, as marked.

~~Valley County: (A) Fort Peck Dredge Cut Trout Pond~~

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

4. The department has managed the Fort Peck Dredge Cut Trout Pond to provide public fishing opportunities. Because the size of the pond is only 60 surface acres, operation of watercraft at high rates of speed on the pond raises safety questions. The existing regulation prohibits waterskiing for safety reasons and to avoid conflict with anglers. In the spring of 1999 the department installed floating docks on the pond at the request of the public. Obstructions such as these docks or small fishing boats create an even greater hazard if any watercraft travels at a high rate of speed on the pond. Changing the existing restriction from "no water skiing" to "no-wake speed" will more appropriately control the use of water craft on this small pond and decrease the likelihood of a serious accident.

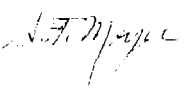
5. Concerned persons may present their data, views or arguments in writing to Bill Wiedenheft, Department of Fish, Wildlife and Parks, Route 1-4210, Glasgow, MT 59230, no later than January 3, 2000.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Bill Wiedenheft, Department of Fish, Wildlife and Parks, Route 1-4210, Glasgow, MT 59230 no later than January 3, 2000.

7. 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 rule review committee of the legislature; from a governmental agency or subdivision; or from any association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 450 persons based on the average of 4500 persons using the pond annually as tracked by the department.

8. The Department of Fish, Wildlife and Parks maintains a list of persons interested in both department and commission rulemaking proceedings. Any person wishing to be on the list must make a written request to the department, providing name, address and description of the subject or subjects of interest. Direct the request to Montana Fish, Wildlife and Parks, Legal Unit, PO Box 200701, Helena, MT 59620-0701.

9. The bill sponsor notification requirements of 2-4-302, MCA do not apply.

By: 

S.F. MEYER
Commission Chairman

By: 

JOHN F. LYNCH
Rule Reviewer

Certified to the Secretary of State November 22, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through XIV pertaining to air quality compliance assurance monitoring; and the amendment of ARM 17.8.1212 and 17.8.1213 pertaining to requirements for air quality operating permit content	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. The Board of Environmental Review will hold a public hearing on January 25, 2000, at 10 a.m. in Room 44 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., January 18, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The proposed new rules provide as follows:

RULE I DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) The terms "air quality operating permit" or "permit", "air quality permit revision" or "permit revision", "applicable requirement", "emissions unit", "major source", and "regulated air pollutant" have the same meaning as provided under ARM 17.8.1201.

(2) "Air quality operating permit application" or "permit application" mean an application (including any supplement to a previously submitted application) that is submitted by the owner or operator to obtain an operating permit pursuant to ARM Title 17, chapter 8, subchapter 12.

(3) "Capture system" means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

(4) "Continuous compliance determination method" means a method, specified by the applicable standard or an applicable permit condition, which:

(a) is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(b) provides data either in units of the standard or correlated directly with the compliance limit.

(5) "Control device" means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (for example, the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters).

(a) For purposes of this subchapter, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition shall be binding for purposes of this subchapter.

(6) "Data" means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

(7) "Emission limitation or standard" means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the FCAA. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (for example, pounds of SO_2 per hour, pounds of SO_2 per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO_2) or as the relationship of uncontrolled to controlled emissions (for example, percentage capture and destruction efficiency of VOC or percentage reduction of SO_2). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of this subchapter, an emission

limitation or standard shall not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

(8) "Exceedance" means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(9) "Excursion" means a departure from an indicator range established for monitoring under this subchapter, consistent with any averaging period specified for averaging the results of the monitoring.

(10) "FCAA" means the Federal Clean Air Act, as amended.

(11) "Inherent process equipment" means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of this subchapter, inherent process equipment is not considered a control device.

(12) "Monitoring" means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Recordkeeping may be considered monitoring where such records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). The conduct of compliance method tests, such as the procedures in appendix A to 40 CFR part 60, on a routine periodic basis may be considered monitoring (or as a supplement to other monitoring), provided that requirements to conduct such tests on a one-time basis or at such times as a regulatory authority may require on a non-regular basis are not considered monitoring requirements for purposes of this paragraph. Monitoring may include one or more than one of the following data collection techniques, where appropriate for a particular circumstance:

(a) continuous emission or opacity monitoring systems.

(b) continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.

(c) emission estimation and calculation procedures (for example, mass balance or stoichiometric calculations).

(d) maintenance and analysis of records of fuel or raw materials usage.

(e) recording results of a program or protocol to conduct specific operation and maintenance procedures.

(f) verification of emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

(g) visible emission observations.

(h) any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

(13) "Monitoring malfunction" means any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused entirely or in part by poor maintenance or careless operation are not malfunctions.

(14) "Owner or operator" means any person who owns, leases, operates, controls or supervises a stationary source subject to this subchapter.

(15) "Pollutant-specific emissions unit" means an emissions unit considered separately with respect to each regulated air pollutant.

(16) "Potential to emit" shall have the same meaning as provided under ARM 17.8.1201(26), provided that it shall be applied with respect to an "emissions unit" as defined in ARM 17.8.1201(15) in addition to a "stationary source" as defined in ARM 17.8.1201(33).

(17) "Predictive emission monitoring system (PEMS)" means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE II INCORPORATION BY REFERENCE (1) For purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) 40 CFR part 72.2, which contains the definition of utility unit;

(b) 40 CFR part 75, which describes the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA;

(c) 40 CFR part 51.214 and 40 CFR part 51, appendix P, which set forth EPA minimum emissions monitoring requirements for the state implementation plan;

(d) 40 CFR part 60.13 and 40 CFR part 60, appendix B, which set forth EPA performance specification and test procedures for continuous emission monitoring systems for new stationary sources;

(e) 40 CFR part 63, which sets forth monitoring requirements and performance specifications for source categories of hazardous air pollutants; and

(f) 40 CFR part 266, subpart H and appendix IX, which set forth compliance and monitoring requirements for boilers and industrial furnaces.

(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, phone: (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE III APPLICABILITY (1) Except for backup utility units that are exempt under (3) below, the requirements of this subchapter shall apply to a pollutant-specific emissions unit at a major source that is required to obtain an air quality operating permit if the unit satisfies all of the following criteria:

(a) The unit is subject to an emission limitation or standard for the applicable regulated air pollutant (or a surrogate thereof), other than an emission limitation or standard that is exempt under (2) below;

(b) The unit uses a control device to achieve compliance with any such emission limitation or standard; and

(c) The unit has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source. For purposes of this paragraph, "potential pre-control device emissions" shall have the same meaning as "potential to emit", as defined in [NEW RULE I](16), except that emission reductions achieved by the applicable control device shall not be taken into account.

(2) The requirements of this subchapter shall not apply to any of the following emission limitations or standards:

(a) emission limitations or standards proposed by the administrator of the EPA after November 15, 1990, pursuant to section 7411 or 7412 of the FCAA.

(b) stratospheric ozone protection requirements under Title VI of the FCAA.

(c) acid rain program requirements pursuant to sections 7651c, 7651d, 7651e, 7651f(a) or (b), or 7651i of the FCAA.

(d) emission limitations or standards or other applicable requirements that apply solely under an emissions trading program approved or promulgated by the administrator under the FCAA that allows for trading emissions within a source or between sources.

(e) an emissions cap that meets the requirements specified in ARM 17.8.1224(4).

(f) emission limitations or standards for which an air quality operating permit specifies a continuous compliance determination method, as defined in [NEW RULE I](4). The exemption provided in this subsection shall not apply if the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test; in this example, the requirements of this subchapter would apply to the control device and capture system, but not to the remaining elements of the coating line, such as raw material usage).

(3) The requirements of this subchapter shall not apply to a utility unit, as defined in 40 CFR part 72.2, that is municipally-owned if the owner or operator provides documentation in an air quality operating permit application that:

(a) The utility unit is exempt from all monitoring requirements in 40 CFR part 75 (including the appendices thereto);

(b) The utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations and will be operated consistent with that purpose throughout the permit term. The owner or operator shall provide historical operating data and relevant contractual obligations to document that this criterion is satisfied; and

(c) The actual emissions from the utility unit, based on the average annual emissions over the last 3 calendar years of operation (or such shorter time period that is available for units with fewer than 3 years of operation) are less than 50 percent of the amount in tons per year required for a source to be classified as a major source and are expected to remain so.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE IV GENERAL CRITERIA FOR MONITORING DESIGN (1) To provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit, monitoring

under this subchapter shall meet the following general criteria:

(a) The owner or operator shall design the monitoring to obtain data for one or more indicators of emission control performance for the control device, any associated capture system and, if necessary to satisfy (1)(b) below, processes at a pollutant-specific emissions unit. Indicators of performance may include, but are not limited to, direct or predicted emissions (including visible emissions or opacity), process and control device parameters that affect control device (and capture system) efficiency or emission rates, or recorded findings of inspection and maintenance activities conducted by the owner or operator.

(b) The owner or operator shall establish an appropriate range(s) or designated condition(s) for the selected indicator(s) such that operation within the range(s) provide a reasonable assurance of ongoing compliance with emission limitations or standards for the anticipated range of operating conditions. Such range(s) or condition(s) shall reflect the proper operation and maintenance of the control device (and associated capture system), in accordance with applicable design properties, for minimizing emissions over the anticipated range of operating conditions at least to the level required to achieve compliance with the applicable requirements. The reasonable assurance of compliance will be assessed by maintaining performance within the indicator range(s) or designated condition(s). The range(s) shall be established in accordance with the design and performance requirements in this rule, [NEW RULE V] and [NEW RULE VI], and documented in accordance with the requirements in [NEW RULE VII] and [NEW RULE VIII]. If necessary to assure that the control device and associated capture system can satisfy this criterion, the owner or operator shall monitor appropriate process operational parameters (such as total throughput where necessary to stay within the rated capacity for a control device). In addition, unless specifically stated otherwise by an applicable requirement, the owner or operator shall monitor indicators to detect any bypass of the control device (or capture system) to the atmosphere, if such bypass can occur based on the design of the pollutant-specific emissions unit.

(c) The design of indicator ranges or designated conditions may be:

(i) based on a single maximum or minimum value if appropriate (for example, maintaining condenser temperatures a certain number of degrees below the condensation temperature of the applicable compound(s) being processed) or at multiple levels that are relevant to distinctly different operating conditions (for example, high versus low load levels).

(ii) expressed as a function of process variables (for example, an indicator range expressed as minimum to maximum pressure drop across a venturi throat in a particulate control scrubber).

(iii) expressed as maintaining the applicable parameter in a particular operational status or designated condition

(for example, position of a damper controlling gas flow to the atmosphere through a bypass duct).

(iv) established as interdependent between more than one indicator.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE V PERFORMANCE CRITERIA AND EVALUATION FACTORS FOR MONITORING DESIGN (1) The owner or operator shall design the monitoring to meet the following performance criteria:

(a) specifications that provide for obtaining data that are representative of the emissions or parameters being monitored (such as detector location and installation specifications, if applicable).

(b) for new or modified monitoring equipment, verification procedures to confirm the operational status of the monitoring prior to the date by which the owner or operator must conduct monitoring under this subchapter as specified in [NEW RULE XI](1). The owner or operator shall consider the monitoring equipment manufacturer's requirements or recommendations for installation, calibration, and start-up operation.

(c) quality assurance and control practices that are adequate to ensure the continuing validity of the data. The owner or operator shall consider manufacturer recommendations or requirements applicable to the monitoring in developing appropriate quality assurance and control practices.

(d) specifications for the frequency of conducting the monitoring, the data collection procedures that will be used (for example, computerized data acquisition and handling, alarm sensor, or manual log entries based on gauge readings), and, if applicable, the period over which discrete data points will be averaged for the purpose of determining whether an excursion or exceedance has occurred.

(i) At a minimum, the owner or operator shall design the period over which data are obtained and, if applicable, averaged consistent with the characteristics and typical variability of the pollutant-specific emissions unit (including the control device and associated capture system). Such intervals shall be commensurate with the time period over which a change in control device performance that would require actions by the owner or operator to return operations within normal ranges or designated conditions is likely to be observed.

(ii) For all pollutant-specific emissions units with the potential to emit, calculated including the effect of control devices, the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, for each parameter monitored, the owner or operator shall collect four or more data values equally spaced over each hour and average the values, as applicable, over the applicable averaging period as determined in accordance with

(1)(d)(i) above. The department may approve a reduced data collection frequency, if appropriate, based on information presented by the owner or operator concerning the data collection mechanisms available for a particular parameter for the particular pollutant-specific emissions unit (for example, integrated raw material or fuel analysis data, noninstrumental measurement of waste feed rate or visible emissions, use of a portable analyzer or an alarm sensor).

(iii) For other pollutant-specific emissions units, the frequency of data collection may be less than the frequency specified in (1)(d)(ii) above, but the monitoring shall include some data collection at least once per 24-hour period (for example, a daily inspection of a carbon adsorber operation in conjunction with a weekly or monthly check of emissions with a portable analyzer).

(2) In designing monitoring to meet the requirements in [NEW RULE IV] and (1) above, the owner or operator shall take into account site-specific factors including the applicability of existing monitoring equipment and procedures, the ability of the monitoring to account for process and control device operational variability, the reliability and latitude built into the control technology, and the level of actual emissions relative to the compliance limitation.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE VI SPECIAL CRITERIA FOR MONITORING DESIGN (1) If a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS) or predictive emission monitoring system (PEMS) is required pursuant to other authority under the FCAA or state or local law, the owner or operator shall use such system to satisfy the requirements of this subchapter.

(2) The use of a CEMS, COMS, or PEMS that satisfies any of the following monitoring requirements shall be deemed to satisfy the general design criteria in [NEW RULE IV] and [NEW RULE V], provided that a COMS may be subject to the criteria for establishing indicator ranges under [NEW RULE IV]:

(a) 40 CFR part 51.214 and appendix P of 40 CFR part 51;

(b) 40 CFR part 60.13 and appendix B of 40 CFR part 60;

(c) 40 CFR part 63.8 and any applicable performance specifications required pursuant to the applicable subpart of 40 CFR part 63;

(d) 40 CFR part 75;

(e) Subpart H and appendix IX of 40 CFR part 266; or

(f) If an applicable requirement does not otherwise require compliance with the requirements listed in (2)(a) through (e) above, comparable requirements and specifications established by the department.

(3) The owner or operator shall design the monitoring system subject to this rule to:

(a) allow for reporting of exceedances (or excursions if applicable to a COMS used to assure compliance with a

particulate matter standard) consistent with any period for reporting of exceedances in an underlying requirement. If an underlying requirement does not contain a provision for establishing an averaging period for the reporting of exceedances or excursions, the criteria used to develop an averaging period in [NEW RULE V](1)(d) shall apply; and

(b) provide an indicator range consistent with [NEW RULE IV] for a COMS used to assure compliance with a particulate matter standard. If an opacity standard applies to the pollutant-specific emissions unit, such limit may be used as the appropriate indicator range unless the opacity limit fails to meet the criteria in [NEW RULE IV] after considering the type of control device and other site-specific factors applicable to the pollutant-specific emissions unit.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE VII SUBMITTAL REQUIREMENTS FOR MONITORING INDICATORS AND PRESUMPTIVELY ACCEPTABLE MONITORING (1) The owner or operator shall submit to the department monitoring that satisfies the design requirements in [NEW RULES IV through VI]. The submission shall include the following information:

(a) the indicators to be monitored to satisfy [NEW RULE IV](1)(a) and (b);

(b) the ranges or designated conditions for such indicators, and the process by which such indicator ranges or designated conditions shall be established, or revised;

(c) the performance criteria for the monitoring to satisfy [NEW RULE V](1); and

(d) if applicable, the indicator ranges and performance criteria for a CEMS, COMS or PEMS pursuant to [NEW RULE VI], including the process by which indicator ranges or designated conditions shall be established or revised.

(2) As part of the information submitted, the owner or operator shall submit a justification for the proposed elements of the monitoring. If the performance specifications proposed to satisfy [NEW RULE V](1)(b) or (c) include differences from manufacturer recommendations, the owner or operator shall explain the reasons for the differences between the requirements proposed by the owner or operator and the manufacturer's recommendations or requirements. The owner or operator also shall submit any data supporting the justification, and may refer to generally available sources of information used to support the justification (such as generally available air pollution engineering manuals, or EPA or department publications on appropriate monitoring for various types of control devices or capture systems). To justify the appropriateness of the monitoring elements proposed, the owner or operator may rely in part on existing applicable requirements that establish the monitoring for the applicable pollutant-specific emissions unit or a similar unit. If an owner or operator relies on presumptively

acceptable monitoring, no further justification for the appropriateness of that monitoring should be necessary other than an explanation of the applicability of such monitoring to the unit in question, unless data or information is brought forward to rebut the presumption. Presumptively acceptable monitoring includes:

(a) presumptively acceptable or required monitoring approaches, established by the department in a rule that constitutes part of the applicable implementation plan required pursuant to Title I of the FCAA, that are designed to achieve compliance with this subchapter for particular pollutant-specific emissions units;

(b) continuous emission, opacity or predictive emission monitoring systems that satisfy applicable monitoring requirements and performance specifications as specified in [NEW RULE VI];

(c) excepted or alternative monitoring methods allowed or approved pursuant to 40 CFR part 75; and

(d) monitoring included for standards exempt from this subchapter pursuant to [NEW RULE III](2)(a) or (f) to the extent such monitoring is applicable to the performance of the control device (and associated capture system) for the pollutant-specific emissions unit.

(e) presumptively acceptable monitoring identified in guidance by the EPA. Such guidance may be sufficient for purposes of this rule and [NEW RULE VIII](1) and (2), or additional information may be required.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE VIII ADDITIONAL SUBMITTAL REQUIREMENTS REGARDING OPERATING PARAMETER DATA, PERFORMANCE TESTING, IMPLEMENTATION PLANS AND MULTIPLE UNITS AND CONTROL DEVICES (1) Except as provided in (3) below, the owner or operator shall submit control device (and process and capture system, if applicable) operating parameter data obtained during the conduct of the applicable compliance or performance test conducted under conditions specified by the applicable rule. If the applicable rule does not specify testing conditions or only partially specifies test conditions, the performance test generally shall be conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the pollutant-specific emissions unit. Such data may be supplemented, if desired, by engineering assessments and manufacturer's recommendations to justify the indicator ranges (or, if applicable, the procedures for establishing such indicator ranges). Emission testing is not required to be conducted over the entire indicator range or range of potential emissions.

(2) The owner or operator must document that no changes to the pollutant-specific emissions unit, including the control device and capture system, have taken place that could result in a significant change in the control system

performance or the selected ranges or designated conditions for the indicators to be monitored since the performance or compliance tests described in (1) above were conducted.

(3) If existing data from unit-specific compliance or performance testing specified in (1) above are not available, the owner or operator:

(a) shall submit a test plan and schedule for obtaining such data in accordance with (4) below; or

(b) may submit indicator ranges (or procedures for establishing indicator ranges) that rely on engineering assessments and other data, provided that the owner or operator demonstrates that factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary to establish indicator ranges at levels that satisfy the criteria in [NEW RULE IV].

(4) If the monitoring submitted by the owner or operator requires installation, testing, or other necessary activities prior to use of the monitoring for purposes of this subchapter, the owner or operator shall include an implementation plan and schedule for completing these or any other appropriate activities prior to use of the monitoring. The implementation plan and schedule shall provide for use of the monitoring as expeditiously as practicable after approval of the monitoring in the air quality operating permit pursuant to [NEW RULE X], but in no case shall the schedule for completing installation and beginning operation of the monitoring exceed 180 days after approval of the permit.

(5) If a control device is common to more than one pollutant-specific emissions unit, the owner or operator may submit monitoring for the control device and identify the pollutant-specific emissions units affected and any process or associated capture device conditions that must be maintained or monitored in accordance with [NEW RULE IV] rather than submit separate monitoring for each pollutant-specific emissions unit.

(6) If a single pollutant-specific emissions unit is controlled by more than one control device similar in design and operation, the owner or operator may submit monitoring that applies to all the control devices and identify the control devices affected and any process or associated capture device conditions that must be maintained or monitored in accordance with [NEW RULE IV] rather than submit a separate description of monitoring for each control device.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE IX DEADLINES FOR SUBMITTALS (1) For all pollutant-specific emissions units with the potential to emit (taking into account control devices to the extent appropriate under the definition of this term in [NEW RULE I](16)) the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year,

required for a source to be classified as a major source, the owner or operator shall submit the information required under [NEW RULES VII and VIII] at the following times:

(a) on or after April 20, 1998, the owner or operator shall submit information as part of an application for an initial air quality operating permit if, by that date, the application either:

(i) has not been filed; or

(ii) has not yet been determined to be complete by the department.

(b) On or after April 20, 1998, the owner or operator shall submit information as part of an application for a significant permit revision of an air quality operating permit, but only with respect to those pollutant-specific emissions units for which the proposed permit revision is applicable.

(c) The owner or operator shall submit any information not submitted under the deadlines set forth in (1)(a) and (b) above, as part of the application for the renewal of an air quality operating permit.

(2) For all other pollutant-specific emissions units subject to this subchapter and not subject to (1) above, the owner or operator shall submit the information required under [NEW RULES VII and VIII] as part of an application for a renewal of an air quality operating permit.

(3) The effective date for the requirement to submit information under [NEW RULES VII and VIII] shall be as specified pursuant to (1) and (2) above, and a permit reopening to require the submittal of information under this rule shall not be required pursuant to ARM 17.8.1228(1)(a), provided, however, that, if an air quality operating permit is reopened for cause by the department pursuant to ARM 17.8.1228(1)(c) or (d), the department may require the submittal of information under this rule for those pollutant-specific emissions units that are subject to this subchapter and that are affected by the permit reopening.

(4) Prior to approval of monitoring that satisfies this subchapter, the owner or operator is subject to the requirements of ARM 17.8.1212(1)(b).

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE X APPROVAL OF MONITORING (1) Based on an application that includes the information submitted in accordance with [NEW RULE IX], the department shall act to approve the monitoring submitted by the owner or operator by confirming that the monitoring satisfies the requirements in [NEW RULES IV through VI].

(2) In approving monitoring under this rule, the department may condition the approval on the owner or operator collecting additional data on the indicators to be monitored for a pollutant-specific emissions unit, including required compliance or performance testing, to confirm the ability of

the monitoring to provide data that are sufficient to satisfy the requirements of this subchapter and to confirm the appropriateness of an indicator range(s) or designated condition(s) proposed to satisfy [NEW RULE IV](1)(b) and (c) and consistent with the schedule in [NEW RULE VIII](4).

(3) If the department approves the proposed monitoring, it shall establish one or more permit terms or conditions that specify the required monitoring in accordance with ARM 17.8.1212(1). At a minimum, the permit shall specify:

(a) the approved monitoring approach that includes all of the following:

(i) the indicator(s) to be monitored (such as temperature, pressure drop, emissions, or similar parameter);

(ii) the means or device to be used to measure the indicator(s) (such as temperature measurement device, visual observation, or CEMS); and

(iii) the performance requirements established to satisfy [NEW RULE V](1) or [NEW RULE VI], as applicable.

(b) the means by which the owner or operator will define an exceedance or excursion for purposes of responding to and reporting exceedances or excursions under [NEW RULE XI and XII]. The permit shall specify the level at which an excursion or exceedance will be deemed to occur, including the appropriate averaging period associated with such exceedance or excursion. For defining an excursion from an indicator range or designated condition, the permit may include the specific value(s) or condition(s) at which an excursion shall occur, and shall include the specific procedures that will be used to establish that value or condition. The permit shall specify appropriate notice procedures for the owner or operator to notify the department upon any establishment or reestablishment of the value.

(c) if an excursion from an indicator range is to be considered a per se violation of an emission limitation or permit term. Unless so designated, an indicator range shall not be enforceable as a violation of a permit term.

(d) the obligation to conduct the monitoring and fulfill the other obligations specified in [NEW RULES XI through XIII].

(e) if appropriate, a minimum data availability requirement for valid data collection for each averaging period, and, if appropriate, a minimum data availability requirement for the averaging periods in a reporting period.

(4) If the monitoring proposed by the owner or operator requires installation, testing or final verification of operational status, the air quality operating permit shall include an enforceable schedule with appropriate milestones for completing such installation, testing, or final verification consistent with the requirements in [NEW RULE VIII](4).

(5) If the department issues a draft permit that disapproves the proposed monitoring, the draft permit shall include monitoring that satisfies the requirements of ARM 17.8.1212(1)(b), and a compliance schedule for the source

owner to submit monitoring that satisfies [NEW RULES IV through VIII].

(6) If the department disapproves the proposed monitoring, the final permit shall include, at a minimum, monitoring that satisfies the requirements of ARM 17.8.1212(1)(b). The owner or operator shall comply with this monitoring until a plan for revised monitoring is implemented, as follows:

(a) the final permit shall include a compliance schedule for the owner or operator to submit monitoring that satisfies [NEW RULE IV] through [NEW RULE VIII]. In no case shall the owner or operator be allowed to submit a plan for revised monitoring more than 180 days from the date of issuance of the final permit;

(b) if the owner or operator does not submit the plan for revised monitoring in accordance with the compliance schedule as required above, the owner or operator shall be deemed not in compliance with the requirements of this subchapter. If the department disapproves the monitoring submitted under the compliance schedule, and notwithstanding the owner or operator's compliance with monitoring that satisfies the requirements of ARM 17.8.1212(1)(b), the owner or operator shall be deemed not in compliance with the requirements of this subchapter, unless the owner or operator files a timely request for a hearing pursuant to 75-2-218(5), MCA, and successfully challenges the disapproval.

(7) If an appeal of the department's decision is filed with the board, the deadline for filing any implementation plan and schedule required under [NEW RULE VIII](4), or compliance schedule required under (6)(a) above, shall be tolled until the conclusion of the appeal process. If the board affirms the department's decision, the owner or operator shall comply with the implementation plan and schedule, or compliance schedule, as applicable. If the board rejects the department's decision, the board shall order the owner or operator to submit an implementation plan and schedule that provides for monitoring approved by the board as expeditiously as practicable. In no case may the owner or operator complete installation and begin operation of the monitoring more than 180 days from the date of the board's decision.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE XI OPERATION OF APPROVED MONITORING (1) The owner or operator shall conduct the monitoring required under this subchapter upon issuance of an air quality operating permit that includes such monitoring, or by such later date specified in the permit pursuant to [NEW RULE X](4).

(2) At all times, the owner or operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(3) Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that the pollutant-specific emissions unit is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of this subchapter, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The owner or operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused entirely or in part by poor maintenance or careless operation are not malfunctions.

(4) Upon detecting an excursion or exceedance, the owner or operator shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

(5) Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance under (4) above, will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.

(6) After approval of monitoring under this subchapter, if the owner or operator identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not provide an indication of an excursion or exceedance while providing valid data, or the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the owner or operator shall promptly notify the department and, if necessary, submit a proposed modification to the air quality operating permit to address the necessary

monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE XII QUALITY IMPROVEMENT PLAN REQUIREMENTS

(1) Based on the results of a determination made under [NEW RULE XI](5), the department may require the owner or operator to develop and implement a quality improvement plan (QIP). Consistent with [NEW RULE X](3)(c), the air quality operating permit may specify an appropriate threshold, such as an accumulation of exceedances or excursions exceeding 5 percent duration of a pollutant-specific emissions unit's operating time for a reporting period, for requiring the implementation of a QIP. The threshold may be set at a higher or lower percent or may rely on other criteria for purposes of indicating whether a pollutant-specific emissions unit is being maintained and operated in a manner consistent with good air pollution control practices.

(2) Elements of a QIP are as follows:

(a) The owner or operator shall maintain a written QIP, if required, and have it available for inspection.

(b) The plan initially shall include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the owner or operator shall modify the plan to include procedures for conducting one or more of the following actions, as appropriate:

(i) improved preventive maintenance practices.

(ii) process operation changes.

(iii) appropriate improvements to control methods.

(iv) other steps appropriate to correct control performance.

(v) more frequent or improved monitoring (only in conjunction with one or more steps under (2)(b)(i) through (iv) above).

(3) If a QIP is required, the owner or operator shall develop and implement a QIP as expeditiously as practicable and shall notify the department if the period for completing the improvements contained in the QIP exceeds 180 days from the date on which the need to implement the QIP was determined.

(4) Following implementation of a QIP, upon any subsequent determination pursuant to [NEW RULE XI](5) the department may require that an owner or operator make reasonable changes to the QIP if the QIP is found to have:

(a) failed to address the cause of the control device performance problems; or

(b) failed to provide adequate procedures for correcting control device performance problems as expeditiously as

practicable in accordance with good air pollution control practices for minimizing emissions.

(5) Implementation of a QIP shall not excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the FCAA.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE XIII REPORTING AND RECORDKEEPING REQUIREMENTS

(1) On and after the date specified in [NEW RULE XI](1) by which the owner or operator must use monitoring that meets the requirements of this subchapter, the owner or operator shall submit monitoring reports to the department in accordance with ARM 17.8.1212(3)(b) and (c).

(2) A report for monitoring under this subchapter shall include, at a minimum, the information required under ARM 17.8.1212(3)(b) and (c) and the following information, as applicable:

(a) summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken;

(b) summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and

(c) a description of the actions taken to implement a QIP during the reporting period as specified in [NEW RULE XII]. Upon completion of a QIP, the owner or operator shall include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

(3) The owner or operator shall comply with the recordkeeping requirements specified in ARM 17.8.1212(2). The owner or operator shall maintain records of monitoring data, monitor performance data, corrective actions taken, any written quality improvement plan required pursuant to [NEW RULE XII] and any activities undertaken to implement a quality improvement plan, and other supporting information required to be maintained under this subchapter (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions).

(4) Instead of paper records, the owner or operator may maintain records on alternative media, such as microfilm, computer files, magnetic tape disks, or microfiche, provided that the use of such alternative media allows for expeditious inspection and review, and does not conflict with other applicable recordkeeping requirements.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

RULE XIV SAVINGS PROVISIONS (1) Nothing in this subchapter shall:

(a) excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the FCAA. The requirements of this subchapter shall not be used to justify the approval of monitoring less stringent than the monitoring which is required under separate legal authority and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under separate authority under the FCAA, including monitoring in permits issued pursuant to Title I of the FCAA. The purpose of this subchapter is to require, as part of the issuance of a permit under Title V of the FCAA, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of this subchapter.

(b) restrict or abrogate the authority of the department to impose additional or more stringent monitoring, recordkeeping, testing, or reporting requirements on any owner or operator of a source under any provision of the FCAA, including but not limited to sections 7414(a)(1) and 7661c(b), or state law, as applicable.

(c) restrict or abrogate the authority of the department to take any enforcement action under the FCAA for any violation of an applicable requirement or of any person to take action under section 7604 of the FCAA.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

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

17.8.1212 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO MONITORING, RECORDKEEPING, AND REPORTING

(1) Each air quality operating permit shall contain the following requirements with respect to monitoring:

(a) all ~~emissions~~ monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including [NEW RULES I through XIV] and any ~~required~~ other procedures and methods that may be promulgated pursuant to sections 7661c(b) or 7414(a)(3) of the FCAA~~;~~. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at

least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(1)(b) through (4) remain the same.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

17.8.1213 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO COMPLIANCE (1) through (7)(b) remain the same.

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) ~~the compliance status as shown by monitoring or other information required by the permit or otherwise reasonably available to the source;~~ the identification of the method(s) or other means used by the owner or operator for determining the status of compliance with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under ARM 17.8.1212. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 7413(c)(2) of the FCAA, which prohibits knowingly making a false certification or omitting material information;

(iii) ~~whether compliance was continuous or intermittent;~~ the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in (7)(c)(ii) above. The certification must identify each deviation and take it into account in the compliance certification. The certification must also identify as possible exceptions to compliance any periods during which compliance was required and in which an excursion or exceedance as defined in [NEW RULE I] occurred; and

~~(iv) the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with ARM 17.8.1212; and~~

~~(v)~~(iv) such other facts as the department may require to determine the compliance status of the source.

(d) A requirement that all compliance certifications be submitted to the administrator as well as to the department.

~~(e) Such additional requirements as may be specified pursuant to sections 7414(a)(3) and 7661c(b) of the FCAA.~~

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

5. The Board is proposing these amendments and new rules to maintain state primacy under the federal Clean Air Act (Act). On October 22, 1997, EPA published the preamble and final rules regarding compliance assurance monitoring (CAM) for major stationary sources of air pollution that are required to obtain operating permits under Title V of the Act. 62 Fed. Reg. 54,900. The EPA rules may be found at 40 CFR part 64, and require that, on or after April 20, 1998, owners and operators subject to the CAM rules that are seeking Title V permits or permit revisions must submit the information required by the rules. The objective of the CAM program is to assure ongoing compliance with emission limits and standards established under the Act. Subject to certain exemptions, the CAM program requires sources to conduct monitoring to provide reasonable assurance of compliance with applicable requirements, for monitoring and compliance certification under Title V (operating permit program) and Title VII (enforcement). This monitoring is focused on emissions units that rely on pollution control equipment to achieve compliance with applicable requirements.

The new rules and rule amendments proposed by the Board would apply to major stationary sources of air pollution that are required to obtain operating permits under Title V of the Clean Air Act. The proposed new rules and rule amendments would also provide procedures for coordinating the new monitoring requirements with the operating permit program rules, and the proposed amendments would clarify the relationship between the proposed CAM requirements and the periodic monitoring and compliance certification requirements under Title V.

The policy of the state legislature has been for the state to obtain, and maintain, primacy for the state's environmental programs. The proposed amendments are necessary to maintain an EPA-approved Title V Permitting Program. Failure to adopt these amendments may result in the loss of primacy, and imposition of economic sanctions on the state by EPA.

For certain emission units that use control devices to achieve compliance, the owner or operator will have to develop and propose, through the Title V permitting process, monitoring that meets specified criteria for selecting appropriate indicators of control performance, establishing ranges for those indicators, and for responding to any excursions from those ranges. These rules also include performance and operating criteria that must be achieved, as well as documentation requirements for the monitoring proposed by the owner or operator. The rules also provide for the use of a quality improvement plan, to allow the department to address those situations where an owner or operator operates in a manner that involves excursions from indicator ranges, followed by ineffective actions to bring the monitored indicators back into acceptable range.

The proposed amendments represent the minimum program necessary to obtain EPA approval. The Board is not proposing

alternative rules because the adoption of rules that are at least as stringent as the EPA rules is required for EPA approval. The Board is not proposing rules that exceed the minimum requirements for EPA approval because the Board has not met the requirements of 75-2-207, MCA (implementing HB 521 from the 1995 Legislature). That statute prohibits the Board from adopting rules more stringent than comparable federal regulations without first conducting a written hearing and making certain written findings.

Since the CAM process is part of the Title V permitting process, the Board has tailored these rules to complement the statutory procedures contained in section 75-2-218(5), MCA, regarding permit appeals. In addition, the EPA rules do recognize that the states have discretion in certain areas. The Board proposes to utilize this discretion to both elaborate upon the consequences of an excursion from indicator ranges contained in the permit, and to require that the process by which indicator ranges or designated conditions shall be established or revised be set forth in the permit. The Board has clarified, in NEW RULE X(3)(c), that the permit must indicate if an excursion from an indicator range is to be considered a per se violation of an emission limitation or permit term. Unless so designated, an indicator range is not directly enforceable as a violation of a permit term. In addition, the Board intends that the permit should not only include the indicator ranges, but should also include the process by which those ranges are established or revised.

6. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than January 31, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. January 31, 2000.

7. James B. Wheelis, attorney for the Board, has been designated to preside over and conduct the hearing.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff by: *Joe Gerbase*

David Rusoff, JOE GERBASE, Chairperson
Rule Reviewer

Certified to the Secretary of State November 22, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.1201 and 17.8.1225 pertaining to Title V air quality operating permits	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On January 26, 2000, at 1:30 p.m. in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., January 14, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.8.1201 DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) through (23) remain the same.

(24)(a) "Non-federally enforceable requirement" means, ~~the following~~ as ~~they apply~~ applicable to emissions units in a source requiring an air quality operating permit~~:~~,

~~(i)~~ any standard, rule, or other requirement, including any requirement contained in a consent decree, or judicial or administrative order entered into or issued by the department, that is not contained in the Montana state implementation plan approved or promulgated by the administrator through rulemaking under Title I of the FCAA;

~~(ii) any term, condition or other requirement contained in any air quality preconstruction permit issued by the department under this chapter that is not contained in the Montana state implementation plan approved or promulgated by the administrator through rulemaking under Title I of the FCAA;~~

(b) through (33) remain the same.

AUTH: 75-2-217, MCA
IMP: 75-2-217, 75-2-218, MCA

17.8.1225 ADDITIONAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT AMENDMENTS (1) through (3) remain the same.

(4) The permit shield provided for in ARM 17.8.1214

~~shall extend~~ does not apply to administrative permit amendments.

AUTH: 75-2-217, MCA
IMP: 75-2-217, MCA

4. On May 11, 1995, the U.S. Environmental Protection Agency (EPA) published a notice in the Federal Register (60 FR 25143) that there were ten provisions of the Department's Title V air quality operating permit rules for which EPA would require amendments or attorney general opinions demonstrating the adequacy of rules for EPA approval of the Department's Title V program. These ten provisions, identified by EPA as "deficiencies," were specified in EPA's notice of final interim approval, published in the Federal Register on May 11, 1995.

On February 4, 1999, the state submitted revised Title V air quality operating permit rules and attorney general opinions to EPA for review. EPA determined that the revisions and opinions corrected or adequately explained nine of the ten provisions in Montana's original program submittal identified as deficiencies by EPA. EPA also identified one additional provision in the state's rules as a deficiency that previously had been overlooked by EPA.

The Board is proposing these rule amendments in response to EPA's identification of two remaining provisions of the state's Title V operating permit rules as deficiencies. It is necessary for the Board to amend the rules so that EPA will grant full approval of the state's Title V program. EPA approval is necessary for the state to obtain and maintain primacy of the Title V permit program, and the policy of the Montana legislature has been for the state to maintain primacy over its environmental programs. Also, under 40 CFR § 70.10 and 42 USC § 7509, failure of the state to submit a fully approvable Title V program may result in withholding of federal highway funds for projects in nonattainment areas of the state and a requirement that new or modified sources or emission units to be located in nonattainment areas obtain emission reductions from existing sources to offset increased emissions by a ratio of at least 2:1.

The Board is proposing to delete ARM 17.8.1201(24)(a)(ii) because is it superfluous. That subsection defines "non-federally enforceable requirements", in part, as including any requirement contained in an air quality preconstruction permit issued by the Department that is not federally enforceable. Every preconstruction permit and permit condition issued under a State Implementation Plan (SIP) approved by EPA is federally enforceable. The rules that constitute the state's preconstruction permit program, ARM Title 17, chapter 8, subchapters 7 through 10, have been approved by EPA into the Montana SIP. Therefore, all air quality preconstruction permits issued by the Department, and all requirements in those permits, are federally enforceable.

The Board is proposing to amend ARM 17.8.1225(4) to specify that the permit shield does not extend to administrative permit amendments. Under 40 CFR § 70.7(d)(4), a permit shield may apply only to permit conditions that have gone through public review. Administrative permit amendments are permit revisions used to correct typographical errors, identify changes in name, address, or phone number of any person identified in the permit, or provide a similar minor administrative change. These administrative permit amendments are not subject to public review.

5. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than January 31, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. January 31, 2000.

6. James B. Wheelis, attorney for the Board, has been designated to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State November 22, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.101, 17.8.308 and 17.8.320 pertaining to implementation of revised federal air quality standards for particulate matter	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On January 25, 2000, at 9 a.m. in Room 44 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., January 18, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) through (30) remain the same.

(31) "PM" means all applicable definitions of particulate matter that specify an aerodynamic size class.

(32) "PM-2.5" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR part 50, Appendix L, and designated in accordance with 40 CFR part 53, or by an equivalent method designated in accordance with 40 CFR part 53.

(31) through (42) remain the same, but are renumbered (33) through (44).

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

17.8.308 PARTICULATE MATTER, AIRBORNE (1) through (3) remain the same.

(4) Within any area designated ~~non-attainment~~ nonattainment in 40 CFR 81.327 ~~for the national ambient air quality standards~~ for ~~PM-10~~ PM, any person who owns or operates:

(a) remains the same.

(b) any new source of airborne particulate matter that has a potential to emit less than 100 tons per year of particulates matter shall apply best available control technology (BACT); and

(c) any new source of airborne particulate matter that has a potential to emit more than 100 tons per year of particulates matter shall apply lowest achievable emission rate (LAER).

(5) remains the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

17.8.320 WOOD-WASTE BURNERS (1) through (5) remain the same.

(6) Wood-waste burners in existence on February 10, 1989, do not have to comply with the requirements of (5) of this rule if they are located outside of ~~10-micron particulate (PM-10)~~ PM nonattainment areas.

(7) through (9) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

4. On July 18, 1997, under the federal Clean Air Act (CAA), 42 USC § 7401, et seq., the U.S. Environmental Protection Agency (EPA) promulgated revised National Ambient Air Quality Standards (NAAQS) for particulate matter, including a revised form for the standard for particulate matter having a diameter of 10 microns or less (PM-10) and new standards for particulate matter having a diameter of 2.5 microns or less (PM-2.5).

A recent court decision of the U.S. Court of Appeals for the D.C. Circuit in American Trucking Associations v. U.S. E.P.A, 175 F.3d 1027 (D.C. Cir. 1999), vacated the revised standards for PM-10. The court directed EPA to "reconsider" the new PM-2.5 standards, however, the court did not vacate these NAAQS, which continue to exist.

Section 110(a) of the CAA requires states to verify to EPA that they have the authority to implement any new NAAQS. EPA is reviewing State Implementation Plans (SIPs) to ensure that the states have adequate programs and resources to implement their air quality programs and enforce control measures. On June 26, 1998, EPA sent letters to state air quality program directors reiterating the states' obligation to review and revise their SIPs to include the new NAAQS. Revisions to Montana's SIP, incorporating the new NAAQS for PM-2.5, must be submitted to EPA for review and approval by July 18, 2000.

The Board is proposing to amend ARM 17.8.101 to adopt a definition of "PM" that accounts for the fact that, under the proposed amendments, there would be more than one size class of particulate being regulated and to add a definition of "PM-2.5" that incorporates the EPA measurement reference method

for PM-2.5. The Board is proposing to amend ARM 17.8.308 and ARM 17.8.320 by substituting the term "PM" for the term "PM-10", in those rules, which specify control requirements and emission limits for new sources and certain wood-waste burners located in particulate matter nonattainment areas. The Board is also proposing editorial amendments to ARM 17.8.308 to make the rule more concise and to make the term used in the rule for particulate matter consistent with the language in other rules.

The proposed amendments to Montana's air quality rules are necessary to certify to EPA that Montana has the authority to conduct monitoring and data collection related to the new particulate standards. Failure to make the proposed rule amendments may result in EPA determining that the SIP is inadequate and placing economic sanctions on the state.

The proposed amendments represent the minimum rule changes necessary for EPA approval. The Board is not proposing alternative rule changes because the adoption of rules that are at least as stringent as the EPA rules is required for EPA approval. The Board is not proposing rules that exceed the minimum requirements for EPA approval because the Board has not met the requirements of Section 75-2-207, MCA (implementing HB 521 from the 1995 Legislature). That statute prohibits the Board from adopting rules more stringent than comparable federal regulations without first conducting a public hearing and making certain written findings.

5. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than January 31, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. January 31, 2000.

6. James B. Wheelis, attorney for the Board, has been designated to preside over and conduct the hearing.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff by: *Joe Gerbase*

David Rusoff, JOE GERBASE, Chairperson
Rule Reviewer

Certified to the Secretary of State November 22, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.705 pertaining to nondegradation requirements for outstanding resource waters	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On January 19, 2000, at 10 a.m. in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of ARM 17.30.705 pertaining to nondegradation requirements for outstanding resource waters.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., January 10, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.30.705 NONDEGRADATION POLICY--APPLICABILITY AND LIMITATION (1) through (2)(b) remain the same.

(c) For outstanding resource waters, no degradation is allowed and no permanent change in the quality of outstanding resource waters resulting from a new or increased point source discharge is allowed.

(3) remains the same.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

4. The Board is proposing the amendment of ARM 17.30.705 in order to be consistent with the newly enacted requirements for outstanding resource waters (ORWs) enacted by Montana's Legislature in 1999. See Chapter 588, 1999 Laws of Montana.

On December 22, 1998, the U.S. Environmental Protection Agency (EPA) disapproved the definition of "degradation" in Montana's Water Quality Act, because it allowed nonsignificant changes to the quality of ORWs. Under EPA's antidegradation requirements, any change in the quality of ORWs is prohibited other than short-term and limited changes. Since nonsignificant activities could result in permanent changes in ORWs, EPA disapproved Montana's definition of "degradation" as it applied to ORWs. As a result, the Montana Legislature amended 75-5-316, MCA, to prohibit nonsignificant activities

that would result in permanent changes in outstanding resource waters. Section 75-5-316, MCA, now provides that (1) no significant change in water quality (i.e., "degradation) is allowed in ORWs; and (2) except for short-term and temporary changes, no permanent change in water quality resulting from new or increased point sources may occur, regardless of its status as "nonsignificant".

The changes made to 75-5-316(2)(b), MCA, make it necessary to modify ARM 17.30.705(2)(c). As currently written, ARM 17.30.705 only prohibits degradation resulting from activities that cause significant changes in the water quality of ORWs. The new language clarifies that activities that cause degradation are not allowed and only short-term changes resulting from nonsignificant point source discharges may be allowed.

If not modified as proposed, the rule would be inconsistent with the new requirements for ORWs enacted by the Montana Legislature. In addition, failure to modify the existing rule to reflect EPA's requirements would result in the promulgation of a federal standard to replace the current language in ARM 17.30.705.

5. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than January 25, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. January 25, 2000.

6. James B. Wheelis, attorney for the Board, has been designated to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State November 22, 1999.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 46.18.149 and 46.18.150 pertaining to emergency assistance for recipients of temporary assistance to needy families (TANF)	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 1, 2000, the Department of Public Health and Human Services proposes to amend the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 20, 1999, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.18.149 EMERGENCY ASSISTANCE ~~FOR NEEDY FAMILIES WITH DEPENDENT CHILDREN~~ (1) Financial assistance and/or services may be authorized to meet the emergency needs of a child under the age of ~~18~~ 21 ~~or who is age 18 and is a full-time primary or secondary school student~~, who lives with a specified relative as defined in ARM 46.18.112 or who lived with a specified relative within the 6 months prior to the request date in a place of residence maintained by the relative as the child's home, ~~or of a relative of the child within the degree of kinship specified in ARM 46.18.112 who lives with the child,~~ in the following circumstances:

(a) remains the same.

(b) where the emergency arises out of a situation identified by the department ~~'s family services bureau~~ as involving abuse or neglect of the child.

(2) through (4) remain the same.

(5) Emergency assistance shall be provided in the form of cash payments directly to the household or ~~payments by the department~~ protective payee or to the vendor of a necessary item or service.

(6) Emergency assistance shall not be provided to pay for the following:

(a) through (g) remain the same.

(h) bills more than 30 days past due, excepting the two most recent months of past due rent or utility bills if ~~a written~~ an eviction notice or utility cut-off notice ~~has been given to the household~~ is imminent and the cause of the eviction or utility shut-off was an unforeseen event~~.~~. For purposes of this rule, "imminent" means likely to happen without delay as a result of unanticipated circumstances.

(i) remains the same.

(j) the purchase of a vehicle; or

(k) any travel expense that would be payable by any source including but not limited to medicaid, ~~or by~~ FAIM supportive services or one-time employment related payments.

(7) Emergency assistance may be provided to pay for ~~family~~ home-based services, ~~in the home~~ substitute care or foster care if the department~~'s family services bureau or family prevention contractor has identified~~ identifies a need for ~~social worker~~ services to prevent the child's removal, expedite the return of the child to the home, or prevent the need for protective services for the child.

(8) and (9) remain the same.

(10) Receipt of emergency assistance does not count as using any month of time-limited FAIM cash assistance.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

46.18.150 EMERGENCY ASSISTANCE ~~FOR NEEDY FAMILIES WITH DEPENDENT CHILDREN~~ PROCEDURES FOLLOWED IN DETERMINING ELIGIBILITY (1) A household member or an employee or agent of the department may make a request for emergency assistance ~~at the county office administering public assistance programs in the county where the household needing assistance lives~~.

(2) remains the same.

(3) To receive emergency assistance, an applicant must show:

(a) that a child who is under the age of ~~18 or is 18 and a full time primary or secondary school student~~ 21 is living with a relative specified in ARM 46.18.112 or has lived with a specified relative within 6 months of the date of the request in a place of residence maintained by the relative as the child's ~~own~~ home; and

(b) remains the same.

(4) Emergency assistance may be provided in addition to but not as a substitute for ~~FAIM cash~~ basic needs assistance, including but not limited to FAIM assistance, tribal TANF family assistance or bureau of Indian affairs (BIA) general assistance.

(5) The completed request for emergency assistance shall be submitted to the county office of public assistance. The applicant shall be notified by the ~~county office~~ department of the approval or reasons for ~~disapproval~~ denial of the request for emergency assistance.

(6) remains the same.

(7) ~~County offices~~ The department shall make a determination of eligibility for emergency assistance within 5

days after receiving the application and all verification required to support the application.

(8) remains the same.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

3. The State of Montana provides assistance to needy families through the Families Achieving Independence in Montana (FAIM) program and the Emergency Assistance program. These programs are jointly funded by the federal TANF (Temporary Assistance to Needy Families) block grant and the State's general fund. Prior to the passage of Public Law 104-193, the Personal Responsibility and Work Reconciliation Act, Montana operated its FAIM and Emergency Assistance programs based on the Aid to Families with Dependent Children (AFDC) program regulations. When TANF replaced the AFDC program, the State amended the ARMs to comply with temporary TANF regulations. In April of 1999, the federal government published the final TANF regulations and the State learned that Emergency Assistance could have continued under the old AFDC regulations.

The final TANF regulations released in April of 1999, clarified the definition of "assistance", making it clear that the State can use TANF funds to provide a broad range of benefits and services without triggering time limits or work participation requirements so long as a similar form of assistance was authorized prior to 1996. See 64 Fed. Reg. 17894 (April 12, 1999). The final TANF regulations allow states to use federal TANF funds for specific activities previously authorized based on an approved Title IV-A or IV-F plan, using the same eligibility criteria as contained in the prior 1996 approved plan.

In Montana, in 1996, the AFDC plan made emergency assistance available to eligible minor children under 21 years of age. In order to use TANF funds for emergency assistance today, the program criteria must be the same as the criteria used in 1996; and therefore, the proposed amendment is necessary to raise the age of eligible minor children back up to 21, the criteria which was set in the 1996 AFDC plan and readopt the eligibility criteria that was in place in 1996.

Furthermore, in the 1996 AFDC plan, the State plan allowed emergency assistance for children who were not living with a specified caretaker relative due to abuse or neglect, so long as the children had lived with a specified caretaker relative within the six months preceding the application for assistance. Since, in order to use TANF federal dollars, the State's current emergency assistance program must mirror that which was in place in 1996, the proposed rule amendment is necessary to allow emergency assistance to be paid for children not living with a specified caretaker relative, so long as they have resided with such caretaker relative within the past six months. Moreover,

as in the 1996 AFDC State plan, emergency assistance can be used for medical needs of children suffering from abuse or neglect. The proposed amendment permits such use.

By returning to the State's 1996 AFDC plan, the State is able to use Block Grant Funds (paid in whole by the federal government) for emergency assistance. Previously, the State has been required to contribute State general funds to provide such assistance. Furthermore, the scope of emergency assistance can be broadened to reflect the assistance which was available under the old AFDC plan. This permits the State to better protect the health, safety and welfare of abused or neglected kids and those in crisis.

Though the Department could have chosen to provide no emergency assistance at all, the Department believes that option would not adequately protect the needs of the State's most vulnerable citizens, those in crisis. Under the new federal TANF regulations, the Department could also have left the emergency assistance program as it was. But, that option requires cost-sharing using State funds and provides narrower assistance to fewer persons in need. In addition, the federal government would not count the State contributions toward emergency assistance as matching funds for the purposes of the TANF block grant. Thus, using available federal funds and avoiding lost State contributions is prudent. By returning to the 1996 AFDC plan, federal funds can be used to provide more adequate protection for abused or neglected children who cannot reside with a specified caretaker relative. Thus, the Department concluded that the proposed amendment was necessary in order to readopt the 1996 AFDC plan and better protect the health, safety and welfare of the State's children.

The Department served 164 emergency assistance recipients in state fiscal year 1999. For that period the state paid approximately $69,500 in emergency assistance benefits. Though the total benefit and the number of emergency assistance recipients will likely increase due to the proposed amendment, the state's total expenditures for emergency assistance will decrease since federal funds can be used in place of state funds under the proposed amendment.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 30, 1999. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 30, 1999.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 16 based on the 164 individuals affected by rules covering emergency assistance for TANF.

Dawn Sliva
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State November 22, 1999.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to licensure of out-of-state applicants, approved programs or courses, therapeutic pharmaceutical agents, approved course and examination, and approved drugs	)))))))	NOTICE OF AMENDMENT OF 8.36.417 LICENSURE OF OUT-OF-STATE APPLICANTS, 8.36.602 APPROVED PROGRAMS OR COURSES, 8.36.801 THERAPEUTIC PHARMACEUTICAL AGENTS, 8.36.803 APPROVED COURSE AND EXAMINATION, AND 8.36.804 APPROVED DRUGS

TO: All Concerned Persons

1. On October 7, 1999, the Board of Optometry published a notice of public hearing on the proposed amendments of the above-stated rules at page 2153, 1999 Montana Administrative Register, issue number 19. The hearing was held on November 5, 1999 in Helena, Montana.

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

3. The Board received one written comment and four optometrists, one representing the Montana Optometric Association, presented oral testimony at the hearing. The comments received and the Board's response is as follows:

COMMENT #1: All commentors were in favor of the proposed amendments.

RESPONSE: The Board concurred with the commentors and voted to amended the rules exactly as proposed.

BOARD OF OPTOMETRY
CHARLIENE STAFFANSON, CHAIRMAN

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

CERTIFIED TO THE SECRETARY OF STATE, NOVEMBER 22, 1999

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a new rule for the administration of the 1999 Treasure State Endowment Program (TSEP)	) NOTICE OF ADOPTION))))

TO: All Concerned Persons

1. On July 1, 1999, the Department of Commerce published notice of a public hearing on the proposed adoption by reference of the above-stated rule at page 1473, 1999 Montana Administrative Register, issue number 13. The Department convened the hearing on July 21, 1999, but no members of the public attended.

2. No comments or testimony were received.

3. The Department has adopted rule I (8.94.3805) as proposed with the following changes: (authority and implementing sections will remain the same as proposed)

"8.94.3805 INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1999 TREASURE STATE ENDOWMENT PROGRAM PROJECTS (1) The department of commerce herein adopts and incorporates by this reference the Montana Treasure State Endowment Program ~~1999~~ Project Administration Manual dated May 1999 and published by it as rules for the administration of the TSEP.

(2) will remain the same as proposed.

(3) will remain the same as proposed."

4. The reason for the changes noted above is to clarify the applicability of the Administrative Manual and to more precisely identify the Manual. In addition the department has made several technical changes to the manual itself. A complete explanation of these changes may be obtained from the Department of Commerce, Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY:

Anne M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Anne M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 22, 1999.

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

In the matter of the amendment of ARM 12.6.901 limiting motor-propelled water craft to no-wake speed from Porcupine Bridge to the mouth of the Swan River	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 12, 1999, the Montana Fish, Wildlife and Parks Commission (commission) published notice of the proposed amendment of ARM 12.6.901 concerning limiting motor-propelled water craft on the Swan River at page 1732 of the 1999 Montana Administrative Register, Issue Number 15. On September 23, 1999, the commission published notice of a supplemental comment period regarding this amendment at page 1938 of the 1999 Montana Administrative Register, Issue Number 18.

2. The commission has amended ARM 12.6.901 as proposed.

3. A total of 330 comments were received regarding this rule amendment. Comments in favor of amending the rule numbered 302. Comments opposed to the rule amendment numbered 28. The following is a summary of the comments received opposing the rule or suggesting changes, along with the commission's responses to those comments:

COMMENT 1: Twelve of the 28 opposing comments received stated that only newcomers to the area, radical environmentalists, or only one or two individuals were promoting the amendment of the rule.

RESPONSE 1: Out of 330 comments received, 302 favored adopting this rule amendment. Most of the correspondence received in favor of the rule was from the Kalispell area. North West Montana is growing and, with that growth, some change is inevitable. This proposal is not designed to take the interests of one group over another; it is intended to mitigate the increased use of high speed boating in close proximity to the wildlife refuge. The Montana Constitution provides individuals on any side of an issue the right to express comments, promote or oppose laws and regulations, and form groups to promote their view points. The commission's duty is to decide if the proposed restriction is in the best interests of river regulation considering all factors, including statutory criteria and public comment.

COMMENT 2: Seven individuals stated that they believed the rule amendment was not enforceable. Some asserted that to enforce the amendment, more law enforcement, for which not enough funding exists, would be required. Others saw the amendment as a nuisance law that is in itself not enforceable.

RESPONSE 2: The commission believes that most people are law abiding and will follow the regulations. Like all new regulations, the Department of Fish, Wildlife and Parks would first provide educational information about the rule, issuing warnings when necessary and issuing citations when it becomes unavoidable. The commission is prepared to enforce this rule.

While more funding for law enforcement could always be effectively used, laws and regulations are continually being made, and new funding is not generated every time a new regulation or law becomes effective.

COMMENT 3: Three individuals stated that there was no need for the rule amendment. These individuals said that there had been no accidents with water craft and that the wildlife were thriving in the area. One individual suggested a study or Environmental Impact Statement (EIS) be done to determine what effects recreational water craft are having in the area. One also stated that there had been no problems with the conduct of water craft users in the area.

RESPONSE 3: The basis for this rule amendment was public interest in protecting wildlife. That high speed water craft and increased human activity disturb nesting and rearing of water fowl and other birds is an assertion that has been documented by numerous scientific studies. See National Biological Survey, Biological Report 22, May 1994, published by the Department of Interior. Of the total number of individuals commenting, 91% believe that this proposed rule amendment is needed to protect wildlife. Some respondents provided technical and personal observations regarding the adverse affects of high speed water craft on wildlife on this stretch of the Swan River.

According to the Montana Environmental Policy Act (MEPA) an EIS is a detailed environmental review which is required whenever an agency proposes an action that may significantly affect the quality of the human environment. Evidence did not indicate that this proposed rule would significantly affect the quality of the human environment. Scientific data and public observation support the premise that wildlife in a refuge is adversely affected by water craft traveling at high rates of speed.

COMMENT 4: One individual proposed a compromise that involved amending the rule to incorporate a 50 yard no-wake zone before and after the half mile stretch where the cabins are located.

RESPONSE 4: This would not accomplish the intent of the rule. The intent of the rule is to protect wildlife. The no-wake regulation is a compromise between closing the section of river to motor-propelled water craft and allowing unrestricted boating.

COMMENT 5: Two individuals maintained that erosion was not increased by high speed water craft and two individuals stated that spring run off and the natural flow of the river combined with the soil composition of the bank were the cause of any erosion problems, not high speed water craft.

RESPONSE 5: This rule is not being amended on the basis that high speed water craft is causing bank erosion. The basis for this rule is that high speed water craft disturbs the nesting and rearing of wildlife. That high speed water craft and increased human activity disturb nesting and rearing of water fowl and other birds is an assertion that has been documented by scientific studies.

COMMENT 6: Four individuals indicated that there was not enough time for rebuttal of proponents' comments at the hearing. Three of the four believed another hearing was necessary in order for all concerned parties to receive a fair hearing.

RESPONSE 6: On September 23, 1999, the commission published notice of a supplemental comment period regarding this amendment at page 1938 of the 1999 Montana Administrative Register, Issue Number 18. To ensure that the rulemaking process was fair and all viewpoints had an opportunity to be expressed, the commission extended the comment period from September 9, 1999, to October 22, 1999. Written comments were given as much weight as oral comments received at the hearing.

COMMENT 7: One individual pointed out that boat traffic is only heavy from July 1 through Labor Day every year. This individual believes that citizens who object to the boat traffic can tolerate it for that period of time every year.

RESPONSE 7: The purpose of the rule is to protect wildlife and habitat. The nesting and rearing of birds and other wildlife within the refuge occurs throughout the spring and summer months.

COMMENT 8: One individual argued that the river was being used as it is now before the refuge was created. This individual stated that the river borders the refuge as does a highway. If this portion of the river is regulated to no-wake speed to protect wildlife, this individual thought it was inconsistent that the highway was not also closed to protect wildlife.

RESPONSE 8: The Swan River is vital to the existence of the birds within the refuge and adjoining areas. The river itself and its riparian zone is the habitat where wildlife is especially concentrated. Under 87-1-303, MCA the commission has the responsibility and authority to regulate motorized water craft and recreational uses on Montana's waters in the interest of the protection of wildlife which the state owns in trust for the citizens of the state. The commission does not have authority over public highways.

By: S.F. Meyer

S.F. MEYER
Commission Chairman

By: Martha C. Williams

MARTHA C. WILLIAMS
Rule Reviewer

Certified to the Secretary of State on November 22, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of amendment of 17.8.102, 17.8.103, 17.8.106, 17.8.202, 17.8.204, 17.8.206, 17.8.302 and 17.8.316 pertaining to air quality incorporation by reference rules	CORRECTED NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On September 27, 1999, the Board of Environmental Review published notice of the amendment of ARM 17.8.102, 17.8.103, 17.8.106, 17.8.202, 17.8.204, 17.8.206, 17.8.302 and 17.8.316 pertaining to air quality incorporation by reference rules at page 2250 of the 1999 Montana Administrative Register, Issue No. 19.

2. The reason for the correction is that pursuant to the Board's decision, the title of the Montana Source Test Manual was retained. In ARM 17.8.106(1)(b) and 17.8.316, the title reflected changes that were incorrect. ARM 17.8.316(5) contained the correct title, and therefore will not be amended. ARM 17.8.106(1)(b) is corrected to read as follows:

17.8.106 SOURCE TESTING PROTOCOL (1)(a) remains the same.

(b) All emission source testing, sampling and data collection, recording, analysis, and transmittal must be performed as specified in the Montana Source Testing Protocol and Procedures Manual, unless alternate equivalent requirements are determined by the department and the source to be appropriate, and prior written approval has been obtained from the department. If the use of an alternative test method requires approval by the administrator, that approval must also be obtained.

(c) through (e) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on December 31, 1999.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

John F. North
John F. North,
Rule Reviewer

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Certified to the Secretary of State November 22, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.303, 17.24.304, 17.24.404, 17.24.405, 17.24.416, 17.24.518, 17.24.520, 17.24.623, 17.24.639, 17.24.645, 17.24.718, 17.24.724, 17.24.815, 17.24.901, 17.24.924, 17.24.932, 17.24.1108, 17.24.1226, and 17.24.1261 pertaining to coal and uranium mining organizational changes	NOTICE OF AMENDMENT (Coal and Uranium)

TO: All Concerned Persons

1. On August 26, 1999, the Board of Environmental Review published notice of the proposed amendment to ARM 17.24.303, 17.24.304, 17.24.404, 17.24.405, 17.24.416, 17.24.518, 17.24.520, 17.24.623, 17.24.639, 17.24.645, 17.24.718, 17.24.724, 17.24.815, 17.24.901, 17.24.924, 17.24.932, 17.24.1108, 17.24.1226, and 17.24.1261 pertaining to coal and uranium mining organizational changes at page 1782 of the 1999 Montana Administrative Register, Issue No. 16.

2. The board has amended ARM 17.24.303, 17.24.304, 17.24.404, 17.24.416, 17.24.518, 17.24.520, 17.24.623, 17.24.639, 17.24.645, 17.24.718, 17.24.724, 17.24.815, 17.24.901, 17.24.924, 17.24.932, 17.24.1108, 17.24.1226, and 17.24.1261 as proposed.

3. The Board has amended ARM 17.24.405 with the following changes:

17.24.405 FINDINGS AND NOTICE OF DECISION (1) through (8)(a)(ii) remain as proposed.

(iii) if, after reconsideration pursuant to ~~(i)~~ (ii) above, the department determines that permit issuance is not prohibited, require that the applicant file the required performance bond or provide other equivalent guarantee.

(b) remains as proposed.

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

4. The Board received the following comments; Board responses follow:

COMMENT #1: In the proposed revision of ARM 17.24.405(8)(iii), the reference to (i) is incorrect. It is clear from the context of (iii) that the "reconsideration" that is being referred to is in (ii).

RESPONSE: The Board agrees and has made the suggested change.

BOARD OF ENVIRONMENTAL REVIEW

by: *Garon Smith*
GARON SMITH, Acting Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State November 22, 1999.

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

In the Matter of the Adoption of Rules Implementing) Senate Bill 406 ("Electricity Buying Cooperative Act") and House Bill 211 Pertaining to Electricity Default Suppliers	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 7, 1999, the Department of Public Service Regulation, Public Service Commission (Commission), published a notice of public hearing on the proposed adoption of rules pertaining to electricity default supplier licensing and selection rules at page 2228 of the 1999 Montana Administrative Register, issue number 19.

2. The Commission conducted a public hearing on November 4, 1999 in its offices at 1701 Prospect Avenue, Helena, Montana, in the Bollinger Room. Twelve individuals representing themselves, their companies or associations commented at the public hearing. The Commission received written comments through the November 4, 1999 deadline from the following: Montana Power Company (MPC); Natural Resources Defense Council-Renewable Northwest Project (NRDC-RNP); Cities of Missoula, Helena and Bozeman and Montana League of Cities and Towns (Cities); Energy Northwest, Inc. (ENI); Enron North America (Enron); Energy West Resources (Energy West); Montana Electricity Buying Cooperative (Buying Coop); Avista Corporation (Avista); Montana Consumer Counsel (MCC); Bonneville Power Administration (BPA); Central Montana Electric Power Cooperative (Central Montana); Montana Department of Environmental Quality (DEQ); PP&L EnergyPlus Co., LLC (PPL); Center for Energy and Economic Development (CEED); Montana Electric Cooperatives Association (Coops); and Montana Office of the Northwest Power Planning Council (NPPC). The comments are addressed in paragraph 4.

3. The Commission has adopted Rule I, Alternative B, and II as proposed, with amendments in response to concerns raised in comments. The Commission does not adopt proposed Rules III through VIII.

RULE I. (38.5.8101) DEFINITIONS (1) "Default supplier" means a ~~regulated transmission and~~ distribution services provider~~, as defined in 69-8-103(10), MCA, or a retail electricity supplier licensed by the Montana public service commission to provide all or a portion of the electricity supply requirements of all or a portion of the small customers of a regulated transmission and distribution services provider that are not being served by a retail electricity supplier~~ or

a person that has received a default supplier license from the commission.

(2) "Default supply service" means regulated electricity supply service provided by a distribution services provider or one or more default suppliers ~~as designated by the commission~~ to small customers of a distribution services provider that has implemented retail customer choice pursuant to Title 69, chapter 8, MCA.

~~(3) "Default supply tariff" means a tariff filed by a designated default supplier and approved by the commission that contains the price(s) and other terms and conditions.~~

~~(4)~~(3) "Small customer" means a retail customer of a regulated electric distribution services provider with an average monthly peak demand in the previous calendar year of less than 100 kilowatts or a new customer with an estimated average monthly demand of less than 100 kilowatts.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

RULE II. (38.5.8102) APPLICATION FOR ELIGIBILITY TO BE A DEFAULT SUPPLIER (1) To become eligible to be selected as a default supplier for small customers of a distribution services provider, an ~~electricity supplier~~ interested person must ~~submit a bid for designation as a default supplier in the commission's competitive solicitation, or submit an application to the commission for designation as a default supplier~~ obtain a license from the commission pursuant to this rule. ~~The supplier must submit~~ License applications must be filed with the commission and a copy sent to the distribution services provider serving the area(s) in which the person wishes to be the default supplier. A person who obtains a license pursuant to this rule is eligible to become a default supplier, but must be specifically designated a default supplier by the commission before providing service to any small customers. License applications must include the following information ~~to the commission and the public utility(ies) serving the area(s) in which the supplier wishes to provide default supply~~:

(a) complete business name of the applicant;

(b) complete street and mailing address of the applicant's principal office;

(c) the name of a regulatory contact who should be contacted regarding the application, and the address, direct telephone number, fax number and e-mail address of that person;

(d) the name and business address of all applicant's officers and directors, partners or other similar officials, and a statement that neither the applicant, nor any of its officers and directors, partners or other similar officials are currently in violation of, and within the past three years have not violated, any state or federal consumer protection laws or rules;

(e) a description of the applicant's experience, and the experience of each of its officers, directors or other officials in wholesale and retail electricity markets;

~~(e)~~(f) a list of affiliates, if any, a corporate organization diagram, a description of each affiliate's activities and purpose;

~~(f)~~(g) a statement ~~explaining whether~~ that the applicant neither owns, holds, equips ~~or~~, maintains or operates any electric generation, transmission or distribution systems or facilities in the state of Montana;

~~(g)~~(h) a demonstration that it has the capability to ~~generate or~~ acquire energy, capacity and other generation-related ancillary services, transmission rights and interconnection arrangements sufficient to deliver ~~to the public utility's~~ firm, reliable electricity supply, including line losses on the distribution services provider's transmission and distribution system ~~electricity supply~~, to default service customers equivalent in quality to the power product described by western systems power pool, schedule c;

~~(h)~~(i) ~~an~~ a statement that the applicant agree~~ments~~ to comply with reliability criteria established by the North American electric reliability council and the western systems coordinating council and mid-continent area power pool, as applicable;

~~(i)~~(j) a demonstration of creditworthiness through one of the following:

(i) a ~~financial performance~~ long term bond (or other senior debt) rating of at least BBB- or an equivalent rating as determined by Standard & Poor's or another recognized U.S. or Canadian debt rating service; and

(ii) proof of a security deposit payable to the distribution services provider as of commencement of service in an amount ~~with a value~~ equal to the product of five dollars per megawatt-hour times the estimated annual megawatt-hours of electricity that the applicant will deliver to the ~~public utility's transmission interconnection(s)~~ default service customers of a distribution services provider if designated as a default supplier. ~~The performance bond must allow the Montana public service commission to order the bond issuer to pay, up to the financial value of the bond, any debts owed by the applicant due to applicant's failure to deliver to the public utility's transmission interconnection(s) the electric energy, capacity and other generation services necessary to satisfy the applicant's default supplier obligations~~ The security deposit must be updated six months after the date on which service is first provided and every six months thereafter using the average load for the period and a good faith estimate of the cost of emergency service. Security deposits must be in the form of either a renewable surety bond issued by a major insurance company, or a guarantee with a guarantor possessing a credit rating of Baa2 or higher from Moody's or BBB or higher from Standard & Poor's, Fitch or Duff and Phelps. The terms of the bond or guarantee must allow the commission to order the issuer to pay directly to the

distribution services provider, up to the value of the bond or guarantee, any debts owed by the applicant due to its failure to satisfy its default supply obligations; and

~~(j)~~(k) ~~verification~~ a demonstration that the applicant can execute an agreement with the ~~public utility~~ distribution services provider for deliveries of default electric supply to the ~~utility's transmission system interconnection points~~ distribution services provider's service area(s).

(2) The commission may waive one or more licensing requirements in (1) of this rule if the applicant demonstrates good cause and the commission determines that waiving the requirement is in the public interest.

(3) The average time for commission action on an uncontested correctly completed application for a license to be eligible for default supplier designation is 45 days. The average time for commission action on a contested correctly completed application is up to 120 days.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

4. The Commission received the following comments and responds as follows:

COMMENTS ON RULE I:

Comment 1: PPL recommended changing the definition of "default supplier" to be consistent with the statute and referring to the public utility as the distribution services provider.

Response: The rule is modified accordingly.

Comment 2: PPL also recommended changing the term "default supply tariff" to "default supply price."

Response: The term "default supply tariff" is deleted.

Comment 3: Enron commented that the definition of the term "Melded retail default service rate" should be added to the rule after further discussions of standards of default supply service.

Response: The term "melded retail default service rate" was not used because the Commission chose Alternative B.

Comment 4: The Buying Coop stated that the rule should make clear that the only licensing requirements applicable to potential default suppliers are contained entirely within the rules.

Response: The rule, as modified, makes this clear.

Comment 5: ENI recommended deleting the word "transmission" from the definition of default supplier.

Response: The rule is modified and does not include the word "transmission."

COMMENTS ON RULE II.

Comment 6: Enron commented that part (1) should be modified to be consistent with a two-stage process in which persons wanting to become default suppliers first obtain a license before becoming eligible for possible selection as a default supplier at some later date.

Response: The rule is modified accordingly.

Comment 7: ENI stated that ancillary services should be added to part (1)(g).

Response: The rule is modified accordingly.

Comment 8: Enron asked that the Commission expand part (1)(i) to allow other options for demonstrating creditworthiness.

Response: The Commission incorporated Enron's suggested methods for demonstrating creditworthiness.

Comment 9: The Buying Coop stated that part (1)(e), (f) and (g) improperly indicate that the default supplier may own or control generation, transmission or distribution assets. These rules are designed to allow the Commission to verify that an entity seeking to become a default supplier does not own or control such assets.

Comment 10: The Cities commented that the need for and level of bonding required in part (1)(i) might be more appropriately addressed in the application process.

Comment 11: The Buying Coop stated that part (1)(i) should be written so that the default supplier must demonstrate that its sources of supply are financially sound and the details of any bond should be left to negotiation between the default supplier and its suppliers. The Buying Coop stated that the default supplier will not likely own a substantial amount of assets and, therefore, would not be able to obtain a bond.

Response to Comments 9-11: The Commission disagrees with these comments. If a buying cooperative or a city is eventually selected as a default supplier, it will be a market aggregator that takes title to electricity for resale to retail customers. These entities will have an obligation to serve conferred on them by the Commission and, therefore, an obligation to acquire and take title to electricity supply necessary to fulfill its obligation. It is these entities, not their upstream suppliers, that will have contractual obligations with the distribution services provider, or otherwise these entities are brokers. Since these entities take title to electricity, they will own assets.

Comment 12: Avista supported the bonding requirement contained in the part (1)(i). ENI stated that part (1)(i)

should be modified so that the distribution services provider is the beneficiary.

Response: The rule is modified accordingly.

Comment 13: ENI stated that the Commission should exercise greater oversight over the terms of performance bonds.

Response: The Commission believes the rule, as modified, is sufficient. If the terms of the bond become a practical concern, the Commission may modify the rule.

Comment 14: DEQ commented that part (1)(e) should require the same information from the parent company and affiliates of the applicant.

Response: The Commission does not believe the statute requires this information.

Comment 15: DEQ also recommended that the rules require an applicant to describe its experience and capability to provide reliable default service.

Response: The rule is modified accordingly.

COMMENTS ON RULES III THROUGH VII.

Comment 16: The Commission received general comments from Enron, NPPC, MCC, Avista, ENI and PPL recommending that these rules not be adopted at this time because of unresolved technical and policy issues. These parties recommended that the Commission continue to develop these rules through its public processes, with the goal of adopting rules on standards for default service, obligations of distribution services providers and default suppliers and methods for selecting default suppliers at a future date.

Comment 17: DEQ and MPC commented that with some modifications Rules III, IV and V would establish an appropriate means of providing for default supply service.

Comment 18: MPC and DEQ opposed Rules VI and VII, asserting that cities and buying cooperatives should not be treated differently than any other potential default supplier.

Comment 19: The Buying Coop opposed separate treatment, or the "dual track" selection process established through these rules. The Buying Coop opposed the bidding approach in Rule V, believing that a single application approach for all entities interested in being a default supplier would be more workable and consistent with legislative intent.

Comment 20: The Cities supported the application process reserved for them, with some modifications.

Comment 21: MEIC opposed the "two track" selection process and the bidding alternative B.

Comment 22: Central Montana commented that the distribution services provider, i.e., the owner of distribution facilities, should be the default supplier.

Response to Comments 16-22: The Commission does not adopt Rules III through VII. There are many unresolved technical and policy issues associated with these proposed rules. Because of the diverse and conflicting comments of parties on the proposed rules, the Commission finds that the record does not support adoption of the proposed rules, either in their original form or as modified to reflect various comments.

COMMENTS ON RULE VIII.

Comment 23: On the proposed default supply renewable portfolio standard, MPC, MCC, ENI, Energy West, PPL, DEQ, CEED, and Enron questioned the appropriateness of the rule and the Commission's authority to adopt the rule, and/or recommended that the rule be eliminated.

Comment 24: NRDC-RNP alone supported the renewable portfolio standard, but stated that it should not go into effect until July 2002.

Response to Comments 23 and 24: Because of questions raised by commenters about the Commission's legal authority to implement this rule, and the fact that a legislative session will occur in the interim period before NRDC-RNP's proposal for the rule would go into effect, the Commission finds that deferring adoption of this rule is appropriate. The proposed rule is not adopted.

Nancy McCaffree, Vice-Chair

Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 22, 1999.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 regarding scheduled dates for the Montana Administrative Register	)))))	NOTICE OF AMENDMENT OF ARM 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION OF THE MONTANA ADMINISTRATIVE REGISTER

TO: All Concerned Persons

1. On October 21, 1999, the Secretary of State published notice of the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register for 2000 at page 2432 of the 1999 Montana Administrative Register, Issue No. 20.

2. ARM 1.2.419 is amended as proposed with the following changes:

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION OF THE MONTANA ADMINISTRATIVE REGISTER (1) same as proposed.

(2) All material to be published must be submitted by ~~1:00~~ 12:00 p.m. on the scheduled filing date. All material submitted after the scheduled filing deadline will not be published until the next scheduled publication date.

(3) same as proposed.

AUTH: Sec. 2-4-312, MCA IMP: Sec. 2-4-312, MCA

3. The following two written comments were received and appear with the Secretary of State's response.

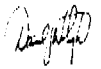
COMMENT 1: One commentor agreed with the proposed time change in ARM 1.2.419(2).

RESPONSE: The Secretary of State appreciates the comment.

COMMENT 2: The second commentor agreed with the proposed deadline change in ARM 1.2.419(2) but offered an alternative deadline of 12:00 p.m. The suggested time change of 12:00 p.m. would be at the "...end of the morning whereas 1:00 is the start of the work afternoon. It would be better to have your deadline to match an ending time rather than a beginning time during the work day."

RESPONSE: The Secretary of State agrees that the suggested deadline change to 12:00 p.m. is logical and has merit. Therefore, the Secretary of State will amend the rule with the change noted in ARM 1.2.419(2).

MIKE COONEY
Secretary of State



DANIEL J. WHYTE
Rule Reviewer

Dated this 22nd day of November 1999.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:.

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Taxation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1999. This table includes those rules adopted during the period October 1, 1999 through December 31, 1999 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1999, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1998 and 1999 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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