

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 14

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end 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 Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and New Rule II and the amendment of ARM 10.55.601 through 10.55.606, 10.55.701 through 10.55.711, 10.55.713 through 10.55.717, 10.55.801 through 10.55.805, 10.55.901 and 10.55.902, 10.55.904 through 10.55.910, 10.55.1001, and 10.55.1003 relating to accreditation standards	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT
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TO: All Concerned Persons

1. On August 20, 2012 at 1:30 p.m. the Board of Public Education will hold a public hearing in the OPI conference room at 1300 11th Avenue, Helena Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Board of Public Education 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 board no later than 5:00 p.m. on August 6, 2012, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I INTERNSHIPS (1) Internships are defined in ARM 10.55.602.

(2) As part of an internship agreement, the parties must agree to the following:

(a) the intern will complete the requirements for the appropriate endorsement within three years;

(b) the school district will provide local supervision and support of the intern; and

(c) the accredited educator preparation program will approve the coursework and provide support and periodic supervision.

(3) If entering into internship agreements, the accredited Montana educator preparation program must report each enrolled intern to the Superintendent of Public Instruction no later than November 15 of each year.

(4) For each intern a district desires to have deemed appropriately assigned, the school district must report to the superintendent during the annual data collection, at the beginning of years two and three of each internship agreement, the intern's yearly progress toward completion of the program of study.

(5) An intern may be considered appropriately assigned for up to three years while enrolled in and making progress toward completion of a Montana accredited educator preparation program. Extension may be granted at the discretion of the Superintendent of Public Instruction as authorized in ARM 10.57.109. Requests for extension must be submitted by the intern and supported by the accredited educator preparation program and the school district. A request for extension must demonstrate evidence of extreme hardship or other circumstances beyond the control of the intern which prevented timely completion of the agreed upon plan of study.

(6) If an intern fails to show sufficient and satisfactory annual progress in the plan of study toward completion of a Montana accredited educator preparation program, the Superintendent of Public Instruction may consider that intern inappropriately assigned.

(7) An emergency authorization of employment granted by the Superintendent of Public Instruction pursuant to 20-4-111, MCA is not a license; it is granted to a district which, under emergency conditions, cannot secure the services of an appropriately licensed and endorsed teacher or principal. A person authorized under 20-4-111, MCA is not eligible for an internship.

AUTH: 20-2-121, MCA

IMP: 20-2-121, MCA

NEW RULE II STUDENT PROTECTION PROCEDURES (1) A local board of trustees shall adopt a policy designed to deter persistent threatening, insulting, or demeaning gestures or physical conduct, including an intentional written, verbal, or electronic communication or threat directed against a student or students regardless of the underlying reason for such conduct, that:

(a) causes a student physical or emotional harm, damages a student's property, or places a reasonable fear of harm to the student or the student's property;

(b) substantially and materially interferes with access to an educational opportunity or benefit; or

(c) substantially and materially disrupts the orderly operation of the school.

(2) Behavior prohibited under (1) includes retaliation against a victim or witness who reports behavior prohibited under (1).

(3) "Persistent" as used in this rule can consist of repeated acts against a single student or isolated acts directed against a number of different students.

(4) The behavior prohibited in (1) includes but is not limited to conduct:

(a) in a classroom or other location on school premises;

(b) during any school-sponsored program, activity, or function where the school is responsible for the student including when the student is traveling to and from school or on a school bus or other school-related vehicle; or

(c) through the use of electronic communication, as defined in 45-8-213, MCA, that substantially and materially disrupts the orderly operation of the school or any school-sponsored program, activity, or function where the school is responsible for the student.

(5) Each local board of trustees has discretion and control over the

development of its policies and procedures regarding behavior prohibited under (1), but each district's policies and procedures must include at a minimum:

- (a) a prohibition on the behavior specified in (1), regardless of the underlying reason or reasons the student has engaged in such behavior;
- (b) a procedure for reporting and documenting reported acts of behavior prohibited under (1);
- (c) a procedure for investigation of all reports of behavior prohibited under (1)(a) that includes an identification of the persons responsible for the investigation and response;
- (d) a procedure for determining whether the reported act is subject to the jurisdiction of the school district or another public agency, including law enforcement, and a procedure for referral to the necessary persons or entity with appropriate jurisdiction;
- (e) a procedure for prompt notification, as defined in the district policy, of the alleged victim and the alleged perpetrator, or the parents or guardian of such students when the students are minors;
- (f) a procedure to protect any alleged victim of behavior prohibited under (1)(a) from further incidents of such behavior;
- (g) a disciplinary procedure establishing the consequences for students found to have committed behavior prohibited under (1); and
- (h) a procedure for the use of appropriate intervention and remediation for victims and perpetrators.

AUTH: 20-2-121, MCA

IMP: 20-2-121, MCA

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

10.55.601 ACCREDITATION STANDARDS: PROCEDURES (1) The Board of Public Education adopts standards of accreditation upon the recommendation of the ~~State~~ Superintendent of Public Instruction.

(2) The ~~board~~ Board of Public Education and the ~~Office~~ Superintendent of Public Instruction establish procedures and schedules for reviewing the accreditation status of each school.

(3) To ensure continuous education improvement, the school district and each of its schools shall develop, implement, and evaluate, ~~and revise a five-year comprehensive education~~ continuous school improvement plans and make the plans publically available. These plans shall be reviewed on a yearly basis to reflect a continuous improvement process.

(a) ~~This~~ Each plan shall include:

(i) a school district level education profile ~~as described in guidance provided periodically by the Office of Public Instruction;~~

(ii) the school district's educational goals ~~in accordance with~~ pursuant to the requirements of ARM 10.55.701;

(iii) a description of planned progress toward implementing all content, ~~performance,~~ and program area standards, in accordance with the schedule in ARM

10.55.603;

(iv) a description of strategies for assessing student progress toward meeting all content and performance standards, ~~in accordance with~~ pursuant to the requirements of ARM 10.55.603 and ARM 10.56.101; and

(v) remains the same.

~~(b) By May 1, 2003, the district~~ The local board of trustees shall file report and submit their adopted five-year comprehensive education continuous school improvement plan with the Office Superintendent of Public Instruction and make their plan available to employees and the public.

~~(c) The Office Superintendent of Public Instruction shall develop and implement procedures necessary to monitor and evaluate the effectiveness of the implementation of the continuous improvement plan of each school district's comprehensive education plan and its schools.~~

~~(4) To ensure continuous educational improvement and to meet the identified needs of students in every school, every school in the district shall develop and have on file in the district office a comprehensive education plan.~~

~~(5) To ensure continuous educational improvement, the Office Superintendent of Public Instruction shall provide guidance, resources, and evaluation to assist in the implementation of district and school plans to improve teaching and learning for all students.~~

~~(6) School districts are required to maintain present programs that meet current standards until such standards are superseded. The content and performance standards will supersede model learner goals according to the following schedule:~~

~~(a) Reading -- November 1998;~~

~~(b) Mathematics -- November 1998;~~

~~(c) Science -- October 1999;~~

~~(d) Technology -- October 1999;~~

~~(e) Health enhancement -- October 1999;~~

~~(f) Communication arts aligned to the reading content and performance standards -- October 1999;~~

~~(g) World languages -- October 1999;~~

~~(h) Social studies -- October 2000;~~

~~(i) Arts -- October 2000;~~

~~(j) Library media -- October 2000;~~

~~(k) Workplace competencies -- October 2000;~~

~~(l) Vocational/technical education -- October 2001.~~

~~(7) On or before July 1, 2004, a school district shall align its curriculum to the state content and performance standards and program area standards as adopted by the Board of Public Education. A school district shall maintain programs to align with the state's schedule for revising standards.~~

AUTH: 20-2-114, MCA

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

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

(1) "Accreditation" means certification by the Board of Public Education that a school meets the adopted standards of the Board of Public Education for a specified school year.

(1) remains the same but is renumbered (2).

(3) "Assurance standards" means the minimal standards of a quality education program comprised of the following subchapters:

(a) Subchapter 6, General Provisions, ARM 10.55.601 through (NEW RULE I):

(b) Subchapter 7, School Leadership, ARM 10.55.701 through (NEW RULE II):

(c) Subchapter 8, Academic Requirements, ARM 10.55.801 through 10.55.805:

(d) Subchapter 9, Educational Opportunity, ARM 10.55.901 through 10.55.910; and

(e) Subchapter 10, Program Area Standards, ARM 10.55.1001 through 10.55.1003.

~~(2) (4) "Asynchronous" means not occurring at the same time.~~

~~"Asynchronous" refers to content, instruction, and communication between participants (i.e. e.g., students and teachers) that occurs at different times, the period of which may vary by circumstance, (e.g., e-mail, threaded discussions, homework, message boards).~~

(5) "At-risk student" means any student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation, as defined in 20-1-101(4), MCA.

~~(3) "Benchmark" means expectations for a student's knowledge, skills, and abilities along a developmental continuum in each content area. That continuum is focused at three points: the end of grade 4, the end of grade 8, and upon graduation (grade 12).~~

~~(4) "Certification" means licensure of an educator/specialist, as issued by the state of Montana, based on completion of an approved teacher, administrator, or specialist program of an accredited college/university. Certification includes grade level(s), endorsement(s), and classification.~~

(6) "Class 8 license" means an educator license as defined in ARM 10.57.102.

~~(5) (7) "Combined elementary-high school district" means an elementary district and a high school district, which are combined into a single school system for district administration purposes. This may include school systems formed under governing joint boards of trustees depending on the programs and services agreed to by the participating local boards of trustees, including districts designated as "K-12 districts" pursuant to 20-6-701, MCA. Most town school districts in Montana would fit this category, i.e., Helena, Hamilton, Whitehall.~~

~~(6) (8) "Content standard" means what all students should know, understand, and be able to do in a specific content area, such as reading, mathematics, or social studies.~~

(9) "Corrective plan" means a systematic procedure and timeline for resolving deviations from regular accreditation status.

(7) remains the same but is renumbered (10).



(11) "Digital content provider" means an entity, organization, or individual registered pursuant to ARM 10.55.907 offering K-12 educational content for distance, online, and technology-delivered programs and courses.

~~(8)~~ (12) "Distance learning" means instruction in which students and teachers are separated by time and/or location with synchronous or asynchronous content, instruction, and communication between student and teacher (e.g., correspondence courses, online learning, videoconferencing, streaming video). This instruction may consist of learning opportunities provided through online (Internet-based) and other emerging technologies.

(13) "Dual enrollment/dual credit" means opportunities for high school students to be enrolled in high school and postsecondary courses at the same time. There are three categories of such opportunities:

(a) "College credit only" means students receive college credit for courses taken from a postsecondary institution but do not receive high school credit. Students may or may not be taking these courses during the school day.

(b) "Dual credit" means students receive both college credit and high school credit for courses taken from a postsecondary institution. Students may or may not be taking these courses during the school day. The faculty member must have an appropriate K-12 license and endorsement in the subject taught or a Class 8 license.

(c) "Concurrent enrollment" means the district offers these courses during the school day and they are taught by district high school faculty who have been approved by the post-secondary institution to teach these college level courses. Students receive both high school and college credit for the completed course.

(9) remains the same but is renumbered (14).

(15) "Facilitator" means the individual assigned to monitor distance, online, and technology-delivered learning programs pursuant to ARM 10.55.907. The facilitator may be an instructional paraprofessional as long as there is a licensed teacher providing the instruction.

(10) remains the same but is renumbered (16).

(17) "Indian Education for All" means the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage. Implementation of these requirements ensures:

(a) every Montanan, Indian or non-Indian, is encouraged to learn about the distinct heritage and contributions of Montana tribal groups and governments in a culturally responsive manner; and

(b) every educational agency shall work cooperatively with Montana tribes to provide means by which school personnel will gain an understanding of and appreciation for American Indian people.

(18) "Instructional paraprofessional" means school or district personnel whose positions are instructional in nature and who work under the direct supervision of licensed school personnel. The supervising licensed school personnel are responsible for:

(a) the design, implementation, and assessment of learner progress; and

(b) the evaluation of the effectiveness of learning programs and related services for children.

(19) "Intensive assistance" means a required process for schools in

continuous or serious deficiency accreditation status. Such schools have failed to develop or implement an approved corrective plan to remedy accreditation deviations within the designated timeline.

(20) "Internship" means an agreement among a fully licensed Class 1, 2, or 3 educator, the school district, and a Montana accredited educator preparation program as provided in [NEW RULE I].

(21) "K-12 district" means an elementary district, with the same district boundaries as a high school district, which has been attached to that high school district. The high school district remains an organized district and the elementary district is an inactive district pursuant to 20-6-701(1) and (2), MCA.

(22) "Learning progression" means the specific performance expectations in each content area at each grade level from kindergarten through grade 12.

(23) "Licensure" means certification of an educator/specialist as issued by the state of Montana, based on completion of an approved educator preparation program. Licensure indicates grade level(s), endorsement(s), and classification.

(24) "Literacy" means learning to read, write, speak, listen, and use language effectively.

~~(11) "Part-time" means not less than six hours in a school week.~~

~~(12) "Performance standard" means the specific expectations for performance in each content area at each of the three benchmarks. Performance standards define the quality of performance and describe the performance to be demonstrated.~~

(25) "Middle grades" means grades 4 through 9.

(26) "Minimum aggregate hours" means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301, MCA and includes passing time between classes. Minimum aggregate hours does not include lunch time and periods of unstructured recess, as defined in 20-1-101, MCA.

(27) "Misassignment" means a licensed educator/specialist teaching outside their endorsed teaching area(s) and/or level (elementary K-8 and secondary 5-12).

(28) "Nonaccredited status" means previously accredited school which failed to meet the requirements of intensive assistance and is out of compliance with the Board of Public Education standards of accreditation.

(29) "Nonlicensed" means a person who does not hold a current Montana educator license, except for a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111, MCA.

(30) "Online learning" means educational activity in which instruction and content are delivered primarily via the Internet and through emerging technologies. Online learning is a form of distance learning.

(31) "Principal" means a person who holds a valid Montana Class 3 educator license with an applicable principal endorsement and who is employed by a district as a principal, or who is enrolled in a Board of Public Education approved principal internship program under [NEW RULE I].

~~(13)~~ (32) "Program area standards" means the subject matter Montana school districts are required to offer and the strategies and proven practices used to instruct. The program area standards include: ~~communication~~ English language arts, arts, health enhancement, mathematics, science, social studies, career and

vocational/technical education, technology, workplace competencies, library media, world languages, and school counseling.

~~(14)~~ (33) "Program delivery standards" means the conditions, and practices and resources school districts are required to provide for all ensuring that every student to have is afforded educational opportunities to learn, develop, and demonstrate learning to achievement in content and performance standards and content-specific grade-level learning progressions.

(34) "Pupil instruction day" means a school day when organized instruction is conducted with students under the supervision of a teacher.

(35) "Pupil instruction-related (PIR) day" means days of teacher activities devoted to improving the quality of instruction. The activities may include, but are not limited to: in-service training, attending state meetings of teacher organizations, and conducting parent conferences.

~~(15) "Online learning" means education activity in which instruction and content are delivered primarily via the internet. Online learning is a form of distance learning.~~

(36) "School" means, for accreditation purposes, an educational program and grade assignments designated by the local board of trustees in one of the following categories:

(a) an elementary school, which offers any combination of kindergarten through eighth grade;

(b) a seventh and eighth grade school, which comprises the basic education program for grades 7 and 8 that may be funded at the high school rate pursuant to 20-9-396, MCA;

(c) a junior high school, which offers the basic education program for grades 7 through 9;

(d) a middle school, which offers education programs for grades 4 through 8 or any combination thereof; and

(e) a high school, which offers the educational programs for grades 9 through 12 or grades 10 through 12 when operating in conjunction with a junior high school.

~~(16)~~ (37) "School administrator" means a person who is a part of the school's administrative or supervisory staff and who holds a eClass 3 license and is appropriately endorsed, or who is enrolled in a Board of Public Education approved administrator internship program under ARM 10-55-702 through 10-55-705 [NEW RULE I].

(38) "School district" means the territory, regardless of county boundaries, organized under the provisions of Title 20, MCA to provide public educational services under the jurisdiction of the local board of trustees. A high school district may encompass all or parts of the territory of one or more elementary districts. A school district may also exist as the result of the formation of a joint board of trustees as provided by 20-3-361, MCA. "School district" shall refer to all state-funded special purpose schools that are accredited under this chapter.

(39) "School system" means the administrative unit of a district or combination of districts. In Montana, types of school systems are as follows:

(a) "combined elementary-high school district" means an elementary district and a high school district which are combined into a single school system for district administration purposes. This may include school systems formed under the statute

governing joint boards of trustees depending on the programs and services agreed to by the participating local boards of trustees.

(b) "independent high school district" means a district organized for the purpose of providing public education for all or any combination of grades 9 through 12; and

(c) "independent elementary school district" means a district organized for the purpose of providing public education for all or any combination of grades kindergarten through grade 8.

(40) "Specialist" means a person with a Class 6 Specialist license in a nonteaching role of school psychologist or school counselor

(41) "Student performance standards" means minimal standards of a quality education, which measures student performance on annual state level summative assessments and graduation rates used to determine the accreditation status of a school.

(42) "Superintendent" means a person who holds a valid Montana Class 3 educator license, with an applicable superintendent's endorsement and who is employed by a district as a district superintendent, or who is enrolled in a Board of Public Education approved superintendent internship program under [NEW RULE 1].

~~(17)~~ (43) "Synchronous" means occurring at the same time. "Synchronous" refers to content, instruction, and communication between participants (i.e. e.g., students and teachers) that occurs at the same time even though they may be in different physical locations. For example, instruction in which students and teachers are online at the same time so that a question can be immediately answered (e.g., telephone calls, face-to-face meetings, physical classrooms, chat rooms, and videoconferencing).

(44) "Teacher" means a person, except a district superintendent, who holds a valid Montana educator license issued by the Superintendent of Public Instruction under the policies adopted by the Board of Public Education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111, MCA.

(18) remains the same but is renumbered (45).

(46) "Variance to standard" means an alternate approach to meeting or exceeding the minimum standards.

AUTH: 20-2-114, MCA

IMP: 20-1-101, 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.55.603 CURRICULUM AND ASSESSMENT (1) Local school districts shall ~~incorporate~~ ensure their curriculum is aligned to all content and performance standards and the appropriate learning progression for each grade level into their curriculum, implementing them sequentially and developmentally.

(2) School districts shall maintain their programs consistent with the state's schedule for revising standards.

(3) School districts shall assess the progress of all students toward achieving content and performance standards and content-specific grade-level learning progressions in all each program areas. ~~Assessment of all students shall be used~~

The district shall use assessment results, including state-level achievement information obtained by administration of assessments pursuant to ARM 10.56.101 to examine the educational program and measure its effectiveness based on the content and performance standards.

(a) and (b) remain the same.

~~(2)~~ (4) For content and performance standards in all program areas in accordance with pursuant to the requirements of ARM 10.55.602(8), school districts shall:

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

(b) review curricula at ~~intervals not exceeding~~ least every five years or consistent with the state's standards revision schedule, and modify, as needed, to meet educational goals of the ~~five-year comprehensive education~~ continuous school improvement plan in accordance with pursuant to ARM 10.55.601;

(c) review materials and resources necessary for implementation of the curriculum and assessment at least every five years, ~~review and select materials and resources necessary for implementation of the curriculum and assessment or consistent with the state's standards revision schedule~~ that are consistent with the goals of the ~~five-year comprehensive education~~ continuous school improvement plan; and

(d) review curricula and instructional materials and resources to ensure the inclusion of the distinct and unique cultural heritage and contemporary portrayal of the American Indians.

~~(3)~~ (5) The school district shall develop and implement its assessment plan used to measure student progress ensuring alignment to the local curriculum in all program areas.

~~(a) School district~~ The assessment plans shall be included in the comprehensive education continuous school improvement plan and be in place within two years following the development of local curriculum.

~~(a)~~ (b) School districts shall use effective and appropriate multiple measures and methods, including state-level achievement information obtained by administration of assessments pursuant to the requirements of ARM 10.56.101, to assess student progress in achieving content and performance standards and content-specific grade-level learning progressions in all program areas.

~~(b)~~ (c) Utilizing input from representatives of accredited schools, the Office The Superintendent of Public Instruction shall develop criteria and procedures for the selection of effective and appropriate multiple measures and methods to be used to assess student progress in reading and mathematics in grades 4, 8 and 11 achieving content and appropriate content-specific grade-level learning progressions in all program areas.

~~(c)~~ (d) The Office Superintendent of Public Instruction shall provide technical assistance to districts to meet the criteria and procedures in (3)(b c).

~~(d) Not later than the school year immediately following the completion of written sequential curricula aligned with the content and performance standards in a program area in accordance with ARM 10.55.601(6), the school district shall begin~~

the development of a student assessment process for that program area. The assessment process must be in place two years following the development of written curriculum.

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

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

(b) The measures used to report to the Office of Public Instruction shall be included within the district assessment plan in accordance with ARM 10.55.601.

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

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

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

10.55.604 VARIANCES TO STANDARDS (1) A school-district local board of trustees may apply to the Board of Public Education through the Superintendent of Public Instruction to implement an alternative a variance to a standard or a section of standards, excluding standards stating statutory criteria, standards pertaining to teacher educator licensure or endorsement, and content and performance standards as defined by the Board of Public Education and provided in guidance from the Superintendent of Public Instruction.

(a) In its application, the school-district local board of trustees shall provide evidence establishing describe how and why its proposed variance would be that its alternative is workable, and educationally sound, and designed to meet or exceed results under established standards and, where applicable, aligned with program in comparison to the intent of the standard(s) that would be waived, and shall establish that the goals of the alternative will meet or exceed the results under the current standard(s) ARM 10.55.1101 through 10.55.1901.

(b) In its application, the school-district shall submit a statement of mission and objectives, and identify formative and summative measures to be used to evaluate the effectiveness of the alternative. An application for variance to standards to take effect at the beginning of the academic year is due in writing to the Superintendent of Public Instruction no later than the first Monday in March. An application for variance to standards to take effect the second semester of the academic year is due in writing to the Superintendent of Public Instruction no later than the first Monday in July.

(c) Upon appropriate application, the Board of Public Education shall approve or deny the proposed alternative. The Superintendent of Public Instruction shall refer applications to a review board appointed and facilitated by the Superintendent of Public Instruction. The review board shall provide its recommendations to the

Superintendent of Public Instruction.

~~(d) If the board denies the proposed alternative, it shall state in writing why it has done so. The Superintendent of Public Instruction shall provide the Board of Public Education with a recommendation for approval, modification, or rejection of the review board's recommendation.~~

~~(e) If the board approves the proposed alternative, its initial approval shall be for two years.~~

~~(f) During the second year of the initial approval, the Board of Public Education, through the Office of Public Instruction, shall direct an on-site evaluation of the alternative.~~

~~(g) If the board finds the alternative is workable and educationally sound in comparison to how the waived standard(s) previously worked in the district, the board shall renew the alternative for five years.~~

~~(h) Subject to on-site evaluations every five years, the board may continue to renew the alternative.~~

~~(i) A school district may discontinue an approved alternative at any time. If it does so, it shall promptly notify the Board of Public Education in writing.~~

(2) The Board of Public Education shall approve or deny proposed variances to standards.

(3) If the Board of Public Education approves a proposed variance to standards, it shall initially do so for no more than two years pending ongoing review of the implementation by the Superintendent of Public Instruction.

(4) Following the second year of implementation of a variance to standards, the school district shall provide evidence to the Superintendent of Public Instruction that the methods selected by the district implement, meet, or exceed results that could have been achieved under established standards.

(5) If the Superintendent of Public Instruction finds the variance is workable and educationally sound, the Superintendent shall report findings and recommend continued approval to the Board of Public Education.

(6) If the Board of Public Education concurs with the Superintendent's recommendation, it may renew the variance for no more than three years.

(7) The Board of Public Education may subsequently renew the variance for up to three-year intervals provided the district continues to show how the variance meets or exceeds established standards.

(8) If the Superintendent of Public Instruction finds the alternative is not working as intended or does not meet or exceed results that could be achieved under established standards, the Superintendent shall recommend to the Board of Public Education that the variance be revoked.

(9) If the Board of Public Education accepts the Superintendent's recommendation to revoke a variance, the board's decision is final.

(10) A school district may discontinue an approved variance at any time. If it does so, it shall promptly notify the Superintendent of Public Instruction in writing.

(2) through (2)(e) remain the same but are renumbered (11) through (11)(e).

AUTH: 20-2-114, MCA

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

10.55.605 CATEGORIES OF ACCREDITATION (1) Regular accreditation means the school has: met the assurance standards and student performance standards as defined in ARM 10.55.606 and the Licensure Endorsement Requirements Related to Teaching Assignments, adopted by the Board of Public Education July 2012, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> (Appendix A).

~~(a) its program aligned to the content and performance standards and program area standards;~~

~~(b) certified staff that is appropriately assigned, and fully utilized;~~

~~(c) school programs and resources that are adequate;~~

~~(d) facilities that meet appropriate standards; and~~

~~(e) school trustees, staff, parents, and community that work together to provide a quality education.~~

(2) ~~When the school meets the r~~Regular accreditation standards with minor deviations, these deviations are noted on the annual accreditation status letter as minor citations when considering the school program in its entirety means the school does not meet all the requirements and standards required in (1) and delineated in the Accreditation Procedures and Status Criteria, adopted by the Board of Public Education July 2012, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> (Appendix B).

(3) A school with regular accreditation with level 2 deviation(s) in student performance standards, as defined in ARM 10.55.606, or regular accreditation with minor deviations at level 2 in either assurance or student performance standards, shall remedy all deviations within three years or will be reassigned to a lower category of accreditation.

~~(3) (4) Accreditation with advice means the school exhibits serious and/or numerous deviations from the standards. The school must submit an improvement plan developed by trustees, administrators, teachers, parents, and the community, to the Office of Public Instruction.~~

~~(4) (5) Deficiency a~~Accreditation with assistance deficiency means that the school has been is on advice status for two years, has not complied with the required corrective plan, and continues to have serious and/or numerous deviations, or has substantially increased the seriousness of deviations over the previous year.

(6) For a district with a school on advice or in deficiency status, the district administrator and the chair of the local board of trustees shall submit to the Superintendent of Public Instruction a corrective plan, including a systematic procedure and timeline for resolving the deviations noted.

~~(a) (7) A school will be immediately accredited with deficiency if:~~

~~(i) (a) the school employs as a teacher an individual who does not have a Montana teaching certificate license; or~~

~~(ii) (b) the school has a facility that creates an unhealthy environment with safety and health hazards; or,~~

~~(iii) the school provides an inadequate learning environment.~~

~~(b) The school administrator and the chair of the board of trustees will submit and/or come before the Board of Public Education with an improvement plan and a systematic procedure for correcting the deviations noted. The Office of Public Instruction will facilitate assistance to enable the school to accomplish the goals of~~



the improvement plan and to correct the deviations.

(8) A school with deficiency status failing to comply with the required corrective plan shall be placed into the intensive assistance process as defined in the Accreditation Procedures and Status Criteria, adopted by the Board of Public Education July 2012, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> (Appendix B).

(5) (9) Nonaccredited status means that a school on deficiency status fails to document that it has met its improvement plan meet the requirements of intensive assistance and is out of compliance with the Board of Public Education standards of accreditation.

(6) remains the same but is renumbered (10).

AUTH: 20-2-114, MCA

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

#### 10.55.606 PERFORMANCE-BASED ACCREDITATION PROCESS

(1) Performance-based accreditation gives a school district the option of obtaining, for one or more of its schools, accreditation through a process that involves self-evaluation, peer review and on-site visitations. This method allows a school to meet accreditation standards by showing through its students' work that it provides a quality education. The school improvement plan serves as a basis for assessment of school effectiveness and an impetus for mobilizing improvement efforts. The categories of accreditation of a school shall be determined by using two sets of standards:

- (a) assurance standards; and
- (b) student performance standards.

(2) After engaging in a sustained school improvement effort, a school district, on behalf of one or more of its schools, may apply to the Superintendent of Public Instruction for performance-based accreditation. The Board of Public Education makes the final decision on whether a school is accredited through the performance-based accreditation process. The school improvement process shall incorporate the following six steps or their equivalent: Assurance standards are comprised of the following subchapters in ARM Title 10, chapter 55:

- (a) development of a student/community profile Subchapter 6, General Provisions, ARM 10.55.601 through [NEW RULE I];
  - (b) development of a school mission and goals that reflect a locally derived philosophy of education Subchapter 7, School Leadership, ARM 10.55.701 through [NEW RULE II];
  - (c) identification of desired learner results based on the content and performance standards Subchapter 8, Academic Requirements, ARM 10.55.801 through 10.55.805;
  - (d) analysis of instructional and organizational effectiveness Subchapter 9, Educational Opportunity, ARM 10.55.901 through 10.55.910; and
  - (e) development and implementation of a school improvement plan; and Subchapter 10, Program Area Standards, ARM 10.55.1001 through 10.55.1003.
  - (f) monitoring through self-assessment and visits by peers or teams.
- (3) To be granted performance-based accreditation, a school must: Student

performance standards are comprised of student performance measures for each grade as follows:

~~(a) engage in a continuous schoolwide improvement process; Math and reading average scale score range for all students grades 3-8 and 10 and science average scale score range for all students grades 4, 8, and 10:~~

~~(i) Level 1 = 300-250;~~

~~(ii) Level 2 = 249-220;~~

~~(iii) Level 3 = 219-210;~~

~~(iv) Level 4 = 209-200; and~~

~~(b) host at least two visitations, chaired by a person trained or experienced in the process to seek feedback and validate the school improvement process; For high schools, graduate rate range:~~

~~(i) Level 1 = 100.0%-75.0%;~~

~~(ii) Level 2 = 74.9%-60.0%;~~

~~(iii) Level 3 = 59.9%-55.0%;~~

~~(iv) Level 4 = 54.9%-0.0%.~~

~~(c) notify the Superintendent of Public Instruction of the visitation dates and team members. A member of the staff of the Office of Public Instruction shall be invited to be a member of the visitation team;~~

~~(d) submit reports of the visitation to the Superintendent of Public Instruction; and~~

~~(e) apply to the Superintendent of Public Instruction for performance-based accreditation by providing documentation of school improvement, including, but not limited to:~~

~~(i) visitation reports;~~

~~(ii) a school improvement plan;~~

~~(iii) evidence of attainment or significant progress toward attainment of the school improvement plan goals; and~~

~~(iv) a recommendation from the visitation team that the Board of Public Education grant performance-based accreditation.~~

~~(4) After a review in which the school demonstrates successful attainment or significant progress toward achieving the desired learner results, the school may be granted performance-based accreditation for up to six years. The school is subject to peer or team reviews at least every three years. The review shall establish that: For schools with any combination of grades K-2, only the assurance standards will be used to determine accreditation status.~~

~~(a) the integrity of the school improvement process is maintained;~~

~~(b) the school is making informed, data-driven decisions;~~

~~(c) the process is school-based;~~

~~(d) all steps of the school improvement process are connected and inform one another;~~

~~(e) committees work collaboratively within and among one another;~~

~~(f) the school implements each step appropriately; and~~

~~(g) student learning is central to the entire process, with improvement demonstrated in desired learner results, based on content and performance standards.~~

~~(5) A school district, on behalf of one or more of its accredited schools~~

electing this process, may petition the Superintendent of Public Instruction to recommend that the Board of Public Education waive existing standards that interfere with the school improvement plan, excluding standards stating a statutory requirement, standards pertaining to teacher certification and content and performance standards as defined by the Board of Public Education. There shall be four levels for assurance standards and student performance standards used to determine accreditation status, as described in the Accreditation Procedures and Status Criteria, adopted by the Board of Public Education July 2012, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> (Appendix B). The highest level is 1 and the lowest level is 4.

(6) A school shall be classified as regularly accredited by using the combined results of the assurance standards and student performance standards as follows:

(a) level 1 for all assurance standards and level 1 or 2 for student performance standards; or

(b) level 1 or 2 for all assurance standards and level 1 for student performance standards.

(7) A school shall be classified as regularly accredited with minor deviation by using the combined results of the assurance standards and student performance standards with level 2 in any category in both sets of standards.

(8) A school shall be classified as accredited with advice by using the combined results of the assurance standards and student performance standards with level 3 in any category in either set of standards.

(9) A school shall be classified as accredited with deficiency by using the combined results of the assurance standards and student performance standards with level 4 in any category in either set of standards.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.701 BOARD OF TRUSTEES (1) The local board of trustees shall ensure that the school district complies with all local, state, and federal laws and regulations.

~~(2) The board of trustees shall provide in each school building at least one copy of the accreditation standards for staff and public review.~~

~~(3) Each school district shall have in writing and make available to the staff and public:~~

~~(a) a comprehensive philosophy of education;~~

~~(b) goals that reflect the district's philosophy strategic plan of education;~~

~~(c) sequential curricula curriculum for each program area that aligns to the content and performance standards, and the district's educational goals specific grade-level learning progressions, and program area standards;~~

~~(d) policies establishing student assessment procedures that ensure evaluation of the school's curricula district's curriculum and student learning. These procedures shall specify how and when data are to be collected, analyzed, and reported;~~

~~(e) policies that delineate the responsibilities of the local board of trustees, superintendent, and personnel employed by the school district. The local~~

board of trustees shall review these policies on a regular basis and make them available to employees and the public;

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

~~(g) (f)~~ a policy that is designed to policies addressing bullying, hazing, intimidation, and harassment of students and school personnel and meeting the requirements in (NEW RULE II);

(h) through (m) remain the same but are renumbered (g) through (l).

~~(n) (m)~~ a parent involvement policy that encourages comprehensive family engagement policy aligned to meet the following goals:

(i) regular, two-way and meaningful communication between home and school families actively participate in the life of the school and feel welcomed, valued, and connected to each other, to school staff, and to what students are learning and doing in class;

(ii) promotion and support of parenting skills families and school staff engage in regular, two-way meaningful communication about student learning;

(iii) that parents play an integral role in assisting student learning families and school staff continuously collaborate to support student learning and healthy development both at home and at school and have regular opportunities to strengthen their knowledge and skills to do so effectively;

(iv) that parents are welcome in the school, and that their support and assistance are sought families are empowered to be advocates for their own and other children, to ensure that students are treated equitably and have access to learning opportunities that will support their success;

(v) parents as full partners in the decisions that affect children and families and school staff partner in decisions that affect children and families and together inform, influence, and create policies, practices, and programs; and

(vi) community resources be used to strengthen schools, families, and student learning families and school staff collaborate with members of the community to connect students, families, and staff to expand learning opportunities, community services, and civic participation;

~~(e) (n)~~ a policy that incorporates incorporating the distinct and unique cultural heritage of American Indians, ensuring integration of the history and contemporary portrayals of Indians, and that is aligned with district educational goals; and

~~(p) (o)~~ a policy addressing distance, online, and technology delivered learning as defined in ARM 10.55.602;

(p) a policy that defines a significant writing program; and

(q) a policy that addresses student health issues that arise in the school setting.

~~(4) (3)~~ The local board of trustees shall have valid, written contracts with all regularly employed certified licensed administrative, supervisory, and teaching personnel.

~~(5) (4)~~ The local board of trustees shall have written policies and procedures for regular and periodic evaluation of all regularly employed certified administrative, supervisory, and teaching personnel. The individual evaluated shall have access to a written copy of the evaluation instrument, the opportunity to respond in writing to the completed evaluation, and access to his/ or her files. Personnel files shall be confidential.

(a) The evaluation system for licensed teachers used by a school district shall include an assessment of the extent to which the teacher:

(i) understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences;

(ii) uses understanding of individual differences and diverse cultures and communities, including American Indians and tribes in Montana, to ensure inclusive environments that enable each learner to meet high standards;

(iii) works with others to create environments that support individual and collaborative learning and that encourage positive social interaction, active engagement in learning, and self-motivation;

(iv) understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make the discipline accessible and meaningful for learners to assure mastery of the content;

(v) understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues;

(vi) understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision-making;

(vii) plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context;

(viii) understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways;

(ix) engages in ongoing professional learning and uses evidence to continually evaluate his or her practice, particularly in the effects of his or her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner;

(x) seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession; and

(xi) demonstrates understanding of and ability to integrate history, cultural heritage, and contemporary status of American Indians and tribes in Montana.

(b) The evaluation system for licensed administrators used by a school district shall include an assessment of the extent to which the administrator:

(i) facilitates the development, articulation, implementation, and stewardship of a school or district vision of teaching and learning supported by the school community in order to promote the success of all students;

(ii) promotes a positive school culture, provides an effective instructional program, applies best practice to student learning, and designs comprehensive professional growth plans for staff in order to promote the success of all students;

(iii) manages the organization, operations, and resources in a way that promotes a safe, efficient, and effective learning environment in order to promote the

success of all students;

(iv) collaborates with faculty, families, and other community members, responds to diverse community interests and needs, including American Indian communities in Montana, and mobilizes community resources in order to promote the success of all students;

(v) acts with integrity, fairness, and in an ethical manner in order to promote the success of all students; and

(vi) understands, responds to, and ethically influences the larger political, social, economic, legal, and cultural context in order to promote the success of all students.

~~(6)~~ (5) The local board of trustees shall:

(a) establish conditions that contribute to a positive school climate and morale by encouraging cooperative and harmonious relationships among the staff members, students, parents, and community. which:

(i) keep parents/guardians up to date on students' progress;

(ii) engage in a continuous school improvement process; and

(b) establish mentoring and induction programs to assist licensed staff in meeting teaching standards as defined in ARM 10.55.701(4)(a) and (b).

~~(7) To enhance a positive learning environment, the board of trustees shall:~~

~~(a) establish a system to keep parents/guardians up to date on students' progress; and~~

~~(b) use technology and equipment to facilitate management and instruction.~~

~~(8) To ensure continuous education improvement, the district shall engage in a continuous school improvement process.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.702 LICENSURE AND DUTIES OF DISTRICT ADMINISTRATOR - DISTRICT SUPERINTENDENT (1) The district superintendent shall be:

(a) appropriately licensed and endorsed in accordance with state statutes and Board of Public Education rules; or

(b) considered appropriately assigned if the superintendent is enrolled in a Board of Public Education approved administrator/district superintendent an internship program as defined below: in ARM 10.55.602 and meets the requirements of [NEW RULE I].

~~(i) the intern must be enrolled in an approved administrator/district superintendent training program with the state of Montana;~~

~~(ii) the intern must have completed the principal endorsement requirements or be simultaneously enrolled in an administrator/principal internship program;~~

~~(iii) the intern must file an application with the Board of Public Education prior to placement within the local school districts in the state of Montana; and~~

~~(iv) at each assigned school district, the intern must annually receive an on-site visit by an appointed faculty member of the approved internship program.~~

(2) A superintendent intern shall be supervised throughout the year by a licensed and endorsed superintendent contracted by the district, including participation in, and review of, and written concurrence in all performance

evaluations of licensed staff completed by the intern.

~~(2) In cases where the intern is the only administrator hired by the district, the district shall contract with a properly licensed and endorsed administrator for annual and periodic supervision of the practice of the intern throughout the school year. Such supervision shall include participation in, review of, and written concurrence in all performance evaluations of licensed staff completed by the intern.~~

(3) remains the same.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.703 LICENSURE AND DUTIES OF SCHOOL PRINCIPAL (1) The school principal shall:

(a) be appropriately licensed and endorsed in accordance with state statutes and Board of Public Education rules; or

(b) be considered appropriately assigned if the principal is enrolled in an internship as defined in ARM 10.55.602 and meets the requirements of [NEW RULE I]. Board of Public Education approved administrator/principal internship program as defined below:

~~(i) the intern must be enrolled in an approved administrator/principal training program within the state of Montana;~~

~~(ii) the intern must file an application with the Board of Public Education prior to placement within a school district in the state of Montana;~~

~~(iii) at each assigned school, the intern must annually receive an on-site visit by an appointed faculty member of the approved internship program;~~

~~(iv) at each assigned school, the intern shall receive an appropriate level of supervision by a properly licensed and endorsed administrator hired by the district. Such supervision shall include participation in, review of, and written concurrence in all performance evaluations of licensed staff completed by the intern. In cases where the intern is the only administrator hired by the district, the district shall contract with a properly licensed and endorsed administrator for annual and periodic supervision of the practice of the intern throughout the school year.~~

~~(c) have a license endorsed at the level assigned as a principal, except where one individual serves as the single administrator for the entire district under ARM 10.55.705(1)(a) or (b), where the superintendent may hold either a high school or elementary principal endorsement. No individual may be assigned a total of more than 100% full-time equivalent (FTE);~~

~~(d) consider ways to:~~

~~(i) provide instructional leadership;~~

~~(ii) exercise vision in defining and accomplishing the school's mission;~~

~~(iii) encourage teachers to have high expectations for student achievement;~~

~~(iv) stress the importance of parents' and students' roles in academic~~

~~success;~~

~~(e) involve staff and others in decision making and in setting, accomplishing, and assessing educational goals;~~

~~(f) carry out the district's policies and procedures;~~

~~(g) be responsible for the effective day-to-day operation of the school,~~

including the management of finances, materials, and human resources.

(2) Supervision of the principal intern shall be provided throughout the year by the district superintendent, county superintendent, or in the absence of either, a licensed and endorsed superintendent contracted by the district. Such supervision shall include participation in, and review of, and written concurrence in all performance evaluations of licensed staff completed by the intern.

(3) The principal shall carry out the district's policies and procedures, provide instructional leadership, and be responsible for the effective day-to-day operation of the school, including the management of finances, materials, and human resources.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1) ~~A district superintendent for a combined elementary-high school district or a county high school district or an independent elementary school district~~ The assignment of licensed superintendents for all configurations of school systems shall be based upon full-time equivalency (FTE) and shall be assigned as follows:

~~(a) full or part-time district superintendent and at least a half-time school administrator/principal as defined in ARM 10.55.705(1)(a) or (b) shall be employed for an independent elementary district with fewer than 18 full-time equivalent (FTE) licensed staff, or the district shall utilize the services of the county superintendent to fulfill the duties of the district superintendent. One individual may serve as both district superintendent and part-time school administrator/principal as defined in ARM 10.55.705(1)(a) or (b). A superintendent serving under this subsection shall devote full time to administration and supervision not to exceed a total assignment of 400% FTE. School systems with 14 or fewer FTE licensed staff and without a licensed superintendent employed may use a supervising teacher and the services of the office of the county superintendent to satisfy administrator requirements;~~

~~(b) A full or part-time district superintendent and at least a half-time school administrator/principal shall be employed for a combined elementary-high school district or a county high school district with fewer than 30 FTE licensed staff. A full or part-time district superintendent and at least a half-time school administrator/principal shall be employed for an independent elementary district with more than 18 but fewer than 30 FTE licensed staff. One administrator may serve as both superintendent and part-time school administrator/principal as defined in ARM 10.55.705 (1)(a) or (b). A superintendent serving under this subsection shall devote full time to administration and supervision not to exceed a total assignment of 100% FTE. School systems with more than 14 and fewer than 18 FTE licensed staff shall employ a part-time, at a minimum of .10 FTE, licensed superintendent. One individual may serve as both superintendent and principal as defined in ARM 10.55.705(2)(a) or (2)(b);~~

~~(c) A full-time (one FTE) district superintendent shall be employed for any district with 30 or more FTE licensed staff or 551 or more students. School systems with more than 18 and fewer than 31 FTE licensed staff shall employ a half-time (.50 FTE) licensed superintendent. One administrator may serve as both superintendent~~



and principal as defined in ARM 10.55.705(2)(a) or (2)(b):

(d) school systems with 31 or more FTE licensed staff shall employ a full-time (1.0 FTE) licensed superintendent who shall devote full time to administration and supervision not to exceed a total assignment of 1.0 FTE.

(e) No individual superintendent assigned pursuant to the ratios in (1) may be assigned as more than 1.0 FTE.

~~(2) A combined elementary-high school district, or a county high school district, or an independent elementary school district~~ School systems with 100 or more FTE licensed staff shall employ a full-time curriculum coordinator to supervise the educational program and alignment of standards, assessment, curriculum, instruction, and instructional materials. The curriculum coordinator shall hold a ~~€~~Class 3 administrative license. Those districts with ~~less~~ fewer than 100 FTE licensed staff and no full-time curriculum coordinator shall employ the services of a ~~regional curriculum consortium, multidistrict collaborative, or interlocal cooperative,~~ or a part-time, designated curriculum coordinator.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.705 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF SCHOOL ADMINISTRATORS/PRINCIPALS (1) ~~School districts shall employ appropriately endorsed school administrators/principals as follows: systems with nine or fewer FTE licensed staff and without a licensed superintendent may use a supervising teacher and the services of the office of the county superintendent to satisfy principal requirements.~~

(2) The assignment of licensed principals shall be based upon student enrollment and prorated as applicable. Principal assignments are as follows:

~~(a) for schools in third class elementary districts without a licensed administrator under contract, a supervising teacher and county superintendent will be accepted in satisfaction of administrator requirements for up to eight full-time equivalent (FTE) licensed staff; 0.25 FTE licensed principal shall be assigned to schools with enrollments of 125 to fewer than 175 students;~~

~~(b) for schools in districts with an assigned licensed administrator under contract, the following staffing requirements shall apply: 0.50 FTE licensed principal shall be assigned to schools with enrollments of 175 to fewer than 250 students;~~

~~(c) 1.0 FTE licensed principal shall be assigned to schools with enrollments of 250 to fewer than 550 students;~~

~~(d) 2 FTE licensed principals shall be assigned to schools with enrollments of 550 to fewer than 1050 students;~~

~~(e) 3 FTE licensed principals shall be assigned to schools with enrollments of 1050 to fewer than 1550 students;~~

~~(f) 4 FTE licensed principals shall be assigned to schools with enrollments of 1550 to fewer than 2050 students;~~

~~(g) 5 FTE licensed principals shall be assigned to schools with enrollments of 2050 or more students.~~

(3) No individual principal assigned pursuant to the ratios in (2) may be assigned as more than 1.0 FTE.

~~(i) .5 FTE principal for schools with more than eight and less than 18 FTE licensed staff. A district may satisfy the FTE requirements of this subsection for a school under this circumstance by prorating the assignment of building administrators in other buildings of the district, so long as the number of licensed FTE staff for whom each administrator is responsible is not more than 29 and so long as the number of students for whom each administrator is responsible is not more than 550;~~

~~(ii) one FTE principal for schools with 18-29 FTE licensed staff or 250-550 students;~~

~~(iii) two FTE administrators/principals for schools with 551-1050 students;~~

~~(iv) three FTE administrators/principals for schools with 1051-1550 students;~~

~~(v) four FTE administrators/principals for schools with 1551-2050 students;~~

and

~~(vi) five FTE administrators/principals for schools with 2051 or more students.~~

~~(2) (4) In a schools that requires two or more FTE administrators/principals, at least one individual shall be appropriately endorsed as principal. At least a second administrator shall have an administrative endorsement(s) at the appropriate level(s) and in the area(s) that accurately reflects the administrator's supervisory responsibilities. For example, a school may assign a properly licensed and endorsed curriculum coordinators to supervise the appropriate instructional programs. No individual administrator assigned pursuant to the ratios in ARM 10.55.705(2) may be assigned as more than 1.0 FTE.~~

~~(3) In schools with at least three FTE school administrators who are administratively endorsed, release time of department coordinators or chairpersons may be counted toward additional school administration. Department coordinators or chairpersons counted toward school administration may observe and supervise but shall not formally evaluate classroom instruction.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.706 TEACHER INVOLVEMENT (1) Teachers should use their professional judgment to deliver high-quality instruction to all students based on individual need.

(2) Teachers shall be involved in curriculum development and student assessments and in the promotion of a school climate that enhances student learning, achievement, and well-being.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.707 TEACHER AND SPECIALIST LICENSURE (1) Teachers and specialists shall hold Montana teaching licenses. be:

(a) appropriately licensed and endorsed in accordance with state statutes and Board of Public Education rules; or

(b) considered appropriately assigned if enrolled in an internship as defined in ARM 10.55.602 and meet the requirements of [NEW RULE I].

(2) The school district shall arrange for a licensed and endorsed teacher in the content area to provide periodic support to the intern.

(3) School psychologists shall be licensed under ARM 10.57.432(1) or 10.57.433 and 10.57.434, or considered appropriately assigned if they are enrolled in an internship as defined in ARM 10.55.602 and meet the requirements of [NEW RULE I].

(4) School counselors shall be:

(a) licensed under ARM 10.57.432(2) or 10.57.433 and 10.57.435; or

(b) considered appropriately assigned if they hold a Class 1 or 2 license and are enrolled in an internship as defined in ARM 10.55.602 and meet the requirements of [NEW RULE I].

~~(2) An emergency authorization of employment is not a valid license; it is granted to a district which, under emergency conditions, cannot secure the services of a licensed teacher.~~

~~(3) All school psychologists must be licensed with a class 6 specialist license.~~

~~(4) Licensed teachers and school counselors who are enrolled in Board of Public Education approved internship programs according to the following provisions shall be considered appropriately assigned when teaching or serving in the internship area.~~

~~(a) Only an accredited educator preparation institution located within the boundaries of the state of Montana shall be eligible to operate an approved endorsement area internship program.~~

~~(b) Only a currently licensed Montana teacher enrolled in an approved endorsement area internship program shall be considered appropriately assigned when teaching or serving in the endorsement area within three years following the date of initial enrollment.~~

~~(c) An educator preparation program shall obtain approval of the Board of Public Education prior to placing interns in positions in local school districts in the state of Montana. In order to gain approval, the program must:~~

~~(i) file an application with the Board of Public Education;~~

~~(ii) include a model plan for preparation of interns prior to placement that shall include, at a minimum, completion of or enrollment in six semester credits of study in the endorsement field the teacher is pursuing;~~

~~(iii) appoint a faculty member responsible for ensuring compliance with all program requirements by interns enrolled in the program, which shall include, as a minimum, an on-site visit to each school district in which an intern is placed at least once during the term of the internship.~~

~~(d) All interns placed in a school district shall receive an appropriate level of periodic supervision and training by a licensed teacher who is currently endorsed in the intern's prospective endorsement area.~~

~~(5) All personnel whose qualifications are not outlined in the certification standards ARM Title 10, chapter 57 must have a license issued by the appropriate state or federal licensing agent or national registry if required by the existing rules and regulations.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.708 TEACHING ASSIGNMENTS (1) Teachers shall be assigned at the levels and in the subjects for which ~~their certificates~~ they are licensed and endorsed. ~~Exceptions are: unless they are enrolled in an internship as defined in ARM 10.55.602 and meet the requirements of [NEW RULE I].~~

~~(a) individuals serving in internship positions approved by the Board of Public Education;~~

~~(b) (2) Teachers assigned in grade 5 or 6 in the departmentalized classroom or middle school, who hold a 5-12 secondary certificate license, must be endorsed in the subjects they are teaching. A 5-12 certificate license will not cover a grade 5 or 6 assignment in a self-contained K-8 classroom;~~

~~(c) (3) Clarifications of teaching assignments in grades 5 through 12 departmentalized settings are published in the Licensure Endorsement Requirements Related to Teaching Assignments, adopted by the Board of Public Education July 2012, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> (Appendix A) Appendix A of the "Montana School Accreditation Standards and Procedures Manual" adopted November 2000.~~

~~(2) (4) Certification Licensure at the elementary level entitles the holder to teach in grades K through 8.~~

~~(3) remains the same but is renumbered (5).~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.709 LIBRARY MEDIA SERVICES, K-12 (1) The school library shall be housed in a central location, and each school shall have a ~~full-time or part-time certified school licensed and endorsed~~ library media specialist ~~with a K-12 library media endorsement~~ at the following ratio:

~~(a) through (f) remain the same.~~

~~(2) Schools or districts of fewer than 125 students shall employ or contract with a certified, licensed and endorsed school library media specialist, or seek alternative ways to provide library media services, using certified personnel. For example, they may contract for services or receive services from a regional, certified library media specialist provided through joint efforts of adjacent districts and/or counties. If a district has fewer than 125 students, the district may utilize a consortium, multidistrict agreement, or interlocal cooperative to secure these services.~~

~~(a) Alternative services shall include:~~

~~(i) instruction in library media skills;~~

~~(ii) administration of a library media program that meets the district's instructional goals;~~

~~(iii) collection, development and management;~~

~~(iv) reader assistance;~~

~~(v) library media collection management; and~~

~~(vi) inservice in the use of new resources and equipment.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.710 ASSIGNMENT OF SCHOOL COUNSELING STAFF (1) and (2) remain the same.

(3) ~~Schools and/or Districts~~ with fewer than 125 students shall: may  
(a) employ or contract with a licensed, endorsed school counselor or Class 6 specialist; or utilize a consortium, multidistrict agreement, or interlocal cooperative to secure these services.

~~(b) seek alternative ways to provide counseling services and meet the required school counseling program goals using licensed personnel. For example, they may contract for services or receive services from a licensed school counselor or class 6 specialist provided through joint efforts of adjacent districts and/or counties.~~

~~(i) When a school district uses alternatives to meet this standard, it shall submit a description of the alternatives to the Superintendent of Public Instruction and seek approval from the Board of Public Education.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.711 GENERAL: CLASS SIZE AND TEACHER LOAD (1) These standards do not require a minimum class size at any grade level or for any subject offered. One pupil student may be considered a class.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.713 TEACHER LOAD AND CLASS SIZE: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL, AND GRADES 7 AND 8 BUDGETED FUNDED AT HIGH SCHOOL RATES (1) ~~In addition to the school administrator, the school shall employ a sufficient number of certified FTEs to allow for varying instructional patterns including, but not limited to teaming, core curriculum and departmentalization. Each program offered shall have properly~~ be staffed by appropriately licensed and endorsed FTE(s) educators.

(2) and (2)(a) remain the same.

(b) Laboratory/studio, e.g., science, art, PE, career and technical education, class size shall be limited for safety purposes. The number of students shall be determined through consultation with the teacher, considering the number, size, and use of laboratory stations.

(3) through (4) remain the same.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA;

10.55.714 PROFESSIONAL DEVELOPMENT (1) ~~By definition,~~  
Professional development:

(a) shall be aligned with district educational goals and objectives;

~~(a)~~ (b) focuses on teachers as central to student learning, yet and includes all other members of the school community;

(b) through (j) remain the same but are renumbered (c) through (k).

~~(k)~~ (l) is evaluated ultimately on the basis of its impact of professional development on teacher effectiveness and student learning, and the results of this assessment guides subsequent professional development efforts.

(2) Teachers and specialists shall annually complete professional development pursuant to the requirements of 20-1-304 and 20-4-304, MCA, including a minimum of three pupil instruction related (PIR) days dedicated exclusively to professional development.

(a) through (c) remain the same.

~~(3) School district~~ The local board of trustees shall establish an advisory committee to evaluate the school district's current school year professional development plan; and develop and recommend a plan for the subsequent school year.

(a) remains the same.

(b) Each school year, ~~school district~~ the local board of trustees shall adopt a professional development plan for the subsequent school year based on the recommendation of the advisory committee.

(c) The plan recommended by the advisory committee and adopted by the ~~school district~~ local board of trustees shall outline how, when, and from whom teachers and specialists shall meet their professional development PIR day expectations.

(d) ~~Although the advisory committee's recommendation is advisory,~~ The plan adopted by the school district local board of trustees must take into consideration the advisory committee's recommendations and include two professional development PIR days in October during which schools must close in order to permit teachers and specialists to attend the annual professional development meetings of state professional associations.

(e) through (g) remain the same.

~~(h) School district~~ The local board of trustees shall ~~file their adopted professional development plan with the Office of Public Instruction and make their plan available to employees and the public.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

#### 10.55.715 INSTRUCTIONAL AIDES PARAPROFESSIONALS:

QUALIFICATIONS AND SUPERVISION (1) ~~Instructional aides need not be certified; however, the following supervision is required:~~ paraprofessionals

~~(a) Instructional aides assigned due to classroom size or diversity shall be under the direct supervision of a certified licensed teacher. This means that the aide shall be supervised by a certified teacher who is responsible for instruction and assessment of students. The supervising teacher shall be available while the aide~~ instructional paraprofessional is fulfilling his/ or her responsibilities and shall not be simultaneously assigned to another teaching duty or preparation time.

(b) ~~Instructional aides~~ paraprofessionals assigned to assist students with

special education needs shall be under the supervision of the teacher or other professional designated as primarily responsible for instructional planning for the student. The designated professional has the responsibility to provide regularly scheduled communication and direction to the instructional aide paraprofessional and not to delegate any activity to the instructional aide paraprofessional that requires professional skill, knowledge, and judgment.

(c) Instructional aides paraprofessionals assigned to assist students in gaining specialized knowledge not generally available from a properly endorsed teacher shall be supervised by a teacher ~~certified~~ licensed at the proper level. The supervising teacher is responsible for instruction and assessment of students and shall not be simultaneously assigned to another teaching duty or preparation time.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.716 SUBSTITUTE TEACHERS (1) remains the same.

(a) In cases where a regular, licensed teacher under contract is temporarily unable, by reason of illness or for other reasons approved by the ~~school district~~ local board of trustees, to fulfill the teacher's duties, substitute teachers may be employed to carry on the duties of that teacher's position for a period not to exceed 35 consecutive teaching days. Such substitutes need not hold a current license, but preference shall be given to those substitutes who are properly licensed.

(b) If the absence of the regular, licensed, or authorized teacher continues for more than 35 consecutive teaching days, the substitute may be placed under contract if licensed or the local board of trustees shall place a licensed teacher under contract. If the local board of trustees makes a written declaration to the Superintendent of Public Instruction that no licensed teacher is available, the district shall pursue the employment of a teacher authorized under the provisions of ARM 10.57.107.

(2) Any nonlicensed substitute teacher shall complete a minimum of three hours of training, as approved by the ~~school district~~ local board of trustees.

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

(c) The district ~~shall~~ may accept the report of a previous fingerprint-based background check if it is submitted by a Montana university or college for a student currently or formerly enrolled in an accredited Montana professional educator program or from a public or nonpublic state-accredited school that previously employed the substitute. The report shall not be accepted if it was completed more than two years prior to the date of submission.

(d) remains the same.

(5) Sections (2), (3), and (4) may be waived by the local board of trustees in whole or in part, if the nonlicensed substitute has previous teaching or substitute teaching experience in an Montana-accredited public school in Montana prior to November 28, 2002 and who has continued to substitute yearly thereafter.

AUTH: 20-4-102, MCA

IMP: 20-4-102, MCA

10.55.717 ASSIGNMENT OF PERSONS PROVIDING INSTRUCTION TO

BRaille STUDENTS (1) No certified licensed or classified employee of a school district, cooperative, or any contracted service provider shall be assigned to provide instruction of Braille to a student or produce Braille materials who has not demonstrated competency in "contracted" (grade two) standard literary Braille code by:

(a) through (7) remain the same.

AUTH: 20-2-114, MCA

IMP: 20-1-121, 20-7-475, MCA

10.55.801 SCHOOL CLIMATE (1) The local board of trustees shall:

~~(a) encourage cooperative and harmonious relationships among staff, students, parents, trustees, and community;~~

~~(b) determine whether or not its staff turnover is excessive and, if it is, the reasons why;~~

~~(c) create teaching and learning conditions that meet the district's educational goals and attract and maintain a quality staff;~~

(d) remains the same but is renumbered (a).

(b) create teaching and learning conditions that meet the district's educational goals and recruit and maintain a quality staff;

(e) and (f) remain the same but are renumbered (c) and (d).

~~(g) (e) inform students, parents, families, and guardians of the school's expectations and of students' rights and responsibilities;~~

(h) remains the same but is renumbered (f).

~~(i) (g) encourage the active involvement of parents, families, and guardians in their children's education and in their school; and~~

~~(j) (h) provide opportunities for parents, families, guardians, educators, and members of the community to take active roles in developing and reviewing district and school educational goals.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.802 OPPORTUNITY AND EDUCATIONAL EQUITY (1) It is the purpose of the accreditation standards to guarantee equality of educational opportunity and to respect the dignity of every to each person regardless of race, color, sex, race, marital status, national origin, or physical or mental disability culture, social origin or condition, or political or religious ideas, with prejudice toward none. This includes programs, facilities, ~~textbooks~~ educational materials, curriculum, counseling, library services, and extracurricular activities.

AUTH: Montana Constitution, Article II, Section 4, 20-2-114, MCA

IMP: Montana Constitution, Article II, Section 4, 20-2-121, MCA

10.55.803 LEARNER ACCESS (1) Equal opportunity to learn is a primary consideration of all program areas, at all levels. In order to integrate this concept throughout the education program, the local board of trustees shall develop and



implement processes for assessing the educational needs of its students.

(2) In ~~developing curricula~~ implementing curriculum in all program areas, the local board of trustees shall:

(a) provide learning experiences matched to students' interests, readiness, and learning styles;

(b) ~~take into account~~ recognize individual and cultural diversity and differences among learners, including American Indians. Cultural and language differences should be viewed as valuable and enriching resources and should take into account the unique needs of American Indian students and other minority groups;

(c) ~~develop an understanding of the~~ ensure integration of the history, values contemporary portrayals, and contributions of ~~Montana's~~ American Indians, with an emphasis on Montana Indians, across all content areas for all students;

(d) provide learning resources that are relevant, ~~culturally relevant~~, inclusive, and current;

(e) remains the same.

(f) provide equal access to learning resources, ~~including technology;~~

(g) provide instructional materials ~~which are sequential and compatible with previous and future offerings~~ that support the adopted curricula; and

(h) provide books and materials that reflect authentic historical and contemporary portrayals of American Indians; ~~and.~~

(i) ~~(3)~~ The local board of trustees shall identify, using the school's own appropriate criteria, students who may be at risk or in need of special services.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.804 GIFTED AND TALENTED (1) ~~Schools~~ Districts shall provide educational services to gifted and talented students that are commensurate to their needs, and foster a positive self-image.

(2) Each ~~school~~ district shall comply with all federal and state laws and regulations addressing gifted education.

(3) Each ~~school~~ district shall provide structured support and assistance to teachers in identifying and meeting the diverse student needs of gifted and talented students, and shall provide a framework for considering a full range of alternatives for addressing student needs.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.805 SPECIAL EDUCATION (1) Each ~~school~~ district shall ~~comply with all federal and state laws and regulations addressing~~ provide educational programs and services to students eligible to receive special education services as identified under IDEA.

(2) Each ~~school~~ district shall ~~provide structured support and assistance to regular education teachers in identifying and meeting diverse student needs, and shall provide a framework for considering a full range of alternatives for addressing~~

student needs comply with all federal and state laws and regulations addressing special education.

~~(3) Students with disabilities shall be given opportunities to become confident, dignified, and self-sufficient members of society. Each district shall provide structured support and assistance to regular education teachers in identifying and meeting the diverse needs of students receiving special education services.~~

(4) A student eligible to receive special education services as identified under IDEA and who has successfully completed the goals identified on an individualized education program for high school completion shall be awarded a diploma.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.901 BASIC EDUCATION PROGRAM: ELEMENTARY (1) An elementary school shall have an education program aligned to the program area standards that enables students to meet the content ~~and performance~~ standards and content-specific grade-level learning progressions.

AUTH: 20-2-114, MCA

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

10.55.902 BASIC EDUCATION PROGRAM: MIDDLE GRADES (1) A school with middle grades must have an education program aligned to the program area standards that enables all students to meet the content ~~and performance~~ standards and content-specific grade-level learning progressions.

~~(2) In order to receive funding at the high school rate for Grades 7 and 8, the grade program that~~ The Board of Public Education, upon recommendation of the Superintendent of Public Instruction, may approve a 7 and 8, the grade program that must follow either the middle school philosophy and components described in (3) or the departmentalized philosophy and components ~~(often seen in junior high settings)~~ described in (4).

~~(3) An officially recognized middle school must be approved by the~~ The Board of Public Education, upon recommendation of the Superintendent of Public Instruction, may approve a middle school program that:

(a) ~~A middle school specifically~~ addresses the unique nature of middle-grade children by focusing on their intellectual, social, emotional, and physical development. To put such philosophy into practice, a middle school must have flexibility to:

(i) through (iii) remain the same.

(b) incorporates ~~critical and creative thinking, career awareness, lifelong learning, and safety; must be incorporated in the school program.~~

(c) incorporates instruction in reading literacy and writing literacy into all required and elective program areas as required in the Montana Common Core Standards, ARM Title 10, chapter 53;

(d) includes, at a minimum, the following program areas, ~~shall be required of all students yearly:~~

(i) ~~communication~~ English language arts including, but not limited to

literature, reading, writing, speaking and listening, media literacy;

(ii) mathematics including, but not limited to written and mental computation and problem solving;

(iii) through (v) remain the same.

~~(d)~~ (e) At a minimum, the middle school curriculum shall maintain in balance the following required program areas:

(i) and (ii) remain the same.

(iii) ~~vocational~~ career and technical education courses or pathways such as agriculture, business education, family and consumer sciences, health occupations, and industrial arts technology education, and marketing; and

(iv) remains the same.

~~(e)~~ (f) offers as electives to all students ~~E~~exploratory courses such as creative writing, dance, drama, financial education, photography, and leadership shall be offered as electives to all students.

(4) A junior high (grades 7-9) or 7-8 school for middle grades must offer an educational program, aligned to the program area standards, that enables all students to meet the content and performance standards and content-specific grade-level progressions. ~~The educational program shall be designed to familiarize students with the high school setting and provide content-specific instruction.~~

(a) Instruction in reading literacy and writing literacy shall be incorporated into all required and elective program areas as required in the Montana Common Core Standards, ARM Title 10, chapter 53.

~~(a)~~ (b) All students shall complete the following program areas each year:

(i) ~~communication arts~~ English language arts--1 unit;

(ii) through (v) remain the same.

(b) remains the same but is renumbered (c).

(i) and (ii) remain the same.

(iii) ~~vocational~~ career and technical education--1/2 unit; and

(iv) world languages and cultures--1/2 unit.

~~(e)~~ (d) A unit is defined as the equivalent of at least ~~225~~ 8100 minutes per week for one school year.

(d) remains the same but is renumbered (e).

AUTH: 20-2-114, MCA

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

#### 10.55.904 BASIC EDUCATION PROGRAM OFFERINGS: HIGH SCHOOL

(1) The basic education program, aligned to the program area standards, for grades 9 through 12 shall be at least 20 units of coursework that enable all students to meet the content and performance standards and content-specific grade-level learning progressions.

(2) Instruction in reading literacy and writing literacy shall be incorporated into all required and elective program areas as required in the Montana Common Core Standards, ARM Title 10, chapter 53.

~~(2)~~ (3) Minimum offerings shall include at least the following:

(a) through (d) remain the same.

(e) 2 units of ~~vocational/~~ career and technical education;

(f) through (i) remain the same.

AUTH: 20-2-114, MCA

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

10.55.905 GRADUATION REQUIREMENTS (1) As a minimum, a school district's requirements for graduation shall include a total of 20 units of study that enable all students to meet the content and performance standards and content-specific grade-level learning progressions.

(2) through (2)(e) remain the same.

(f) 1 unit of arts; and

(g) 1 unit of ~~vocational~~ career and technical education.

(3) and (4) remain the same.

AUTH: 20-2-114, MCA

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

10.55.906 HIGH SCHOOL CREDIT (1) A high school shall require a minimum of 20 units of credit for graduation, including ninth grade units. ~~A unit of credit shall be given for satisfactory completion of a full-unit course.~~

(a) A unit of credit is defined as the equivalent of at least ~~225~~ 8100 minutes ~~per week~~ for one year.

(b) remains the same.

(2) A student who is unable to attend class for the required amount of time may be given fractional credit for partial completion of a course, with the local ~~administrator's~~ board of trustee's permission.

(3) ~~Each governing authority~~ The local board of trustees may waive specific course requirements based on individual student needs and performance levels. Waiver requests shall also be considered with respect to age, maturity, interest, and aspirations of the students and shall be in consultation with the parents or guardians.

(4) With the permission of the ~~school district~~ local board of trustees, a student may be given credit for a course satisfactorily completed in a period of time shorter or longer than normally required and, provided that the course meets the district's curriculum and assessment requirements, which are aligned with the content ~~and performance~~ standards stated in the education program. Examples of ~~possible~~ acceptable course work include those delivered through correspondence, ~~and extension courses,~~ and distance learning courses, adult education, summer school, work study, specially designed courses, and challenges to current courses. ~~Any acceptable programs~~ must be consistent with the local board of trustees' policy.

(a) ~~Any~~ Montana high schools shall accept such units of credit taken with the approval of the accredited Montana high school in which the student was then enrolled and which appear on the student's official transcript.

AUTH: 20-2-114, MCA

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

10.55.907 DISTANCE, ONLINE, AND TECHNOLOGY-DELIVERED

LEARNING (1) through (2)(a) remain the same.

(b) Distance, online, and technology-delivered learning programs and/or courses shall ~~meet the learner expectations adopted by the school district and~~ at a minimum be aligned with state content and performance standards and content-specific grade-level learning progressions.

(c) ~~A~~ Annually, by the first Monday in June, a school district shall provide a report to the Superintendent of Public Instruction documenting ~~how it is meeting the needs of students under the accreditation standards who are taking a majority of courses during each grading period via distance, online, and/or technology-delivered programs~~ all distance, online and technology-delivered courses, student enrollments, and the digital content providers.

(3) and (3)(a) remain the same.

~~(i) The provisions of (3) and (3)(a) shall not be effective until July 1, 2009.~~

(b) and (c) remain the same.

(d) The school district must ensure that the distance, online, and technology-delivered learning facilitators receive in-service training on technology-delivered instruction ~~pertaining to:~~

~~(i) the course organization;~~

~~(ii) classroom management;~~

~~(iii) technical aspects of the delivery method;~~

~~(iv) strategies for use of distance learning;~~

~~(v) monitoring of student testing;~~

~~(vi) and securing other services as needed.~~

(4) remains the same.

(5) ~~All providers or coordinating entities of distance, online, and technology delivered learning programs shall annually, no later than October 1:~~ Digital content providers serving Montana schools accredited by the Board of Public Education shall:

(a) annually, by the first Monday in August, register with the Office of Public Instruction;

(b) annually, by the first Monday in June, identify all the Montana school districts to whom they are providing distance, online, and technology delivered programs and/or courses served in the current school year by the digital content provider, including the courses and student enrollments for each school district served; and

(c) document the professional qualifications, including Montana teacher licensure and endorsement, of their teachers of distance, online, and technology-delivered programs and/or courses; by providing names and credentials of other licensing entities, when not licensed and endorsed in Montana.

~~(d) provide the course description including the content and delivery model for each distance, online, and technology delivered program and/or course provided to Montana schools; and~~

~~(e) demonstrate that the students they serve have ongoing contact with their teachers of distance, online, and technology delivered learning programs and/or courses.~~

AUTH: 20-2-114, MCA

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

10.55.908 SCHOOL FACILITIES (1) School facilities shall be constructed, maintained, and supervised in accordance with all applicable local, state, and ~~national~~ federal codes, regulations, and laws.

(2) School facilities shall be of sufficient size and arrangement to meet all programs' educational goals.

(3) The local board of trustees shall provide for educational facilities which are ~~pleasant~~ functional and ~~reasonably~~ safe for the conduct of the educational and extracurricular activities of students, and which will meet federal accessibility standards.

(4) The school shall provide the necessary equipment for ~~emergency nursing care and~~ first aid.

(5) When the local board of trustees considers major remodeling or building a facility, it shall seek facility expertise in all affected program areas as well as comments from faculty, students, and community.

(6) The local board of trustees shall have ~~in writing~~ a written policy that defines the use of school facilities and resources.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.909 STUDENT RECORDS (1) remains the same.

(2) The local board of trustees shall establish policies and procedures for the use and transfer of student records that are in compliance with 20-1-213, MCA, and state and federal laws governing individual privacy. All educational records collected and maintained by a school shall be kept in a confidential manner according to the implementing regulations of the Family Educational Rights and Privacy Act (FERPA) at 34 CFR part 99.

(3) The local board of trustees shall develop a process for destruction of records pursuant to 20-1-213, MCA, including nonpermanent student records. Nonpermanent student records are records retained in a central file maintained by the school containing a student's cumulative educational records, which are not retained as a student's permanent record detailed in (1).

(3) remains the same but is renumbered (4).

AUTH: 20-1-213, 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.910 STUDENT DISCIPLINE RECORDS (1) Each school shall maintain a record of any disciplinary action that is educationally related, with explanation, taken against the student. When a local board of trustees takes disciplinary action against a student, the board must take minutes of the action taken, with detailed explanation, even if the disciplinary action is decided during a closed session. For the purpose of this rule, a disciplinary action that is educationally related is an action that results in the expulsion or out-of-school suspension of the student. This record must be maintained/destroyed consistent

~~with Montana Local Government Records Schedule 7, and is subject to transfer to a local educational agency, or accredited school, or pursuant to 10-1-213(4), MCA. Upon request, a copy of this record shall be sent to a nonpublic school pursuant to 20-1-213(7), MCA, and the No Child Left Behind Act, 20 USC 6304.~~

AUTH: 20-2-114, MCA

IMP: 20-1-213, 20-2-121, MCA

10.55.1001 DISTRICT'S RESPONSIBILITIES FOR PROGRAM DELIVERY STANDARDS (1) ~~It is the school district's local board of trustees' responsibility to incorporate~~ ensure the district's curricula align with the state content and performance standards into its curriculum, implementing them sequentially and content-specific grade-level learning progressions.

AUTH: 20-2-114, MCA

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

10.55.1003 PROGRAM FOUNDATION STANDARDS (1) The purpose of all programs is to develop and apply knowledge and skills necessary to pursue lifelong goals and opportunities.

~~(2) Program foundation standards are the common conditions, and practices, and resources that cross~~ will be evident in all programs within a school system to ensure that all students have educational opportunity to learn, develop, and demonstrate learning ~~to~~ in the content and performance standards and content-specific grade-level learning progressions. All programs shall follow the content and performance standards in the accreditation rules of Montana. ~~In addition, all programs shall work to~~ The local board of trustees shall:

(a) meet the following conditions:

~~(i) incorporate in curricular programs the distinct and unique cultural heritage of American Indians~~ ensure integration of the history, contemporary portrayals, and contributions of American Indians, with an emphasis on Montana Indians, for all students, across all content areas;

~~(ii) provide effective health enhancement instruction to all grades and to provide such instruction on a daily basis as part of the basic elementary education program;~~

~~(iii) provide physically, emotionally, and educationally safe and supportive learning and working environments, including environments free from bullying, intimidation and harassment;~~

~~(iv) (ii) ensure an educational climate that promotes academic freedom and respect for diversity (e.g., gender, race, ethnicity, economic status, native language, disability, special gift and talent) with prejudice toward none;~~

~~(v) (iii) maintain high expectations for student performance, and behavior, and challenge every student at his/her level of need that stimulates a desire for lifelong learning; and~~

~~(vi) (iv) encourage collaboration among school personnel to plan, assess, and support instruction; and~~

~~(vii) build school calendars and schedules based upon instructional needs.~~

- (b) include the following practices:
- ~~(i) align local curricula with the Montana content and performance standards;~~
  - ~~(ii) offer engaging and relevant experiences that enable students to develop effective communication skills for fulfillment in their personal lives, workplaces, and communities;~~
  - ~~(iii) (ii) teach ethical behavior, including use of technology (social media) and the implications of one's choices;~~
  - ~~(iv) remains the same but is renumbered (iii).~~
  - ~~(v) (iv) encourage the use of the inquiry process and the application of multiple thinking, decision-making, and problem-solving skills challenge students to think creatively and critically, and use the inquiry process to solve problems and make informed decisions;~~
  - ~~(vi) (v) emphasize common unifying themes or principles that build on students' prior experiences encourage interdisciplinary instruction;~~
  - ~~(vii) (vi) provide learning experiences that connect the disciplines and transfer learning from one context to another use relevant data to inform decision making, modify instruction, and increase student learning; and~~
  - ~~(viii) (vii) integrate information literacy skills, technology tools, and workplace competencies to support learning in all curricular areas; and~~
  - ~~(c) provide the following resources:~~
    - ~~(i) access to regional, community, and school-based resources for teaching and learning;~~
    - ~~(ii) qualified staff necessary to support the instructional process, including elementary teachers (00 endorsement) with at least ten semester credits in assigned subject areas when teaching departmentalized grades 5-8;~~
    - ~~(iii) (viii) provide equitable access to all facilities, technology, equipment, materials, and services necessary to support the instructional process; and~~
    - ~~(iv) time for professional development that supports learning for all;~~
    - ~~(v) a well-conceived mentoring program for teachers in the first three years of teaching; and~~
    - ~~(vi) access to a variety of current technologies and information resources (e.g., libraries, databases, computer networks, videos).~~

AUTH: 20-2-114, MCA

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

5. The effective date of the rules being adopted and the amendments to the rules in ARM Title 10, chapter 55 is July 1, 2013.

6. REASON: By authority of 20-7-101, MCA Standards of Accreditation for all schools are adopted by the Board of Public Education upon the recommendation of the Superintendent of Public Instruction. The board considers recommendations for revision of the policies at any time it deems necessary and conducts a comprehensive review of standards of accreditation policies on a regular cycle to ensure that such policies are meeting the needs of the state. The last comprehensive review of these standards was completed in 2000.



The Board of Public Education and the Office of Public Instruction facilitated the comprehensive review process to amend ARM Title 10, chapter 55, Standards of Accreditation, with input from a joint task force comprised of education stakeholders appointed by the board and the superintendent.

To implement the work of the task force as recommended by the superintendent to the board, the new rules address the requirements for internships and specify policy requirements related to student protection. The task force also concluded that it was necessary to include comprehensive amendments to existing rules to clarify language and process; clarify and add necessary definitions; clarify and amend school district policy requirements; add and define student performance and provide transparency to the accreditation process; address the process for application for variance to accreditation standards; clarify the categories of accreditation and the consequences for deficiencies; delineate the procedures used by the Office of Public Instruction when reviewing accreditation status, program, and assurance standards; specify requirements and deadlines for distance and online learning; clarify student records requirements; and update program foundation standards. Other amendments are made for consistency with other Board of Public Education rules.

7. 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: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail [pdonovan@mt.gov](mailto:pdonovan@mt.gov) and must be received no later than 5:00 p.m., August 23, 2012.

8. Peter Donovan, Executive Secretary for the Board of Public Education has been designated to preside over and conduct this hearing.

9. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 7 above or may be made by completing a request form at any rules hearing held by the board.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web

site may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

/s/ Patty Myers  
Patty Myers, Chair  
Board of Public Education

Certified to the Secretary of State July 16, 2012.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 10.56.101 relating to ) PROPOSED AMENDMENT  
assessment )

TO: All Concerned Persons

1. On August 21, 2012 at 9:00 a.m., the Board of Public Education will hold a public hearing in the Superintendent's conference room at 1227 11th Avenue, Helena Montana, to consider the proposed amendment of the above-stated rule.

2. The Board of Public Education 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 board no later than 5:00 p.m. on August 7, 2012 to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

10.56.101 STUDENT ASSESSMENT (1) By the authority of 20-2-121(12), MCA and ARM 10.55.603, the Board of Public Education adopts rules for state-level assessment in the public schools and those private schools seeking accreditation.

(2) The board recognizes that the primary purpose of assessment is to serve learning. ~~Classroom assessment is the primary means through which assessment impacts instruction and learning for individuals. State-level and large-scale assessment affect learning through assisting policy decisions and assuring program quality for all students. To meet both classroom and state-level needs, state-level assessments will provide information about the proficiency level of student achievement relative to established content standards, as well as the status of Montana's schools in relation to other groups of students, states, and nations. The school and district responsibilities for assessment are identified in ARM 10.55.603.~~ A balanced assessment system including formative, interim, and summative assessments aligned to state content standards will provide an integrated approach to meeting both classroom learning needs and school and state level information needs. A balanced assessment system is structured to continuously improve teaching and learning and to inform education policy.

(3) In order to obtain state-level achievement information, all accredited schools shall annually administer a single system of state-level assessments approved by the board. The following state-level assessments shall be administered according to standardized procedures. Districts and schools shall ensure that all test administrators are trained in and follow those procedures.

~~(a) State-level assessments shall aligned to Montana content standards (phase 1) and the Montana common core standards (phase 2) shall be administered to all students in grades four, eight and eleven in reading, communication arts, mathematics, science, and social studies. For planning purposes, state-level assessments shall be given during a week in the spring of the year, identified by the Office of Public Instruction a year prior to the assessment date. as specified below for each phase.~~

~~(i) Phase 1 – school years 2012-2013 and 2013-2014, the assessments shall be:~~

- ~~(A) aligned to Montana content standards;~~
- ~~(B) administered to grades 3-8 and 10 in math and reading;~~
- ~~(C) administered to grades 4, 8, and 10 in science; and~~
- ~~(D) administered in the spring of the year.~~

~~(ii) Phase 2 – beginning in school year 2014-2015, the assessments shall be:~~

- ~~(A) aligned to Montana common core standards;~~
- ~~(B) administered to grades 3-8 and 11 in math and English language arts;~~
- ~~(C) aligned to Montana content standards for science and administered in grades 4, 8, and 10; and~~
- ~~(D) administered in the spring of the year.~~

~~(b) All-state State-level assessments results shall be provided to the Office of Public Instruction and school districts in a format specified by the Office of Public Instruction and approved by the Board of Public Education aligned to Montana English language proficiency standards shall be administered to all students identified as Limited English Proficient (LEP) in grades K-12. These assessments shall be administered mid-school year.~~

~~(c) Beginning in the 2012-13 school year, the ACT Plus Writing college readiness test shall be offered to all eleventh grade public school students in their high schools on a school day without charge to the students or schools. Students may participate without accommodations, with ACT-approved accommodations, or with state-allowed accommodations. The testing window for the ACT Plus Writing will be in April and May of each year. All eleventh grade students will take the test unless:~~

- ~~(i) a parent or guardian requests in writing that the student not participate; or~~
- ~~(ii) a student, 18 or older, requests in writing to not participate.~~

~~(d) The obligation for funding the assessments identified in (3)(a), (b), and (c) is an obligation of the state. This section may not be construed to require a school district to provide these assessments if the state does not have a current contract with test vendors for provision of these assessments to Montana school districts.~~

~~(4) State-level assessment results are a part of each student's permanent records as described in ARM 10.55.909.~~

~~(5) The Office Superintendent of Public Instruction shall provide a report of the results to the board, and the Legislature, and the public. Schools are encouraged to compare their results with the state results and share state-level assessment information with parents and local communities.~~

~~(6) The Superintendent of Public Instruction is authorized to make available the reported student assessment data in compliance with confidentiality requirements of federal and state law. State-level assessment results released to~~

the public shall be accompanied by a clear statement of the purposes of the assessments, subject areas assessed, level of measurement of the content standards, and the percent of students who participated in the assessments. ~~The release shall include additional information to provide a fair and useful context for assessment reporting (e.g., dropout rates, mobility rates, poverty levels, district size) that will assist districts to examine their educational programs to assure effectiveness.~~ The Superintendent of Public Instruction will ensure transparency and public availability of public school performance data and reporting as outlined in 20-7-104, MCA.

(7) All students shall participate in the state-level assessments, except as provided in (3)(d). ~~Students with disabilities or limited English proficiency (LEP) shall participate using the approved assessments, unless it is determined that a student's progress toward the content standards cannot be adequately measured with the approved assessments even when provided accommodations.~~

(a) For a students with disabilities, the student's individualized education program (IEP) teams ~~have~~ has the authority to specify accommodations to be provided, as defined in (8), for participation by the student in the state-level assessment.

(i) When an IEP team determines that an accommodation for a student's disability would still not allow for adequate measurement of the student's progress toward the content standards, the IEP team may waive using the approved state-level assessments by providing alternate assessments that are appropriate to determine the student's progress toward the content standards.

(b) For a students who ~~have~~ has been identified by a team of educators through the district's process as LEP, ~~those teams have the authority to specify accommodations to~~ may be provided, as defined in (8), for participation by the student in the state-level assessment.

(i) When the ~~team of educators~~ result of the district's process indicates ~~determines~~ that an accommodation for an LEP student who has had fewer than three years of instruction in English would still not allow for adequate measurement of the student's progress toward the content standards, the team of educators may waive using the approved state-level assessments by providing alternate assessments that are appropriate to determine the student's progress toward the content standards.

~~(c) The Office of Public Instruction shall provide guidance to schools concerning alternate state-level assessments.~~

(8) Accommodations allow a students to demonstrate competence in subject matter so that state-level assessment results accurately reflect the student's' achievement levels rather than limited English language development or impaired sensory or manual skills, except where those skills are the factors which the assessment purports to measure.

(a) Accommodations for state-level assessment purposes ~~is~~ are defined as modifications of the test administration procedures similar to those used to ~~support and accommodate~~ assess the student in the instructional setting.

(b) ~~Accommodations may include, but are not limited to extended time, small group administration, facilitator reading directions, native language support, student responding orally, or using required assistive technology.~~ Accommodations vary for

the state required tests under (3)(a) through (c) and are dependent on the knowledge and skills being measured. Test-specific accommodations are detailed in test administration manuals.

(c) The Office Superintendent of Public Instruction shall provide guidance to schools concerning appropriate accommodations.

AUTH: 20-2-121, MCA

IMP: 20-2-121, 20-7-402, MCA

4. REASON: The Board of Public Education has determined that it is reasonable and necessary to amend the above rule because Federal testing requirements have changed to require tests aligned to state content standards. Montana is in the process of adopting common core standards in core subjects. As the current content standards are replaced with common core standards the tests will be replaced with new tests aligned to the common core standards. Federal testing requirements have also changed requiring tests aligned to the Montana English language proficiency standards for students with Limited English Proficiency (LEP).

The Montana Office of the Commissioner of Higher Education was awarded a seven year grant for all public high schools to offer the ACT Plus Writing college readiness assessment to all eleventh grade students free of charge. The amendments to this rule require all schools to offer the ACT Plus Writing as an accreditation requirement.

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: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail [pdonovan@mt.gov](mailto:pdonovan@mt.gov) and must be received no later than 5:00 p.m., August 23, 2012.

6. Peter Donovan, Executive Secretary for the Board of Public Education has been designated to preside over and conduct this hearing.

7. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all

concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

/s/ Patty Myers  
Patty Myers, Chair  
Board of Public Education

Certified to the Secretary of State July 16, 2012.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.2.403 pertaining to	)	AMENDMENT
diagnostic laboratory fees	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

1. On September 20, 2012, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on, August 20, 2012 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

32.2.403 DIAGNOSTIC LABORATORY FEES (1) The following list identifies the laboratory services and procedures available at the Montana Department of Livestock ~~v~~Veterinary ~~d~~Diagnostic ~~l~~Laboratory (laboratory), and the fees charged for each of those services and/or procedures:

<del>ABORTION STUDIES (kits):</del>	
<del>Includes histopathology and bacteriology (use SV43 form)</del>	\$40.00



<p><del>BACTERIOLOGY (use SV43 form):</del></p> <p><del>aerobic culture (first isolate)</del></p> <p><del>aerobic culture (additional isolates) \$14.00</del></p> <p><del>anaerobic culture (facultative) 5.00 each</del></p> <p><del>antibiotic sensitivity per isolate 15.00</del></p> <p><del>Campylobacter (livestock reproductive disease) 7.00</del></p> <p><del>Campylobacter (intestinal contents) 11.00</del></p> <p><del>Chlamydia ELISA 11.00</del></p> <p><del>Glostridium FA 17.00</del></p> <p><del>Glostridium genotyping-referral -11.00</del></p> <p><del>dermatophyte culture and PAS stain cost of referral</del></p> <p><del>direct darkfield microscopy</del></p> <p><del>E. coli K99 latex agglutination 25.00</del></p> <p><del>Mycoplasma culture 7.00</del></p> <p><del>non-dermatophyte fungal culture 11.00</del></p> <p><del>special requests 13.00</del></p> <p><del>Trichomonas culture 20.00</del></p> <p style="text-align: right;"><del>contact lab 5.50</del></p>	
<p><del>CLINICAL PATHOLOGY (clinical profiles):</del></p> <p><del>small animal health screen (SA Chem Panel, -CBC/Differential, UA) \$40.00</del></p> <p><del>small animal clinical profile (SA Chem Panel, -CBC/Differential) 40.00</del></p> <p><del>SA Pre-Anesthetic Profile (BUN, CRE, ALT, ALP, -Glu, TP, CBC/Differential) 30.00</del></p> <p><del>Feline ADR Profile (SA Chem Panel, T4, -CBC/Differential, FeLV, FIV, FIA) 22.00</del></p> <p><del>large animal health screen (LA Chem Panel, -CBC/Differential, Fibrinogen, UA) 60.00</del></p> <p style="text-align: right;"><del>40.00</del></p>	
<p><del>large animal clinical profile (LA Chem Panel, -CBC/Differential, Fibrinogen) 30.00</del></p> <p><del>LA Pre-Anesthetic Profile (BUN, GGT, AST, CK, -CBC/Differential, Fibrinogen) 23.00</del></p> <p><del>Equine Fitness Profile (AST, GGT, Tbili, CK, TP, -ALB, Glob, Ca, PO4, Na, K, Cl, TCO2, -CBC/Differential, Fibrinogen) 25.00</del></p>	
<p><del>CLINICAL PATHOLOGY (mini-profiles):</del></p> <p><del>small animal Hepatic profile (ALT, AST, ALP, GGT, -Tbili, Dbili, TP, ALB, Glob, Chol, BUN, GLu) \$15.00</del></p> <p><del>small animal Renal Profile (BUN, CRE, TP, ALB,</del></p>	

<del>–Glob, Ca, PO4, Na, K, Cl, TCO2)</del>	15.00
<del>Exocrine Pancreatic Profile (BUN, Ca, TP, ALB,</del>	
<del>–Glu, ALP, ALT, AST, Chol, Amylase, LIPASE)</del>	15.00
<del>canine Endocrine Profile (Ca, PO4, TP, ALB, ALP,</del>	
<del>–ALT, AST, Chol, T4, Na, K, Cl, Glu)</del>	21.00
<del>large animal Hepatic Profile (GGT, AST, Tbili, TP,</del>	
<del>–ALB)</del>	11.00
<del>large animal Renal Profile (BUN, CRE, TP, ALB,</del>	
<del>–Ca, PO4, Na, K, Cl)</del>	12.00
<del>S/ALA Gastrointestinal Profile (TP, ALB, Na, K, Cl)</del>	10.00
<del>feline Thyroid Profile (ALP, ALT, AST, PO4, T4)</del>	12.00
<del>Electrolytes (Na, K, Cl, TCO2)</del>	8.00
<del>cT4</del>	8.00
<del>T3</del>	8.00
<del>TSH</del>	8.00
<del>free T4</del>	8.00
<del>TT4</del>	8.00
<del>cTSH</del>	8.00
<del>cortisol</del>	13.00 each test
<del>canine thyroid panel (CTT4, CTSH, PT4, TT3)</del>	24.00
<del>thyroid panel (equine/feline)</del>	19.00
<del>bile acids</del>	22.00
<del>TLI</del>	22.00
<del>Phenobarbitol</del>	22.00
<b>CLINICAL PATHOLOGY (biochemical panels):</b>	
<del>small animal Chem Panel</del>	\$22.00
<del>large animal Chem Panel</del>	22.00
<del>individual biochemical tests</del>	contact laboratory
<b>CLINICAL PATHOLOGY (Cytology):</b>	
<del>solid tissue (FNA, imprint, or smear)</del>	\$28.00
<del>bone marrow analysis</del>	32.00
<del>fluid analysis (total cell count, TP, SG, Cytology)</del>	28.00
<del>fluid smear (cytology only)</del>	24.00
<del>CSF analysis (SG, Microprotein, Cytospin cytology)</del>	20.00 plus microprotien referral
<b>CLINICAL PATHOLOGY (Hematology):</b>	
<del>small animal CBC (RBC, HCT, MCV, MCH, MCHC,</del>	
<del>–Reticulocytes, WBC/Differential, TP, RWD, MPV,</del>	
<del>–Fibrigogen)</del>	\$12.00

small animal CBC without Differential	5.25
Reticulocyte count	5.25
Feline Anemia Panel (SA, CBC, FeLV, FIV, FIA)	33.00
Large animal CBC (RBC, HCT, MCV, MCHC, —Reticulocyte count, RDW, MPV, WBC/Differential, —TP, Fibrinogen)	12.00
large animal CBC without Differential	5.25
Hemotropic Parasite Screen	3.00
Fibrinogen	3.00
<b>CLINICAL PATHOLOGY (miscellaneous tests):</b>	
blood cross match	\$12.00
Buffy coat count	22.00
Coagulation per test (PT, APTT, RBR, FDP)	18.00
bovine IgG	12.00
equine IgG	12.50
others	call ahead for prices
<b>CLINICAL PATHOLOGY (urine evaluation):</b>	
urinalysis (chemical, specific gravity, sediment evaluation)	\$11.00
urinalysis with culture/sensitivity	30.00
<b>HISTOLOGY (use SV43 form):</b>	
1 - 3 slides (one biopsy)	\$28.00
4 - 6 slides	34.00
7 - 10 slides	40.00
11 or greater slides	45.00
duplicate H&E slide	10.00
immunohistochemistry	25.00
special stains	8.00

<p><b>MILK LABORATORY (use SV43 form):</b></p> <p>added water</p> <p>antibiotic (depending on class of suspected —antibiotic)</p> <p>Brucella ring test</p> <p>coliform (milk and water)</p> <p>component testing</p> <p>Gerber</p> <p>Listeria culture</p> <p>Majonnier</p> <p>pesticide (organophosphate/carbamate)</p> <p>pesticide (chlorinated hydrocarbon)</p> <p>phosphatase</p> <p>somatic cell count (direct microscopy)</p> <p>somatic cell count (electronic)</p> <p>standard plate count</p> <p>yeast or mold</p> <p>laboratory certification review</p>	<p>\$3.00</p> <p>12.00 to 23.00</p> <p>2.00</p> <p>5.00</p> <p>1.00</p> <p>3.00</p> <p>32.00</p> <p>12.50</p> <p>24.00 minimum</p> <p>210.00 minimum</p> <p>6.00</p> <p>5.00</p> <p>1.00</p> <p>5.50</p> <p>5.00</p> <p>contact laboratory</p>
<p><b>MISCELLANEOUS TESTS (use SV43):</b></p> <p>bovine IgG</p> <p>equine IgG</p> <p>ocular nitrate</p> <p>duplicate test reporting</p> <p>after hour fee (pathologist)</p> <p>stat results (clinical pathology only)</p>	<p>\$12.00</p> <p>12.50</p> <p>12.00</p> <p>2.00</p> <p>50.00</p> <p>15.00</p>
<p><b>NECROPSY:</b></p> <p>Includes gross examination, histopathology, and routine bacterial isolation, as deemed necessary by the pathologist. Contact the laboratory for procedural instructions. Euthanasia must be performed at animal departure point unless recommended otherwise by pathologist.</p> <p>cattle and horses</p> <p>—fetus</p> <p>—&lt; 150 lbs.</p> <p>—150-500 lbs.</p> <p>—&gt; 500 lbs.</p>	<p>\$60.00 + carcass disposal</p> <p>75.00 + CD</p> <p>100.00 + CD</p> <p>140.00 + CD</p>

<p>sheep and goats          -fetus          -&lt; 20 lbs.          -&gt; 20 lbs.          pigs          -fetus/s (same sow)          -&lt; 25 lbs.          -25-250 lbs.          -250-500 lbs.          dogs and cats          other species          carcass disposal rates          -small animals          -large animals          -wildlife          insurance and legal cases          research cases          spinal cord removal (in addition to necropsy fees)          transmissible encephalopathies          -necropsy          -brain removal          -IHC and ELISA testing</p>	<p>60.00 + CD          60.00 + CD          75.00 + CD          60.00 + CD          60.00 + CD          75.00 + CD          100.00 + CD          100.00 + CD          40.00 minimum            25.00 to 85.00          20/per hundred weight          contact FWP          contact laboratory 150/hour          contact laboratory          45.00 to 80.00            (minimum) 125.00 + CD          (minimum) 30.00          referral costs + shipping          and handling</p>
<p>NEONATAL DIARRHEA STUDIES (kits):            Includes histopathology and routine bacteriology          with additional tests for K-99 E. coli LA, viral agents          (EM), Cryptosporidium, endoparasitism, and serum          immunoglobulin as history and age of calf dictates          (use SV43 form)</p>	<p>\$85.00</p>
<p>PARASITOLOGY:            adult parasite or arthropod identification (referral)          cryptosporidia exam          Dirofilaria immitis ELISA screening          Dirofilaria immitis ELISA confirmation          fecal flotation          Giardia ELISA          special parasite ID procedures</p>	<p>\$25.00          6.00          9.00          13.00          10.00          25.00          contact laboratory</p>
<p>PCR TESTING</p>	<p>\$40.00 to 80.00</p>

<p><b>RABIES:</b></p> <p>Submit entire brain or head in a refrigerated, fresh state. Do not submit live animals. Coincide specimen arrival with laboratory working schedule.</p> <p>FA examination (small animal) \$25.00          FA examination (large animal) 50.00          carcass disposal (does not apply to bats) see carcass disposal</p>	
<p><b>SEROLOGY (large animal):</b></p> <p>anaplasmosis cELISA \$7.50          Avian Influenza AGID &lt; 10 5.50          -10 &gt; 24 4.75          -25 &gt; 49 2.75          -&gt; 50 1.50          Bluetongue AGID 5.50          Bluetongue cELISA 8.25          Bovine Leukemia Virus, ELISA 6.50          Bovine Respiratory Syncytial Virus SN referral          Bovine Virus Diarrhea Type I and II SN 13.00          Bovine Virus Diarrhea ELISA 5.00          -&gt; 100 BVD samples (each sample) 4.00          Brucella abortus, card, BAPA or FP 1.50 each          Brucella abortus CF, Rivanol, SPT, or STT 2.50 each          Brucella ovis ELISA, CF 7.50          Equine Infectious Anemia AGID (Coggins) 1-15 7.00 each          -16 &gt; 50 5.50 each          -&gt; 50 4.50 each          Equine Infectious Anemia ELISA 12.50          Epizootic Hemorrhagic Disease AGID 10.00          Infectious Bovine Rhinotracheitis SN 6.50          Johne's (Paratuberculosis) AGID 11.00          Johne's (Paratuberculosis) ELISA 7.50</p>	
<p>Johne's ELISA CF referral          Leptospirosis (8 routine serovars) MAT 7.00          Ovine Progressive Pneumonia/Caprine Arthritis -Encephalitis AGID 5.50          Parainfluenza-3 HA referral          Pseudorabies SN, LA 5.50          Salmonella pullorum MAT 4.50          Vesicular stomatitis CF 40.00          Vesicular stomatitis SN (New Jersey or Indiana) 13.00          West Nile IgM ELISA (May - October) 15.00          (November - April) referral fee</p>	

SEROLOGY (small animals) (use SV43 form):	
Brucella canis Tube	\$22.00
Feline Infectious Peritonitis ELISA	25.00
Feline Leukemia ELISA	15.00
Feline Leukemia/Feline Immunodeficiency Virus –ELISA	25.00
TOXICOLOGY:	referral to outside contracted lab
VIROLOGY (use SV43 form):	
BVD, IBR, Leptospira, EHV-1, and BRSV –Fluorescent antibody testing	\$8.00 per agent
Bovine Viral Diarrhea ELISA 0 to 99 samples	5.00
> 100 samples (per sample)	4.00
Canine Parvovirus (fecal only) ELISA	20.00
electron microscopy (where applicable)	25.00
virus isolation (livestock only)	25.00 per virus
OTHER TESTS REQUESTED:	call ahead for prices
MISCELLANEOUS CHARGES/SUPPLIES:	
culturette	\$3.45
duplicate test reporting	2.00
handling fee	7.00 plus shipping
kits	mailing costs
large shipper	11.50
minimum fee	7.00
out-of-state	cost of test plus 50%
organizational fee (submission abuse)	1.00 minimum
referral testing	referral lab testing costs + mailing costs and 6.00 handling fee
special testing/referral	contact laboratory
shipper return	mailing costs

(1) Abortion studies, livestock (use abortion kits, instructions and SV43 form provided):

(a) histopathology and aerobic, Brucella, Campylobacter, Trichomonas cultures and darkfield examination

\$40.00

(2) Bacteriology (specify culture site/specimen, use SV43 form):

<u>(a) aerobic culture (refrigerated specimen/culturette):</u>	
<u>(i) identify one isolate</u>	\$14.00
<u>(ii) additional isolates</u>	each \$5.00
<u>(b) anaerobic culture (facultative; use anaerobic culturette)</u>	\$15.00
<u>(c) antibiotic sensitivity (per isolate)</u>	\$7.00
<u>(d) Campylobacter (livestock reproductive disease)</u>	\$11.00
<u>(i) preputial wash, fetal membranes, fetal abomasal fluid; campy transport media required</u>	contact lab
<u>(e) Campylobacter (intestinal contents)</u>	\$11.00
<u>(f) Contagious Equine Metritis (CEM) culture</u>	contact lab
<u>(g) Chlamydial ELISA (moistened swab; fresh, affected tissue; placenta)</u>	\$17.00
<u>(h) Clostridium FA (fresh, refrigerated tissue from affected site)</u>	\$11.00
<u>(i) Clostridium perfringens genotyping (fresh small intestinal contents; colony of isolate)</u>	cost of referral
<u>(j) dermatophyte culture and PAS stain (skin scraping including hair)</u>	\$25.00
<u>(k) direct microscopy</u>	\$7.00
<u>(l) fecal occult blood</u>	\$5.00 each or \$7.00 minimum
<u>(m) Listeria (environmental swabs)</u>	\$32.00
<u>(n) Listeria culture</u>	contact lab
<u>(o) Mycoplasma culture (fresh tissue, milk or culturette)</u>	\$13.00
<u>(p) non-dermatophyte fungal culture (fresh specimen)</u>	\$20.00
<u>(q) Salmonella enteritidis (environmental samples)</u>	contact lab
<u>(r) special requests</u>	contact lab
<u>(s) Trichomonas culture (call laboratory if arrival will be on a weekend [do not freeze], use SV69) preputial wash, uterine discharge, fetal abomasal fluid</u>	\$5.50
<u>(3) Clinical Pathology (use form SV43R):</u>	
<u>(a) Clinical Profiles (1 cc serum, whole blood, slides):</u>	
<u>(i) small animal (SA) health screen (SA chem panel, CBC/differential, UA)</u>	\$40.00
<u>(ii) SA clinical profile - (SA chem panel, CBC/differential)</u>	\$30.00
<u>(iii) SA pre-anesthetic profile - (BUN, CRE, ALT, ALP, Glu, TP, CBC/differential)</u>	\$22.00
<u>(iv) large animal (LA) health screen - (LA chem panel, CBC/differential, fibrinogen, UA)</u>	\$40.00



(v) LA clinical profile - (LA chem panel, CBC/differential, fibrinogen)	\$30.00
(vi) LA pre-anesthetic profile - (BUN, GGT, AST, CK, CBC/differential, fibrinogen)	\$23.00
(vii) feline ADR profile - (SA chem panel, T4, CBC/differential, FeLV, FIV, FIA)	\$60.00
(viii) equine fitness profile - (AST, GGT, TBili, CK, TP, ALB, Glob, Ca, PO4, Na, K, CL, TCO2, CBC/differential, fibrinogen)	\$25.00
(b) Mini Profiles (1 cc serum):	
(i) SA hepatic profile - (ALT, AST, ALP, GGT, TBili, DBili, TP, ALB, Glob, Chol, BUN, Glu)	\$15.00
(ii) SA renal profile - (BUN, CRE, TP, ALB, Glob, Ca, PO4, Na, K, CL TCO2)	\$15.00
(iii) LA hepatic profile - (GGT, AST, TBili, TP, ALB)	\$11.00
(iv) LA renal profile - (BUN, CRE, TP, ALB, Ca, PO4, Na, K, Cl)	\$12.00
(v) SA/LA animal gastrointestinal profile - (TP, ALB, Na, K, Cl)	\$10.00
(vi) exocrine pancreatic profile (BUN, Ca, TP, ALB, Glu, ALP, ALT, AST, Chol, Amylase)	\$15.00
(vii) canine endocrine profile - (Ca, PO4, TP, ALB, ALP, ALT, AST, Chol, T4, Na, K, CL Glu)	\$21.00
(viii) feline thyroid profile - (ALP, ALT, AST, T4, BUN, CRE, PO4)	\$12.00
(ix) electrolytes (Na, K, CL, TCO2)	\$8.00
(c) Biochemical Panels (1 cc serum)	
(i) SA chem panel (CK, AST, ALT, ALP, Glu, Chol, TP, Alb, Glob, Ca, PO4, BUN, creat, TBilli, DBilli, Na, K, Cl, CO2, Amylase)	\$22.00
(ii) LA chem panel (BUN, creat, TBilli, DBilli, Na, K, Cl, CO2, Mg)	\$22.00
(d) Urine Evaluation (5-10 cc urine):	
(i) urinalysis - (chemical, specific gravity, sediment evaluation)	\$11.00
(ii) urinalysis with culture/sensitivity	\$30.00
(e) Individual Biochemical Tests (1/2 cc serum, or 1 cc if combined with other tests):	
(i) canine thyroid panel (cTT4, cTSH, vFT4, TT3)	\$24.00
(ii) thyroid panel other than canine (TT4, vFT4, TT3)	\$19.00
(iii) canine total T4 (cTT4)	\$8.00
(iv) total T4 (TT4) feline & equine	\$8.00
(v) canine TSH (cTSH) canine specific	\$8.00

(vi) free T4 (Veterinary vFT4) canine, feline, equine	\$8.00
(vii) total T3 (TT3) canine, feline, equine	\$8.00
(viii) cortisol canine, feline, equine (serum only) - single test for baseline per sample	\$13.00
(ix) bile acid	\$22.00 or 2 for \$32.00
(x) phenobarbital	\$22.00
(xi) PLI (pancreatic-like immunoreactivity) canine, feline – 12-hour fasting	\$22.50
(xii) miscellaneous biochemical tests	call for price
(f) Hematology (whole blood, slides):	
(i) SA CBC (RBC, HGB, HCT, MCV, MCH, MCHC, CBC/differential platelet, plasma protein, reticulocyte if indicated, PP, hemotropic parasite screen)	\$12.00
(ii) LA CBC (RBC, HGB, HCT, MCV, MCH, MCHC, WBC/differential platelet, plasma protein, reticulocyte if indicated, PP, hemotropic parasite screen, fibrinogen)	\$12.00
(iii) SA/LA CBC without differential	\$5.25
(iv) Reticulocyte count	\$5.25
(v) Hemotropic parasite screen	\$3.00
(vi) fibrinogen	\$3.00
(vii) feline anemia panel - SA CBC, FeLV, FIV, FIA	\$33.00
(g) Cytology:	
(i) solid tissue - FNA, Imprint, Smear	\$28.00
(ii) bone marrow cytology	\$32.00
(iii) fluid analysis - total cell count, TP, SG, cytology	\$28.00
(iv) fluid smear (cytology only)	\$24.00
(v) CSF analysis - SG, microprotein, cytospin, cytology	\$22.50
(vi) CSF analysis with microprotein referral	\$28.00 + plus referral
(h) Miscellaneous Tests:	
(i) blood cross match - whole blood, serum; donor and recipient	\$12.00
(ii) buffy coat exam - whole blood	\$22.00
(iii) coagulation tests - PT, APTT, FBR, FDP	\$18.00 each
(iv) direct coombs - canine, EDTA whole blood	\$30.00
(v) bovine immunoglobulin - IgG1 (0.5cc serum)	\$12.00
(vi) equine immunoglobulin - IgG1 (0.5cc serum)	\$12.50
(4) Histology - 10% formalin fixed tissue (use SV43 form):	

<u>(a) routine H&amp;E – charged as number of slides</u>	
<u>per biopsy submitted:</u>	
(i) 1 to 3 slides	\$28.00
(ii) 4 to 6 slides	\$34.00
(iii) 7 to 10 slides	\$40.00
(iv) 11 slides or more	\$45.00
(b) duplicate H&E	\$10.00
(c) immunohistochemistry – charged per antibody (subject to pathologists' discretion)	\$25.00
(d) special stains – charged per stain (subject to pathologists' discretion)	\$8.00
(e) special preparation	minimum \$8.00
<u>(5) Milk Testing (use SV43 form):</u>	
(a) added water	\$3.00
(b) antibiotic (charm testing, cost range for antibiotic tested)	\$12.00 to \$23.00
(c) Brucella ring test	\$2.00
(d) coliform (milk or water)	\$5.00
(e) component (butterfat)	\$1.00
(f) Gerber (ice cream fat)	\$3.00
(g) Listeria culture - see Bacteriology section	\$32.00
(h) Majonnier (cheese and cottage cheese fat)	\$12.50
(i) pesticide (organophosphate and carbamates) minimum charge	\$24.00
(j) pesticide (chlorinated hydrocarbons) minimum charge	\$210.00
(k) phosphatase (pasteurization)	\$6.00
(l) somatic cell count (direct microscopy)	\$5.00
(m) somatic cell count (electronic)	\$1.00
(n) standard plate count	\$5.50
(o) yeast and mold	\$5.00
(p) laboratory certification review	contact lab
(q) organizational fee	minimum charge \$40.00
<u>(6) Miscellaneous Tests and Special Requests</u>	
<u>(use SV43 form):</u>	
(a) bovine IGG1 (0.5 cc serum)	\$12.00
(b) camelid IGG with total protein	contact lab
(c) equine IGG1 (0.5 cc serum)	\$12.50
(d) ocular nitrate (0.5 cc aqueous humor)	\$12.00
(e) organization fee (submission abuse)	each \$1.00
(f) duplicate test result reporting (fax/mail/e-mail)	\$2.00
(g) after hour fee (pathologist)	\$50.00
(h) stat fee (defined as immediate testing required, clinical pathology only)	call in advance \$15.00
(i) minimum laboratory fee	\$7.00
(j) referral testing	fees for referral lab testing, shipping cost plus \$7.00 handling

(7) Necropsy - includes gross examination, histopathology and cultures (per pathologists' discretion). Prices may not include carcass disposal. Contact laboratory for procedural instructions. Euthanasia must be performed at animal departure point unless recommended otherwise by pathologist (use SV43 form and provide complete history):

<u>(a) cattle and horses (routine):</u>	
<u>(i) fetus</u>	\$60.00
<u>(ii) less than 150 lbs</u>	\$75.00
<u>(iii) 150 to 500 lbs</u>	\$100.00
<u>(iv) more than 500 lbs</u>	\$140.00
<u>(b) sheep and goats:</u>	
<u>(i) fetuses (same dam)</u>	\$60.00
<u>(ii) up to 20 lbs</u>	\$60.00
<u>(iii) more than 20 lbs</u>	\$75.00
<u>(c) swine:</u>	
<u>(i) fetuses (same litter)</u>	\$60.00
<u>(ii) less than 25 lbs</u>	\$60.00
<u>(iii) 25 to 250 lbs</u>	\$75.00
<u>(iv) more than 250 lbs</u>	\$100.00
<u>(d) dogs and cats</u>	\$100.00
<u>(e) other species</u>	minimum charge \$40.00
<u>(f) carcass disposal:</u>	
<u>(i) companion animals</u>	\$25.00 to \$85.00
<u>(ii) livestock</u>	\$20.00 per 100 wt.
<u>(g) insurance and legal cases</u>	contact lab - \$150.00 per hour
<u>(h) research</u>	contact lab
<u>(i) spinal cord removal</u>	in addition to necropsy fee \$45.00 to \$80.00
<u>(j) transmissible encephalopathies:</u>	
<u>(i) necropsies</u>	minimum charge \$125.00
<u>(ii) brain removal only</u>	minimum charge \$30.00
<u>(iii) IHC and ELISA testing</u>	fees for referral lab testing, shipping cost and \$7.00 handling

(8) Neonatal Diarrhea Studies (kits) - includes histopathology, routine bacteriology and, as history and age of animal dictate, additional testing for E. coli, viral agents, Cryptosporidia, endoparasitism and IGG1 level determination (use SV43 form and instructions provided with kit) \$85.00

(9) Parasitology (use SV43 form):

<u>(a) adult parasite or arthropod identification (referral)</u>	\$25.00
<u>(b) Cryptosporidia exam (1 gm. feces)</u>	\$6.00
<u>(c) Dirofilaria immitis (heartworm) ELISA screening (1 cc serum)</u>	\$9.00
<u>(d) confirmation (1 cc serum)</u>	\$13.00

(e) fecal flotation (3 gm fresh feces)	\$10.00
(f) Giardia ELISA; feces	\$25.00
(g) special parasite ID procedures	Contact lab
<u>(10) PCR Testing:</u>	
<u>(a) Tritrichomonas foetus (call laboratory if arrival will be on a weekend [do not freeze] use SV69 obtained from Montana State Veterinarian, Helena)</u>	
	\$27.00
<u>(b) BVD</u>	\$35.00
<u>(c) IBR</u>	\$35.00
<u>(11) Rabies (use SV43 form) (coincide specimen arrival with laboratory working hours) - submit entire brain or head in refrigerated, fresh state. Do not submit live animals.</u>	
<u>(a) FA examination (small animal)</u>	\$25.00
<u>(b) FA examination (large animal)</u>	\$50.00
<u>(c) carcass disposal (does not apply to bats or small rodents)</u>	see Carcass Disposal
<u>(12) Serology – large animal (use SV2A for all below except EIA. [Use federal form VS 10-11 for EIA.] Submit samples in red top Vacutainer tubes. Tail bleeders acceptable only for bovine brucellosis testing). Note: 5cc blood in red top tube yields approximately 1.5cc serum.</u>	
<u>(a) anaplasmosis (cELISA; 0.5cc serum required)</u>	\$7.50
<u>(b) Avian Influenza (AGID; 0.5cc serum):</u>	
<u>(i) less than 10</u>	\$5.50
<u>(ii) 10 to 24</u>	\$4.75
<u>(ii) 25 to 49</u>	\$2.75
<u>(iii) 50 or more</u>	\$1.50
<u>(c) Bluetongue (AGID; 0.5cc serum)</u>	\$5.50
<u>(d) Bluetongue (cELISA; 0.5cc serum)</u>	\$8.25
<u>(e) Bovine Leukemia Virus (ELISA; 1cc serum)</u>	\$6.50
<u>(f) Bovine Respiratory Syncytial Virus (SN; 1cc serum)</u>	\$6.50
<u>(g) Bovine Virus Diarrhea Type 1 and 2 (SN; 1cc serum)</u>	\$13.00
<u>(h) Bovine Virus Diarrhea (ELISA; 1cc serum or ½ sq. inch ear notch)</u>	\$5.00
<u>(i) calves under 3 months ear notch only - over 100 samples</u>	each \$4.00
<u>(j) Brucella abortus (1.5cc serum for series; no charge for slaughter samples):</u>	
<u>(i) card, BAPA, FP or RAP</u>	each \$1.50
<u>(ii) CF, RAP, Rivanol, SPT, or STT</u>	each \$2.50
<u>(k) Brucella ovis (ELISA, .5cc serum)</u>	\$7.50

(l) Epizootic Hemorrhagic Disease (AGID, 0.5cc serum)	\$10.00
(m) Equine Infectious Anemia (AGID [Coggins]; .5cc serum):	
(i) 1 to 15 samples	each \$7.00
(ii) 16 to 50 samples	each \$5.50
(iii) over 50 samples	each \$4.50
(n) Equine Infectious Anemia (cELISA; 0.5cc serum)	\$12.50
(o) Infectious Bovine Rhinotracheitis (SN; 1cc serum)	\$6.50
(p) Johne's [Paratuberculosis] (AGID, .05cc serum)	\$11.00
(q) Johne's [Paratuberculosis] (ELISA, .05cc serum)	\$7.50
(r) Leptospirosis (8 routine serovars - L aut, L bra, L can, L grp, L har, L ict, L pom, L tara) - MAT; 1cc serum	\$7.00
(s) <u>Ovine Progressive Pneumonia/Caprine Arthritis Encephalitis:</u>	
(i) AGID	\$5.50
(ii) ELISA (0.5cc serum)	\$6.00
(t) Parainfluenza-3 (HAI; 1cc serum)	\$5.00
(u) Pseudorabies (ELISA; 1cc serum)	\$5.50
(v) Salmonella pullorum (MAT; 0.5cc serum)	\$4.50
(w) Vesicular Stomatitis (CF, 1cc serum) (transport only; diagnostic)	contact lab -\$45.00
(x) Vesicular Stomatitis - New Jersey and Indiana (SN; 1cc serum)	\$13.00
(y) <u>West Nile Virus (IgM ELISA; 1cc serum):</u>	
(i) May through October	contact lab
(ii) November through April	referral
(13) <u>Serology – small animal (use SV43 form):</u>	
(a) Brucella canis (Card; 0.5cc serum)	\$22.00
(b) Feline Infectious Peritonitis (ELISA; 0.5cc serum)	\$25.00
(c) Feline Leukemia Virus (ELISA; 0.5cc serum)	\$15.00
(d) Feline Leukemia/Feline Immunodeficiency Virus (ELISA; 0.5cc serum)	\$25.00
(14) Toxicology	referral to outside contract laboratory
(15) <u>Virology (use SV43 form):</u>	
(a) Bovine Virus Diarrhea (see above under serology - use SV2A serology form)	
(b) Canine Parvovirus (ELISA; feces)	\$20.00
(c) electron microscopy (where applicable)	\$25.00

(d) fluorescent antibody testing BRSV, BVD, bovine coronavirus, EHV-1, IBR, leptospira, or PI-3	\$8.00/agent
(e) Rotavirus (ELISA; feces)	\$25.00
(f) virus isolation (livestock only)	\$25.00/virus
<u>(16) Miscellaneous charges/supplies:</u>	
(a) culturette	\$3.50
(b) duplicate test reporting	\$2.00
(c) handling fee	\$7.00 plus shipping
(d) kits	shipping and mailing costs
(e) large shipper	\$11.50
(f) minimum fee	\$7.00
(g) out-of-state	cost of test plus 50%
(h) organizational fee (submission abuse)	\$1.00 minimum
(i) referral testing	referral lab testing cost plus mailing costs and \$6.00 handling fee
(j) special testing/referral	contact laboratory
(k) shipper return	shipping and mailing costs
(17) Other tests requested	call ahead for prices
(2) remains the same but is renumbered (18).	

AUTH: 81-1-102, 81-2-102, MCA  
IMP: 81-1-301, 81-1-302, 81-2-102, MCA

REASON: The diagnostic laboratory has implemented new tests at the request of producers. New test fees have been established and are published in this proposal. Fees for the new tests must, by statute, be set at levels commensurate with the costs of performing the tests or services listed. Fees for each procedure and test were evaluated determining the cost of the test materials and labor for performance of the test. The fees were compared to regional government funded diagnostic laboratories and a private veterinary laboratory. The fees were adjusted to be competitive with these laboratories and to offset inflationary costs. The laboratory must continue to provide a utilized service to the Montana livestock industry in order to assure that a vital function and mission of the laboratory regarding disease surveillance is not compromised. Fees on existing lab procedures remain the same; however, the rule has been reformatted to provide clarity and a more user friendly document.

The increased fees charged by the department's diagnostic laboratory will potentially affect approximately 25,000 people who may use services at the laboratory. The cumulative amount of the fee increase will be \$40,000.00 based on this number of lab users.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., August 27, 2012.

5. 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 a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. August 27, 2012.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

#### DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ George H. Harris  
George H. Harris  
Rule Reviewer

Certified to the Secretary of State July 16, 2012.



BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.3.212 pertaining additional	)	AMENDMENT
requirements for cattle	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

1. On September 20, 2012, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on, August 20, 2012 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE (1) through (1)(b) remain the same.

(c) nonvaccinated female cattle less than 11 months of age placed under a hold order for Brucellosis vaccination or spaying within 30 days of arrival; and (d) remains the same.

(2) Sexually intact cattle, 12 months of age and older, originating from outside the United States must have a negative brucellosis test within 30 days of arrival.

(2) remains the same but is renumbered (3).

~~(3)~~ (4) Sporting bovines originating from a tuberculosis accredited free U.S. state or zone require a negative tuberculosis test performed by an accredited veterinarian within ~~60 days~~ six months prior to importation if they:

(a) through (c) remain the same.

~~(4)~~ (5) Test-eligible cattle originating from a tuberculosis modified accredited advanced U.S. state or zone, or from outside the United States, must meet one of the following:

(a) through (d) remain the same.

(6) All male calves less than 30 days of age imported into the state of Montana without their dams must be:

(a) held in isolation and cannot be resold for 30 days after entry; and

(b) individually identified by an official ear tag at the state of origin.

(7) All female calves less than 30 days of age imported into the state of Montana without their dams must be:

- (a) held in isolation for 30 days after entry;
  - (b) cannot be resold until they are officially calfhood vaccinated after four months of age; and
  - (c) individually identified by an official eartag at the state of origin.
- (5) through (11) remain the same but are renumbered (8) through (14).

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA  
IMP: 81-2-102, 81-2-703, MCA

REASON: Section 81-2-102, MCA requires that official orders last no more than five years. Changes in ARM 32.3.212 incorporate outdated official orders. The proposed rule revision improves readability.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., August 27, 2012.

5. 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 a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. August 27, 2012.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 4 above or may be made by completing a request form at any rules hearing held by the department.

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concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ George H. Harris  
George H. Harris  
Rule Reviewer

Certified to the Secretary of State July 16, 2012.

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

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
36.12.101, 36.12.102, 36.12.103,	)	ON PROPOSED AMENDMENT
36.12.107, 36.12.120, 36.12.121,	)	
36.12.1301, 36.12.1401, 36.12.1601,	)	
36.12.1701 through 36.12.1706,	)	
36.12.1801, 36.12.1901 through	)	
36.12.1904, 36.12.2001 regarding water	)	
right permitting	)	

To: All Concerned Persons

1. On August 23, 2012 at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department 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 no later than August 6, 2012, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, PO Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; e-mail mheffner@mt.gov.

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

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (50) remain the same.

(51) "Pre-application review" means the applicant or the applicant's attorney or consultant or others who may know about the proposed project have met with the department to discuss details of the proposed project and application.

(51) through (78) remain the same but are renumbered (52) through (79).

AUTH: 85-2-113, 85-2-308, 85-2-370, MCA

IMP: 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360 through 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-514, 85-2-518, 85-2-520, MCA

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at <http://dnrc.mt.gov/wrd/default.asp>. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) through (p) remain the same.

(q) Form No. 633, "Aquifer Test Data Form";

(q) through (ac) remain the same but are renumbered (r) through (ad).

(ade) Form No. 647, "Notice of Completion of Emergency Fire Protection Development", which must be submitted for groundwater developments by local governmental fire agencies organized under Title 7, chapter 33, MCA, for emergency fire protection; and

(aef) Form No. 648, "Petition to Subordinate a State Water Reservation"; ;  
and

(ag) Form No. 649, "Surface Water Measurement Data Form".

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-316, 85-2-402, 85-2-424, 85-20-401, MCA

### 36.12.103 FORM AND SPECIAL FEES

(1) remains the same.

(2) The department will assess the following filing fees:

(a) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute, there shall be a fee of \$1000. If the application meets the requirements for a pre-application review as determined by the department, the fee shall be \$800;

(b) remains the same.

(c) For an Application for Beneficial Water Use Permit, Form No. 600, not filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, nor in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, nor a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, nor filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute there shall be a fee of \$800. If the application meets the requirements for a pre-application review as determined by the department, the fee shall be \$600;

(d) through (f) remain the same.

(g) \$900 \$700 for an Application to Change a Water Right, Form No. 606, except for an application that meets the requirements for a pre-application review as

determined by the department, in the following instances, where there shall be a \$700 \$200 fee;:

~~(i) if the change application concerns a replacement well greater than 35 gpm or ten acre-feet, or a municipal well that does not exceed 450 gpm, or replacement reservoir located on the same source; or~~

~~(ii) if the change application concerns only moving or adding stock tanks to an existing system;~~

(h) \$200 for an Application to Change a Water Right, Form No. 606 in the following instances:

(i) if the change application concerns a replacement well greater than 35 gpm or ten acre-feet, or a municipal well that does not exceed 450 gpm, or replacement reservoir located on the same source; or

(ii) if the change application concerns only moving or adding stock tanks to an existing system;

~~(h) through (x) remain the same but are renumbered (i) through (y).~~

~~(3) through (3)(c) remain the same.~~

(d) Form No. 633, Aquifer Test Data Form;

~~(d) remains the same but is renumbered (e).~~

~~(ef) Form No. 640, Certification of Water Right Ownership Update; and~~

~~(fg) Form No. 648, Petition to Subordinate a State Water Reservation; and-~~

(h) Form No. 649, Surface Water Measurement Data Form.

~~(4) remains the same.~~

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-312, 85-2-402, 85-2-436, 85-20-401, MCA

36.12.107 FILING FEE REFUNDS (1) An applicant may be entitled to a refund if the applicant withdraws an application prior to a correct and complete application ~~public notice~~ or a deadline set by the department ~~for the applicant to make an application correct and complete.~~

(2) If it is determined that mitigation is required for an Application for Beneficial Water Use Permit and the applicant does not have a mitigation plan the applicant may withdraw the application prior to the department's issuance of a Preliminary Determination Decision.

~~(2a) No refund will be authorized, if substantial direct processing costs have been accrued in making the application correct and complete prior to publication or department waiver of publication.~~

(b) If the permit application is resubmitted with a mitigation plan within two years of the withdrawal of the original application, the original application fee amount will be applied to the new application fee amount.

~~(3) through (8) remain the same.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-113, 85-2-302, MCA

36.12.120 BASIN CLOSURE AREA EXCEPTIONS AND COMPLIANCE

(1) through (4) remain the same.

~~(5) An applicant must identify the potentially affected area and provide a map depicting that area.~~

~~(6) A net depletion analysis must be submitted with the water right application and must include but is not limited to analysis of the following factors within the potentially affected area:~~

~~(a) evidence addressing the hydraulic connection between the source aquifer and all surface water. Surface water means, in addition to ARM 36.12.101(64) and for the purposes of 85-2-360 through 85-2-362, MCA, includes but is not limited to irrigation canals and drains;~~

~~(b) evidence of propagation of drawdown from pumping a proposed well or other groundwater diversion and volume, rate, timing, and location of any resulting surface water effects;~~

~~(c) evidence of the comparison of the proposed flow rate and period of diversion to similar types of existing water uses;~~

~~(d) estimates of the monthly volume of water consumed by a proposed project through evaporation, evapotranspiration, and all other forms of consumption associated with the proposed project;~~

~~(e) an assessment of potential return flows to a source aquifer or surface water source and the volume, rate, timing, and location of return flows;~~

~~(f) in addition to ARM 36.12.101(56) and for the purposes of 85-2-361, MCA, return flow includes but is not limited to any treated wastewater if the treated wastewater will be used as part of an aquifer recharge plan;~~

~~(g) the volume, rate, timing, and locations of accretions to surface water that is not consumed and subsequently returns to surface water; and~~

~~(h) a water balance table must be included that describes the monthly and total annual water balance for the proposal.~~

~~(7) An applicant must provide a list and map of the points of diversion of surface water appropriation rights and groundwater rights on record with the department that are located within the potentially affected area.~~

~~(85) Information required by the hydrogeologic assessment pursuant to 85-2-361, MCA, may not be sufficient to meet applicable criteria under 85-2-311, MCA, including but not limited to adverse effect to a prior appropriator. The applicant for a beneficial water use permit pursuant to 85-2-311, MCA, is responsible for providing sufficient evidence to meet all applicable criteria.~~

AUTH: 85-2-113, 85-2-370, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360 through 85-2-364, 85-2-368, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA

36.12.121 AQUIFER TESTING REQUIREMENTS (1) Aquifer testing must follow standard procedures that are discussed in hydrogeology textbooks and professional literature. A hydrogeologist, hydrologist, or engineer familiar with aquifer

testing procedures must supervise the aquifer test; however, the supervisor does not need to be on site.

(a) Applicants are encouraged to confer with department staff prior to designing an aquifer test to ensure that the test will not have to be repeated, which may require additional expense.

(b) Department staff will provide guidance on testing procedures, monitoring, and reporting, but will not provide technical support or assistance. Requests for variance from testing requirements must be submitted to the appropriate regional office manager. There are numerous tests that can be performed on wells and aquifers, with a variety of objectives and procedures. An adequate aquifer test will depend on factors such as whether the well is located in a basin closure area (see ARM 36.12.120), the expected pumping schedule of the well, the potential interference with existing water rights and the characteristics of the aquifer in which the well is completed.

(2) Minimum information that must be submitted with applications:  
~~Applicants are encouraged to confer with department staff prior to designing an aquifer test to ensure that the test will not have to be repeated, which may require additional expense.~~

~~(a) Department staff will provide guidance on testing procedures, monitoring, and reporting, but will not provide technical support or assistance.~~

(a) a topographic map with labeled location of production and observation wells and water discharge point;

(b) if available, a geologic map, stratigraphic, geomorphic, or lithologic descriptions, and drilling logs;

(c) distances between the pumping well and the observation well, and depths, dimensions, and perforated intervals of each well as specified on Form No. 633;

(d) wellhead elevation, surveyed elevations if available;

(e) a description of testing methods; and

(f) Form 633, in electronic format, with all information and data provided.

(3) Minimum testing procedures are as follows.

(a) Pumping must be maintained at a constant discharge rate equal to or greater than the proposed pumping rate for the entire duration of the test.

(b) Discharge rate must be measured with a reliable measuring device and recorded with clock time according to the schedule on Form 633.

~~Aquifer testing must follow standard procedures that are discussed in hydrogeology textbooks and professional literature. The following are preferred aquifer testing procedures:~~

~~(a) A hydrogeologist, hydrologist, or engineer familiar with aquifer testing procedures must supervise the aquifer test, however, the supervisor does not need to be on site.~~

~~(b) Aquifer test data Form No. 633, or equivalent, must be used to record the data required for the test.~~

~~(c) Pumping must be maintained at a constant discharge rate equal to or greater than the proposed pumping rate for the entire duration of the test. If the discharge rate varies, the applicant must note the clock time and discharge rate.~~

~~(d) and (e) remain the same but are renumbered (c) and (d).~~



(e) Eight-hour duration drawdown and yield tests must be conducted on additional production wells.

~~(f) Discharge of the pumped well must be measured with a reliable measuring device, which can include a barrel, in-line flow meter, flume, or weir.~~

~~(g) Discharge rate must be monitored and recorded with clock time and adjusted if necessary at 15-minute intervals during the first three hours of the aquifer test and at frequent intervals until the end of the test to maintain a constant discharge.~~

~~(h) remains the same but is renumbered (f).~~

~~(4) The following procedures are preferred to ensure monitoring is adequate:~~

~~(ag) One or more observation wells must be completed in the same water-bearing zone(s) or aquifer as the proposed production well and close enough to the production well so that drawdown is measurable and far enough that well hydraulics do not affect the observation well. If existing wells are monitored they must not be pumped, or if pumped should be monitored at a frequency necessary to separate the effects of the pumping.~~

~~(b) One or more observation wells must be completed in the overlying water-bearing zone(s) or aquifer if the proposed production well is purported to be completed in a hydraulically disconnected deeper aquifer.~~

~~(c) An observation well can be an existing well. An existing well should not be pumped, or if pumped should be monitored at a frequency necessary to separate the effects of its pumping.~~

~~(d) New observation wells must be constructed as described in ARM Title 36, chapter 21, subchapter 6. However, observation wells less than ten feet deep are not subject to those rules. In those cases, observation wells might be constructed by simple excavation, or installing PVC pipe, perforated black pipe, or a sand point.~~

~~(e) remains the same but is renumbered (h).~~

~~(fi) Groundwater levels in the production well and observation well(s), at least one of the observation wells in the source aquifer, and at least one observation well in the overlying water-bearing zone or aquifer must be monitored at frequent intervals for at least two days prior to beginning the aquifer test to evaluate background water-level trends and the prepumping hydraulic gradient. An applicant must evaluate and correct for background water-level trends.~~

~~(gj) Groundwater-level drawdown in the production well and monitored observation well(s) during the pumping phase of the aquifer test Water levels in the production well and observation well(s) must be measured with 0.01-foot precision according to the schedule specified on Form No. 633.~~

~~(h) Groundwater-level recovery in the production and monitored observation well(s) must be measured with 0.01-foot precision according to the schedule specified on Form No. 633 or at a minimum, according to the specified schedule on Form No. 633 for the first 24 hours of recovery and four times per day until end of the recovery test.~~

~~(5) A report describing the testing and monitoring procedures and presenting analyses, interpretations, and conclusions must be submitted with the application. The following reporting requirements are preferred:~~

- ~~(a) a topographic map with labeled locations of production and observation wells, discharge point, surface water monitoring sites, and a scale bar and north arrow;~~
- ~~(b) if available, a geologic map, stratigraphic, geomorphic, or lithologic descriptions, and drilling logs;~~
- ~~(c) distances between the pumping well and the observation well, and depths, dimensions, and perforated intervals of each well as specified on Form No. 633;~~
- ~~(d) surveyed wellhead elevations and staff gage elevations if basin closure testing is required;~~
- ~~(e) a narrative description or conceptual model that describes the aquifer system;~~
- ~~(f) a description of testing methods;~~
- ~~(g) groundwater level and surface water monitoring data;~~
- ~~(h) aquifer testing data, transmissivity and storage coefficient determinations and effects to groundwater and surface water availability;~~
- ~~(i) analyses, interpretations, and conclusions; and~~
- ~~(j) all pumping schedules and drawdown and recovery data must be submitted in electronic format.~~

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-311, 85-2-330, 85-2-337, 85-2-341, 85-2-343, 85-2-402, 85-2-418, 85-2-506, 85-2-508, MCA

#### 36.12.1301 PERMIT AND CHANGE APPLICATION ACCEPTANCE

(1) A permit application will not be assigned a priority date and will be returned to the applicant if any of the following is not completed on the application form or included with the application:

- ~~(a) through (f) remain the same.~~
- ~~(g) the applicant's notarized signature; and~~
- ~~(g) for a groundwater well, aquifer testing results conforming to ARM~~

#### 36.12.121:

- ~~(h) a map conforming to standards identified in ARM 36.12.111; and~~
- ~~(h) remains the same but is renumbered (i).~~

(2) A change application will be returned to the applicant if any of the following is not completed on the application form:

- ~~(a) general abstracts of the water rights being changed reflecting the proposed changes;~~
- ~~(b) applicant's notarized signature; and~~
- ~~(a) the name and address of the applicant;~~
- ~~(b) the water right(s) being changed;~~
- ~~(c) the type of change;~~
- ~~(d) a map conforming to standards identified in ARM 36.12.11; and~~
- ~~(c) remains the same but is renumbered (e).~~

AUTH: 85-2-113, MCA

IMP: 85-2-310, MCA

36.12.1401 PERMIT AND CHANGE APPLICATION MODIFICATION

(1) Any element of a permit or change application may be modified prior to the department's issuance of a preliminary determination ~~or after an application has been published.~~

(2) remains the same.

(3) ~~If a modification requires republication, the~~ The priority date of a permit application or the date received of a change application will be changed to the date the last modification was made if a modification changes the nature or scope of the permit or change application information. A change in the nature or scope of the permit or change includes the following types of modifications:-

~~(4) Republication is required if a modification changes the nature or scope of the permit or change application information. The following require republication:~~

(a) through (i) remain the same.

(j) any modification where the effect on the source of supply or its tributaries changes the impact described from the originally submitted ~~published~~ information.

~~(5) For modifications made after an application has been published, the cost of republication and mailing of individual notices must be paid by the applicant.~~

~~(6) A new analysis of the application criteria must be submitted when an application modification requires republication and the department will make a new correct and complete determination on the modifications prior to republication.~~

(7) remains the same but is renumbered (4).

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-307, MCA

36.12.1601 WATER RIGHT PERMIT AND CHANGE - CORRECT AND COMPLETE DETERMINATION (1) The department shall determine whether an application for a provisional permit or change authorization is correct and complete by reviewing:

(a) information publically available within its expertise; and

(b) that information which is submitted in the application.

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

~~(34) Providing correct and complete information is not necessarily the same as proving the statutory criteria. The department, with or without receipt of objections can only grant an application if the criteria for issuance of a permit or change application are proven met.~~

~~(45) A water right permit application will be deemed correct and complete if a permit applicant's information, required to be submitted by ARM 36.12.110 through 36.12.116, 36.12.120, 36.12.121, 36.12.1301, 36.12.1401, 36.12.1701 through 36.12.1707, and 36.12.1802, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required a criteria addendums, have been filled in with the required information.~~

~~(56) A water right change application will be deemed correct and complete if an applicant's information, required to be submitted by ARM 36.12.110 through 36.12.116, 36.12.121, 36.12.1301, 36.12.1401, 36.12.1801, 36.12.1802, 36.12.1901~~

through 36.12.1904, and 36.12.2001, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required criteria addendums, have been filled in with the required information.

AUTH: 85-2-302, MCA

IMP: 85-2-303, MCA

#### 36.12.1701 FILING A PERMIT APPLICATION

(1) through (4) remain the same.

(5) Form No. 600 and any applicable addendums must be completed and must describe the details of the proposed project. The form and addendums must be filled in with the required information. The following must be included in the permit application materials:

~~(a) calculations, references, and methodologies used to determine flow rate, volume, or reservoir capacity must be included in the application materials;~~

(i) remains the same but renumbered (a).

(b) remains the same.

~~(c) the legal descriptions for the point of diversion and place of use, which must be identified as per ARM 36.12.110;~~

(d) through (f) remain the same but are renumbered (c) through (e).

(i) for appropriations over 4000 acre-feet ~~af~~ or more and 5.5 cfs or more, or for water marketing, additional information is required, as per 85-2-310 and 85-2-311, MCA;

(g) and (h) remain the same but are renumbered (f) and (g).

~~(h) if a permit application is to supplement another water right, the water right numbers and abstracts of the associated water rights;~~

~~(j) an explanation of why supplemental water is needed and how the associated water rights will be managed;~~

(k) remains the same but is renumbered (i).

~~(l) an application that is only to increase the flow rate or volume must reflect a value of zero in the nonapplicable field. For example, if an applicant is applying to only increase the flow rate the volume field should reflect zero of water taken from a source, but no additional volume is needed, the application flow rate blank should be completed with the additional flow of water requested and the blank for acre-feet (volume) should reflect zero;~~

(m) and (n) remain the same but are renumbered (k) and (l).

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-311, MCA

#### 36.12.1702 PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE WATER AVAILABILITY

(1) remains the same.

(2) If actual stream gaging records are available, or the source has been otherwise measured and quantified by a public entity, the records shall they should be used to estimate the median of the mean monthly flow rates and volumes for the

stream gaging station period of record during the proposed months of diversion at the source of supply in the amount the applicant seeks to appropriate, the following is required:

- ~~(a) the medians of the monthly average flow rates and volumes for the stream gaging station period of record during the proposed months of diversion;~~
- ~~(b) a legible copy or excerpt of the data source, study or report(s) used in documenting water availability in the source of supply; and~~
- ~~(c) a description of all conclusions, calculations, data, and assumptions used in estimating water availability.~~

(3) If actual flow rate and volume data are not available to estimate the monthly median flows, then the department shall ~~applicant will need to~~ use an accepted method for estimating surface water flow rates and volumes in conjunction with discharge measurements to validate the estimation technique used. Some accepted methods are listed in (65).

(4) When stream flow gaging station data are not available and monthly median flow estimation techniques are used, the following stream discharge data must be collected:

(a) Stream flow measurements in cfs or gpm must be collected at least once every month during the proposed period of diversion at the most suitable location on the source of supply, and at or directly upstream of the proposed point of diversion. Measurements taken and submitted under this method must include:

- ~~(i) a legible copy of the actual flow measurements;~~
- ~~(ii) calculations used to establish flow rates in cfs or gpm;~~
- ~~(iii) the dates measurements were taken, with a description of current weather conditions; Weather conditions include sky conditions, noting any rain and snow, approximate temperature, and approximate wind conditions, e.g., "partly cloudy, light wind, about 60 degrees" or "light rain, calm, about 65 degrees" or "clear, moderate wind, about 40 degrees".~~
- ~~(iv) the type of measuring device or method used; and~~
- ~~(v) a written legal land description or map clearly showing where the measurements were taken.~~

(b) If it is not possible to take measurements every month due to high spring flow conditions, at least one measurement must be collected during the lowest flow period.

(c) Measurements must be submitted on Form 649 in electronic format with all information and data provided.

~~(5) If the application involves new storage of surface water such as a reservoir, pond or pit, or enlargement of a natural or manmade lake, the application must include the following information:~~

- ~~(a) that the source of supply has the volume of water physically available for the proposed beneficial use;~~
- ~~(b) information and data that show the amount of water to be stored is physically available during a median year and in the amount the applicant seeks to appropriate using the methods described in (2) and (3); and~~
- ~~(c) projected evaporation and seepage losses.~~
- (6) remains the same but is renumbered (5).

(76) Other professionally documented hydrologic methods for estimating stream flow or annual runoff which may be applicable and acceptable to the department, including the Orsborn method, Mannings equation, U.S. Natural Resources and Conservation Service-developed mean annual runoff data, and drainage area information paired to gaged streams in similar type basins may be acceptable. The department will determine the acceptability of other methods on a case-by-case basis.

~~(a) If one of these methods is used, the applicant must also include a brief description of the method used and assumptions and calculations used in estimating flow rates and volumes.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.1703 PERMIT APPLICATION CRITERIA - PHYSICAL GROUND WATER AVAILABILITY (1) Applicants for ground-water must follow aquifer testing requirements and provide to the department, at minimum, information and data in conformance with ARM 36.12.121 ~~substantial credible information demonstrating that water is available for their use from the source aquifer in the amount the applicant seeks to appropriate during the proposed period of diversion.~~

~~(2) Information demonstrating physical ground water availability must include The department will complete an evaluation of drawdown in the applicant's production well for the maximum pumping rate and total volume requested in the permit application using the information provided from the aquifer test.~~

~~(3) The department will compare the drawdown projected for the proposed period of diversion must be compared to the height of the water column above the pump in the proposed production well to determine if the requested appropriation can be sustained.~~

~~(4) The requirements of ARM 36.12.121 must be followed, unless a variance has been granted by the department.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.1704 PERMIT APPLICATION - EXISTING LEGAL DEMANDS

~~(1) remains the same.~~

~~(2) The department will applicant must identify the existing legal demands on the source of supply and those waters to which it is tributary and which the department applicant determines may be affected by the proposed appropriation.~~

~~(a) For groundwater appropriations, this shall include identification of existing legal demands for any surface water source that could be depleted as a result of the groundwater appropriation.~~

~~(3) The applicant must provide an abstract of those water rights identified.~~

~~(4) After an application is deemed correct and complete, for public notice purposes the department shall, independent of the information provided by the applicant under this chapter, identify existing water right owners that may be affected by the proposed application.~~

AUTH: 85-2-113, 85-2-302, MCA  
IMP: 85-2-302, MCA

36.12.1705 PERMIT APPLICATION CRITERIA - COMPARISON OF PHYSICAL WATER AVAILABILITY AND EXISTING LEGAL DEMANDS

~~(1) To determine if water is legally available, the department will applicant must compare the physical water supply at the proposed point of diversion and the legal demands within the area of potential impact. An applicant must become familiar with senior water rights operations to accurately evaluate the effect to the senior water right.~~

~~(2) For groundwater appropriations, in addition to (1) the department will compare the physical water supply for any surface water source that could be depleted as a result of the groundwater appropriation and the legal demands within the area of potential impact.~~

~~(2) Applicants must analyze the senior water rights on a source of supply and those waters to which it is tributary within the area of potential impact and provide a written narrative comparing the physical water supply at the point of diversion during the period of diversion requested and the legal demands that exist for the water supply during that same period.~~

~~(3) If known patterns of use differ from the legal water rights filings, an explanation may be submitted explaining the current water use operation. For example, if a water reservation has not been perfected, that information may help to explain water is legally available.~~

AUTH: 85-2-113, 85-2-302, MCA  
IMP: 85-2-302, MCA

36.12.1706 PERMIT APPLICATION CRITERIA - ADVERSE EFFECT

~~(1) and (2) remain the same.~~

~~(3) A written narrative must be provided addressing the applicant's plan to prevent potential adverse effects to the existing water rights, certificates, permits, and water reservations. The plan may include:~~

~~(a) an agreement to measure appropriations and monitor water supplies;  
(b) a plan to appropriate only when stream flows exceed certain trigger flow levels;~~

~~(c) a mitigation or aquifer recharge plan; or  
(d) other conditions necessary to prevent adverse effects. identified in ARM 36.12.1704.~~

~~(4) For surface water applications, in addition to (1), (2), and (3), the applicant shall explain the rate and timing of depletions from the source of supply and its downstream tributaries and what effect that will have on other water rights.~~

~~(5) For groundwater applications, in addition to (1), (2), and (3), the applicant shall describe how water levels in wells of prior water rights will be lowered and the rate, timing, and location of any depletions from hydraulically connected surface waters.~~

AUTH: 85-2-113, 85-2-302, MCA  
IMP: 85-2-302, MCA

36.12.1801 PERMIT AND CHANGE APPLICATIONS - BENEFICIAL USE

- (1) remains the same.
- (2) The applicant must explain the following:
  - (a) how the purpose for the water benefits the applicant; and
  - (b) that the requested flow rate and volume for each purpose is reasonably needed to accomplish that purpose.
- (3) The applicant does not need to explain that the flow rate and volume for each purpose is reasonable if:
  - (a) the requested volume of water for each purpose conforms to standards set out in ARM 36.12.115 for a permit application or ARM 36.12.1902 for a change application; and
  - (b) there are no other associated or overlapping water rights appurtenant to the proposed place of use.
- ~~(3) An application to change must contain information explaining why the requested flow rate and volume to be changed are reasonable for the intended purpose.~~

AUTH: 85-2-113, 85-2-302, MCA  
IMP: 85-2-302, MCA

36.12.1901 FILING A CHANGE APPLICATION (1) An applicant who desires to change the point of diversion, place of use, purpose of use, or place of storage of a water right must file an application to change a water right (Form No. 606) and any applicable addendums.

- (2) remains the same.
- (3) In addition to the change application rules, an applicant proposing to temporarily temporary change to application for instream flow must submit the information required under 85-2-407 and 85-2-408, or 85-2-436, MCA.
- (4) through (6) remain the same.
- ~~(7) A current detailed water right abstract of each water right being changed must be submitted with proposed changes noted on the abstract. The abstract should reflect how the water right would appear if the change application was granted.~~
- ~~(8) Multiple water rights may be changed on one application if upon completion of a project, the diversion, place of use, purpose, and storage information will be exactly the same for each water right. ~~all of the water rights being changed accomplish a single proposed project; if not, separate applications must be filed. The applicant shall provide a chart or table of the combined water rights demonstrating how each water right both individually and cumulatively contributes to the project.~~~~
- (9) through (13) remain the same but are renumbered (8) through (12).
- (14) For a change application that is only to add stock tanks to an existing stock water system, the following rules apply:



(a) Form No. 606 must be completed and must describe the details of the proposed project. Form No. 606 and any applicable addendum(s) must be filled in with the required information;

~~(b) a current department generated water right abstract of each water right being changed must be submitted. The proposed changes must be noted on the abstract. The abstract should reflect how the water right would appear if the change application was granted;~~

~~(cb) the applicant must show that each water right to be changed has been used and must explain the extent of the historic use including the flow rate and volume; and~~

~~(dc) the applicant must provide information to show that the historic flow rate diverted will be adequate for the new use, even though additional stock tanks may be farther away from the source of supply; and-~~

(d) for changes from instream flow based on 85-2-222, MCA, to stock tank(s), the maximum flow rate authorized for the new use will be 35 gallons per minute.

(15) remains the same but is renumbered (14).

AUTH: 85-2-112, 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-436, MCA

### 36.12.1902 CHANGE APPLICATION - HISTORIC USE

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

(c) historic information for a certificate of water right must be described as it was used at the filing date of the completion notice; ~~and~~

(d) historic information for an exempt or nonfiled water right must be described as it was completed prior to July 1, 1973; ~~and-~~

(e) when a change application has been granted on or after July 1, 1973, the department may request additional historic information for a statement of claim as it was used prior to July 1, 1973.

(2) Final Water Court approved stipulations; and master's reports; ~~or examination information~~ related to the water right being changed must be referenced submitted with the application; however, this information or an abstract of a water right from the department or the Montana Water Court by itself is not sufficient to prove the existence or extent of the historical use.

(3) remains the same.

(4) ~~An applicant~~ The department shall compare historical acres irrigated to acres identified as irrigated in the Water Resources Survey, if available for the place of use. If the Water Resources Survey does not support the historical irrigation alleged in the application, the applicant shall explain why. Information from irrigation journals, logs, or old aerial photographs can be submitted for consideration.

(5) and (6) remain the same.

(7) The department will ~~An applicant shall provide substantial credible information to~~ corroborate the historic use, including the following of each water right being changed:

(a) through (t) remain the same.

~~(8) A narrative must be included in the application materials explaining why the historic operation of the right can be considered reasonable and typical of the purpose for which the historic right was used.~~

(98) The following information may be used by the department to help an applicant establish the requirements under (7):

(a) aerial photographs depicting irrigated land:

(i) 1979, 1997, and 2005 photos showing the irrigated land ~~would be beneficial;~~

(b) through (l) remain the same.

~~(10) Calculations for each water right showing how the historic flow rate, consumed and diverted volumes for each water right, and capacity were determined must be included in the application materials, and the methodology employed must be described.~~

(11) remains the same but is renumbered (9).

(10) The department shall calculate the historic diverted volume for water rights with the purpose of irrigation using the following equation: Historic Diverted Volume = (Volume<sub>historic consumptive use</sub>/On-farm efficiency) + Volume<sub>conveyance loss</sub>;

(a) "conveyance loss" means the portion of water diverted at the headgate that does not arrive at the irrigated place of use due to seepage and evapotranspiration from the ditch;

(b) "seepage loss" means ((flow area)\*(ditch length)\*(loss rate)\*(days))/43,560 ft<sup>2</sup>/ac; and

(c) "on-farm efficiency" refers to the percent of the water delivered to the field that is used by the crop.

(11) If the applicant chooses not to use the methodology in (10), they shall provide additional information on the Historic Water Use Addendum.

(12) remains the same.

(13) The following may be used to calculate ditch capacity, historic available water supply, and reservoir capacity:

(a) Manning's equation;

(b) Orsborn's equation;

(c) Blaney-Criddle equation; and

(d) the department will determine the acceptability of other reports or methods on a case-by-case basis.

(14) ~~The historic consumptive use methodology in (16) may be used to determine the historic consumptive volume for irrigation. The methodology that the department shall use to determine historic consumptive use for water rights with a purpose of irrigation is based on data from the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), and generated using the USDA NRCS Irrigation Water Requirements (IWR) program. If the applicant chooses not to use accept the methodology used by the department, they the applicant shall provide additional information on the Historic Water Use Addendum provide evidence showing how the historical consumptive use was calculated and why that amount is less than or greater than the methodology described in (16).~~

(15) IWR Data for Seasonal Alfalfa Evapotranspiration County Management Factor are shown in Table 1 and ~~may~~ will be used by the department to identify the

historic consumptive volume unless additional information is provided by the applicant on the Historic Water Use Addendum. If this table is used to establish the historic consumptive volume, the department will recognize that volume as a reasonable calculation, unless a valid objection is received which offers proof that the volume is inaccurate.

(16) To determine the historic consumptive volume using the table, the department will complete the following steps:

(a) through (f) remain the same.

(g) If the historic consumptive volume determined by this methodology exceeds the historic diverted amount, the department may request additional information in order to resolve the discrepancy. This may result in a reduction of the consumptive volume.

**Table 1 - Montana County Weather Station IWR Data for Seasonal Alfalfa Evapotranspiration and Montana County Management Factor.**

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>
<b>County</b>	<b>Weather Station</b>	<b>Elevation</b>	<b>IWR Flood Irrigation, Wheeline &amp; Handline Seasonal ET (inches)</b>	<b>IWR Center Pivot Irrigation Seasonal ET (inches)</b>	<b>Management Factor Percentage 1964 - 1973</b>	<b>Management Factor Percentage 1997 - 2006</b>
Beaverhead	Dillon	5239	18.34	20.74	63.7%	<u>88.3%</u>
	Wisdom	6060	7.34	9.29		
	Jackson	6480	8.35	10.30		
	Lakeview	6710	8.39	10.67		
	Lima	6583	13.75	16.01		
Big Horn	Busby	3430	20.32	22.88	55.4%	<u>88.1%</u>
	Hardin	2905	27.46	29.96		
	Hysham 25	3100	20.25	22.86		
	Wyola	3750	19.19	21.89		
	Yellowtail Dam	3305	28.07	31.30		
Blaine	Chinook	2420	20.80	23.57	58.7%	<u>66.0%</u>
	Harlem	2362	21.62	24.27		
Broadwater	Townsend	3840	19.42	21.88	69.2%	<u>87.1%</u>
	Trident	4040	20.64	23.31		
Carbon	Joliet	3776	22.41	25.12	58.3%	<u>70.8%</u>
	Red Lodge	5500	15.57	18.41		
Carter	Ekalaka	3425	20.13	23.14	38.4%	<u>54.1%</u>
	Ridgeway	3320	20.28	23.01		
Cascade	Cascade 20	4600	14.12	16.63	57.3%	<u>78.8%</u>
	Cascade 5	3360	17.90	20.75		
	Great Falls	3675	19.78	22.55		
	Neihart	4945	12.17	15.08		
	Sun River	3340	18.10	20.65		
Chouteau	Big Sandy	2700	21.52	24.37	52.5%	<u>78.3%</u>

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	<u>Management Factor Percentage 1997 - 2006</u>
	Fort Benton	2640	21.98	24.75		
	Geraldine	3130	20.30	23.27		
	Iliad	2950	21.55	24.27		
	Loma	2700	22.64	25.37		
	Shonkin	4300	13.32	16.70		
Custer	Miles City	2628	26.68	29.55	54.5%	<u>81.1%</u>
	Mizpah	2480	23.80	26.57		
	Powderville	2800	24.83	27.68		
Dawson	Glendive	2076	26.01	28.99	56.8%	<u>72.0%</u>
Deer Lodge	No weather station				See appropriate adjacent county	
Fallon	Plevna	2780	22.48	25.34	47.6%	<u>47.6%</u>
Fergus	Denton	3620	15.39	18.12	48.8%	<u>68.3%</u>
	Grass Range	3490	18.93	21.93		
	Lewistown	4167	15.54	18.44		
	Roy	3450	19.94	22.78		
	Winifred	3240	17.86	20.75		
Flathead	Creston	2949	14.97	17.81	87.6%	<u>96.6%</u>
	Hungry Horse Dam	3160	14.66	18.06		
	Kalispell	2972	16.45	19.03		
	Olney	3165	12.50	15.16		
	Polebridge	3600	10.20	12.50		
	West Glacier	3154	13.74	16.78		
	Whitefish	3100	15.74	18.61		
Gallatin	Bozeman Exp Farm	4775	16.84	19.55	73.5%	<u>98.6%</u>
	Bozeman MT State	4913	18.42	21.39		
	Hebgen Dam	6667	10.09	12.77		
Garfield	Cohagen	2710	22.36	24.99	43.4%	<u>46.1%</u>
	Jordan	2661	23.58	26.32		
	Mosby	2750	24.51	27.34		
Glacier	Babb	4300	12.12	14.87	59.7%	<u>73.9%</u>
	Cut Bank	3855	16.01	18.60		
	Del Bonita	4340	14.61	17.30		

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	<u>Management Factor Percentage 1997 - 2006</u>
	East Glacier	4810	10.60	13.26		
	St Mary	4560	13.64	16.60		
Golden Valley	Ryegate	4440	17.60	20.17	62.6%	<u>64.6%</u>
Granite	Philipsburg Ranger Station	5270	12.90	15.26	86.5%	<u>96.6%</u>
Hill	Fort Assinniboine	2613	22.42	25.20	54.1%	<u>60.4%</u>
	Guilford	2820	19.54	22.06		
	Havre	2585	20.94	23.46		
	Simpson	2815	19.67	22.13		
Jefferson	Boulder	4904	17.08	19.47	61.0%	<u>81.1%</u>
Judith Basin	Moccasin Exp Station	4243	16.17	19.06	49.3%	<u>68.8%</u>
	Raynesford	4220	16.14	19.05		
	Stanford	4860	16.74	19.69		
Lake	Bigfork	2910	17.37	20.61	55.0%	<u>68.7%</u>
	Polson	2949	20.46	23.23		
	Polson Kerr Dam	2730	21.37	24.08		
	St Ignatius	2940	19.53	22.33		
Lewis & Clark	Augusta	4070	17.51	20.13	60.1%	<u>79.7%</u>
	Austin	4790	15.41	17.96		
	Helena	3828	20.23	22.69		
	Holter Dam	3490	23.88	26.61		
	Lincoln Ranger Station	4575	12.87	15.22		
Liberty	Chester	3132	19.28	21.74	54.8%	<u>63.9%</u>
	Joplin	3300	19.01	21.40		
	Tiber Dam	2850	22.98	25.46		
Lincoln	Eureka Ranger Station	2532	20.63	23.26	47.1%	<u>58.8%</u>
	Fortine	3000	16.09	18.69		
	Libby Ranger Station	2096	21.20	23.71		
	Libby	3600	11.06	13.36		

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	Management Factor Percentage 1997 - 2006
	Troy	1950	19.90	22.68		
Madison	Alder	5800	14.33	16.75	65.2%	<u>83.3%</u>
	Ennis	4953	17.19	19.71		
	Glen	5050	17.81	20.01		
	Norris	4750	20.88	23.97		
	Twin Bridges	4777	16.98	19.22		
	Virginia City	5770	15.57	18.13		
McCone	Brockway	2630	20.74	23.35	43.7%	<u>60.6%</u>
	Circle	2480	22.23	25.01		
	Fort Peck Power Plant	2070	25.37	28.16		
	Vida	2400	21.74	24.65		
Meagher	Lenep	5880	11.93	14.38	57.3%	<u>78.3%</u>
	Martinsdale	4800	15.19	17.73		
	White Sulpher Spr	5060	16.41	18.89		
Mineral	St Regis Ranger Stn	2680	17.61	20.05	56.1%	<u>63.6%</u>
	Superior	2710	21.94	24.54		
Missoula	Lindbergh Lake	4320	14.63	17.22	69.5%	<u>69.5%</u>
	Missoula	3420	18.85	21.49		
	Missoula WSO AP	3199	19.45	21.89		
	Potomac	3620	14.05	16.26		
	Seeley Lake Ranger Station	4100	14.86	17.31		
Musselshell	Melstone	2920	24.22	27.17	50.0%	<u>56.2%</u>
	Roundup	3386	23.98	26.79		
Park	Cooke City	7460	8.68	11.63	56.9%	<u>67.5%</u>
	Gardiner	5275	22.46	24.70		
	Livingston	4870	16.59	19.41		
	Livingston FAA AP	4656	18.63	21.39		
	Wilsall	5840	13.20	16.01		
Petroleum	Flatwillow	3133	22.27	25.01	44.0%	<u>43.2%</u>
Phillips	Content	2340	21.15	23.97	54.7%	<u>54.9%</u>
	Malta 35	2650	20.28	22.99		
	Malta 7	2262	21.61	24.39		

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	Management Factor Percentage 1997 - 2006
	Port of Morgan	2830	20.15	22.72		
	Saco	2180	20.13	22.70		
	Zortman	4660	14.38	17.40		
Pondera	Conrad	3550	16.93	19.42	71.4%	<u>83.7%</u>
	Valier	3810	18.31	20.96		
Powder River	Biddle	3597	21.87	24.66	38.5%	<u>53.3%</u>
	Broadus	3032	23.03	25.69		
	Moorhead	3220	23.72	26.42		
	Sonnette	3900	18.32	20.96		
Powell	Deer Lodge	4678	13.14	15.32	77.6%	<u>100.0%</u> <sup>1</sup>
	Ovando	4109	12.28	14.43		
Prairie	Mildred	2510	22.92	25.58	59.6%	<u>84.3%</u>
	Terry	2248	22.82	25.47		
	Terry 21	3260	18.65	21.34		
Ravalli	Darby	3880	18.91	21.44	79.5%	<u>96.1%</u>
	Hamilton	3529	19.93	22.34		
	Stevensville	3380	19.19	21.44		
	Sula	4475	12.09	14.42		
	Western Ag Research	3600	19.82	22.15		
Richland	Savage	1990	23.61	26.59	56.0%	<u>88.4%</u>
	Sidney	1931	22.49	25.45		
Roosevelt	Bredette	2638	19.99	22.86	46.5%	<u>74.6%</u>
	Culbertson	1942	20.84	23.73		
	Wolf Point	1985	24.16	27.03		
Rosebud	Birney	3160	24.57	27.29	47.7%	<u>72.7%</u>
	Brandenberg	2770	23.83	26.52		
	Colstrip	3218	23.32	26.10		
	Forsythe	2520	25.17	28.04		
	Ingomar	2780	23.18	25.83		
	Rock Springs	3020	21.35	23.93		
Sanders	Heron	2240	14.82	17.73	58.8%	<u>62.8%</u>
	Thompson Falls Power	2380	22.49	25.36		
	Trout Cr Ranger Station	2356	16.60	19.40		
Sheridan	Medicine	1975	21.64	24.49	44.8%	<u>80.7%</u>

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	Management Factor Percentage 1997 - 2006
	Lake					
	Plentywood	2063	20.64	23.48		
	Raymond Border Station	2384	19.13	22.04		
	Redstone	2300	17.86	20.58		
	Westby	2120	18.10	21.033		
Silverbow	Butte FAA AP	5545	14.73	17.06	68.8%	<u>93.6%</u>
	Divide	5350	15.25	17.58		
Stillwater	Columbus	3602	22.31	25.09	46.5%	<u>72.5%</u>
	Mystic Lake	6544	13.57	16.57		
	Nye	4840	15.00	17.93		
	Rapelje	4125	20.35	23.07		
Sweet Grass	Big Timber	4100	20.60	23.47	44.7%	<u>49.4%</u>
	Melville	5370	12.83	15.49		
Teton	Blackleaf	4240	14.74	17.34	68.8%	<u>88.4%</u>
	Choteau Airport	3845	20.53	23.07		
	Fairfield	3980	19.10	21.76		
	Gibson Dam	4724	13.57	16.22		
Toole	Goldbutte	3498	16.30	18.96	51.8%	<u>70.8%</u>
	Sunburst	3610	18.74	21.46		
	Sweetgrass	3466	18.22	21.22		
Treasure	Hysham	2660	25.01	27.78	53.4%	<u>91.5%</u>
Valley	Glasgow WSO AP	2293	23.48	26.12	57.9%	<u>74.9%</u>
	Hinsdale	2670	22.18	25.25		
	Opheim 10	2878	16.19	18.86		
	Opheim 16	3258	16.73	19.34		
Wheatland	Harlowton	4162	17.83	20.56	46.6%	<u>54.4%</u>
	Judith Gap	4573	13.77	16.40		
Wibaux	Carlyle	3030	19.87	22.75	See appropriate adjacent county	
	Wibaux	2696	18.69	21.50		
Yellowstone	Billings Water Plant	3097	26.16	28.92	59.5%	<u>77.8%</u>
	Billings WSO	3648	25.49	28.22		
	Huntley Exp	3034	21.92	24.61		



Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	<u>Management Factor Percentage 1997 - 2006</u>
	Station					

AUTH: 85-2-112, 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-436, MCA

36.12.1903 CHANGE APPLICATION - ADVERSE EFFECT

(1) ~~The applicant must identify the water rights which the applicant determines may be affected by the changes the applicant is proposing to make and must provide a department general abstract of the water rights identified. Adverse effect for change applications is generally based on the applicant's plan showing the diversion and use of water and operation of the proposed project will not exceed historic use, and can be implemented and properly regulated. A written narrative must be provided addressing the applicant's plan to prevent potential adverse effects to existing water rights, certificates, permits, and water reservations.~~

(2) ~~The applicant's plan must identify, analyze, and document the effects to the other water rights including, but not limited to, the following:~~

(a) through (f) remain the same.

(3) ~~A comparison between the historic consumptive use of the water rights being changed and the consumptive use if the change application was granted must be included with the application.~~

(4) ~~After an application is deemed correct and complete, for public notice purposes, the department shall, independent of the information provided by the applicant under this chapter, identify existing water right owners that may be affected by the proposed application.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.1904 CHANGE APPLICATION CRITERIA - ADEQUATE DIVERSION MEANS AND OPERATION

(1) through (2)(b) remain the same.

(c) the historic and proposed flow rate and volume design capacity;

~~(d) the historic efficiency and the projected overall efficiency, including diversion, conveyance, and system efficiencies.~~

(3) remains the same.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.2001 SALVAGE WATER APPLICATIONS (1) Salvage water, defined at 85-2-102(4620), MCA includes seepage, wastewater, or deep percolation water and may be used by the appropriator, moved to other lands, leased, or sold after implementing a water saving method and proving lack of adverse effect to other water rights.

(2) through (4) remain the same.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-402, 85-2-419, MCA

REASONABLE NECESSITY: The changes to these rules are reasonably necessary in order to streamline the processing and permitting of water right applications for the department and the applicants. The proposed fee changes in ARM 36.12.103 are to encourage applicants to meet with the department about the proposed project prior to submitting a change or permit application. Meeting with the department prior to submitting the application will help the applicant better understand what needs to be submitted, help the department better understand the project, and in the end will speed up the application process. The proposed fees are expected to generate approximately an additional \$9200 and affect approximately 46 people (20 percent of the permit and change applications).

4. 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 in writing to Millie Heffner, Department of Natural Resources and Conservation, PO Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0531; or e-mail mheffner@mt.gov, and must be postmarked no later than 5:00 p.m. on August 23, 2012.

5. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment, is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water

resources, or a combination thereof. 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 Lucy Richards, PO Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by e-mail or U.S. Postal Service on July 9 and July 10, 2012, respectively.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Anne Yates

ANNE YATES

Rule Reviewer

Certified to the Secretary of State on July 16, 2012.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through XXXIII pertaining to ) PROPOSED ADOPTION  
Medicaid home and community )  
services children's autism program )

TO: All Concerned Persons

1. On August 20, 2012, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services 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 Department of Public Health and Human Services no later than 5:00 p.m. on August 13, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I MEDICAID HOME AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: AUTHORITY (1) The department has been granted by the United States Department of Health and Human Services (HHS) the authority to provide Medicaid home and community children's autism services to children who are determined to have autism. The authority to implement this program is provided in 42 USC 1396n(c) and 42 CFR 441.300 441.310. These rules implement in Montana the Medicaid home and community services program for children with autism as approved by HHS as the 0667 Home and Community Services Waiver.

AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE II MEDICAID HOME AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: GENERALLY (1) The Medicaid home and community services program for children with autism is available to serve:  
(a) children who would otherwise require the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR); and

(b) for whom services provided will not jeopardize the child's health and safety.

(2) Eligibility of applicants to be considered for acceptance into the Medicaid home and community services program for children with autism is determined as provided in [New Rule III].

(3) Acceptance into the Medicaid home and community services program for children with autism is determined as provided in [New Rule IV].

(4) Services and acceptance into the Medicaid home and community services program for children with autism are available only to the extent that the federal approval of the state's program permits and that available funding allows.

(a) In accordance with current federal approval, the program has only fifty placements available.

(5) The department, in order to comply with federal requirements or to limit expenditures of available funding, may:

(a) reduce the number of Medicaid children that may be served through this program;

(b) postpone or waive implementation of a particular service of the program;

or

(c) eliminate one or more of the services of the program.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

#### NEW RULE III MEDICAID HOME AND COMMUNITY SERVICES

CHILDREN'S AUTISM PROGRAM 0667: ELIGIBILITY (1) Through the Medicaid home and community services program for children with autism, the department determines a child is eligible to be considered for acceptance into the program if the child:

(a) is the age of 15 months through the age of four years;

(b) is eligible for Medicaid;

(c) is diagnosed as having Autism Spectrum Disorder and has adaptive disorder training needs as determined by the eligibility determination process established by the department.

(2) Eligible children are placed on the waiting list in accordance with [New Rule IV].

(3) Eligible children turning five years of age are removed from the eligibility list on their fifth birthday.

(4) Eligible children are not required to have a diagnosis of mental retardation.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

#### NEW RULE IV MEDICAID HOME AND COMMUNITY SERVICES

##### CHILDREN'S AUTISM PROGRAM 0667: SCREENING AND ACCEPTANCE

DETERMINATIONS (1) A child determined eligible to be considered for acceptance into the children's autism program will be placed on the waiting list for services

through the completion of the waiting list application form. The child's application form has a number assigned to it by the program. Service opportunities for the children's autism program are awarded by means of random selection using a computer program that generates a number based on the range of numbers representing the children on the waiting list for the Developmental Disabilities Program (DDP) region of the state where the service opportunity exists.

(2) Except as otherwise provided, service opportunities are only awarded to children who do not have autism services coverage through private insurance which pays for autism services at the time of entry. If the child has private insurance, then one of the following procedures apply:

(a) if a child was selected for and entered the program prior to October 1, 2012 and the child has insurance which pays for autism services, then the child is allowed to remain in services for the three year period of the waiver opportunity; or

(b) if a child enters the program after October 1, 2012 and at the time of entry does not have insurance that pays for autism services but subsequently receives insurance that provides coverage for autism services, then the child's eligibility is terminated and the provision of program services is discontinued.

(3) A service opportunity is awarded as it becomes available.

(4) The allocation of service opportunities is based proportionately on the population of each DDP region derived from US census data.

(5) When the child exits the waiver, the service opportunity will stay within the DDP region except as provided for in (6).

(6) In the event that unused capacity exists in a particular DDP region, an available service opportunity is allocated to the region with the lowest enrolled children per capita.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE V MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: TRANSITIONING FROM THE CHILDREN'S AUTISM WAIVER (1) A child accepted into the program may receive up to three years of available service.

(a) If requested by the family, a child who is transitioning from the children's autism program and who meets the eligibility criterion for developmental disabilities services may be placed on the waiting list for the home and community-based services 0208 waiver program.

(b) If requested by the family, case managers for children enrolled in the autism program shall conduct ongoing transition and other service coordination activities.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE VI MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: REIMBURSEMENT (1) The requirements governing

reimbursement for Medicaid home and community children's autism services are found at ARM 37.34.3001, 37.34.3002, and 37.34.3007.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE VII MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: AVAILABLE SERVICES (1) The following services may be provided by the Medicaid home and community-based autism services waiver:

- (a) Children's Autism Training, as provided in [New Rules XII and XIII];
- (b) Waiver Funded Children's Case Management, as provided in [New Rules XIV and XV];
- (c) Respite, as provided in [New Rules XVI and XVII];
- (d) Adaptive Equipment, as provided in [New Rules XX and XXI];
- (e) Environmental Modifications, as provided in [New Rules XVIII and XIX];
- (f) Occupational Therapy, as provided in [New Rules XXII and XXIII];
- (g) Physical Therapy, as provided in [New Rules XXIV and XXV];
- (h) Speech Therapy, as provided in [New Rules XXVI and XXVII];
- (i) Transportation, as provided in [New Rules XXVIII and XXIX];
- (j) Individual Goods and Services, as provided in [New Rules XXX and XXXI];

and

- (k) Program Design and Monitoring, as provided in [New Rules XXXII and XXXIII].

(2) Services available to a child through the program are limited to the services specified in the child's plan of care.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE VIII MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: GENERAL PROVIDER REQUIREMENTS

(1) The services of the Medicaid home and community program for children with autism may be provided by one or more of the following, as determined by the department:

- (a) a Medicaid provider agency through contract with the department;
- (b) a subcontractor for a Medicaid provider agency that is recognized by the department as an "Organized Health Care Delivery System" (OHCDs);
- (c) an individual Medicaid provider through contract with the department; and
- (d) an individual Medicaid provider without a contract with the department.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE IX MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: INDIVIDUAL FAMILY SERVICE PLAN (1) The department must review and approve the individual family service plan.

AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE X MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: NOTICES AND FAIR HEARINGS (1) The  
department's notices and fair hearings are provided for in ARM 37.34.919.

AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE XI MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: INFORMING BENEFICIARY OF CHOICE (1) The  
department will give the parent or legal representative of the child the opportunity to  
make a choice, on behalf of the child, between placement in an ICF/MR or in the  
Medicaid home and community services program.

(2) The parent or legal representative must be informed of the feasible  
alternatives in the community, if any, available through the Medicaid home and  
community services program.

AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE XII MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: CHILDREN'S AUTISM TRAINING, DEFINITION

(1) Children's autism training is a direct training service designed to assist the  
child in acquiring, retaining, and generalizing the self-help, socialization, cognitive,  
communication, organization skills, and the positive behaviors necessary to function  
successfully in home and community settings.

(2) Children's autism training includes:

- (a) social skills and related skills to enhance participation across all  
environments (school, home and community settings) and relationships;
- (b) a functional communication system which may include expressive verbal  
language, receptive language and nonverbal communication skills, and  
augmentative communication;
- (c) increased engagement and flexibility in the exhibition of developmentally  
appropriate behaviors;
- (d) replacement of inappropriate behaviors with more conventional and  
functional behaviors;
- (e) working with caregivers and others in the environment to promote the  
child's competence and positive behavior;
- (f) fine and gross motor skills used for age-appropriate functional activities,  
as needed;
- (g) cognitive skills relating to play activity and academic skills;
- (h) adaptive behavior and self-care skills to enable the child to be more  
independent; and
- (i) independent exhibition of organizational skills.



AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE XIII MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: CHILDREN'S AUTISM TRAINING, REQUIREMENTS

(1) The children's autism trainer provides hands-on training using evidence-based applied behavior analysis practice and methods. Training goals are outcome-based and progress towards goals is evidenced by training data.

(2) The training effort occurs where the child lives, attends child care, and/or socializes with peers. The bulk of training may occur in the child's home. Training may be delivered in group settings with same age peers or in one-to-one settings, based on the assessed needs of the child. The majority of training is delivered in one-to-one settings.

(3) The trainer must complete the training requirements as outlined in ARM 37.34.2107.

(4) The trainer receives training developed by the provider agency within 30 days of hire, which includes:

- (a) abuse reporting;
- (b) incident reporting;
- (c) client rights;
- (d) client confidentiality;
- (e) first aid training; and
- (f) any specialty training related to the needs of the children served as

outlined in the plan of care.

(5) Trainers must take the college of direct support training provided through the department, including the modules specific to autism within 30 days of hire.

(6) Trainers assisting with medications must be certified in accordance with ARM 37.34.114.

(7) The employer shall maintain documentation verifying that a trainer providing direct client services has had an acceptable criminal background check in accordance with ARM 37.34.2102(2).

AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE XIV MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: WAIVER-FUNDED CHILDREN'S CASE  
MANAGEMENT

(1) Waiver-funded children's case management services are services furnished to assist children in gaining access to needed medical, social, education, and other services.

(2) Waiver-funded children's case management includes the following assistance:

- (a) comprehensive assessment and periodic reassessment of the child's needs to determine the need for any medical, educational, social, or other services;
- (b) development and periodic revision of a specific care plan;

(c) referral and related activities to help an eligible child to obtain needed services;

(d) monitoring and follow-up activities including activities and contacts that are necessary to ensure the plan of care is implemented and adequately addresses the child's needs;

(e) contacts with non-eligible persons that are directly related to identifying the needs and supports for helping the eligible child to access services;

(f) upon request, assisting the department in scheduling meetings and providing information to department staff responsible for completing initial and ongoing level of care activities; and

(g) locating suitable alternative placement, as necessary when the child's health or safety is at risk.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XV MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: WAIVER-FUNDED CHILDREN'S CASE

MANAGEMENT, REQUIREMENTS (1) A case manager shall conduct a face-to-face visit with the parent or legal representative, at least monthly, for the purpose of reviewing any need for change in the plan of care, based on the changing needs of the child or the family.

(2) A case manager must have a four year degree in a human services field, three years of experience in working with children with developmental disabilities, and current family support specialist certification.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XVI MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: RESPITE, DEFINITION

(1) Respite care includes any services designed to meet the safety and daily care needs of the child and the needs of the child's caregiver in relation to reducing stress generated by the provision of constant care to the child receiving waiver services.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XVII MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: RESPITE, REQUIREMENTS

(1) Persons providing respite services will be in compliance with all state and federal respite standards.

(2) Respite services are delivered in conformity with the plan of care.

(3) Respite is considered an ancillary service. The sum of all ancillary service costs may not exceed \$4,000 annually.

(4) Respite provider is subject to approval by the family, and must possess any competencies outlined by the family in the plan of care which are related to the specific needs of the child.

- (5) A person providing the respite service must be 16 years of age or older.
- (6) Respite services are selected in collaboration with the child's parent or legal representative and are provided by persons chosen and trained by the family.
- (7) The amount and frequency of respite care is included in each child's plan of care.

AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE XVIII MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: ENVIRONMENTAL MODIFICATION, DEFINITION

(1) Environmental modifications are physical adaptations to the home, required by the child's plan of care, which are necessary to ensure the health, welfare, and safety of the child, or which enable the child to function with greater independence in the home, and without which the child would require institutionalization.

(2) Environmental modification services are measures that provide the child with accessibility and safety in the environment so as to maintain or improve the ability of the child to remain in community settings and employment.

AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE XIX MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: ENVIRONMENTAL MODIFICATION, REQUIREMENTS

(1) An environmental modification must:

- (a) relate specifically to and be primarily for the child's disability;
- (b) have utility primarily for the child who has a disability;
- (c) not be an item or modification that a family would normally be expected to provide for a non-disabled family member;
- (d) not be in the form of room and board or general maintenance; and
- (e) meet the specifications, if applicable, for the modification set by the American National Standards Institute (ANSI).

(2) Environmental modification is considered an ancillary service; the sum of all ancillary service costs may not exceed \$4,000 annually.

AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE XX MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: ADAPTIVE EQUIPMENT, DEFINITION

(1) Adaptive equipment is equipment necessary to increase independent functioning in completing activities of daily living when such equipment is not available through other sources.

AUTH: 53-6-402, MCA  
IMP: 53-6-402, MCA

NEW RULE XXI MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: ADAPTIVE EQUIPMENT, REQUIREMENTS

- (1) Adaptive equipment will conform to the following criteria:
  - (a) relate specifically to and be primarily for the child's disability;
  - (b) have utility primarily for the child who has a disability;
  - (c) not be an item or modification that a family would normally be expected to provide for a non-disabled family member;
  - (d) not be in the form of room and board or general maintenance; and
  - (e) meet the specifications, if applicable, for the modification set by the American National Standards Institute (ANSI).
- (2) Adaptive equipment may be provided as needed to enable family members or other caregivers to provide the care needed by the child.
- (3) Adaptive equipment is considered an ancillary service; the sum of all ancillary service costs may not exceed \$4,000 annually.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXII MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: OCCUPATIONAL THERAPY, DEFINITION

- (1) Occupational therapy services are defined in 37-24-103, MCA and may include evaluation, consultation, training, and treatment.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXIII MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: OCCUPATIONAL THERAPY, REQUIREMENTS

- (1) Occupational therapy must meet the requirements for occupational therapy services required by ARM 37.86.606, except that under the Medicaid home and community services program:
  - (a) maintenance therapy is reimbursable and there are no limitations on visits for maintenance therapy;
  - (b) training for persons providing direct care is reimbursable; and
  - (c) participation in the interdisciplinary team planning process is reimbursable.
- (2) Occupational therapy is considered an ancillary service. The sum of all ancillary service costs may not exceed \$4,000 annually.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXIV MEDICAID AND COMMUNITY SERVICES CHILDREN'S  
AUTISM PROGRAM 0667: PHYSICAL THERAPY, DEFINITION (1) Physical therapy services are defined in 37-11-101(7), MCA.

(2) Physical therapist may provide treatment training programs that are designed to:

- (a) preserve abilities for independent function; and
- (b) prevent, insofar as possible, irreducible or progressive disabilities.

(3) Therapists may also provide consultation and training to staff or caregivers who work directly with waiver children.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXV MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: PHYSICAL THERAPY, REQUIREMENTS (1) Physical therapy must meet the requirements for physical therapy services required by ARM 37.86.606, except that under the Medicaid home and community services program:

- (a) maintenance therapy is reimbursable and there are no limitations on visits for maintenance therapy;
- (b) training for persons providing direct care is reimbursable; and
- (c) participation in the interdisciplinary team planning process is reimbursable.

(2) Physical therapy is considered an ancillary service. The sum of all ancillary service costs may not exceed \$4,000 annually.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXVI MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: SPEECH THERAPY, DEFINITION (1) Speech therapy services are defined in 37-15-102(8), MCA and may include evaluation, consultation, training, and treatment.

(2) Speech therapy services may include:

(a) screening and evaluation of children with respect to speech and hearing functions;

(b) comprehensive speech and language evaluations when indicated by screening results;

(c) participation in the continuing interdisciplinary evaluation of children for purposes of beginning, monitoring, and following up on individualized habilitation programs; and

(d) treatment services as an extension of the evaluation process, which include consultation with appropriate people involved with the child for speech improvement and speech education activities to design specialized programs for developing each child's communication skills in comprehension, including speech, reading, auditory training, and skills in expression.

(3) Therapists may also provide consultation and training to staff or caregivers who work directly with waiver children.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXVII MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: SPEECH THERAPY, REQUIREMENTS

(1) Speech therapy must meet the requirements for speech therapy services required by ARM 37.86.606, except that under the Medicaid home and community services program:

- (a) maintenance therapy is reimbursable and there are no limitations on visits for maintenance therapy;
- (b) training for persons providing direct care is reimbursable; and
- (c) participation in the interdisciplinary team planning process is reimbursable.

(2) Speech therapy is considered an ancillary service. The sum of all ancillary service costs may not exceed \$4,000 annually.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXVIII MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: TRANSPORTATION, DEFINITION

(1) Transportation services are offered in order to enable children served on the waiver to gain access to waiver and other community services, activities, and resources specified by the plan of care.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXIX MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: TRANSPORTATION, REQUIREMENTS

(1) Transportation services through the waiver must be offered in accordance with the plan of care.

(2) Persons providing transportation must be licensed, insured, and drive a registered vehicle in accordance with the motor vehicle laws of the state of Montana.

(3) Reimbursement for rides provided a legally responsible person or others must be related to the specific disability needs of a child, as outlined in the plan of care.

(4) Under no circumstances will medically necessary transportation be reimbursed through the waiver if the service is reimbursable through Medicaid state plan transportation.

(5) Transportation is considered an ancillary service. The sum of all ancillary service costs may not exceed \$4,000 annually.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXX MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: INDIVIDUAL GOODS AND SERVICES, DEFINITION

(1) Individual goods and services are services, supports, or goods that enhance opportunities to achieve outcomes related to living arrangements,

relationships, inclusion in the community, and work as clearly identified and documented in the plan of care.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXXI MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: INDIVIDUAL GOODS AND SERVICES, REQUIREMENTS (1) Items covered through individual goods and services must meet the following requirements:

- (a) the item or service is designed to meet the child's functional, medical, or social needs and advance the desired outcomes in the plan of care;
- (b) the item or service is not prohibited by federal or state statutes or regulations;
- (c) the item or service is not available through another source;
- (d) the service does not include experimental goods or services; and
- (e) one or more of the following additional criteria are met:
  - (i) the item or service would increase the child's functioning related to the disability;
  - (ii) the item or service would increase the child's safety in the home environment; or
  - (iii) the item or service would increase independence from other Medicaid services.

(2) Recreational activities provided through individual goods and services may be covered only to the degree that they are not diversional in nature and are included in a planning objective related to a specific therapeutic goal.

(3) Individual goods and services are reimbursable only if:

- (a) individual goods and services must be approved by the planning team prior to purchase; and
- (b) goods and services purchased on behalf of the child by nonemployees acting on behalf of the child are reimbursable only if receipts for such purchases are submitted to the agency that has a contract with the department.

(4) The department assures that services, goods, or supports provided for through this definition are not available through the Individuals with Disabilities Education Act (IDEA) or Section 110 of the Rehabilitation Act or available through any other public funding mechanism.

(5) Individual goods and services is considered an ancillary service. The sum of all ancillary service costs may not exceed \$4,000 annually. Individual goods and services projected to exceed an annual aggregate amount of \$2,000 require approval by the program regional manager.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXXII MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: PROGRAM DESIGN AND MONITORING, DEFINITION

(1) Program design and monitoring is designed to provide the formal training protocols and methods used by the children's autism trainer in helping the child acquire, retain, and generalize the self-help, socialization, cognitive, communication, organizational skills, and the positive behaviors necessary to function successfully in home and community-based settings.

(2) Training goals must be outcome-based and progress toward goals will be evidenced by training data.

(3) Training efforts will occur in the customary and usual community locations where the child lives, plays, and socializes with peers. Training may be delivered in group settings with same aged peer or in one-to-one settings, based on the assessed needs of the child. The majority of training will be delivered in one-to-one training.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE XXXIII MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: PROGRAM DESIGN AND MONITORING. REQUIREMENTS (1) Staff providing program design and monitoring(PDM) must have a family support specialist certification with an autism endorsement or be a Board Certified Behavioral Analyst.

(2) Staff providing PDM shall provide the following services:

(a) develop and monitor the implementation of formal and informal training methods and provide training specific to the formal training plan and the informal interaction techniques used by the children's autism trainer, family members and others who work with or interact with the child; and

(b) provide general assistance and support to individuals who provide unpaid support, training, companionship or supervision to the child.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the adoption of New Rules I through XXXIII pertaining to Children's Autism Waiver (CAW). The implementation of these new rules serves to define and deliver the services available.

In order to identify gaps or needs in the service system for children with developmental disabilities, the department formed an autism workgroup which was comprised of Department of Public Health and Human Services management and staff, including the Montana Development Center, developmental disabilities service providers who serve children and/or adults with autism, members of the health care community, the parents or legal representatives of children, Office of Public Instruction (OPI) staff, child care providers, and a member of the state legislature. The group identified the most immediate needs which included earlier assessments,



intensive early intervention services for children with autism, and crisis intervention. This waiver represents the outcome of the statewide children's autism waiver workgroup.

The children's autism waiver provides intensive early autism intervention training (about 20 hours per week) for improving skills in the areas of communication, socialization, academics, and activities of daily living while reducing difficult or socially unacceptable behaviors. Eligible children are between the ages of 15 months through 7 years old and may receive services for a maximum of three years. Eight agencies across the state provide program design and training individualized for each child, case management services, and other supports to children and their families. Applied behavior analysis (ABA) training models and evidence-based practice are the basis for these services. The hours of training provided are required to be evidence-based practices of behavioral intervention. The department ensures these Medicaid expenditures pay for practices that have clear scientific evidence which demonstrate their effectiveness. Treatment strategy is developed and directed by a certified behavior specialist, documented in an individualized autism training plan, and provided by a direct support person trained in providing behavioral support to children with autism.

Providers receive reimbursement for the waiver services at a standardized rate set by the department and based on the rates reimbursement methodology used to establish rates for other department services. Services provided by staff with the required experience and at the intensity required cost approximately \$45,000 per individual per year. It is anticipated that these costs may be more than offset by a decreased need for assistance by the child later in life.

To evaluate the program a variety of types of measures (i.e., norm referenced, curriculum-based measures) across a number of variables (i.e., symptom-related, development, and functional) were measured. The department will conduct a comprehensive evaluation of the project when children complete the program (meaning receive three years of Children's Autism Waiver services); however, the department has preliminary data and report of this data is available at: <http://www.dphhs.mt.gov/dsd/ddp/autism.shtml>.

Previously reported data indicate that in the developmental domains most affected by autism (i.e., social skills, communication skills, and adaptive functioning) all children were making progress. Most notably, in these three domains, norm-reference tests indicated that on average participating children's rate of development nearly tripled. It is not known if this rate will hold steady through the children's participation in the program. Four children have exited due to age and preliminary outcome data suggests that the percentage of treatment goals mastered by these children ranged from 85% to 73%.

Based on this preliminary data, as many as 20% of the children receiving Children's Autism Wavier services may achieve what is known as a "best outcome." Autism is considered a life-long developmental disability and as such there is no cure. "Best

outcome" describes children who demonstrate a normal IQ, can access the general education curriculum, and whose autism symptoms have decreased to the extent that they no longer fall in the clinical scale of autism. Thus far, two children have met these criteria. The average lifetime cost for serving an individual with autism is approximately \$2 million. Using this average for each child obtaining a best outcome, the state could save approximately \$2 million in lifetime costs per child for those children who achieve a best outcome. Appropriations to the department to serve 50 individuals for one year of this waiver total \$2.1 million.

### New Rule I

New Rule I provides the authority for the department to provide Medicaid home and community children's autism services. The department has the authority to apply for waiver funds through the Medicaid home and community-based program and applied for the waiver in order to meet the needs of children with autism. The department believes this is the most fiscally responsible option for meeting those needs. Another option available is to provide these services fully through state funds. The department believes this is a much less responsible option due to the severe limitations placed on the state budget and the fact that the department would be able to serve far fewer individuals.

### New Rule II

The department is proposing New Rule II as it is the goal of the department to provide services to those in need at the least restrictive levels available and it is the department's contention that early autism intervention reduces the risk of placement into an ICF/MR as an adult. This program provides opportunity for children with autism to maximize their level of independence by providing early autism intervention training. The state provides services in accordance with Medicaid home and community services standards and available funding. In order to participate in the Medicaid waiver program, the department has no other option but to strictly comply with these regulations or face the loss of the federal funding.

### New Rule III

The department is proposing New Rule III to define the criteria for eligibility into the Children's Autism Waiver. Unlike eligibility for other services funded by the department the defining characteristic of a child eligible for this waiver is the diagnosis of autism spectrum disorder (ASD) in conjunction with significant deficits in adaptive behavior. Because ASD has different manifestations than other disabilities related to developmental disabilities, it is not necessary for the child found eligible for this waiver to meet the developmental disability, mental retardation, or intellectual disability definitions.

The department retained the services of an expert on autism who has available the scientific data which demonstrates that early and intense intervention has the greatest likely effect for a child with autism. The department begins its eligibility for

this waiver at 15 months. Once the child enters into the waiver, the services continue for three years. The department chose this model over other options because of its demonstrated effectiveness.

#### New Rule IV

New Rule IV defines the process used by the department to randomly select individuals for service opportunities in the department. The numbers of service opportunities are allocated by population density in the 5 developmental disability program regions in Montana. Once a child is determined eligible a computer program assigns the child a random number. When a service opening occurs, the computer program randomly draws one of the numbers assigned to the eligible children in that region. If all eligible children within a region are currently receiving services, the department will allocate the service opportunity to the region containing the largest waiting list of children when compared with the general population of the region. The department allocates service opportunities based upon population density and believes this is the most equitable process for selecting individuals served by the waiver.

Effective October 1, 2012, children who have autism coverage through private insurance will no longer be found eligible for the waiver. As stated above, the department is conducting comprehensive evaluations of the project and in order to maintain consistency in the implementation of the evidence-based practices of the program services and ensure the integrity of data that is derived from the services, the department must regulate the services provided. The department does not regulate or control services provided through private insurers. Therefore, it is proposed that the children's autism waiver services will not be available to those who have private insurance that covers autism services.

#### New Rule V

The department is proposing New Rule V to describe the process whereby a child receiving children's autism services will transition from the waiver after three years of service or upon reaching the age of eight. Upon the request of the family, if the child is determined eligible for developmental disabilities services the family has the option of placing the child on the waiting list for the comprehensive services waiver. If the child is ineligible for developmental disabilities services, the case manager will review requirements for agencies serving children with a substantial handicapping condition due to either a physical disability, traumatic brain injury, diagnosis of serious emotional disturbance, or a combination of any of these with the child's family and will refer the child's family to other appropriate programs and services.

#### New Rule VI

New Rule VI directs individuals to the department's reimbursement rules as adopted in August 2011. ARM 37.34.3001 governs the requirements and limitations for provider reimbursement for services or items delivered to persons currently receiving

services. ARM 37.34.3002 defines and describes the Individual Cost Plans (ICP) for individual persons. ARM 37.34.3007 sets forth the reimbursement for the provision of services or items funded through the 0667 Autism Program of Home and Community Services waiver.

#### New Rule VII

New Rule VII is being proposed to provide a comprehensive list of the services available through the Medicaid and Community Services Children's Autism Program 0667. Items (a), (b), and (k) are core services provided by the children's autism waiver. Items (c) and (d) through (j) are ancillary services.

#### New Rule VIII

New Rule VIII specifies which providers may provide Medicaid home and community-based services. Contracted services may include: initial and ongoing level of care activities, case management duties, available services, registered nurses, and other services determined by the department.

#### New Rule IX

New Rule IX specifies that the department reviews and approves the individual family service plans.

#### New Rule X

New Rule X references the administrative rule that defines the responsibilities of the department for appropriate notice to applicants regarding an individual's level of care and selection or denial for placement. A person who disagrees with an adverse action relating to services rendered, including such actions as suspension, reduction or termination of services, the denial of a requested service, or an adverse action resulting from the individual planning process, may appeal the decision through a fair hearing procedure available through the authority of the Montana Administrative Procedure Act. A fair hearing officer from the Department of Public Health & Human Services' Office of Fair Hearings conducts a hearing. Both the person who is appealing a decision and representatives from the department may present testimony and evidence at that hearing through witnesses and documents.

#### New Rule XI

New Rule XI maintains the department's obligation to meet the federal assurance of informing an individual of their freedom of choice, as provided in 42 CFR Section 441.302(d). The department's Waiver-5 Freedom of Choice form is part of the Children's Autism Waiver application. Upon entry into the waiver, a department staff member completes the form during the initial face-to-face level of care evaluation and then on an annual basis, with a parent or legal representative for children receiving the waiver.

### New Rules XII and XIII

New Rules XII and XIII address the definition and requirements of Children's Autism Training. Children's Autism Training is a direct training service designed to assist the child in acquiring, retaining and generalizing the self-help, socialization, cognitive, communication, organizational skills, and the positive behaviors necessary to function successfully in home and community settings. The training methods are based on practices with a strong scientific basis and the protocols use evidence-based training approaches based upon applied behavior analysis to improve a child's functioning and performance.

The training plan governs the activities of the autism trainer and reflects the assessed needs of the child. The needs of the child determine the assessment tools used and the use of multiple assessments helps ensure that the child's individual needs are met. Training protocols most likely to help the child achieve goals based upon the assessments, and set by the planning team, guide the activity of the staff person delivering the program services.

Participation in the Children's Autism Waiver will require a general willingness on the part of the parent(s) or legal representative(s) to support the goals and objectives specific to the child's disability training needs. The training needs of the child may involve education of the parent(s) or legal representative(s) and others in terms of specific training and interaction protocols likely to be most beneficial to the child. The treatment plan may also provide guidance to others who live with or work with the child. Positive outcomes for the family and the child are contingent upon the cooperation of all planning team members in working together toward mutually agreed upon goals.

### New Rules XIV and XV

New Rules XIV and XV defines Waiver-Funded Children's Case Management and provides the requirements.

Case management includes completing a comprehensive assessment by taking client history and identifying the child's needs, completing related documentation, and gathering information from other sources such as family members, medical providers, social workers, and educators to form a complete assessment of the child. The case manager develops a plan of care based on the information collected through the assessment and specifies goals and actions to address the medical, social, educational, and other services needed by the child. The case manager also provides referrals for needed services and monitors the activities and contacts that are necessary to ensure the care plan is implemented and adequately addresses the child's needs. The case manager is responsible for assisting the department, as requested, in scheduling meetings and providing information as requested to department staff responsible for completing initial and ongoing level of care activities.

### New Rules XVI through XXXI

New Rules XVI through XXXI describe the ancillary services provided through the children's autism waiver. The sum of all ancillary services may not exceed \$4000 and may include one or more services defined in New Rules XVI through XXXI. In collaboration, the parent(s) or legal representative(s) and the planning team select the services and persons chosen by the family supply the service. The Children's Autism Waiver is designed to provide hands on training using evidence-based applied behavioral analysis practices and methods. Ancillary services are chosen based on the specific needs of the child and their family in order to meet the goals defined in the child's plan of care. Ancillary services may be necessary to ensure the health and safety of an individual or enable the individual to function with greater independence. Ancillary services provided through the Children's Autism Waiver play an essential role in providing a holistic approach for services to children and their families.

### New Rules XXXII and XXXIII

The department is proposing New Rules XXXII and XXXIII to provide definitions and the requirements for Program Design and Monitoring. Program Design and Monitoring (PDM) specialists develop the training methods based on practices with a strong scientific basis, as written in a formal training plan. The specialist providing PDM services may use the skill-based interventions and treatments of Applied Behavior Analysis (ABA), Discrete Trial Training (DTT), Pivotal Response Training (PRT), and Learning Experiences: An Alternative Program for Preschoolers and Parents (LEAP).

This waiver service is designed to provide the formal training protocols and methods used by the children's autism trainer in helping the child acquire, retain, and generalize the self-help, socialization, cognitive, communication, organizational skills, and the positive behaviors necessary to function successfully in home and community-based settings.

PDM specialists work with caregivers and others in their environment to implement accommodations and supports to promote the child's competence and positive behavior.

### Fiscal Impact

There is no fiscal impact due to this rulemaking.

5. The department intends the proposed rule changes to be applied effective October 1, 2012.

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: Kenneth Mordan, Department of Public Health and Human Services,

Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., August 23, 2012.

7. The Office of Legal Affairs, Department of Public Health and Human Services, 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 list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 6 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 Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/c/ Cary B. Lund  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State July 16, 2012.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through III pertaining to home ) PROPOSED ADOPTION  
and community-based services )  
(HCBS) state plan program )

TO: All Concerned Persons

1. On August 20, 2012, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services 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 Department of Public Health and Human Services no later than 5:00 p.m. on August 8, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

RULE I 1915(i) HOME AND COMMUNITY-BASED SERVICES (HCBS) STATE PLAN PROGRAM FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: FEDERAL AUTHORIZATION AND AUTHORITY OF STATE TO ADMINISTER PROGRAM (1) Section 1915(i) of the Social Security Act provides states the option to amend their Medicaid state plan to offer Home and Community-Based Services (HCBS) as a state plan benefit.

(2) The Montana Department of Public Health and Human Services has submitted a 1915(i) HCBS State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to establish a 1915(i) State Plan program of Medicaid funded home and community services for youth who have serious emotional disturbance.

(3) In accordance with the state and federal statutes and the rules generally governing the provision of services through a Medicaid-funded 1915(i) HCBS State Plan program and the federal-state agreements specifically governing the provision of the Medicaid-funded home and community-based services to be delivered through this program, and within the available funding appropriated for the program, the department may determine within its discretion the following features of the program:

(a) the types of services to be available;



- (b) the amount, scope, and duration of the services;
- (c) the reimbursement to be made for services;
- (d) the categories of youth to be served; and
- (e) individual eligibility.

(4) The 1915(i) home and community-based services state plan program for youth with serious emotional disturbance must be delivered in accordance with the requirements and limitations of the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual dated October 1, 2012. A copy of the manual may be obtained from the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 Sanders, P.O. Box 4210, Helena, MT 59604 or at <http://www.dphhs.mt.gov/mentalhealth/children/>.

AUTH: 53-6-113, MCA  
IMP: 53-6-101, MCA

RULE II 1915(i) HOME AND COMMUNITY-BASED SERVICES (HCBS) STATE PLAN PROGRAM FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: REIMBURSEMENT (1) Services available through the program are reimbursed as provided in this rule.

(2) Program services are reimbursed at the lower of the following:

(a) the provider's usual and customary charge for the services; or

(b) the fees stated in the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual dated October 1, 2012 which the department adopts and incorporates by reference. A copy of the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual dated October 1, 2012 may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N Sanders, P.O. Box 4210, Helena, MT 59604 or at <http://www.dphhs.mt.gov/mentalhealth/children/>.

(3) Reimbursement is not made for a service that is otherwise available from another source.

(4) No copayment is imposed on services provided through the program.

AUTH: 53-6-113, MCA  
IMP: 53-6-101, MCA

RULE III 1915(i) HOME AND COMMUNITY-BASED SERVICES (HCBS) STATE PLAN PROGRAM FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: NOTICE AND FAIR HEARING (1) When an adverse

determination concerning a youth's eligibility or the delivery of program services to the youth is made by the department, the department provides notice to the parent or legal representative of the youth.

(2) The department provides a youth receiving services and the youth's parent or legal representative with notice ten working days before the intended date for termination of services due to a determination of ineligibility for the youth.

(3) A youth aggrieved by any adverse determination may request a fair hearing to be conducted as provided for in ARM 37.5.103, 37.5.301, 37.5.304, 37.5.305, 37.5.307, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, 37.5.337, 37.5.503 and 37.5.505.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing New Rules I through III for the 1915(i) Home and Community-based Services (HCBS) State Plan Program for Youth with Serious Emotional Disturbance (the 1915(i) HCBS State Plan Program). The proposed rules are necessary to provide a clear understanding of the program and the services offered.

The Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau has submitted a 1915(i) HCBS State Plan proposal to the Centers for Medicare and Medicaid Services to establish a program of Medicaid funded home and community-based services for youth who have serious emotional disturbance. The purpose of this program is to provide a particular set of special mental health services to qualifying youth in the community setting. The 1915(i) HCBS State Plan does not require eligible youth to meet the institutional level of care that is required under a 1915(c) HCBS waiver, allowing states flexibility in providing necessary and appropriate services. The proposed Administrative Rules of Montana, New Rule I through III, are specific for administering the 1915(i) HCBS state plan services.

##### New Rule I

The proposed language in New Rule I outlines the federal authority through Section 1915(i) of the Social Security Act, providing states the option to amend their Medicaid state plan to offer Home and Community-based Services (HCBS) as a state plan benefit.

In addition, the proposed rule establishes the discretion of the department to manage the various aspects of the program in conformance with federal authority, the appropriated budget authority, and as otherwise determined appropriate by the department. This application of discretion to the program is necessary to assure continuing conformance with the governing federal authority so as to avoid withdrawal of federal approval for the program and to avoid federal recoupment for inappropriate expenditures of federal monies. This proposed rule adopts and incorporates by reference, the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual Dated October 1, 2012. The 1915(i) HCBS State Plan program manual defines the population eligible to be served, including: the needs-based criteria; enrollment and disenrollment stipulations; the provision of services available under the program; plans of care; plan management

processes and responsibilities; program cost; provider requirements; and reimbursement.

### New Rule II

Proposed New Rule II clarifies reimbursement for 1915(i) HCBS State Plan Program services. This rule directs person(s) to the correct location for the rates of reimbursement. This rule is necessary to assure that services provided through the program are appropriately and economically purchased and that there is a common scheme of reimbursement that assures the fairness of reimbursement among providers. This proposed rule adopts and incorporates by reference, the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual Dated October 1, 2012. The 1915(i) HCBS State Plan program manual defines the population eligible to be served, including: the needs-based criteria; enrollment and disenrollment stipulations; the provision of services available under the program; plans of care; plan management processes and responsibilities; program cost; provider requirements; and reimbursement.

### New Rule III

Proposed New Rule III provides youth and their parents or legal representatives the right to aggrieve any adverse determination through a fair hearing request. This proposed rule is necessary to assure conformity with due process requirements established in laws applicable to the program.

### Fiscal Impact

It is estimated for the first two years of the 1915(i) Home and Community-based Services State Plan Program for Youth with Serious Emotional Disturbance the total cost will be \$323,277 with a state share of \$111,108 (\$16,913 in general fund and \$94,195 in school match).

It is anticipated for the first year of implementation, by October 1, 2013, 56 youth will be enrolled into the new 1915(i) Home and Community-based Services State Plan Program for Youth with Serious Emotional Disturbance.

5. The department intends the proposed adoption of these new rules to be applied effective October 1, 2012.

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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., August 23, 2012.

7. The Office of Legal Affairs, Department of Public Health and Human Services, 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 list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 6 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 Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Cary B. Lund  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State July 16, 2012.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 37.87.1303, 37.87.1333, and	)	PROPOSED AMENDMENT AND
37.87.1335 and the repeal of	)	REPEAL
37.87.1305, 37.87.1306, 37.87.1307,	)	
37.87.1321, 37.87.1325, and	)	
37.87.1331 pertaining to home and	)	
community-based services (HCBS)	)	
for youth with serious emotional	)	
disturbance	)	

TO: All Concerned Persons

1. On August 20, 2012, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services 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 Department of Public Health and Human Services no later than 5:00 p.m. on August 13, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.87.1303 HOME AND COMMUNITY-BASED 1915(c) SERVICES BRIDGE WAIVER FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: FEDERAL AUTHORIZATION AND AUTHORITY OF STATE TO ADMINISTER PROGRAM

(1) In 2007, the U.S. Department of Health and Human Services (HHS) has provided a grant to the Montana Department of Public Health and Human Services (department), under Section 6063 of the Deficit Reduction Act of 2005, that allows Montana to submit to the Centers for Medicare and Medicaid Services (CMS) a proposal to establish a program of Medicaid funded home and community-based services for youth who have serious emotional disturbance. That proposal has been presented to and approved by CMS to foster the establishment of a home and community-based (HCBS) Psychiatric Residential Treatment Facility (PRTF) Demonstration waiver program (HCBS PRTF waiver), approved by the Centers of

Medicare and Medicaid Services (CMS). The purpose of this program is the HCBS PRTF waiver was to avoid institutionalizing admitting youth with serious emotional disturbance in into psychiatric residential treatment facilities. Institutionalization is avoided through the provision of mental health services and other services that support and treat those youth while residing with their families and receiving mental health treatment in the community. The HCBS PRTF waiver authority ends September 30, 2012.

(2) The Centers for Medicare and Medicaid Services (CMS) is allowing Montana the opportunity to continue to provide 1915(c) HCBS waiver services authorized by section 6063(b)(2) of the Deficit Reduction Act of 2005, only with respect to youth already enrolled in the existing HCBS PRTF waiver program on the termination date of that program and only for the duration of their current eligibility as established under these rules. These youth may continue to receive services through the 1915(c) HCBS bridge waiver, in accordance with these rules and the agreement with CMS, for the continued delivery of home and community services.

(2)(3) In accordance with the state and federal statutes and rules generally governing the provision of Medicaid-funded home and community-based services and any federal-state agreements specifically governing the provision of the Medicaid-funded home and community-based services to be delivered through this program, and within the fiscal limitations of the funding appropriated and available for the program, the department may determine within its discretion the following features of the program:

- (a) the types of services to be available;
- (b) the amount, scope, and duration of the services;
- (c) the categories of youth to be served;
- (d) the total number of service opportunities that may be made available;

(i) Only those youth who were already enrolled in the HCBS PRTF waiver for youth with serious emotional disturbance on September 30, 2012 are eligible to be enrolled in the HCBS bridge waiver for youth with serious emotional disturbance.

(e) the total number of service opportunities that may be made available by category of eligibility or by geographical area;

- (f)(e) individual eligibility; and
- (g)(f) geographic service areas.

(3) A youth's enrollment in the program and the provision of services to the youth through the program are at the discretion of the department. There is no legal entitlement for a youth to enroll in the program or to receive any or all the services available through the program.

(4) The department has received federal approval to waive statewide coverage in the provision of program services. Program services may only be delivered in the following service areas for which federal approval of coverage has been received:

- (a) Yellowstone County core site, implementation date of October 1, 2007.
  - (i) Service areas of Carbon, Stillwater, Musselshell, and Big Horn Counties added to the Yellowstone County core site, implementation date of October 1, 2010.
- (b) Missoula and Ravalli Counties core site, implementation date of August 1, 2009.
- (c) Cascade County core site, implementation date of October 1, 2010.

~~(d) Lewis and Clark County core site, with service areas of Jefferson and Broadwater Counties, implementation date of October 1, 2010.~~

~~(e) Flathead County core site, implementation date of July 1, 2011.~~

~~(5) In the service areas specified in (4) of this rule, no more than a total of 100 youth per waiver year for all core sites may be enrolled at any given time. A waiver year begins on October 1st and ends on September 30th.~~

~~(a) When a waiting list is established in any of the core sites, the protocol defined in the Psychiatric Residential Treatment Facility Home and Community Based Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual dated October 2011 will be used by the department to reallocate unused service opportunities.~~

~~(6) The total cost of expenditures annually for services delivered through the program plus the total cost of Medicaid state plan costs for program participants annually may not exceed the total annual projected Medicaid cost for the participants if they were receiving treatment in a residential psychiatric treatment facility.~~

(4) The 1915(c) home and community-based bridge waiver services for youth with serious emotional disturbance must be delivered in accordance with the requirements and limitations of the Home and Community-Based Services Bridge Waiver for Youth with Serious Emotional Disturbance Policy Manual dated October 1, 2012. A copy of the manual may be obtained from the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 Sanders, P.O. Box 4210, Helena, MT 59604 or at <http://www.dphhs.mt.gov/mentalhealth/children/>.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

37.87.1333 HOME AND COMMUNITY-BASED 1915(c) SERVICES BRIDGE WAIVER FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE:

REIMBURSEMENT (1) remains the same.

(2) Program services are reimbursed at the lower of the following:

(a) the provider's usual and customary charge for the services; or

(b) the fees stated in Appendix A with an effective date of October 1, ~~2011~~ 2012 and December 1, ~~2011~~ contained in the program's Psychiatric Residential Treatment Facility Home and Community-Based Services Bridge Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual dated October 1, 2012. The department adopts and incorporates by reference the provider policy manual which may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 North Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at <http://www.dphhs.mt.gov/mentalhealth/children/>.

(3) and (4) remain the same.

~~(5) A geographical factor of \$.50 per mile may be available to a family support specialist, wraparound facilitator, caregiver peer-to-peer specialist, or a home-based therapist when the following circumstances are met:~~

~~(a) the provider is traveling out of the location where the provider has its regular office, excluding satellite offices;~~

- ~~(b) the provider is traveling a distance greater than 35 miles one way from the office to the youth's home;~~
- ~~(c) the geographical factor will include the initial 35 miles and return trip;~~
- ~~(d) the geographical factor is prior authorized by the plan manager; and~~
- ~~(e) the geographical factor and those providers authorized to receive it are included in the youth's plan of care.~~

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA  
IMP: 53-6-402, MCA

37.87.1335 HOME AND COMMUNITY-BASED 1915(c) SERVICES BRIDGE WAIVER FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: NOTICE AND FAIR HEARING (1) and (2) remain the same.

(3) A youth aggrieved by any adverse determination may request a fair hearing to be conducted as provided for in ARM ~~37.5.105~~ 37.5.103, 37.5.301, 37.5.304, 37.5.305, 37.5.307, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, ~~and 37.5.337~~, 37.5.503, and 37.5.505.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA  
IMP: 53-6-402, MCA

4. The department proposes to repeal the following rules:

37.87.1305 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: ELIGIBILITY FOR PROGRAM, is found on page 37-21389 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA  
IMP: 53-6-402, MCA

37.87.1306 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: SELECTION FOR PLACEMENT, is found on page 37-21390 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA  
IMP: 53-6-402, MCA

37.87.1307 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: LOSS OF A SERVICE AND DISENROLLMENT, is found on page 37-21391 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA  
IMP: 53-6-402, MCA



37.87.1321 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: THE PROVISION OF SERVICES, is found at page 37-21401 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA  
IMP: 53-6-402, MCA

37.87.1325 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: COST OF PLAN OF CARE, is found at page 37-21405 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA  
IMP: 53-6-402, MCA

37.87.1331 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: PROVIDER REQUIREMENTS, is found at page 37-21409 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA  
IMP: 53-6-402, MCA

##### 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing rule amendments to ARM 37.87.1303, 37.87.1333, and 37.87.1335 and to repeal ARM 37.87.1305, 37.87.1306, 37.87.1307, 37.87.1321, 37.87.1325, and 37.87.1331. The proposed changes to these rules are necessary to reflect the termination date of September 30, 2012 for the HCBS PRTF waiver authority. It is also necessary to reflect the federal authority for the opportunity to provide 1915(c) HCBS bridge waiver services as authorized by Section 6063, (b)(2) of the Deficit Reduction Act of 2005 in accordance with Section 1915(c) of the Social Security Act 42 U.S.C. 1396n(c).

There are limited alternatives the department has available. The department chose to apply for the new 1915(c) HCBS bridge waiver under the authority listed above to provide the continuation of home and community-based services for the youth enrolled on the last day of the HCBS PRTF waiver. CMS is allowing Montana the opportunity to continue to provide 1915(c) HCBS bridge waiver services only with respect to youth already enrolled in the waiver on the termination date. Montana is required to submit a new 1915(c) HCBS waiver application with an effective date of October 1, 2012. This new waiver will be called the "Bridge Waiver" for youth with serious emotional disturbance. The alternative would have been not to apply for the 1915(c) HCBS bridge waiver, which would be detrimental to those youth who have the opportunity to enroll into the 1915(c) HCBS bridge waiver.

The department will request federal approval to waive comparability. The services that were included in the HCBS PRTF waiver will be the services requested in the new bridge waiver.

The department is proposing to repeal ARM 37.87.1305, 37.87.1306, 37.87.1307, 37.87.1321, 37.87.1325, and 37.87.1331. Repealing these rules is necessary to reflect the termination date of September 30, 2012 for the HCBS PRTF waiver authority.

#### ARM 37.87.1333

The department is proposing to amend this rule to incorporate by reference the Home and Community-based Services Bridge Waiver Policy Manual to October 1, 2012. It is necessary to amend this rule to remove the reference to the Psychiatric Residential Treatment Facility Home and Community-Based Services Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual dated October 1, 2011 and replace the incorporation with the Home and Community-based Services Bridge Waiver Policy Manual to October 1, 2012.

#### Fiscal Impact

It is anticipated for Waiver Year One (10/1/12 – 9/30/13) the federal cost will be \$48,000 and the state cost will be \$25,000 for a total cost of \$73,000. It is anticipated for Waiver Year Two (10/1/13 – 9/30/14) the federal cost will be \$21,000 and the state cost will be \$11,000 for a total cost of \$33,000.

It is anticipated 85 youth will be enrolled into the Bridge Waiver on October 1, 2012. Per federal regulation, only those youth who were already enrolled in the HCBS PRTF waiver for youth with serious emotional disturbance on September 30, 2012 are eligible to be enrolled in the HCBS bridge waiver.

6. The department intends the proposed adoption of these new rules to be applied effective October 1, 2012.

7. 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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., August 23, 2012.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 7 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Cary B. Lund  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State July 16, 2012.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 42.26.310 relating to water's-	)	AMENDMENT
edge election	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 7, 2012, the department proposes to amend the above-stated rule.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on August 20, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5825; fax (406) 444-4375; e-mail canderson@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

42.26.310 DISREGARDING OR MODIFYING A WATER'S-EDGE ELECTION (1) through (4) remain the same.

(5) Limitations of net operating loss deductions of a water's-edge group are addressed in ~~ARM 42.26.805~~ ARM 42.23.805.

AUTH: 15-31-501, MCA

IMP: 15-31-301, 15-31-322, 15-31-326, 15-31-505, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.26.310, to correct an internal rule reference number that was incorrectly typed when the rule was previously amended on September 23, 2011.

4. Concerned persons may submit their data, views, or arguments in writing. Written data, views, or arguments may be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than 5:00 p.m., August 23, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing they must make written request

for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than 5:00 p.m., August 23, 2012.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 22, based on approximately 220 multistate corporation taxpayers, as of July 13, 2012.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. 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 person in 4 above, or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rulemaking Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State July 16, 2012

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

In the matter of the adoption of NEW ) CORRECTED NOTICE OF  
RULE I, II, and III regarding bodies of ) ADOPTION  
water identified as contaminated with )  
Eurasian watermilfoil )

TO: All Concerned Persons

1. On April 26, 2012, the Department Fish, Wildlife and Parks (department) published MAR Notice No. 12-376 pertaining to the public hearings on the proposed adoption of the above-stated rules at page 811 of the 2012 Montana Administrative Register, Issue Number 8. On July 12, 2012 the department published the notice of adoption at page 1347 of the 2012 Montana Administrative Register, Issue Number 13.

2. In response to comments the department revised NEW RULE II (12.5.702) to not allow either the commercial seining or the taking of bait animals for personal use from any contaminated waters listed in NEW RULE I (12.5.701). However, the word "taking" was not removed from the rule. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

12.5.702 RESTRICTIONS WITHIN IDENTIFIED CONTAMINATED BODIES OF WATER (1) The prohibitions of 80-7-1010, MCA apply to the bodies of water identified as contaminated in ARM 12.5.701 except:

(a) possession ~~and taking~~ of bait animals, dead or alive, is approved when allowed per fishing regulations;

(b) transportation of aquatic bait animals is approved from contaminated bodies of water in water from a noncontaminated source when allowed per fishing regulations; and

(c) transportation of live fish is approved from contaminated bodies of water in water from a noncontaminated source, when allowed per fishing regulations.

(2) Upon departure of a contaminated body of water all vessels and equipment, including bait buckets, must be free of Eurasian watermilfoil.

AUTH: 80-7-1007, MCA

IMP: 80-7-1010, MCA

/s/ Joe Maurier  
Joe Maurier, Director  
Department of Fish, Wildlife and Parks

/s/ Rebecca Jakes Dockter  
Rebecca Jakes Dockter  
Rule Reviewer

Certified to the Secretary of State July 16, 2012

BEFORE THE TRANSPORTATION COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	CORRECTED NOTICE OF
Rule I and amendment of ARM	)	ADOPTION AND AMENDMENT
18.6.202, 18.6.203, 18.6.204,	)	
18.6.205, 18.6.211, 18.6.213,	)	
18.6.215, 18.6.221, 18.6.231,	)	
18.6.240, 18.6.241, 18.6.244,	)	
18.6.245, 18.6.246, 18.6.247,	)	
18.6.251, and 18.6.262 pertaining to	)	
Outdoor Advertising	)	

TO: All Concerned Persons

1. On November 25, 2011 the Department of Transportation published MAR Notice No. 18-130 pertaining to the proposed adoption and amendment of the above-stated rules at page 2470 of the 2011 Montana Administrative Register, Issue Number 22. On January 26, 2012 the department published the notice of adoption and amendment at page 185 of the 2012 Montana Administrative Register, Issue Number 2.

2. The heading of the Notice of Proposed Adoption and Amendment as published in the 2011 MAR issue 22 and the heading of the Notice of Adoption and Amendment as published in the 2012 MAR issue 2 incorrectly read: "Before the Department of Transportation of the State of Montana." Outdoor Advertising is governed by the Transportation Commission of the State of Montana. Therefore, this Corrected Notice of Adoption and Amendment is being published to correct the titles of the Notice of Proposed Adoption and Amendment and Notice of Adoption and Amendment to read "Before the Transportation Commission of the State of Montana."

3. The replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2012.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

/s/ Kevin Howlett  
Kevin Howlett  
Chair  
Transportation Commission

Certified to the Secretary of State July 16, 2012.

BEFORE THE TRANSPORTATION COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 18.6.215 pertaining to Outdoor )  
Advertising fees )

TO: All Concerned Persons

1. On April 26, 2012 the Transportation Commission published MAR Notice No. 18-134 pertaining to the proposed amendment of the above-stated rule at page 816 of the 2012 Montana Administrative Register, Issue Number 8.

2. The commission has amended the above-stated rule as proposed.

3. The commission has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The heading of the Notice of Proposed Amendment as published in the MAR issue 8 incorrectly reads: "Before the Department of Transportation of the State of Montana." Outdoor Advertising is governed by the Transportation Commission of the State of Montana.

RESPONSE #1: The error in title has been corrected in the Notice of Amendment to read "Before the Transportation Commission of the State of Montana."

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

/s/ Kevin Howlett  
Kevin Howlett  
Chair  
Transportation Chair

Certified to the Secretary of State July 16, 2012.



BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.177.401 fees, 24.177.501	)	REPEAL
examinations, 24.177.504 temporary	)	
licenses, 24.177.507 licensure of out-	)	
of-state applicants, 24.177.510	)	
foreign-trained physical therapy	)	
applicants, 24.177.2105 continuing	)	
education, 24.177.2301	)	
unprofessional conduct, and the	)	
repeal of ARM 24.177.2405	)	
screening panel	)	

TO: All Concerned Persons

1. On May 10, 2012, the Board of Physical Therapy Examiners (board) published MAR notice no. 24-177-28 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 939 of the 2012 Montana Administrative Register, issue no. 9.

2. On May 31, 2012, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the June 8, 2012, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

ARM 24.177.501 and 24.177.507

COMMENT 1: One commenter agreed with the board's dissatisfaction with letters of good moral character received from friends, but disagrees that the application questions about criminal record or licensing jurisdiction discipline provide sufficient proof of good moral character. The commenter asked that the board delete the last sentence in the reason statement for both of these rule amendments.

RESPONSE 1: The board notes that the rules, and not the reasons, are proposed for amendment. Because good moral character means many things to different people, a criminal record or discipline by a licensing board may well show that moral character is flawed. The board notes that repeated DUIs, insurance fraud, sexual misconduct would all tend to be evidence of moral character.

ARM 24.177.504

COMMENT 2: One commenter supported allowing PTAs to practice on a temporary license for 120 days, and provided a current example of a qualified student who would suffer hardship if that person were not allowed to practice for this length of time while awaiting examination.

RESPONSE 2: The board appreciates all comments made during the rulemaking process.

ARM 24.177.2105

COMMENT 3: One commenter was in complete support of the changes and thanked the board for finally "seeing the light."

RESPONSE 3: The board appreciates all comments made during the rulemaking process.

COMMENT 4: One comment was received prior to the comment period, but the commenter requested that it be resubmitted as a public comment to be included in the public comment period. The commenter asked the board whether 20 hours of continuing education every two years was sufficient, noting that the Montana (Chapter of the) American Physical Therapy Association (MAPTA) had voted to endorse a requirement of 30 hours every two years to ensure continuing competency. This commenter also requested information about the percentage of licensees audited every year and the number of licensees delinquent in their CEUs.

RESPONSE 4: The board notes that the majority of licensees believe that 20 hours of continuing education is burdensome enough and that continuing education competency can be met without increasing CEUs to 30 hours. The board researched other states' continuing education requirements prior to amending the rule and determined that 20 hours is comparable to most of the other states. Board staff will provide the additional information that was requested.

COMMENT 5: A commenter asked that the Category A continuing education activities include courses approved by other states' physical therapy boards. The commenter recognized that the Montana board does not preapprove or approve courses, but noted that many states do, and believed it would be very restrictive not to allow state board and state association-approved courses.

RESPONSE 5: The board agrees with the commenter and is amending this rule accordingly.

4. The board has amended ARM 24.177.401, 24.177.501, 24.177.504, 24.177.507, 24.177.510, and 24.177.2301 exactly as proposed.

5. The board has repealed ARM 24.177.2405 exactly as proposed.

6. The board has amended ARM 24.177.2105 with the following changes, stricken matter interlined, new matter underlined:

24.177.2105 CONTINUING EDUCATION (1) through (4)(a)(i) remain as proposed.

(ii) a national or state medical, physical therapy, or healthcare board or association, or a component of that board or association; or

(iii) through (6) remain as proposed.

BOARD OF PHYSICAL THERAPY EXAMINERS  
PATTIE JO LANE, PT, CHAIRPERSON

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 16, 2012

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.71.404 pertaining to low )  
income weatherization assistance )  
program (LIWAP) )

TO: All Concerned Persons

1. On June 7, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-587 pertaining to the proposed amendment of the above-stated rule at page 1122 of the 2012 Montana Administrative Register, Issue Number 11.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. These rule amendments are effective August 1, 2012.

/s/ Barbara B. Hoffmann  
Rule Reviewer

/s/ Laurie G. Lamson for  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State July 16, 2012.

## **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.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government 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 and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration 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 P.O. 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 or Register)** is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

### **Use of the Administrative Rules of Montana (ARM):**

- |                  |   |
|------------------|---|
| Known<br>Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute          | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2012. This table includes those rules adopted during the period April 1, 2012, through June 30, 2012, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2012, 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 2012 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

### ADMINISTRATION, Department of, Title 2

- I-IV Financial Responsibility of Mortgage Loan Originators and Control Persons - Ultimate Equity Owners of Mortgage Entities, p. 2108, 183, 1253
- I-IX Bank Debt Cancellation Contracts - Debt Suspension Agreements, p. 1430, 2801
- I-IX Credit Union Debt Cancellation Contract - Debt Suspension Agreements, p. 1842, 2816
- 2.59.104 Semiannual Assessment for Banks, p. 460, 883
- 2.59.1701 and other rules - Mortgage Services, p. 778

#### (Public Employees' Retirement Board)

- 2.43.1306 Actuarial Rates, Assumptions, and Methods for Valuation Purposes - Actuarial Equivalence for the Board-Administered Defined Benefit Retirement Systems, p. 2196, 2800
- 2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 2332, 2799

#### (State Compensation Insurance Fund)

- 2.55.320 and other rule - Classifications of Employments - Construction Industry Premium Credit Program, p. 2580, 394



AGRICULTURE, Department of, Title 4

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in June 2012 appear. Vacancies scheduled to appear from August 1, 2012, through October 31, 2012, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 2012.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

## BOARD AND COUNCIL APPOINTEES FROM JUNE, 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Massage Therapists</b> (Labor and Industry)			
Mr. Stacy Baird East Helena Qualifications (if required): massage therapist	Governor	reappointed	6/6/2012 5/6/2016
Ms. Carole Love Billings Qualifications (if required): public representative	Governor	Bowman	6/6/2012 5/6/2013
<b>Board of Sanitarians</b> (Labor and Industry)			
Mr. Rodney Fink Columbus Qualifications (if required): sanitarian	Governor	reappointed	6/15/2012 7/1/2015
Mr. Donald E. Pizzini Great Falls Qualifications (if required): public representative	Governor	reappointed	6/15/2012 7/1/2014
<b>Commission on Practice of the Supreme Court</b> (Supreme Court)			
Ms. Jean Faure Great Falls Qualifications (if required): none specified	elected	reappointed	6/19/2012 6/19/2016
<b>Montana Grass Conservation Commission</b> (Natural Resources & Conservation)			
Mr. Bill Kennedy Ekalaka Qualifications (if required): grazing district director	Governor	Self	6/15/2012 1/1/2015

**BOARD AND COUNCIL APPOINTEES FROM JUNE, 2012**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Grass Conservation Commission</b> (Natural Resources & Conservation) cont.			
Mr. Jeff Willmore Roy	Governor	Teigan	6/15/2012 1/1/2014
Qualifications (if required): grazing district preference holder			
Mr. Alvin Windy Boy Sr. Box Elder	Governor	reappointed	6/15/2012 1/1/2015
Qualifications (if required): public representative			
<b>Montana Heritage Preservation and Development Commission</b> (Commerce)			
Ms. Barbie Durham Cameron	Governor	reappointed	6/6/2012 5/23/2015
Qualifications (if required): business person			
<b>Public Employees Retirement Board</b> (Administration)			
Ms. Melissa Strecker Missoula	Governor	reappointed	6/19/2012 4/1/2017
Qualifications (if required): public employee/active in retirement system			
<b>State Tax Appeals Board</b> (Administration)			
Ms. Kelly Flaherty-Settle Canyon Creek	Governor	Kaercher	6/18/2012 1/1/2013
Qualifications (if required): public representative			
<b>Statewide Independent Living Council</b> (Public Health and Human Services)			
Ms. Michelle Williamson Pablo	Governor	Dupree	6/15/2012 12/1/2012
Qualifications (if required): public representative/disabilities community			

**BOARD AND COUNCIL APPOINTEES FROM JUNE, 2012**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Teachers' Retirement Board</b> (Administration) Ms. Kari Peiffer Kalispell Qualifications (if required): teacher/member	Governor	reappointed	6/6/2012 7/1/2017
Ms. Marilyn J. Ryan Missoula Qualifications (if required): retired teacher	Governor	Laylman	6/6/2012 7/1/2015

**VACANCIES ON BOARDS AND COUNCILS -- August 1, 2012 through October 31, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Alternative Health Care Board</b> (Labor and Industry)                      Dr. Margaret Beeson, Billings                      Qualifications (if required): naturopathic physician</p>	Governor	9/1/2012
<p><b>Board of Barbers and Cosmetologists</b> (Labor and Industry)                      Ms. Maggie Burton-Blize, Missoula                      Qualifications (if required): barber</p>	Governor	10/1/2012
<p>Ms. Angela Printz, Livingston                      Qualifications (if required): cosmetologist</p>	Governor	10/1/2012
<p>Mr. Thayne Orton, Florence                      Qualifications (if required): barber</p>	Governor	10/1/2012
<p><b>Board of Medical Examiners</b> (Labor and Industry)                      Dr. Dean Center, Bozeman                      Qualifications (if required): doctor of medicine</p>	Governor	9/1/2012
<p><b>Board of Outfitters</b> (Labor and Industry)                      Mr. Shawn McNeely, Bozeman                      Qualifications (if required): fishing outfitter</p>	Governor	10/1/2012
<p>Mr. Lee Kinsey, Livingston                      Qualifications (if required): fishing outfitter</p>	Governor	10/1/2012
<p><b>Board of Private Security</b> (Labor and Industry)                      Sheriff Leo C. Dutton, Helena                      Qualifications (if required): county sheriff's office representative</p>	Governor	8/1/2012

**VACANCIES ON BOARDS AND COUNCILS -- August 1, 2012 through October 31, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Private Security</b> (Labor and Industry) cont.            Mr. Daniel Taylor, Glasgow            Qualifications (if required): contract security company representative</p>	Governor	8/1/2012
<p>Mr. Scott Swingley, Helena            Qualifications (if required): licensed private investigator</p>	Governor	8/1/2012
<p>Mr. Ronald C. Young, Joliet            Qualifications (if required): city police department representative</p>	Governor	8/1/2012
<p>Captain George Skuletich, Butte            Qualifications (if required): city police department representative</p>	Governor	8/1/2012
<p><b>Board of Psychologists</b> (Labor and Industry)            Representative Linda L. Holden, Valier            Qualifications (if required): public representative</p>	Governor	9/1/2012
<p><b>Board of Veterans' Affairs</b> (Military Affairs)            Mr. Bruce W. Knutson, Helena            Qualifications (if required): representative of Senator Jon Tester</p>	Governor	8/1/2012
<p>Mr. Donald Kettner, Glendive            Qualifications (if required): veteran and resident of Region 5</p>	Governor	8/1/2012
<p>Mr. Mike Waite, Helena            Qualifications (if required): representative of Congressman Dennis Rehberg</p>	Governor	8/1/2012
<p>Mr. Don Slavens, Billings            Qualifications (if required): representative of Senator Max Baucus</p>	Governor	8/1/2012

**VACANCIES ON BOARDS AND COUNCILS -- August 1, 2012 through October 31, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Veterans' Affairs</b> (Military Affairs) cont.            Mr. Matthew McCombs, Helena            Qualifications (if required): representative of Senator Jon Tester</p>	Governor	8/1/2012
<p><b>Burial Preservation Board</b> (Administration)            Mr. Conrad Fisher, Busby            Qualifications (if required): representative of the Northern Cheyenne Tribe</p>	Governor	8/22/2012
<p>Mr. William Big Day, Crow Agency            Qualifications (if required): representative of the Crow Tribe</p>	Governor	8/22/2012
<p>Mr. Morris Belgard, Hays            Qualifications (if required): representative of the Fort Belknap Indian Community</p>	Governor	8/22/2012
<p>Mr. Videl Stump Sr., Box Elder            Qualifications (if required): representative of the Chippewa Cree Tribe</p>	Governor	8/22/2012
<p>Dr. Ruthann Knudson, Great Falls            Qualifications (if required): representative of the archaeological association</p>	Governor	8/22/2012
<p>Mr. Terry Bullis, Hardin            Qualifications (if required): representative of the coroner's association</p>	Governor	8/22/2012
<p>Mr. Henry Anderson, Helena            Qualifications (if required): representative of the Little Shell Tribe</p>	Governor	8/22/2012
<p><b>Historical Preservation Review Board</b> (Historical Society)            Mr. Timothy Light, Kalispell            Qualifications (if required): archaeologist</p>	Governor	10/1/2012



**VACANCIES ON BOARDS AND COUNCILS -- August 1, 2012 through October 31, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Historical Preservation Review Board</b> (Historical Society) cont.		
Ms. Lesley M. Gilmore, Gallatin Gateway Qualifications (if required): historic architect	Governor	10/1/2012
Mr. Jon Axline, Helena Qualifications (if required): architectural historian	Governor	10/1/2012
<b>Low Income Energy Programs Policy Advisory Council</b> (Public Health and Human Services)		
Mr. Hank Hudson, Helena Qualifications (if required): none specified	Director	9/2/2012
Mr. Michael Vogel, Bozeman Qualifications (if required): none specified	Director	9/2/2012
Mr. Phil Cooke, Helena Qualifications (if required): none specified	Director	9/2/2012
Ms. Lesa Evers, Helena Qualifications (if required): none specified	Director	9/2/2012
<b>Montana Wheat and Barley Committee</b> (Agriculture)		
Mr. Buzz Mattelin, Culbertson Qualifications (if required): wheat and/or barley producer in District 1	Governor	8/20/2012
Mr. Melvin Goffena, Wilsall Qualifications (if required): wheat and/or barley producer in District 6	Governor	8/20/2012

**VACANCIES ON BOARDS AND COUNCILS -- August 1, 2012 through October 31, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Montana Wheat and Barley Committee</b> (Agriculture) cont.            Mr. Bruce Myllymaki, Stanford            Qualifications (if required): wheat and/or barley producer in District 5</p>	Governor	8/20/2012
<p><b>Small Business Compliance Assistance Advisory Council</b> (Environmental Quality)            Mr. Charles Homer, Helena            Qualifications (if required): representative of the Department of Environmental Quality</p>	Director	9/29/2012
<p><b>Vocational Rehabilitation Council</b> (Public Health and Human Services)            Mr. Dale Mahugh, Butte            Qualifications (if required): business representative</p>	Governor	10/1/2012
<p>Ms. Char Harasymczuk, Billings            Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2012
<p>Ms. Christina Mattlin, Clancy            Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2012
<p>Ms. Andrea Falcon, Kalispell            Qualifications (if required): business representative</p>	Governor	10/1/2012
<p>Mr. Quentin Schroeter, Helena            Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2012
<p>Ms. Mona Amundson, Glasgow            Qualifications (if required): business representative</p>	Governor	10/1/2012
<p>Ms. Rosalie Hollimon, Great Falls            Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2012

**VACANCIES ON BOARDS AND COUNCILS -- August 1, 2012 through October 31, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Water and Waste Water Operators' Advisory Council</b> (Environmental Quality)		
Mr. Tony Porrazzo, Polson Qualifications (if required): water treatment plant operator	Governor	10/16/2012
Mr. Andrew Loudermilk, Kalispell Qualifications (if required): water treatment plant operator	Governor	10/16/2012