

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 2.4.401, 2.4.402, 2.4.403,	)	PROPOSED AMENDMENT AND
2.4.404, 2.4.405, 2.4.406, 2.4.409,	)	REPEAL
2.4.410, and 2.4.411 pertaining to	)	
accounting and financial reporting	)	
standards, report filing fees, filing	)	
penalties, waivers and extensions of	)	
penalties, audit and audit reporting	)	
standards, the roster of independent	)	
auditors, resolution and corrections of	)	
audit findings, financial reviews, and	)	
incorporation by reference of various	)	
standards, accounting policies, and	)	
federal laws and regulations and the	)	
repeal of ARM 2.4.408 pertaining to	)	
audit contracts	)	

TO: All Concerned Persons

1. On July 17, 2019, at 11:00 a.m., the Department of Administration will hold a public hearing in Room 261 of the Mitchell Building, at 125 N. Roberts St., Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on July 10, 2019, to advise us of the nature of the accommodation that you need. Please contact Cody Pearce, Department of Administration, Statewide Accounting Bureau, P.O. Box 200102, Helena, MT 59620; telephone (406) 444-3092; fax (406) 444-9144; TDD (406) 444-1421; Montana Relay Service 711; or e-mail LGSPortalRegistration@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the department has identified necessary changes included in these proposed amendments. The general approach the department has taken in these proposed amendments is to implement the Legislature's intent while understanding that each local government entity is unique, requiring some flexibility in the department's approach. The department has also eliminated unnecessary rules and shortened others.

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

2.4.401 ACCOUNTING AND FINANCIAL REPORTING STANDARDS

~~(1) All counties, cities, and towns, and special purpose districts, other than school districts and special education cooperatives, shall adhere to the accounting and financial reporting standards applicable to the reporting period adopted by the Governmental Accounting Standards Board (see ARM 2.4.411).~~

~~(2) If approved by the department, a local government shall adhere to the provisions described in the Small Government Financial Reporting Framework instead of the provisions provided in (1) (see ARM 2.4.411).~~

~~(2) All counties, cities, and towns shall utilize the chart of accounts prescribed by the department in the budgetary, accounting, and reporting system for Montana cities, towns, and counties (see ARM 2.4.411).~~

~~(3) All local government entities except school districts and associated cooperatives shall file an annual financial report with the department as required by 2-7-503, MCA.~~

~~(4) The annual financial report must be on a form required by the department or, subject to the approval of the department, in a form that provides at least the same information required by the department's form.~~

AUTH: 2-7-504, 2-7-513, MCA

IMP: 2-7-504, 2-7-513, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1) to clarify that all local governments, including special purpose districts other than school districts and associated cooperatives, must submit financial reports in accordance with reporting standards applicable to the report's reporting period. Because the department proposes to amend ARM 2.4.411 to provide the current edition date of generally accepted accounting principles, the proposed amendment to (1) clarifies that local governments should not inappropriately apply current reporting standards to financial reports applicable to past reporting periods.

The department proposes to delete (2) through (4) to remove unnecessary duplication of statutory language in accordance with 2-4-305(2), MCA.

The department proposes (2) to establish a small government financial reporting framework in accordance with L. 2019, Senate Bill 2, which amended 2-7-504, MCA, to provide rulemaking authority to the department to define an alternative reporting framework for small local governments. The department believes the proposed framework will provide relief to those smaller local governments that struggle to meet certain financial reporting requirements of generally accepted accounting principles (GAAP). The framework excludes from GAAP the most costly and burdensome aspects of financial reporting that also lack relevance to the users of those local governments. One such example is actuarially determined post-employment benefit information, which is not only highly technical and expensive to produce, but also does not factor into the day-to-day, cash-basis or budgetary-basis decisions of the governing officials of small, rural governments. The department believes providing a separate document outside of administrative rule by an incorporation by reference

facilitates beneficial coordination with other local government resources provided to assist the annual financial statement preparation process. Those resources include the annual financial report form and the uniform chart of accounts authorized at 2-7-503, MCA.

2.4.402 REPORT FILING FEE (1) ~~As provided by 2-7-514, MCA, each local government entity required to have an audit under 2-7-503, MCA, shall pay an annual filing fee to the department. A local government filing fee is based on the following definitions:~~

~~(2) For purposes of this rule "annual"~~

~~(a) "Annual" refers to means the fiscal year utilized by of the local government entity.~~

~~(3) As required by 2-7-514, MCA, the fee schedule shall be based upon the local government entity's annual revenue amounts.~~

~~(4) For purposes of this rule "revenue"~~

~~(b) "Revenues" means all receipts or inflows of resources of a local government entity from any source excluding the proceeds from bond issuances and other long-term debt not received from state or federal sources.~~

~~(i) Revenues must be based on the recognition criteria of the financial reporting framework presented in the audit report.~~

~~(ii) Revenues may be provisionally based on amounts presented in the financial report required by 2-7-503, MCA, until such time that the audit report for the same period is issued.~~

~~(iii) The department and the local government entity shall settle the balance of any resulting difference in the filing fee when the audited revenues are available.~~

~~(iv) When applicable, revenues do not include receipts or inflows of resources presented in the governmentwide, investment trust funds, or custodial funds financial statements.~~

~~(5) Each local government entity except school districts shall pay the annual filing fee to the department at the time the entity files the annual financial report required by 2-7-503, MCA, with the department.~~

~~(6)~~(2) For school districts and associated cooperatives:

~~(a) as required by 2-7-514, MCA, the Office of Public Instruction shall pay the annual filing fee revenues are based on the recognition criteria of the financial reporting framework presented in the financial report required by 20-9-213, MCA;~~

~~(b) in the case of combined elementary and high school districts, the annual filing fee will be is based upon the combined annual revenue amounts of both districts; and~~

~~(c) in the case of school districts and associated cooperatives having an audit covering two fiscal years, the department will shall calculate a separate fee based on the annual revenue amounts for each fiscal year covered by the audit.~~

~~(7)~~(3) The annual filing fees for local government entities are as follows:

<del>Annual Revenues Equal to or Greater Than in</del> <u>Excess of:</u>	<del>Annual Revenues Equal to or Less Than:</del>	<u>Fee</u>
<del>\$500,000</del> <u>750,000</u>	\$1,000,000	\$550

\$1,000,000	\$1,500,000	\$800
\$1,500,000	\$2,500,000	\$950
\$2,500,000	\$5,000,000	\$1,300
\$5,000,000	\$10,000,000	\$1,700
\$10,000,000	\$50,000,000	\$2,500
\$50,000,000		\$3,000

This filing fee schedule is effective for annual financial reports for ~~years ended June 30, 2015, and~~ due on or after July 1, 2017.

AUTH: 2-7-514, MCA  
IMP: 2-7-514, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1) and (2) to provide style corrections and to remove unnecessary duplication of statutory language.

The department proposes to delete (3) and (5) to remove unnecessary duplication of statutory language.

The department proposes to amend (4) to provide style and grammar corrections and to resolve confusion over whether the filing fee is calculated from revenue amounts reported in the annual financial report or the audit report of the same period. Because revenues reported in the unaudited annual financial report are typically provided prior to the independently verified revenue amounts in the audit report, which provides more reliable revenue amounts for the basis of the filing fee, an entity may provisionally calculate the filing fee from amounts reported in the annual financial report until the audit report is completed. The department believes this approach is reasonable based on the above-described timing differences. The amendment also clarifies that revenues do not include any revenues of the governmentwide, investment trust fund, or custodial funds. The department has taken this approach because these revenues either have already been accounted for in other areas of the financial statements or do not belong to the primary government. In the latter case, these revenues belong to other, legally separate entities.

The department proposes to amend (6) to remove unnecessary duplication of statutory language, to make style corrections, and to provide to the Office of Public Instruction an expediency exception to the proposed amendments to (4). The exception approach is warranted because the Office of Public Instruction reviews the revenue amounts presented in the Trustees' Financial Summary, which provides to the department reasonable assurance of the correct valuation of the filing fee. The Office of Public Instruction calculates and pays the filing fees of school districts and associated cooperatives from revenue amounts presented in the Trustees' Financial Summary. The Trustees' Financial Summary is a financial report prescribed by, submitted to, and reviewed by the Office of Public Instruction.

The department proposes to amend (7) to update the filing fee schedule resulting from L. 2017, Senate Bill 372, which increased the audit threshold from \$500,000 to \$750,000. Accordingly, the filing fee schedule applicable to all local government entities subject to an audit must reflect the same increase.

2.4.403 PENALTIES FOR FAILING TO FILE REPORTS WITHIN PRESCRIBED TIME WITHOUT APPROVED EXTENSION (1) ~~As provided by 2-7-517, MCA, if a local government entity is unable to file its reports with the department as required by 2-7-503, MCA, the department may grant an extension of time in which to file the reports or may waive the fines, fees, and other penalties if the local government entity demonstrates that it has good cause for not submitting the reports within the prescribed time or that the failure to comply was the result of circumstances beyond the entity's control.~~

~~(a) Good cause will be deemed to exist if the local government entity has exercised ordinary business care and prudence and was nevertheless unable to prepare and properly submit the annual financial report within the prescribed time.~~

~~(b) The department will determine what constitutes the exercise of ordinary business care and prudence based on the facts of each case.~~

~~(c) The department shall determine, based on the facts of each case, what constitutes circumstances beyond the entity's control. Examples of circumstances beyond an entity's control may include, but are not limited to, unexpected loss of key accounting staff, loss or inaccessibility of accounting records due to computer malfunction, or natural disaster.~~

(1) The department shall assess a monthly penalty of 10 percent of the required filing fee established in ARM 2.4.402 when a local government entity does not submit by the due date the annual financial report required by 2-7-503, MCA.

(a) If the filing fee applicable to the reporting period is not known to the department, the department shall use the filing fee of the most recent reporting period available to calculate the late submission penalty.

(b) If the local government entity is not required to pay a filing fee, the late submission penalty must be calculated using the minimum filing fee.

(2) In addition to imposing the late submission penalty established in (1), the department may issue an order to withhold payment of any state financial assistance to the local government entity. The department shall notify state agencies of the order.

(a) Upon receipt of the required report and all late submission penalties, the department shall release any financial assistance withheld pursuant to the department's order to the local government entity.

~~(2)(3) If~~ The department shall assess a \$75 fine and provide public notice when a local government entity has not filed the ~~fails to file a reports required by 2-7-503, MCA, within 180 days of the required due dates and the department has not granted an extension for filing the reports, the department shall notify the entity of the fine due and shall provide public notice of the delinquent reports.~~

~~(a) Public notice means publishing in the local newspaper, if available, and posting on the department's web site~~ website: <https://sfsd.mt.gov/LGSB>.

~~(b) Based on the cost of providing public notice, the department shall charge a delinquent filing fee of \$50 for reports not filed within 180 days of the required due dates.~~

AUTH: 2-7-517, MCA  
IMP: 2-7-503, 2-7-517, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend the catchphrase to reflect more accurately the rule's contents.

The department proposes to amend (1) to remove unnecessary duplication of statutory language and to align the rule with long-standing department practice of assessing late submission penalties. The department has used 10 percent and proposes to continue this same penalty because it believes that this amount will incentivize action but not unreasonably punish a local government entity. The department believes that a 15 percent penalty, for example, would be unreasonably harsh. The department expects no change in penalty revenues as a result of the amendment.

The department proposes to amend (2) to provide style corrections, to remove unnecessary duplication of statutory language, and to increase the publication fee from \$50 to \$75. The \$75 fee per publication reflects recent costs associated with average newspaper publication costs and employee processing costs. Average costs are expected to range between \$71 and \$79 for the next five years. The proposed fee is estimated to annually affect 53 local government entities for an annual cumulative amount of \$3,975.

2.4.404 PENALTY FOR FAILING TO PAY FILING FEE WITHIN 60 DAYS OF DUE DATE ~~(1) If the required filing fee is not submitted with the annual financial report, the department will notify the local government entity of the filing fee requirement and of the amount due to the department, and of the penalties for failure to pay the required fee.~~

~~(2) If the required filing fee is not submitted to the department within 60 days of the due date of the annual report, the department may add to the filing fee a late payment penalty equal to 10% of the required filing fee for each month or portion of a month that the filing fee is delinquent in excess of 60 days.~~

(1) The department shall assess a monthly penalty equal to 10 percent of the required filing fee in ARM 2.4.402 when a local government entity does not submit the filing fee required by 2-7-514, MCA, within 60 days of the due date.

(a) If the revenues and filing fee applicable to the reporting period have not been reported or are not known, the department shall use the filing fee of the most recent reporting period available to calculate the late filing fee penalty.

~~(3)(2) In addition to imposing the late payment penalty established in (2)(1), the department may issue an order to all state agencies requiring each agency to withhold payment of any state financial assistance to the local government entity pending receipt of the required filing fee plus the late payment penalty.~~

~~(4)~~(3) Upon receipt of the required filing fee plus the and all late payment ~~penalty penalties~~, the department ~~will~~ shall notify each state agency that any financial assistance withheld pursuant to the department's order ~~is to be~~ has been released to the local government entity.

AUTH: 2-7-514, 2-7-517, MCA

IMP: 2-7-514, 2-7-517, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1) and (2) to remove unnecessary duplication of statutory language, to provide style corrections, and to align the rule with long-standing department practice of assessing a late filing fee penalty of 10 percent. The department has used 10 percent and proposes to continue this same penalty because it believes that this amount will incentivize action but not unreasonably punish a local government entity. The department believes that a 15 percent penalty, for example, would be unreasonably harsh. The department expects no change in penalty revenues as a result of the amendment.

The department proposes to amend (3) and (4) to update numbering references, remove redundant language, and provide style corrections.

2.4.405 AUDIT AND AUDIT REPORTING STANDARDS ~~(1) All audits performed under 2-7-503, MCA, must be conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States (see ARM 2.4.411), that are applicable to financial audits. These standards incorporate generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants.~~

~~(2)~~(1) Audits When applicable, audits and audit reporting must conform to the requirements of the Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and the OMB Circular A-133 the requirements of Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as published in the Federal Register, Volume 78, No. 248 (see ARM 2.4.411).

(2) When approved by the department, audits and audit reporting of financial statements prepared in accordance with a small government financial reporting framework must apply the reporting requirements provided in ARM 2.4.401.

~~(3) All audit reports shall comply with the reporting standards for financial audits prescribed in Government Auditing Standards as established by the Comptroller General of the United States, which incorporate the standards of reporting for financial audits prescribed by the American Institute of Certified Public Accountants (see ARM 2.4.411).~~

~~(4) For audits conducted under the provisions of the OMB Circular A-133, the audit reports must comply with the reporting requirements of that circular (see ARM 2.4.411).~~

AUTH: 2-7-504, 2-7-505, 2-7-513, MCA

IMP: 2-7-504, 2-7-505, 2-7-513, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to delete (1) and (3) to remove unnecessary duplication of statutory language found in 2-7-513, MCA.

The department proposes to amend (2) to include audit reporting requirements from (4) for the sake of brevity and to update for the publication of Title 2 CFR Part 200, which superseded the requirements of the OMB Circular A-133. The requirements of Title 2 U.S. Code of Federal Regulations Part 200 became effective for all federal awards awarded to nonfederal entities after December 26, 2014.

The department proposes (3) to establish that audits of local governments approved to report in accordance with the department's small government financial reporting framework, provided by the passage of L. 2019, Senate Bill 2, must apply the requirements identified at ARM 2.4.401. The reasons for this proposal are explained in the Statement of Reasonable Necessity following the proposed amendments to ARM 2.4.401.

The department proposes to delete (4) to remove redundant language already provided in (2).

The department proposes to amend the rule to correct the authority and implementation citations. Section 2-7-504, MCA, addresses accounting methods and details rather than audit and audit reporting standards, which are instead provided at 2-7-505 and 2-7-513, MCA.

2.4.406 ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES ~~(1) Local government entity audits conducted under the provisions of Title 2, chapter 7, part 5, MCA, must be conducted by an independent auditor as defined by 2-7-501, MCA. For purposes of this requirement, an "independent auditor" is:~~

~~(a) a federal, state, or local government auditor who meets the standards specified in Government Auditing Standards as established by the Comptroller General of the United States; or~~

~~(b) a licensed accountant who meets the standards specified in Government Auditing Standards as established by the Comptroller General of the United States (see ARM 2.4.411).~~

~~(2)(1) In order to To conduct audits of local government entities, an independent auditor must be on the department's roster of authorized independent auditors authorized to conduct such audits that is maintained by the department.~~

~~(3)(2) In order to To be placed on the roster, independent an auditors must shall complete an a department-prescribed application form prescribed by the department and meet the criteria set out in this rule.~~

~~(4)(3) Independent auditors Auditors with separate offices registered as required by 37-50-335, MCA, must shall submit separate application forms for each office that is to be placed separately identified on the roster.~~

~~(5)(4) To be eligible for inclusion on the roster, an independent auditor must:~~



~~(a) if an individual, hold a current Montana certificate as a certified public accountant and hold a current annual permit license to engage in the practice of public accounting under 37-50-314, MCA, or hold a current license as a licensed public accountant, have been licensed on or before December 31, 1970, and hold a current annual permit to engage in the practice of public accounting under 37-50-314, MCA;~~

~~(b) have each office if a firm that has established or maintained offices in this state for the practice of public accounting, register annually as provided under 37-50-335, MCA; by:~~

~~(i) a certified public accountant or a partnership or corporation of certified public accountants registered annually as provided under 37-50-335, MCA; or~~

~~(ii) a licensed public accountant or a partnership or corporation of licensed public accountants registered annually as provided under 37-50-335, MCA, and have been registered on or before December 31, 1970;~~

~~(c) if a firm that does not have an office in this state, comply with the requirements contained in 37-50-335, MCA;~~

~~(e)(d) meet the continuing education requirements specified in Government Auditing Standards, as established by the Comptroller General of the United States;~~

~~(d)(e) have an external quality control review at least once every three years that meets the requirements specified in Government Auditing Standards, as established by the Comptroller General of the United States, and receive a peer review rating of "pass" or "pass with deficiencies" from the reviewing firm, team, or association;~~

~~(i) a firm that undergoes a board-sanctioned compliance or peer review process and receives a provisional pass with deficiencies rating must complete, or be in the process of completing, all required remediation required by the peer review program administrator;~~

~~(ii) upon request, firms with provisional pass with deficiencies ratings shall provide the department all interim and final communications with the peer review program administrator relating to the firm's remedial activities;~~

~~(e)(f) not have been restricted in the conduct of governmental auditing by the Montana Board of Public Accountants;~~

~~(f)(g) not have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from performing audits by any state or federal department or agency; and~~

~~(g)(h) not have been deemed ineligible to conduct local government entity audits by the department because of failure:~~

~~(i) of failure to conduct local government entity audits under contract with the department during the previous two years in accordance with the audit standards described in 2-7-513, MCA, or ARM 2.4.405; or~~

~~(ii) of failure during the previous two years to adhere to the terms and conditions of an audit contract with the department; or~~

~~(iii) the independent auditor is more than 90 days delinquent in filing an audit report required under an existing contract with the department and has not obtained the department's written consent to an extension of the contracted filing date.~~

~~(6)(5)~~ An independent auditor may be removed by the department from the roster of independent auditors authorized to conduct audits of local government entities for failure to continue to meet the eligibility requirements specified above.

~~(7)(6)~~ If an independent auditor is removed by the department from the roster as provided in ~~(6)(5)~~, the independent auditor must complete the application form prescribed by the department, meet the eligibility requirements set out in ~~(5)(4)~~, and pay the fee specified in ~~(10)(9)~~ in order to again be placed on the roster.

~~(8)(7)~~ To remain on the roster, an independent auditor must shall complete and submit to the department on or before June 30 of each year a renewal form prescribed by the department on which the independent auditor certifies certifying that the individual, partnership, or corporation or firm continues to meet the eligibility requirements specified above.

~~(9)(8)~~ To ensure that each independent auditor meets the eligibility requirements specified above, the department may, at any other time during the year, require the independent auditor to submit to the department evidence that the independent auditor meets the above eligibility requirements, including, but not limited to, documentation of required continuing professional education and the required external quality control review.

~~(10)(9)~~ At the time of original application to the department for placement on the roster and at the time the annual renewal form is submitted, to the department, each independent auditor, including each office, separately identified on the roster shall pay to the department a fee of \$100.

~~(11)(10)~~ If an independent auditor is removed from or does not renew to the roster, or if an independent auditor does not properly renew for continuance on the roster, any and all contracts for local government entity audits entered into under the provisions of 2-7-506, MCA, to which the independent auditor is a party are terminated, and the department will notify the local government entities of the termination. If an independent auditor is removed from the roster, the department will not refund any portion of the roster application fee paid to the department by that independent auditor for placement on the roster.

~~(12)(11)~~ Upon the department's notification of the termination of a contract for a local government entity audit, the local government entity must shall select another independent auditor from the department's roster of independent auditors authorized to conduct local government audits and present a signed contract to the department for approval within 90 days of notification of the termination.

AUTH: ~~2-7-504~~, 2-7-506, MCA

IMP: ~~2-7-504~~, 2-7-506, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to delete (1) to remove unnecessary duplication of statutory language.

The department proposes to amend (2) and (3) to correct the rule for style and brevity.

The department proposes to amend (4) to address changes resulting from L. 2017 HB 500, which revised registration and ownership requirements of accounting firms.

While separate firm offices are no longer required to separately register with the state of Montana, a firm may choose to separately identify each office on the department's roster of independent auditors by submitting a separate application form for each office.

The department proposes to amend (5)(a) to address terminology changes resulting from L. 2015 HB 44, which substituted language relating to the former CPA designations of "Certificate" and "Permit to Practice" with "license."

The department proposes to amend (5)(b) and (8) and add new (c) to current (5) to address changes from L. 2017 HB 500, which provided that a public accounting firm that does not have an office in Montana may use the title "CPA" or "CPA firm" in Montana without registering, so long as it meets certain other criteria specified in statute.

The department proposes the addition of (d)(i) and (ii) to current (5)(d) to clarify firm responsibilities when receiving provisional peer review ratings. The department must monitor provisional peer review ratings to ensure eligible roster membership and the appropriate provision of audit services to local government entities.

The department proposes to amend (5)(g)(i) to change the reference for Government Auditing Standards from ARM 2.4.405 to 2-7-513, MCA. As noted earlier in this notice, the department has proposed amendments to ARM 2.4.405 because parts of this rule needlessly repeat statutory language. However, to protect the public interest, the department believes it must evaluate auditor performance against a standard and that the Government Auditing Standards are the appropriate guideposts to assess an auditor's work.

The department proposes to remove (5)(g)(iii) to align the rule with 2-7-503(3), MCA, which provides that the audit requirement applies to the entity, not to the auditor.

The department proposes to amend (6), (7), (9), (10), and (12) to update reference numbers.

The department proposes to amend (3) through (12) to update for style and to remove unnecessary and redundant language, including the often-repeated word "independent."

The department proposes to amend the rule to correct the authority and implementation citations. Section 2-7-504, MCA, provides rulemaking authority for methods and details of accounting but does not provide rulemaking authority for the roster of independent auditors, which is instead provided at 2-7-506, MCA. Nor does the rule implement the requirements of 2-7-504, MCA, and so is proposed to be removed.

2.4.409 ACTIONS BY LOCAL GOVERNMENT ENTITY GOVERNING BODIES TO RESOLVE OR CORRECT AUDIT FINDINGS AND PENALTY FOR

FAILURE TO DO SO (1) ~~As provided by 2-7-515, MCA, the local government entity shall adopt measures to correct the findings contained in its audit report and shall submit a copy of the corrective action plan, or response to the audit report findings, to the department within 30 days of the entity's receipt of the audit report.~~

~~(2) In the case of school districts or associated cooperatives, a copy of the response or corrective action plan must also be filed with the Superintendent of Public Instruction.~~

~~(3) If no findings, deficiencies, or recommendations appear in the audit report, no response or corrective action plan is required to be filed with the department.~~

~~(4) The department will review the local government entity's response or corrective action plan and notify the entity in writing upon the acceptance of the response or plan.~~

~~(5) If the department does not approve all or any portion of a local government entity's response or corrective action plan, or if the department requires additional information in order to evaluate a response, the department will contact the entity regarding the response or corrective action plan.~~

~~(6) If deemed necessary by the department, the department may also contact the independent auditor who performed the audit to obtain additional information regarding the facts related to the independent auditor's findings and the reasons for the independent auditor's recommendations.~~

~~(7) In the case of a school district or associated cooperative audit, the department shall also contact the Superintendent of Public Instruction regarding the acceptability of a school district's or associated cooperative's response or corrective action plan.~~

~~(8) If, as a result of the communications described above, the department agrees to accept the local government entity's response or corrective action plan, the department will notify the entity in writing of that acceptance.~~

~~(9) If, as a result of the communications described above, the local government entity agrees to revise all or a portion of its response or corrective action plan, it will submit such changes or revisions to the department in writing.~~

~~(10) The department will review the local government entity's revised response or corrective action plan and notify the local government entity in writing when the department has accepted the response or plan.~~

~~(11) If, after the communications described above, the department still does not approve all or any portion of a local government entity's response or corrective action plan and the entity does not agree to revise its response or corrective action plan so that it is acceptable to the department, the department will notify the entity in writing of its nonacceptance, the reasons for the nonacceptance and the fact that, pursuant to 2-7-515, MCA, financial assistance can be withheld from the entity if within 30 days of the date of the notification letter the entity does not develop and submit to the department a response to audit findings or a corrective action plan that is acceptable to the department.~~

~~(12) If the department does not receive an acceptable response or corrective action plan within 30 days, it can request, pursuant to 2-7-515, MCA, that state agencies withhold payments of financial assistance from the local government entity pending receipt of an acceptable response or corrective action plan. The~~

department, after consultation with the appropriate state agency or agencies, may designate the financial assistance payments to be withheld.

~~(13) In the case of school districts or associated cooperatives, the department will obtain the concurrence of the Superintendent of Public Instruction before issuing an order withholding payments of financial assistance.~~

~~(14) Upon receipt by the department of an acceptable response or corrective action plan from the local government entity, the department will notify the entity in writing of the acceptance, and will notify each state agency that any financial assistance withheld pursuant to the department's order is to be released to the local government entity.~~

(1) If a local government entity does not submit its planned corrective measures to findings reported in audit and financial review reports required by Title 2, chapter 7, part 5, MCA, to the department within 30 days of the report issuance date, the department shall notify the entity of the delinquency and publish notice of the delinquency on the department's website.

(2) The planned corrective measures must be responsive to the findings identified and provide for a probable resolution of the findings within a reasonable period.

(3) The department shall base a determination of the acceptableness of the local government entity's planned corrective measures on the risks, facts, and circumstances of the findings and of the entity.

(4) If the department does not receive acceptable corrective measures for findings the department deems to be significant, the department may, in addition to its statutory remedies, request additional details, supporting information, or evidence of implementation of the corrective measures.

(5) The department shall base the significance of findings on the risks to the entity of doubtful going concern, significantly distressed operations, or substantially unprotected public interest.

(6) Any financial assistance withheld must be released to the local government entity once the department finds that the local government entity has initiated or taken corrective measures sufficient to provide for a probable resolution of the findings within a reasonable period.

(7) The department shall obtain the concurrence of the Superintendent of Public Instruction before accepting or rejecting any planned corrective measures or withholding or releasing any financial assistance of any school district or associated cooperative.

(8) If the subsequent audit or financial review report repeats a significant finding, the department shall withhold financial assistance from the entity.

(a) The financial assistance withholding process may be halted if the entity demonstrates good cause for the repeat finding. Good cause may be demonstrated with sufficient evidence of:

(i) the entity's good faith effort to implement corrective measures;

(ii) circumstances outside of the entity's control; or

(iii) an inability to address a finding or findings because of the passage of time.

(b) If the subsequent audit report is delinquent, the department may withhold financial assistance until the department receives the delinquent audit report that does not repeat a significant finding.

(c) For those local governments that are not required to have an audit for the subsequent fiscal year, the department may require the entity to have a financial review as defined in ARM 2.4.410. The department shall determine the requirement for a financial review on a case-by-case basis, based on the quality of supporting documentation received from the entity to confirm corrective measures have been taken.

(9) The department shall notify all state agencies any time the department issues an order to withhold or release financial assistance.

AUTH: 2-7-515, MCA

IMP: 2-7-515, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to replace (1) through (14) with (1) through (9) to remove unnecessary duplication of statutory language, to update for style and brevity, and to establish a more reasonable and practical due process before financial assistance can be withheld.

The department proposes (2) and (3) to clarify the department's expectations for the content of the planned corrective measures to avoid confusion or unnecessary inefficiencies in the submissions and administration of corrective action acceptance and monitoring activities.

The department proposes (4) and (5) to limit the withholding of financial assistance only for findings deemed to be significant because withholding assistance could have serious repercussions on the local government's citizens and stakeholders. The department believes that insignificant findings such as findings regarding auditor-prepared financial statements or small office segregation of duties should not warrant withholding given these potential negative impacts. The department has taken this approach because it believes the Legislature did not intend that minor findings should trigger withholding of financial assistance.

The department proposes (6) because the department believes it is important to inform local governments what criteria must be satisfied to resume the payment of financial assistance. The department believes that a "probable resolution of the findings within a reasonable period" is a fair standard because it requires the entity to show meaningful progress with its efforts to resolve the findings, while leaving some flexibility regarding timing. The department considered other alternative approaches, such as requiring action to be taken within a specific time period, but felt that option was too restrictive given the varying circumstances that could affect a government's corrective action plan.

The department proposes (7) to coordinate with the Office of Public Instruction (OPI) regarding its monitoring of corrective measures of school districts and associated

cooperatives so as not to duplicate effort or to hamper OPI's ability to regulate those entities.

The department proposes (8) to address a repeat of significant findings. The department proposes that financial assistance must, subject to narrow exceptions, be withheld in this case because the local government needs a strong incentive to correct inadequacies in important areas.

The department proposes (8)(a) to provide a good cause exception to address concerns that the department should not withhold financial assistance if a reasonable basis exists for a repeat finding. To facilitate determinations of permissible exceptions, the department proposes examples of permissible exceptions. The department believes that good faith efforts in resolving findings should be considered because continuing to withhold financial assistance would not necessarily create any additional incentive to resolve findings—on the contrary, the continued withholding may be perceived as punishment for making progress. The department proposes a "force majeure" condition because situations may arise that the entity cannot control, and the department believes that withholding may not serve the public interest in this instance. Finally, the department proposes (8)(a)(iii) because in some cases the passage of time will render moot an entity's efforts to address findings. For example, a repeat audit finding for late submission of a report may be repeated several years in a row because all of the applicable deadlines had previously lapsed. Likewise, occasionally a repeat finding pertains to a grant award that is no longer offered or taken.

The department proposes (8)(b) and (8)(c) to provide for the contingency of an entity not submitting a subsequent audit or financial review report when it also has an outstanding significant finding. In subsequent periods, if significant findings are not resolved or if evidence of the resolution of the significant findings is not obtained, the department has concluded that a reasonable person would find that the risk to an entity's constituents unacceptably unmitigated. In such cases, the department may either withhold financial assistance or may require, under the authority provided in 2-7-503(5), MCA, that a financial review be performed.

The department proposes (9) because it believes it is important to ensure proper notification to state agencies so that withholding or releasing financial assistance is consistently done across state government. Lack of consistency will frustrate the local governments and undermine the statutory goals.

~~2.4.410 REVIEW OF FINANCIAL STATEMENTS (1) As provided by 2-7-503, MCA, the governing body or managing or executive officer of a local government entity that is not required to have an audit based on the criteria established in 2-7-503, MCA, shall at least once every four years, if directed by the department, or, in the case of a school district or associated cooperative, if directed by the department at the request of the Superintendent of Public Instruction, cause a financial review to be conducted of the financial statements of the entity for the preceding fiscal year.~~

~~(2)~~(1) A "financial review" is defined as an agreed-upon procedures engagement in which an independent auditor ~~is engaged to~~ issues a report of findings based on specific procedures ~~performed on subject matter~~ in accordance with standards established by the American Institute of Certified Public Accountants (see ARM 2.4.411). The procedures to be performed during the financial review of a ~~specific type of~~ local government entity are prescribed by the department and ~~are~~ specified in the contract referred to in ~~(4)~~(3).

~~(3)~~(2) Financial reviews of a local government entity conducted at the direction of the department must be performed either by an independent auditor, ~~as defined by 2-7-501, MCA,~~ who is on the department's roster of independent auditors authorized to conduct audits of local government entities or by the department.

~~(4)~~(3) Financial reviews required by the department must be performed pursuant to a contract ~~entered into by the local government entity, the independent auditor, and the department.~~ Work may not commence under the contract until it is signed by the department. All contracts for conducting financial reviews must be in a form prescribed by the department.

~~(5)~~(4) The compensation to the independent auditor for conducting a financial review must be agreed upon by the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid. If performed by the department, the department shall charge the local government entity an hourly rate to cover the costs of performing the financial review.

~~(6)~~(5) A An administrative fee of \$75 will be charged to each entity required to have a financial review. Entities required to have a financial review will be notified in writing, ~~and the~~ The administrative fee is due ~~60 days from the date of the department's letter notifying the entity of the financial review requirement~~ within six months of the entity's fiscal year end.

~~(7)~~ The provisions of ~~2-7-517, MCA,~~ regarding the penalty for failing to pay an audit fee ~~apply to the failure to pay a financial review fee.~~

~~(8)~~ Reports on financial reviews must be prepared in accordance with reporting standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements (see ARM 2.4.411), and in addition ~~must include any schedules specified in the contract referred to in (4).~~

~~(9)~~(6) The independent auditor shall file copies of the financial review report with the department. In the case of school districts or associated cooperatives, the independent auditor shall also file a copy of the review report with the Superintendent of Public Instruction.

~~(10)~~(7) The provisions of ~~2-7-515, MCA,~~ and ARM 2.4.409, regarding the actions of local government governing bodies to resolve and correct audit findings, and the penalty for failure to do so, ~~apply to financial review reports.~~

~~(11)~~(8) The provisions of ~~2-7-522, MCA,~~ regarding audit report reviews by the department ~~apply to financial review reports.~~

AUTH: 2-7-503, 2-7-504, 2-7-514, MCA

IMP: 2-7-503, 2-7-504, 2-7-514, MCA



STATEMENT OF REASONABLE NECESSITY: The department proposes to delete (1) and (7) to remove unnecessary duplication of statutory language.

The department proposes changes to (3) and (4) to provide that the department may perform financial reviews and charge a fee to cover the costs of performing of financial review so that certain small local governments may have a cost-beneficial alternative for meeting their financial review requirement. The department estimates that the average cost to perform a financial review is \$45.65 an hour based on current hourly costs of audit and support staff. The department estimates that the average time to complete a financial review is 23 hours based on an experience-driven weighted average of time to complete a financial review. Based on those assumptions, the department estimates a total of \$1,050 per review. The department estimates offering financial review services to 12 local government entities each year for an annual cumulative amount for all persons affected of \$12,600. The average cost of a private CPA firm financial review engagement for fiscal year 2018 was \$3,053.

The department proposes to amend (6) to conform to language used in 2-7-514(2), MCA, and to provide alignment of financial review administrative fee due dates and filing fee due dates. Because the financial review administrative fee is assessed in lieu of the filing fee, to apply consistent treatment to the two fees, they should be due at the same time. Because the filing fee is due when the annual financial report is due, the administrative fee should also be due when the annual financial report is due.

Section (8) is proposed for removal because schedules to be included in the financial review report are included in the contract, making this section unnecessary.

Other rule amendments are proposed to improve style and readability. The department proposes to amend the rule to correct the authority and implementation citations. Section 2-7-504, MCA, provides rulemaking authority for methods and details of accounting but does not provide rulemaking authority for financial reviews, which is instead provided at 2-7-503, MCA. Nor does the rule implement the requirements of 2-7-504, MCA, and so is also proposed to be removed. Additionally, the authority to implement an administrative fee by rule is found at 2-7-514, MCA.

2.4.411 INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS (1) The department adopts and incorporates by reference the Codification of Governmental Accounting and Financial Reporting Standards, updated through June 30, 2019, adopted by the Governmental Accounting Standards Board as the required standards for counties, cities, and towns, as provided by ARM 2.4.401.

(a) and (b) remain the same.

~~(2) The department adopts and incorporates by reference the chart of accounts prescribed by the department in the Budgetary, Accounting and Reporting System for Montana Cities, Towns and Counties for use by counties, cities, and towns, as provided by ARM 2.4.401.~~

~~(a) The chart of accounts incorporated by reference in (2) contains the required fund classifications, balance sheet accounts, revenue accounts, expenditure accounts, and objects of expenditure to be used by counties, cities, and towns.~~

~~(b) The chart of accounts adopted by reference in (2) may be obtained from the Montana Department of Administration, Local Government Services Bureau, 125 North Roberts Street, Room 270 Mitchell Building, P.O. Box 200547, Helena, MT 59620-0547.~~

(2) The department adopts and incorporates by reference the Small Government Financial Reporting Framework established by the department as of June 30, 2019, as provided by ARM 2.4.401, available at <https://sfsd.mt.gov/LGSB>.

~~(3) The department adopts and incorporates by reference the Government Auditing Standards, 2011 and 2018 revisions, established by the Comptroller General of the United States for financial audits as required standards for independent auditors in conducting audits of local government entities, as provided by ARM 2.4.405 2.4.406.~~

~~(a) Government Auditing Standards incorporated by reference in (3) contain standards to be followed by an independent auditor in conducting financial audits of local government entities, including general standards, field work standards, and reporting standards.~~

~~(b) Government Auditing Standards established by the Comptroller General of the United States adopted by reference in (3) may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401. These standards may also be accessed at the following web site address: <http://www.gao.gov/>.~~

~~(4) The department adopts and incorporates by reference the Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and the OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations," as requirements to which local government audits must conform Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as published in the Federal Register, Volume 78, No. 248, as provided by ARM 2.4.405.~~

~~(a) The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 and the OMB Circular A-133 relate to the following:~~

- ~~(i) background and purpose;~~
- ~~(ii) applicability of the act and circular;~~
- ~~(iii) audit requirements and scope of audits conducted under the act and circular;~~
- ~~(iv) frequency of audits;~~
- ~~(v) federal agency and pass-through entity responsibilities;~~
- ~~(vi) requirements relating to subrecipients and vendors;~~
- ~~(vii) relation to other audit requirements;~~
- ~~(viii) auditee responsibilities;~~
- ~~(ix) illegal acts or irregularities;~~
- ~~(x) audit report requirements;~~
- ~~(xi) audit resolution;~~

- ~~(xii) audit working papers and reports;~~
- ~~(xiii) audit costs and auditor selection; and~~
- ~~(xiv) sanctions.~~

~~(b)(a) The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 is codified as Chapter 75 of Title 31 of the United States Code. The code is available at many public libraries and at law offices, and can be accessed at the following website address:~~

~~<http://uscode.house.gov/browse/prelim@title31/subtitle5/chapter75&edition=prelim>  
<http://uscode.house.gov/>.~~

~~(c)(b) The circular is available from the federal Office of Management and Budget. A hard copy can be obtained by calling (202) 395-3080. It can also be accessed at the following web site address:~~

~~[http://whitehouse.gov/omb/circulars\\_default/](http://whitehouse.gov/omb/circulars_default/). Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) can be accessed at <https://www.gpo.gov/>.~~

~~(5) The department adopts and incorporates by reference the standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements, updated through June 30, 2019, under which financial reviews of local government entities must be conducted, as provided by ARM 2.4.410, available at <https://www.aicpa.org/>.~~

~~(a) These standards contain:~~

- ~~(i) conditions for engagement performance;~~
- ~~(ii) the subject matter and related assertions;~~
- ~~(iii) the nature, timing, and extent of procedures;~~
- ~~(iv) the presentation of the results of applying agreed-upon procedures to specific subject matter in the form of findings;~~
- ~~(v) reporting requirements; and~~
- ~~(vi) written representations.~~

~~(b) The standards for agreed-upon procedures engagements are contained in Section 201 of the Codification of Statements on Standards for Attestation Engagements, which may be obtained from the American Institute of Certified Public Accountants by calling (888) 777-7077 or at the following web site address: <https://www.cpa2biz.com>.~~

AUTH: ~~2-7-503~~, 2-7-504, 2-7-505, 2-7-506, MCA

IMP: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1), (3), and (5) to provide the edition dates for materials incorporated by reference.

The department proposes to delete (2) to remove unnecessary duplication of statutory language

The department proposes (2) to incorporate by reference the Small Government Financial Reporting Framework, which establishes an alternative financial reporting option for small local governments in accordance with L. 2019, Senate Bill 2. The department believes the proposed framework will provide relief to those smaller local

governments that struggle to meet certain financial reporting requirements of GAAP. The framework excludes from GAAP the most costly and burdensome aspects of financial reporting that also lack relevance to the users of those local governments. One such example is actuarially determined post-employment benefit information, which is not only highly technical and expensive to produce, but also does not factor into the day-to-day, cash-basis or budgetary-basis decisions of most governing officials of small, rural governments.

The department believes providing a separate document outside of administrative rule by an incorporation by reference facilitates beneficial coordination with other local government resources provided to assist the annual financial statement preparation process. Those resources include the annual financial report form and the uniform chart of accounts authorized at 2-7-503, MCA.

The department proposes to amend (3) to remove unnecessary duplication of statutory language, to correct for style, and to correct the cross-reference to ARM 2.4.406, due to the removal of Government Audit Standards provisions from ARM 2.4.405.

The department proposes to amend (4) to update for the publication of Title 2 CFR Part 200, which superseded the requirements of the OMB Circular A-133. The requirements of Title 2 CFR Part 200 became effective for nonfederal entities for all federal awards awarded after December 26, 2014.

The department proposes to amend (4)(b) to update the U.S. Code web address to the home page of the U.S. Code website. The department expects the home page to be a more reliable web address over time than an address that includes specific search parameters.

The department proposes to amend (5) to remove outdated and unnecessary language and references to the Codification of Statements on Standards for Attestation Engagements, which were amended and reorganized in state fiscal year 2016. The department also proposes to correct for style and to update the web address for the location of the applicable attestation standards.

The department proposes to amend the rule to correct the authority citation. Section 2-7-503(3)(b), MCA, provides rulemaking authority for financial reviews, which are to be performed under the Statements on Standards for Attestation Engagements.

5. The department proposes to repeal the following rule:

2.4.408 AUDIT CONTRACTS, found on ARM page 2-85.

AUTH: 2-7-506, MCA

IMP: 2-7-506, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal this rule because it unnecessarily repeats statutory language.

6. 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 Cody Pearce, Department of Administration, Statewide Accounting Bureau, P.O. Box 200102, Helena, MT 59620; telephone (406) 444-3092; fax (406) 444-9144; Montana Relay Service 711; or e-mail [LGSPortalRegistration@mt.gov](mailto:LGSPortalRegistration@mt.gov), and must be received no later than 5:00 p.m., July 19, 2019.

7. Cody Pearce, Department of Administration, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding the Single Audit Act rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the department's website at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Margaret MacDonald, was contacted on May 22, 2019, by email and U.S. mail.

11. The department has determined that under 2-4-111, MCA, the proposed amendments and repeal will not significantly and directly affect small businesses.

By: /s/ John Lewis  
John Lewis, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State June 11, 2019.