

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 8.94.3814, pertaining to ) PROPOSED AMENDMENT  
governing the submission and review )  
of applications for funding under the )  
Treasure State Endowment Program )  
(TSEP) )

TO: All Concerned Persons

1. On June 26, 2013, at 2:30 p.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., June 20, 2013, to advise us of the nature of the accommodation that you need. Please contact Becky Anseth, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2865; TDD (406) 841-2702; facsimile (406) 841-2771; or e-mail to banseth@mt.gov.

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

8.94.3814 INCORPORATION BY REFERENCE OF RULES FOR THE  
ADMINISTRATION OF TREASURE STATE ENDOWMENT GRANTS

(1) The Department of Commerce adopts and incorporates by reference the ~~2011~~ 2013 Montana Treasure State Endowment Program Project Administration Manual, published by it as rules for the administration of TSEP grants.

(2) and (3) remain the same.

AUTH: 90-6-710, MCA

IMP: 90-6-710, MCA

REASON: It is reasonably necessary to amend this rule to update the administration manual to reflect the new 2015 biennium legislation awarding TSEP grants.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; by facsimile to (406) 841-2771, or e-mail to banseth@mt.gov, and must be received no later than 5:00 p.m., July 5, 2013.

5. Becky Anseth, TSEP Program Manager, has been designated to preside over and conduct this hearing.

6. 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 may 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 Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to [bmartello@mt.gov](mailto:bmartello@mt.gov), or by completing a request form at any rules hearing held by the department.

7. 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.

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

/s/ G. Martin Tuttle  
G. MARTIN TUTTLE  
Rule Reviewer

/s/ Meg O'Leary  
MEG O'LEARY  
Director  
Department of Commerce

Certified to the Secretary of State May 23, 2013.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULES I through IV pertaining to the ) PROPOSED ADOPTION  
implementation of the Montana Indian )  
Language Preservation Pilot Program )

TO: All Concerned Persons

1. On June 26, 2013, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., June 21, 2013, to advise us of the nature of the accommodation that you need. Please contact Heather Sobrepena-George, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2775; TDD (406) 841-2731; facsimile (406) 841-2702; or e-mail to hsobrepena@mt.gov.

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

NEW RULE I PERFORMANCE AND OUTPUT STANDARDS (1) The Montana Indian Language Preservation Pilot Program requires the following output and performance standards:

- (a) development of audio and visual recordings;
- (b) creation of dictionaries and other reference materials, including audio, visual, electronic, or written dictionaries;
- (c) creation and publication of curricula, which may include electronic curricula;
- (d) language classes;
- (e) language immersion camps;
- (f) storytelling; and
- (g) publication of literature.

(2) Each local program advisory board shall work with college tribal language instructors and class 7 American Indian language and culture specialist licensure evaluators to develop and adopt measurable and specific outcome requirements for their respective language preservation programs.

AUTH: Title 20, chapter 9, MCA  
IMP: Title 20, chapter 9, MCA

REASON: The proposed rule is necessary to implement and administer the Montana Indian Language Preservation Pilot Project program and to create performance and output standards as required by Chapter 410, Section 1, Laws of 2013.

NEW RULE II DISTRIBUTION OF \$2 MILLION IN MONTANA INDIAN LANGUAGE PRESERVATION PILOT PROGRAM GRANT FUNDS FOR THE 2014-2015 BIENNIUM (1) \$2 million in grant funds will be available starting July 1, 2013, for a total of \$2 million for the biennium.

(2) Any unencumbered funds will revert to the general fund on June 30, 2015 with all tangible goods produced as a result of the funding due to the Montana Historical Society by September 15, 2014.

(3) Distribution of funds will be governed by individual contracts entered between the State Tribal Economic Development Commission and each tribal government, including the Little Shell Chippewa Tribe:

(a) The individual contracts will specify the method of distribution from the department to the tribal government;

(b) Program objectives and requirements must be incorporated into the overall contract between each tribal government and the State Tribal Economic Development Commission.

(4) Tribal governments shall distribute awarded funds through subrecipient agreements.

AUTH: Title 20, chapter 9, MCA

IMP: Title 20, chapter 9, MCA

REASON: It is necessary for the State Tribal Economic Development Commission which is attached to the Montana Department of Commerce for administrative purposes to define a method of distributing grant funds to tribal governments for language preservation projects as required by Chapter 410, Section 1, Laws of 2013.

NEW RULE III ACCOUNTING OF FUNDS IN THE MONTANA INDIAN LANGUAGE PRESERVATION PILOT PROGRAM (1) Recipients shall use an accounting system that conforms to Generally Accepted Accounting Principles (GAAP), in accordance with 18-4-311, MCA.

AUTH: Title 20, chapter 9, MCA

IMP: Title 20, chapter 9, MCA

REASON: The proposed rule is necessary to ensure the use of adequate accounting systems in a standard format and to promote the efficient and transparent use of public funding.

NEW RULE IV USE OF FUNDS IN THE MONTANA INDIAN LANGUAGE PRESERVATION PILOT PROGRAM (1) Use of funds in the Montana Indian Language Preservation Pilot Program will be determined in coordination with collaborating partners no later than September 30, 2013.

AUTH: Title 20, chapter 9, MCA  
IMP: Title 20, chapter 9, MCA

REASON: It is reasonably necessary for the State Tribal Economic Development Commission and collaborating partners to determine the uses of funds that preserve and protect Montana tribal languages.

4. Concerned persons may submit their data, views, or arguments in written form or a request for opportunity to submit data, views, or arguments in oral form to: Heather Sobrepena-George, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana, 59620-0505; telephone (406) 841-2775; TDD (406) 841-2731; facsimile (406) 841-2702; or e-mail to [hsobrepena@mt.gov](mailto:hsobrepena@mt.gov), and must be received no later than 5:00 p.m., June 5, 2013.

5. Ty L. Jones, Legal Counsel, Department of Commerce, has been designated to preside over and conduct this hearing.

6. 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 may 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 Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to [bmartello@mt.gov](mailto:bmartello@mt.gov), or by completing a request form at any rules hearing held by the department.

7. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Jonathan Windy Boy was contacted on May 17, 2013 by e-mail at [sentatorjwb@gmail.com](mailto:sentatorjwb@gmail.com).



/s/ G. Martin Tuttle  
G. MARTIN TUTTLE  
Rule Reviewer

/s/ Meg O'Leary  
MEG O'LEARY  
Director  
Department of Commerce

Certified to the Secretary of State May 23, 2013.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	AMENDED NOTICE OF
17.30.702, 17.36.345, 17.36.914, and )	PROPOSED AMENDMENT AND
17.38.101 pertaining to Department )	EXTENSION OF COMMENT
Circular DEQ-4 )	PERIOD
)	
)	(WATER QUALITY)
)	(SUBDIVISIONS/ON-SITE
)	SUBSURFACE WASTEWATER
)	TREATMENT)
)	(PUBLIC WATER AND SEWAGE
)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On December 20, 2012, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-343 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2529, 2012 Montana Administrative Register, issue number 24. On January 31, 2013, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-343 extending the comment period because the original comment period spanned the Christmas and New Year holidays, at page 90, 2013 Montana Administrative Register, issue number 2.

2. A comment was received requesting that the board and the department make available to the public those rules and other publications that are adopted by reference in Department Circular DEQ-4, Montana Standards for Subsurface Wastewater Treatment Systems (DEQ-4). In response, the board and the department are proposing to amend DEQ-4 by providing: (a) the specific version of each standard to be adopted; (b) a link to the web site of the source of each rule or publication proposed to be adopted by reference, as required by 2-4-307(3)(c), MCA; (c) the address of the department, where the rule or publication may be viewed; and (d) language to clarify that these standards are adopted by reference. This information may be viewed at <http://deq.mt.gov/wqinfo/sub/deq-4tables.mcp>. The board and department are proposing to add a new Appendix F, which would list the design standards referenced in DEQ-4 and links to the web sites where the standards may be obtained. No further amendments to DEQ-4 are being proposed in this notice based on comments received during the initial Notice of Public Hearing or the Notice of Extension of Comment Period. Comments already received will be addressed during the adoption process of this rulemaking and, therefore, resubmission of those comments is not necessary.

The board and the department are, therefore, amending the notice and extending the comment period to allow the public more time to provide comment regarding the industry standards adopted by reference.

3. The board and department are not intending to hold a second public hearing regarding the proposed amendments, unless requests are received on the proposed action from either 10% 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, and then 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 40 based on the 396 individuals on the Subdivision Program's interested persons mailing list. The written request for hearing must be received no later than July 5, 2013.

4. Written data, views, or arguments may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than July 5, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The board and department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., June 20, 2013, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North  
JOHN F. NORTH  
Rule Reviewer

BY: /s/ Robin Shropshire  
ROBIN SHROPSHIRE  
Chairman

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

BY: /s/ Tracy Stone-Manning  
TRACY STONE-MANNING, Director

Certified to the Secretary of State, May 28, 2013.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
23.12.401, 23.12.402, 23.12.408,	)	AMENDMENT AND REPEAL
23.12.430, 23.12.501, 23.12.502,	)	
23.12.601 and 23.12.605, concerning	)	NO PUBLIC HEARING
fire safety, fireworks, and Uniform Fire	)	CONTEMPLATED
Code; and the repeal of ARM	)	
23.12.420, concerning equipment	)	
approval	)	

TO: All Concerned Persons

1. On July 8, 2013, the Department of Justice proposes to amend and repeal 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 5:00 p.m. on June 18, 2013, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail [kstelling@mt.gov](mailto:kstelling@mt.gov).

3. The rules as proposed to be amended are as follows:

23.12.401 DEFINITIONS Unless the context requires otherwise, the following definitions apply to the rules in ARM Title 23, chapter 12:

(1) through (7) remain the same.

(8) "Explosive" means a chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, and display fireworks. See Chapter 2, Section 202 - General Definitions 1.3G (Class B, Special), International Fire Code, ~~2009~~ 2012 Edition.

(9) remains the same.

(10) "Fire code" means the edition of the International Code Council, International Fire Code (IFC), ~~2009~~ 2012 Edition, currently adopted by the FPIS, and any additions thereto currently adopted by the FPIS.

(11) through (27) remain the same.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

RATIONALE AND JUSTIFICATION: The department has adopted the

International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC.

23.12.402 ENFORCEMENT OF FIRE PREVENTION AND INVESTIGATION SECTION RULES (1) and (2) remain the same.

(3) Each official responsible for investigating fires shall file with the state fire marshal a fire incident report on each and every fire occurring within the official's jurisdiction. Fire incident reports must be submitted on forms downloaded, or filled out online, from the National Fire Incident Reporting System (NFIRS) at [www.nfirs.fema.gov](http://www.nfirs.fema.gov). The state fire marshal may notify a fire department of incomplete or invalid reports for resubmission with complete information.

AUTH: 50-3-102(2), MCA

IMP: 50-3-102, 50-61-102, 50-63-203(1), MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify that forms can be either downloaded or completed online.

23.12.408 CERTIFICATE OF APPROVAL FOR COMMUNITY HOMES

(1) through (4) remain the same.

(5) For purposes of determining compliance with the fire code, all community homes shall comply with the ~~2009~~ IFC as adopted, and with all other rules promulgated by the FPIS.

(6) and (7) remain the same.

AUTH: 50-3-102, MCA

IMP: 53-20-307, 52-4-204, MCA

RATIONALE AND JUSTIFICATION: The department has adopted the International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC.

23.12.430 SERVICE TAGS (1) through (5) remain the same.

(6) Stored pressure extinguisher tags must follow the guidelines listed in the National Fire Protection Association (NFPA) 10, ~~2007~~ 2010 Edition, and include the information listed in (3).

(7) remains the same.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to conform to the 2010 Edition of the NFPA 10, which replaced the 2007 Edition.

23.12.501 RETAIL FIREWORKS SALE (1) through (12) remain the same.

(13) All fireworks stands shall be subject to inspection by the chief, or the

chief's representative, in accordance with the 2009 IFC. Violations shall be handled in accordance with 50-61-115, MCA. If immediate action is necessary to safeguard life and property, the chief may issue an order to remedy in accordance with 50-62-102, MCA.

AUTH: 50-3-102(3), MCA  
IMP: 50-3-102(3), MCA

RATIONALE AND JUSTIFICATION: The department has adopted the International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC.

23.12.502 FIREWORKS REPACKAGING, STORAGE, AND SHIPPING

(1) All buildings where fireworks are stored, opened for repacking, repackaged, or prepared for shipping shall conform to the provisions of the 2009 2012 International Building Code and the 2009 IFC. Where those codes are silent, NFPA pamphlet 1124 (2006 Edition) shall be applied.

(2) remains the same.

AUTH: 50-3-102(3), MCA  
IMP: 50-3-102(3), MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to update references to the current editions of the codes.

23.12.601 ADOPTION OF THE INTERNATIONAL FIRE CODE (~~2009~~ 2012 EDITION) (1) The FPIS adopts and incorporates by reference the International Fire Code ~~2009 Edition (2009 IFC)~~ 2012 Edition (2012 IFC) with the additions and amendments enumerated in this subchapter. Copies of the ~~2009 IFC~~ and related materials may be obtained from the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

(2) remains the same.

(3) This rule establishes a minimum fire protection code to be used in conjunction with the building code. Nothing in this rule prohibits any local government unit from adopting those portions of the IFC that are not adopted by the FPIS or standards which are more restrictive than the ~~2009 IFC~~.

(4) through (5)(b) remain the same.

(c) The Permit sections of the following chapters are not adopted: 3, 5, 6, 9, 11, ~~and 15-44~~ 20-35, and 50-67.

(d) and (e) remain the same.

(f) 202 General Definitions. ~~GOVERNMENTAL FIRE AGENCIES FIRE DEPARTMENT - Governmental Fire agencies~~. Any fire department organized under Montana law under the jurisdiction of a city, county, state, fire district, or fire service area.

(g) and (h) remain the same.

(i) 405.2 Delete section and replace with: "Frequency. Required emergency evacuation drills shall be held at the intervals specified in 20-1-402, MCA. There

must be at least eight emergency evacuation/disaster drills held a year in a school. At least four of the drills must be fire exit drills. Drills must be held at different hours of the day or evening to avoid distinction between drills and actual disasters." In Table 405.2, delete the word "monthly" from the Frequency column, applicable to Group E, and replace with "20-1-402, MCA."

(i) remains the same, but is renumbered (j).

(j) remains the same, but is renumbered (k).

(k) remains the same, but is renumbered (l).

~~(l) (m) 906.1 Portable fire extinguishers~~ extinguishers - (1) Exception - is not adopted.

~~(m) (n) 1008.1.9.4 Door operations.~~ Adopted adding the sentence "Exit doors shall not be locked, chained, bolted, barred, latched, or otherwise rendered unusable. All locking devices shall be of an approved type."

~~(n) (o) 2206.7.9 2306.7.9 through 2306.7.9.2.4 Vapor-recovery and vapor-processing systems -including all subsections,~~ are not adopted.

~~(o) (p) 2403.2 3103.2 Approval required.~~ Adopted, but deleting "a permit and."

~~(p) (q) 3301.1.3 5601.1.3 Fireworks~~ - is not adopted.

~~(q) (r) 3301.2.2 5601.2.2 through 3301.2.4.2 5601.2.4.2~~ are not adopted.

(s) 5606.5.2.1 Smokeless propellant - is not adopted. The maximum quantities, storage conditions, and fire-protection requirements for gunpowder and ammunition stored in a building shall be as follows: Smokeless powder and small arms primers or percussion caps shall be in accordance with 50-61-120 and 50-61-121, MCA.

~~(r) (t) 3306.5.2.3 5606.5.2.3 Small arms primers~~ - is not adopted. See 50-61-120 and 50-61-121, MCA.

~~(s) 3306.6 The maximum quantities, storage conditions, and fire-protection requirements for gunpowder and ammunition stored in a building shall be as follows: Smokeless powder and small arms primers or percussion caps shall be in accordance with 50-61-120 and 50-61-121, MCA.~~

~~(t) (u) 3308 5608 Fireworks Display~~ - is not adopted. See Title 50, chapter 37, MCA.

~~(u) (v) 3406.1 5706.1 General~~ - In paragraph numbered 1, delete "farms and."

~~(v) (w) 3406.2 5706.2~~ Delete "farms and" from the heading, and "on farms and rural areas and" from the paragraph.

~~(w) (x) 3406.2.5.1(2) 5706.2.5.1(2)~~ is not adopted.

~~(x) Appendix B - Fire Flows~~ - is adopted.

~~(y) Appendix C - Hydrants~~ - is adopted.

~~(z) Appendix D - Access Roads: Sections 101-105.3~~ - is adopted.

~~(aa) Appendix I - Fire Protection Systems Non-Compliant Conditions~~ - is adopted.

(y) Appendix A - Board of Appeals - is not adopted.

(z) Appendix D - Access Roads - sections D105.4 through D108 are not adopted.

(aa) Appendix E - Hazard Categories - is not adopted.

(ab) Appendix F - Hazard Ranking - is not adopted.

- (ac) Appendix G - Cryogenic Fluids - is not adopted.
- (ad) Appendix H - Hazardous Materials - is not adopted.
- (ae) Appendix J - Building Information Sign - is not adopted.

AUTH: 50-3-102, MCA  
IMP: 50-3-103, MCA

RATIONALE AND JUSTIFICATION: The department has adopted the International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC, add Montana-specific rules, and to promote consistency within the rules.

23.12.605 PROCESSES (1) Chapters ~~22, 33, and 34~~ 23, 56, and 57 of the IFC are adopted with the following ~~exceptions~~ additions and amendments:

(a) ~~2204.5~~ 2304.5 Fuel Dispensing in Rural Areas. For public automotive motor vehicle fuel-dispensing stations located in rural areas:

(b) ~~2204.5.1~~ 2304.5.1 General. When performed in the operation of a farm or ranch, or when approved by the chief, liquids used as fuels may be transferred from tank vehicles into the tanks of motor vehicles or special equipment, provided:

1. through 8. remain the same.

(c) ~~2204.5.2~~ 2304.5.2 Motor Vehicle Fuel Dispensing Stations. Motor vehicle fuel dispensing stations are not permitted at bulk plants which are not located in a rural area with the following exceptions:

(i) and (ii) remain the same.

(d) ~~2204.5.3~~ 2304.5.3 Rural Bulk Plants. Bulk plants located inside the districts defined as "rural" are permitted to incorporate motor vehicle fuel-dispensing stations. The motor vehicle fuel-dispensing stations shall be separated by a fence or similar barrier from the area in which bulk operations are conducted.

(e) ~~2204.6~~ 2304.6 Rural Motor Vehicle Fuel-Dispensing Stations.

(f) ~~2204.6.1~~ 2304.6.1 Plans submittal. Plans shall be submitted in accordance with these rules for public automotive motor vehicle fuel-dispensing stations located in rural areas.

(g) ~~2204.6.2~~ 2304.6.2 Plans and specifications submittal. Plans and specifications shall be submitted for review and approval prior to the installation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area. A site plan shall be submitted which illustrates the location of flammable liquid, LP-gas, or CNG storage vessels, and their spatial relation to each other, property lines, and building openings. Both aboveground and underground storage vessels shall be shown on plans. For each type of station, plans and specifications shall include, but not be limited to, the following:

1. remains the same.

(h) ~~2204.6.3~~ 2304.6.3 Plan Approval. Prior to the proposed renovation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area, an applicant shall obtain a letter of approval from the local fire official responsible for fire protection. This letter and two sets of plans, blueprints, or drawings shall be submitted to the FPIS for examination and approval.

(i) ~~2204.7~~ 2304.7 Locations of aboveground tanks. Aboveground storage



tanks are not prohibited for private use on farms and ranches. EXCEPTION: Pursuant to 50-3-103(6), MCA, there are no requirements regarding diked areas or heat-actuated or other shut-off devices for storage tanks containing Class I or Class II liquids.

(j) ~~2204.7.1~~ 2304.7.1 Disposal of Tanks. Tanks shall be disposed of in accordance with the following:

1. through 3. remain the same.

(k) ~~2206.2.1.1~~ 2306.2.1.1 Inventory Control is amended by adding the following exceptions to the existing section: EXCEPTION: Other leak detection methods as approved by the Montana Department of Environmental Quality UST program are acceptable; and Unsupervised Dispensing requires a sign to provide an "EMERGENCY" telephone number.

~~(l) 3306.6 Hazardous Materials. The maximum quantities, storage conditions, and fire protection requirements for gunpowder and ammunition stored in a building shall be as follows:~~

~~1. Smokeless powder shall be stored in accordance with 50-61-120 and 50-61-121, MCA.~~

~~2. Small arms primers or percussion caps shall be stored in accordance with 50-61-120 and 50-61-121, MCA.~~

AUTH: 50-3-102, MCA

IMP: 50-3-102, 50-3-103, MCA

RATIONALE AND JUSTIFICATION: The department has adopted the International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC, add Montana-specific rules, and to promote consistency within the rules.

4. The department proposes to repeal the following rule:

23.12.420 APPROVAL OF EQUIPMENT, found at page 23-431 of the Administrative Rules of Montana.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

RATIONALE AND JUSTIFICATION: This repeal is reasonably necessary to reflect the nature of the department's duties. The department is no longer in charge of inspecting and licensing fire extinguishers. The Department of Labor now handles these duties. Thus, the department has no need for this rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Matt Cochenour, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail mcochenour2@mt.gov, and must be received no later than 5:00 p.m. on July 5, 2013.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Matt Cochenour at the above address no later than July 5, 2013.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is at least 25.

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 5 above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/agooffice/administrative-rules>, and mailed to the rule reviewer.

9. An electronic copy of this notice is available through the Department of Justice web site at <http://doj.mt.gov/agooffice/administrative-rules>. 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. In addition, although the department strives 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, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

By: /s/ Tim Fox  
Tim Fox  
Attorney General  
Department of Justice

/s/ Matt Cochenour  
Matt Cochenour  
Rule Reviewer

Certified to the Secretary of State May 28, 2013.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 23.16.1822 and 23.16.1823 ) AMENDMENT  
pertaining to an increase in video )  
gambling machine permit fees ) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On July 26, 2013, the Montana Department of Justice proposes to amend the above-stated rules.

2. The Montana Department of Justice 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 Justice no later than 5:00 p.m. on June 20, 2013, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Administrator, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

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

23.16.1822 PERMIT NOT TRANSFERABLE (1) remains the same.

(2) When, during the first quarter of the permit year, a gambling operation changes ownership and the application for a new gambling operator license has been approved, the permit fee for the machines on the premises is \$25 per machine if the ~~\$220~~ \$240 licensing fee has already been paid for that machine for the permit year.

(3) through (9) remain the same.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-603, 23-5-611, 23-5-612, 23-5-621, ~~23-5-637~~, MCA

23.16.1823 PRORATION OF PERMIT FEE – RENEWAL (1) The department shall prorate the permit fee for a video gambling machine on a quarterly basis according to the following schedule:

Effective Dates For Permit	Permit Fee
July 1 through June 30	<del>\$220</del> <u>\$240</u>
October 1 through June 30	<del>\$165</del> <u>\$180</u>
January 1 through June 30	<del>\$110</del> <u>\$120</u>
April 1 through June 30	<del>\$55</del> <u>\$60</u>

(2) through (6) remain the same.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-602, 23-5-611, 23-5-612, 23-5-621, MCA

RATIONALE AND JUSTIFICATION: These rules are being amended because the 2013 Legislature passed HB141, Section 4 of which becomes effective July 1, 2013, which increases video gambling machine permit fees. In FY 2012, 19,294 video gambling machine permits were issued [16,328 permits first quarter + 1,084 permits second quarter + 827 permits third quarter + 1,055 permits fourth quarter = 19,294]. The change in the permit fee will result in an increase of approximately \$356,365 in the gambling state special revenue account collections for FY 2014 [(16,328 permits x \$20 increase) + (1,084 permits x \$15 increase) + (827 permits x \$10 increase) + (1,055 permits x \$5 increase) = \$356,365]. It is assumed all permitting levels will remain constant after FY 2014.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments in writing to: Rick Ask, Administrator, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail [rask@mt.gov](mailto:rask@mt.gov), and must be received no later than 5:00 p.m., July 5, 2013.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Rick Ask at the above address no later than 5:00 p.m., July 5, 2013.

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 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 hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 162 persons based on 1621 licensed operators and route operators in Montana (fiscal year 2013).

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 paragraph 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 department's web site at [https://doj.mt.gov/agooffice/administrative rules](https://doj.mt.gov/agooffice/administrative%20rules). The department 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 department 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 requirement of 2-4-302, MCA, does apply and has been fulfilled. The primary bill sponsor was initially contacted on May 16, 2013 by e-mail and U.S. Postal mail.

/s/ Tim Fox  
TIM FOX  
Attorney General, Department of Justice

/s/ Matt Cochenour  
MATT COCHENOUR  
Rule Reviewer

Certified to the Secretary of State May 28, 2013.

BEFORE THE STATE ELECTRICAL BOARD  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.141.405 fee schedule ) PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 27, 2013, at 2:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Electrical Board (board) no later than 5:00 p.m., on June 21, 2013, to advise us of the nature of the accommodation that you need. Please contact Jason Steffins, State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; dlibsdele@mt.gov (board e-mail).

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

24.141.405 FEE SCHEDULE (1) through (4) remain the same.

- (a) Contractor ~~275~~ 300
- (b) Master ~~135~~ 200
- (c) Journeyman ~~135~~ 200
- (d) Residential ~~135~~ 200
- (5) through (11) remain the same.

AUTH: 37-1-134, 37-68-201, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-68-304, 37-68-310, 37-68-311, 37-68-312, 37-68-313, MCA

REASON: The board determined it is reasonably necessary to increase renewal fees as proposed to comply with 37-1-134, MCA, and keep the board's fees commensurate with associated costs. The board's licensee base has slowly decreased from a peak in 2007. In 2011, the board responded to comments made during rulemaking and raised fees by only one third of the fee increase as originally configured and proposed by the department. In providing administrative services to the board, the department has determined that unless the renewal fees are increased as proposed now, the board will have a shortage of operating funds by November 2013. The proposed fee increases will affect approximately 1,590

renewing licensees and result in approximately \$90,750 in additional annual revenue.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdele@mt.gov](mailto:dlibsdele@mt.gov), and must be received no later than 5:00 p.m., July 8, 2013.

5. An electronic copy of this Notice of Public Hearing is available at [www.electrician.mt.gov](http://www.electrician.mt.gov) (department and board's web site). 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. In addition, although the department strives 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, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board 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 the person who wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to [dlibsdele@mt.gov](mailto:dlibsdele@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

8. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

STATE ELECTRICAL BOARD  
RICK HUTCHINSON, MASTER  
ELECTRICIAN, PRESIDENT

/s/ DARCEE L. MOE  
Darcee L. Moe  
Rule Reviewer

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 28, 2013

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS  
AND AUDIOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of )  
ARM 24.222.701 supervisor )  
responsibility, 24.222.702 schedule of )  
supervision, 24.222.703 functions of )  
aides or assistants, 24.222.2301 )  
unprofessional conduct, and the )  
adoption of NEW RULE I functions of )  
audiology aides or assistants )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
ADOPTION

TO: All Concerned Persons

1. On June 27, 2013, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Speech-Language Pathologists and Audiologists (board) no later than 5:00 p.m., on June 21, 2013, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; dlilbdsplp@mt.gov (board e-mail).

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

24.222.701 SUPERVISOR RESPONSIBILITY (1) ~~All persons working in the capacity of a speech-language or audiology aide or assistant must be working directly under the supervision of a fully licensed speech-language pathologist or audiologist.~~ Speech-language aides and assistants must work directly under the supervision of a Montana licensed speech-language pathologist. Audiology aides and assistants must work directly under the supervision of a Montana licensed audiologist. All supervisors must have been fully licensed in Montana or another state or jurisdiction for at least one full year to qualify as a supervisor.

(2) This supervisor assumes full legal and ethical responsibility for the tasks performed by the aide or assistant and for any services or related interactions with a client.

(2) and (3) remain the same, but are renumbered (3) and (4).



(5) Speech-language pathology and audiology supervisors shall be required to provide ten percent of direct services to each individual client.

(6) The board or board designee shall review and approve all registration forms that indicate the supervision of three or more speech-language pathology or audiology aides or assistants.

(7) The supervisor is responsible for keeping records to demonstrate compliance with the supervision schedule and must provide proof of compliance to the board upon request.

(8) The supervisor must complete and submit to the board a midyear verification form by February 25 of each year, on the supervisor's renewal form, to indicate continuing compliance with the schedule of supervision previously filed under ARM 24.222.702(1).

AUTH: 37-1-131, 37-15-202, MCA  
IMP: 37-15-102, 37-15-313, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the requirements for supervisors of aides and assistants as set forth in 37-15-102, MCA. In response to questions and to align with the statutory requirements, the board is amending this rule to specify that audiology aides must be directly supervised by Montana licensed audiologists, and speech-language pathology aides must be supervised by Montana licensed speech-language pathologists.

The board is also specifying that supervisors must have at least one year of licensure in their field prior to serving as a supervisor. The board concluded that this requirement is necessary to ensure that supervisors have a minimal level of practical experience prior to supervising unlicensed aides and assistants.

The board is adding (5) to require that all supervisors provide a minimum of ten percent of direct services to each client. The board believes it is crucial to quality client services and public safety to ensure that each client receives at least this minimum amount of care directly from a licensed provider.

The board is adding (6) through (8) to incorporate requirements previously found in ARM 24.222.702, as they are more properly included with supervisor duties rather than supervision schedule requirements.

24.222.702 SCHEDULE OF SUPERVISION - CONTENTS (1) For monitoring purposes, the supervisor must complete an aide registration form supplied by the board, including a schedule of supervision. This must include an acceptable schedule of supervision. The board or board designee shall review and approve all schedules of supervision.

(2) remains the same.

(a) aide or assistant I shall be supervised on-site a minimum of ~~40~~ ten percent of total client contact time. At the discretion of the supervising speech-language pathologist, the on-site supervision requirement may be reduced to ~~2~~ two percent after the first year of supervision.

(i) remains the same.

(b) aide or assistant II shall be supervised on-site ~~40~~ ten percent of client contact time; and

(c) and (3) remain the same.

(a) audiology aides or assistants shall be supervised under a proposed plan to be submitted by the supervisor with the aide application, ~~but which shall include that includes~~ a minimum of ~~40~~ ten percent of client contact time; and

(b) remains the same.

(4) The schedule of supervision must be signed by the proposed supervisor and by a responsible representative of the employing agency and submitted to the board on or before October 31. ~~The schedule must be reviewed and approved by the board annually by October 31.~~ Aides employed after October 31 shall work no more than 30 calendar days without registering with the board.

~~(5) Each supervisor must also submit a supervisor summary form, as prescribed by the board, which lists the following:~~

~~(a) each speech or audiology aide or assistant;~~

~~(b) number of hours of supervision; and~~

~~(c) other information as required by the board.~~

~~(d) The board will review all supervisor summary forms indicating the supervision of three or more speech or audiology aides or assistants.~~

~~(6) The supervisor must complete and submit to the board a midyear verification form by February 25 of each year, on the supervisor's renewal form, to indicate continuing compliance with the schedule of supervision previously filed under (1).~~

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-15-102, 37-15-313, MCA

REASON: The board is reorganizing this rule to address licensee confusion by more clearly setting forth the requirements for aide/assistant supervision schedules, including the October 31 statutory deadline for schedule submission.

The board is eliminating the requirement for submission of a separate supervisor summary in (5) and (6) since the information is now contained within the initial and annual aid registration form materials.

24.222.703 FUNCTIONS OF SPEECH-LANGUAGE PATHOLOGY AIDES OR ASSISTANTS (1) The supervisor is obligated to ensure that the aide assist only in the provision of those services, which are within the abilities of the aide as determined by the training and experience of that aide or assistant. The supervisor is directly responsible for all decisions affecting the client in all phases of diagnosis, treatment, and disposition. It is recognized that administrative responsibilities for an aide or assistant may be with other than the professional supervisor and those responsibilities are not included in this regulation.

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

(ii) conduct speech-language evaluations, and write evaluation reports, which have been properly signed off by the supervisor;

(iii) through (v) remain the same.

(vi) write or plan individual or group therapy/rehabilitation plans, which have been properly signed off by the supervisor;

(vii) through (b)(i) remain the same.

(ii) conduct speech-language evaluations under the supervision of the supervisor, and write evaluation reports, which have been properly signed off by the supervisor;

(iii) remains the same.

(iv) interpret data or clinical experience into diagnostic statements of clinical management policies, with the supervisor present, or available, for the purpose of immediate communication and consultation;

(v) write or plan individual or group therapy/rehabilitation plans with supervisor review and sign off; and

(vi) and (c) remain the same.

(i) perform tasks identified by the speech-language pathology supervisor according to the therapy plan, which do not violate any provision of Title 37, chapter 15, MCA, or these rules; and

(ii) remains the same.

(3) Speech-language pathology aides or assistants shall comply with the following guidelines on functions, which are not allowed for the appropriate aide category:

(a) and (b) remain the same.

(i) transmit clinical information to anyone other than the professional directly supervising the aide or assistant; or

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

(iii) transmit clinical information, except to the professional directly supervising the aide or assistant;

(iv) and (v) remain the same.

(vi) attend child study or IEP meetings, except with the permission of the supervisor; or

(vii) through (4) remain the same.

~~(5) Audiology aides or assistants and industrial audiology aides or assistants shall comply with the supervision plan and functions submitted by the supervisor at the time of application, and with all other statutory or rule requirements.~~

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-15-102, 37-15-313, MCA

REASON: The board is amending the title of this rule to clarify that this rule addresses speech pathology aides and assistants only. The board is proposing New Rule I in this notice to separately address the functions of audiology aides and assistants. The board is incorporating the provisions of (5) into New Rule I.

24.222.2301 UNPROFESSIONAL CONDUCT (1) The board defines "unprofessional conduct" for licensees as follows:

(a) and (b) remain the same.

(c) accepting and performing occupational responsibilities, which the licensee knows or has reason to know that the licensee is not competent to perform;

(d) through (g) remain the same.

(h) failing to report the unsafe practice of speech-language pathology or audiology to the board, or to the appropriate facility; ~~or~~

(i) failing to report unlicensed practice of speech-language pathology or audiology to the board, or to the appropriate facility;

(j) allowing aides and assistants to perform functions not allowed under the board's rules; and

(k) failing to provide appropriate supervision to aides and assistants and services to clients.

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA

IMP: 37-1-131, 37-1-316, 37-15-202, MCA

**REASON:** The board has rules describing qualifications for supervisors, amount and type of supervision required, and both allowable and prohibited duties of aides and assistants. To ensure the board's ability to protect the public and discipline licensees who fail to follow the guidelines pertaining to aide/assistant supervision, the board is adding such conduct as unprofessional conduct.

4. The proposed new rule provides as follows:

**NEW RULE I FUNCTIONS OF AUDIOLOGY AIDES OR ASSISTANTS**

(1) The supervisor is obligated to ensure that the aide assist only in the provision of those services that are within the abilities of the aide as determined by the training and experience of that aide or assistant. The supervisor is directly responsible for all decisions affecting the client in all phases of diagnosis, treatment, and disposition. It is recognized that administrative responsibilities for an aide or assistant may be with other than the professional supervisor and those responsibilities are not included in this regulation.

(2) Audiology aides or assistants shall not perform any task without the expressed knowledge and approval of the supervising audiologist.

(3) All audiology aides or assistants shall be under appropriate supervision. Each aide or assistant shall comply with the following function guidelines:

(a) audiology aide or assistant may:

(i) greet, escort, and schedule patients;

(ii) package and mail earmold orders, device repairs, and factory returns;

(iii) perform inventories of equipment and supplies;

(iv) enter clinic supply orders;

(v) perform checks on hearing aids and other amplification devices;

(vi) clean hearing aids and other amplification devices;

(vii) perform troubleshooting and minor repairs to hearing aids, earmolds, and other amplification devices;

(viii) perform electroacoustic analysis of hearing aids and other amplification devices;

(ix) instruct patients in proper use and care of hearing aids and other amplification devices;

(x) demonstrate alerting and assistive listening devices;

(xi) instruct patients in proper ear hygiene;

(xii) assist audiologists in treatment programs;

(xiii) assist audiologists with setup and technical tasks;

- (xiv) prepare materials for ear impressions;
  - (xv) maintain and restock test and treatment rooms;
  - (xvi) perform equipment maintenance and biological checks;
  - (xvii) conduct but not interpret hearing and tympanometric screening for children aged three and older and adults;
  - (xviii) conduct otoacoustic emission screening;
  - (xix) perform nondiagnostic otoscopy;
  - (xx) perform, but not interpret, audiologic and vestibular tests;
  - (xxi) assist audiologists in hearing testing of pediatric patients;
  - (xxii) perform pure-tone hearing screening;
  - (xxiii) perform universal newborn hearing screening tests;
  - (xxiv) perform infection control duties within the clinic/service; and
  - (xxv) assist patients in completing case history or other relevant forms.
- (4) Audiology aides or assistants shall comply with the following guidelines on functions that are not allowed:
- (a) audiology aide or assistant may not:
    - (i) determine case selection or evaluation protocols;
    - (ii) interpret observations or data into diagnostic statements of clinical management strategies or procedures;
    - (iii) participate in team or case conferences, or any interdisciplinary team, without the presence of the supervising audiologist or an audiologist designated by the supervising audiologist;
    - (iv) write, develop, or modify a patient's individualized treatment plan;
    - (v) assist with patients without following the treatment plan prepared by the audiologist or without proper supervision;
    - (vi) compose or sign any formal documents (e.g., treatment plans, reimbursement forms, or reports); progress notes written by audiology assistants may be reviewed and cosigned by the supervising audiologist, subject to local facility policy;
    - (vii) transmit clinical information either orally or in writing to anyone, including the patient, without the approval of the supervising audiologist;
    - (viii) select patients for treatment services or discharge patients from treatment services;
    - (ix) disclose clinical or confidential information either orally or in writing to anyone other than the supervising audiologist;
    - (x) counsel or consult with the patient, family, or others regarding the patient status or service, or make referrals for additional services;
    - (xi) refer to themselves either orally or in writing with a title other than one determined by the supervising audiologist;
    - (xii) make ear impressions;
    - (xiii) fit hearing aids or other amplification devices; or
    - (xiv) map cochlear implants.
- (5) Audiology aides or assistants and industrial audiology aides or assistants shall comply with the supervision plan and functions submitted by the supervisor at the time of application, and with all other statutory or rule requirements.

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-15-102, 37-15-313, MCA

REASON: The board is proposing New Rule I to clearly and specifically set forth the allowable and prohibited functions of audiology aides and assistants in a separate rule so aides and licensees can guide their actions accordingly. The board has already set forth the functions for speech-language pathology aides and assistants in ARM 24.222.703.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdsplp@mt.gov](mailto:dlibsdsplp@mt.gov), and must be received no later than 5:00 p.m., July 8, 2013.

6. An electronic copy of this Notice of Public Hearing is available at [www.slpaud.mt.gov](http://www.slpaud.mt.gov) (department and board's web site). 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. In addition, although the department strives 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, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board 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 the person who wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdsplp@mt.gov](mailto:dlibsdsplp@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

9. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
LYNN HARRIS, CHAIRPERSON

/s/ DARCEE L. MOE  
Darcee L. Moe  
Rule Reviewer

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 28, 2013

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

To: All Concerned Persons

1. On July 15, 2013 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 June 26, 2013, 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 test services and procedures available at through the Montana Department of Livestock ~~v~~Veterinary ~~e~~Diagnostic ~~l~~Laboratory (laboratory MVDL), and the associated fees charged for each of those services, and/or procedures:

(a) Acceptance of specimens for diagnostic testing signifies contractual agreement between MVDL and our client.

(b) All submitted specimens become the property of MVDL.

(c) Submitted specimens may be subjected to additional testing as determined by state or federal animal or foreign animal disease surveillance mandates at no additional expense to our clients.

~~(1) (2)~~ (2) Abortion studies, livestock ~~(use abortion kits, instructions and SV43 form provided):~~

(a) histopathology and aerobic, brucella, campylobacter, trichomonas cultures and darkfield examination	\$40.00 <u>\$50.00</u>
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~~(2) (3)~~ (3) Bacteriology ~~(specify culture site/specimen, use SV43 form):~~

~~(a) aerobic culture (refrigerated specimen/ culturette):~~

(i) identify one isolate	\$14.00 <u>\$15.00</u>
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(ii) additional isolates	each \$5.00 <u>\$6.00 each</u>
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~~(b) anaerobic culture; (facultative; use anaerobic culturette)~~

(i) <u>one</u>	<u>\$15.00</u> <u>\$18.00</u>
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(ii) <u>additional</u>		\$6.00
(c) <u>antibiotic sensitivity (per isolate)</u>		<del>\$7.00</del> <u>10.00</u>
(d) <u>Campylobacter (livestock reproductive disease)</u>		<del>\$11.00</del> <u>\$12.00</u>
(i) <u>preputial wash, fetal membranes, fetal abomasal fluid; campy transport media required</u>		contact lab
(e) <u>Campylobacter (intestinal contents)</u>		\$11.00
(f) (e) <u>CEM contagious equine metritis (CEM) culture (talorellar equengenitales)</u>		contact lab
(g) (f) <u>chlamydial ELISA (moistened swab; fresh, affected tissue; placenta)</u>		<del>\$17.00</del> <u>\$20.00</u>
(h) (g) <u>clostridium FA (fresh, refrigerated tissue from affected site)</u>		<del>\$11.00</del> <u>\$12.00</u>
(i) <u>clostridium perfringens genotyping (fresh small intestinal contents; colony of isolate)</u>		cost of referral
(j) (h) <u>dermatophyte culture and PAS stain (skin scraping including hair)</u>		\$25.00
(k) (i) <u>direct microscopy</u>		<del>\$7.00</del> <u>\$8.00</u>
(l) (j) <u>fecal occult blood</u>	\$5.00 each or \$7.00	<u>\$8.00</u> minimum
(m) <u>listeria (environmental swabs)</u>		\$32.00
(n) <u>listeria culture</u>		contact lab
(o) (k) <u>mycoplasma culture (fresh tissue, milk or culturette) (spectation -referral)</u>		<del>\$13.00</del> <u>\$15.00</u>
(p) (l) <u>nondermatophyte fungal culture (fresh specimen)</u>		<del>\$20.00</del> <u>\$22.00</u>
(q) (m) <u>salmonella enteritis (environmental samples)</u>		<u>\$18.00</u> each/contact lab
(r) <u>special requests</u>		contact lab
(s) (n) <u>trichomonas foetus culture (call laboratory if arrival will be on a weekend [do not freeze], use SV69) preputial wash, uterine discharge, fetal abomasal fluid (in pouch):</u>		
(i) <u>1 to 100</u>		<del>\$5.50</del> <u>\$6.00</u>
(ii) <u>101 to 500</u>		<u>\$5.50</u>
(iii) <u>501 or more</u>		<u>\$5.00</u>
(3) (4) <u>Clinical Pathology (use form SV43R):</u>		
(a) <u>clinical profiles (1 cc serum, whole blood, slides):</u>		
(i) <u>small animal (SA) health screen (SA chem panel, CBC/differential, UA)</u>		<del>\$40.00</del> <u>\$44.00</u>
(ii) <u>SA clinical profile -(SA chem panel, CBC/differential)</u>		<del>\$30.00</del> <u>\$33.00</u>
(iii) <u>SA pre-anesthetic profile -(BUN, CRE, ALT, ALP, Glu, TP, CBC/differential)</u>		<del>\$22.00</del> <u>\$24.00</u>
(iv) <u>large animal (LA) health screen -(LA chem panel, CBC/differential, fibrinogen, UA)</u>		<del>\$40.00</del> <u>\$44.00</u>
(v) <u>LA clinical profile -(LA chem panel, CBC/differential, fibrinogen)</u>		<del>\$30.00</del> <u>\$33.00</u>
(vi) <u>LA pre-anesthetic profile -(BUN, GGT, AST, CK, CBC/differential, fibrinogen)</u>		<del>\$23.00</del>
(vii) (vi) <u>feline ADR profile -(SA chem panel, T4, CBC/differential, FeLV, FIV, FIA)</u>		<del>\$60.00</del> <u>\$66.00</u>
(viii) (vii) <u>equine fitness profile -(AST, GGT, TBili, CK, TP, ALB, Glob, Ca,</u>		

PO4, Na, K, CL, TCO2, CBC/differential, fibrinogen)	\$25.00	<u>\$32.00</u>
(b) mini-profiles (1 cc serum) <u>biochemistry panels:</u>		
(i) SA hepatic profile - (ALT, AST, ALP, GGT, TBili, DBili, TP, ALB, Glob, Chol, BUN, Glu) <u>panel</u>	\$15.00	<u>\$20.00</u>
(ii) SA renal profile - (BUN, CRE, TP, ALB, Glob, Ca, PO4, Na, K, CL TCO2) <u>panel</u>	\$15.00	<u>\$20.00</u>
(iii) LA hepatic profile - (GGT, AST, TBili, TP, ALB)		<u>\$11.00</u>
(iv) LA renal profile - (BUN, CRE, TP, ALB, Ca, PO4, Na, K, Cl)		<u>\$12.00</u>
(v) SA/LA animal gastrointestinal profile - (TP, ALB, Na, K, Cl)		<u>\$10.00</u>
(vi) exocrine pancreatic profile (BUN, Ca, TP, ALB, Glu, ALP, ALT, AST, Chol, Amylase)		<u>\$15.00</u>
(vii) (iii) canine endocrine profile - (Ca, PO4, TP, ALB, ALP, ALT, AST, Chol, T4, Na, K, CL Glu) <u>panel</u>	\$21.00	<u>\$23.00</u>
(viii) feline thyroid profile - (ALP, ALT, AST, T4, BUN, CRE, PO4)		<u>\$12.00</u>
(ix) (iv) electrolytes (Na, K, CL, TCO2) <u>panel</u>	\$8.00	<u>\$10.00</u>
(x) (v) LA electrolyte panel (Na, k, CL, TCO2, Ca, Mg, PO4) <u>expanded electrolyte panel</u>	\$12.00	<u>\$15.00</u>
(vi) feline geriatric panel		<u>\$14.00</u>
(e) <u>biochemical panels (1 cc serum):</u>		<u>\$22.00</u>
(i) (vii) SA chem panel (CK, AST, ALT, ALP, Glu, Chol, TP, Alb, Glob, Ca, PO4, BUN, creat, TBili, DBili, Na, K, Cl, CO2, Amylase)	\$22.00	<u>\$25.00</u>
(ii) (viii) LA chem panel (BUN, creat, TBili, DBili, Na, K, Cl, CO2, Mg)	\$22.00	<u>\$25.00</u>
(d) (c) <u>urine evaluation (5-10 cc urine):</u>		
(i) urinalysis - (chemical, specific gravity, sediment evaluation)	\$11.00	<u>\$12.00</u>
(ii) urinalysis with culture/sensitivity	\$30.00	<u>\$34.00</u>
(e) (d) Individual Biochemical Tests (1/2 cc serum, or 1 cc if combined with other tests) <u>endocrinology:</u>		
(i) canine thyroid panel (cTT4, cTSH, vFT4, TT3)	\$24.00	<u>\$28.00</u>
(ii) thyroid panel other than canine (TT4, vFT4, TT3)		
<u>feline &amp; equine</u>	\$19.00	<u>\$24.00</u>
(iii) canine total T4 (cTT4)	\$8.00	<u>\$10.00</u>
(iv) total T4 (TT4) feline & equine	\$8.00	<u>\$10.00</u>
(v) canine TSH (cTSH) canine specific	\$8.00	<u>\$10.00</u>
(vi) free T4 (Veterinary vFT4) canine, feline, equine	\$8.00	<u>\$10.00</u>
(vii) total T3 (TT3) canine, feline, equine	\$8.00	<u>\$10.00</u>
(viii) cortisol canine, feline, equine (serum only) single test		
for baseline per sample <u>studies</u>	\$13.00	<u>\$15.00 each</u>
(e) <u>other serum chemistry:</u>		
(ix) (i) bile acid	\$22.00 or 2 for \$32.00	<u>\$24.00 each</u>
(ii) bile acid (pre and post)		<u>\$34.00</u>
(x) (iii) phenobarbital	\$22.00	<u>\$24.00</u>
(xi) (iv) PLI (pancreatic-like lipase immunoreactivity) canine, feline 12-hour fasting		<u>\$22.50</u>
(xii) (v) miscellaneous individual biochemical tests	call for price	<u>contact lab</u>
(f) <u>Hematology (whole blood, slides):</u>		

(i) <del>SA/LA CBC (RBC, HGB, HCT, MCV, MCH, MCHC, CBC/differential platelet, plasma protein, reticulocyte if indicated, PP, hemotropic parasite screen) with differential</del>	<del>\$12.00</del>	<del>\$15.00</del>
(ii) <del>LA CBC (RBC, HGB, HCT, MCV, MCH, MCHC, WBC/differential platelet, plasma protein, reticulocyte if indicated, PP, hemotropic parasite screen, fibrinogen)</del>	<del>\$12.00</del>	
(iii) (ii) SA/LA CBC without differential	\$5.25	\$6.50
(iv) (iii) reticulocyte count	\$5.25	\$6.50
(v) (iv) hemotropic parasite screen	\$3.00	\$4.00
(vi) (v) fibrinogen	\$3.00	\$4.00
(vii) (vi) feline anemia panel -SA-CBC, FeLV, FIV, FIA	\$33.00	\$36.00
(g) Cytology:		
(i) solid tissue -FNA, Imprint, Smear	\$28.00	\$34.00
(ii) bone marrow cytology	\$32.00	\$40.00
(iii) fluid analysis -total cell count, TP, SG, cytology	\$28.00	\$36.00
(iv) fluid smear (cytology only)		\$24.00
(v) CSF analysis -SG, microprotein, cytospin, cytology		\$22.50
(vi) (iv) CSF analysis with microprotein referral	\$28.00	\$24.00 + plus referral
(h) Miscellaneous Ttests:		
(i) blood cross match -whole blood, serum; donor and recipient	\$12.00	\$15.00
(ii) buffy coat exam -whole blood	\$22.00	\$30.00
(iii) coagulation tests -PT, APTT, FBR, FDP panel	\$18.00 each	\$80.00
(iv) individual coagulation test		\$20.00
(iv) (v) canine 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) (5) Histology -10% formalin fixed tissue (use SV43 form):		
(a) routine H&E -charged as number of slides per biopsy submitted:		
(i) 1 to 3 slides	\$28.00	\$34.00
(ii) 4 to 6 slides	\$34.00	\$40.00
(iii) 7 to10 slides	\$40.00	\$46.00
(iv) 11 slides or more	\$45.00	\$52.00
(b) duplicate H&E (1 to 3)	\$10.00	\$17.00
(i) each additional slide		\$5.00
(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	minimum
(f) decalcification/keratin		\$8.00
(g) bulk research slide prep staining only	\$3.50 per slide +	\$22.00/hour
(5) (6) Milk Testing (use SV43 form):		
(a) remains the same.		
(b) antibiotic (charm testing, cost range for antibiotic tested)		\$12.00 to \$23.00
(c) remains the same.		

(d) coliform <u>count</u> ( <del>milk or water</del> )	\$5.00
(e) component ( <del>butterfat</del> )	\$1.00
(f) gerber ( <del>ice cream fat</del> )	\$3.00
(g) listeria culture – see Bacteriology section ( <u>up to 3 environmental swabs</u> )	\$32.00
(h) majonnier ( <del>cheese and cottage cheese fat</del> )	\$12.50
(i) pesticide (organophosphate and carbamates)	minimum charge \$24.00 <u>minimum</u>
(j) pesticide (chlorinated hydrocarbons)	minimum charge \$210.00 <u>minimum</u>
(k) phosphatase ( <del>pasteurization</del> )	\$6.00
(l) through (n) remain the same.	
(o) yeast and mold	<del>\$5.00</del> <u>\$5.50</u>
(p) laboratory certification review	contact lab
(q) organizational fee	minimum charge <del>\$40.00</del>
<del>(6) (7) Miscellaneous Tests and Special Requests (use SV43 form):</del>	
(a) bovine IgG1 (0.5 cc serum)	<del>\$12.00</del> <u>\$15.00</u>
(b) camelid IgG with total protein	contact lab <u>\$15.00</u>
(c) equine IgG1 (0.5 cc serum)	<del>\$12.50</del> <u>\$15.00</u>
(d) ocular nitrate (0.5 cc aqueous humor)	<del>\$12.00</del> <u>\$14.00</u>
(e) organization fee (submission abuse)	each <del>\$1.00</del> <u>\$60.00/hour</u>
(f) duplicate test result reporting (fax/mail/e-mail)	<del>\$2.00</del> <u>\$3.00</u>
(g) after hour fee (pathologist)	<del>\$50.00</del> <u>up to \$85.00</u>
(h) stat fee ( <del>defined as immediate testing required, clinical pathology only</del> )	call in advance \$15.00
(i) minimum laboratory fee	<del>\$7.00</del> <u>\$8.00</u>
(j) referral testing	<del>fees for referral lab testing fee + shipping cost plus \$7.00 and \$8.00 handling</del>
<del>(7) (8) 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):</del>	
(a) cattle and horses ( <del>routine</del> ):	
(i) fetus	<del>\$60.00</del> <u>\$70.00 + carcass disposal (cd)</u>
(ii) less than 150 lbs	<del>\$75.00</del> <u>\$85.00 + cd</u>
(iii) 150 to 500 lbs	<del>\$400.00</del> <u>\$110 + cd</u>
(iv) more than 500 lbs	<del>\$140.00</del> <u>\$150.00 + cd</u>
(b) <del>sheep and goats</del> <u>small ruminants</u> :	
(i) fetuses (same dam)	<del>\$60.00</del> <u>\$70.00 + cd</u>
(ii) up to 20 lbs	<del>\$60.00</del> <u>\$70.00 + cd</u>
(iii) more than 20 lbs	<del>\$75.00</del> <u>\$85.00 + cd</u>
(c) swine:	
(i) fetuses (same litter)	<del>\$60.00</del> <u>\$70 + cd</u>
(ii) less than 25 lbs	<del>\$60.00</del> <u>\$70 + cd</u>
(iii) 25 to 250 lbs	<del>\$75.00</del> <u>\$85.00 + cd</u>
(iv) more than 250 lbs	<del>\$100.00</del> <u>\$110 + cd</u>

- (d) dogs and cats \$100.00 \$110 + cd
- (e) other species minimum charge \$40.00 minimum
- (f) carcass disposal (incineration):
- (i) companion animals \$25.00 to \$85.00 \$100.00
- (ii) livestock \$20.00 \$25.00 per 100 wt.
- (g) and (h) remain the same.
- (i) spinal cord removal ± in addition to necropsy fee; \$45.00 to \$80.00
- (i) small animal \$50.00
- (ii) large animal \$100.00
- (j) transmissible encephalopathies:
  - (i) necropsies minimum charge \$125.00 minimum +cd
  - (ii) brain removal only minimum charge \$30.00 minimum + cd
  - (iii) IHC and /ELISA/WB testing fees for referral lab testing fee,  
± shipping cost and \$7.00 \$8.00 handling
- ~~(8)~~ (9) Livestock 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 \$95.00
- ~~(9)~~ (10) Parasitology (use SV43 form):
  - (a) adult parasite or arthropod identification (referral) \$25.00 \$27.00
  - (b) cryptosporidia exam (1 gm. feces) \$6.00 \$8.00 minimum
  - (c) dirofilaria immitis (heartworm) ELISA screening (1 cc serum) \$9.00
  - (d) with confirmation (1 cc serum) \$13.00 \$8.00
  - (e) fecal flotation (3 gm fresh feces) \$10.00
  - (f) giardia ELISA; feces \$25.00 \$28.00
  - (g) special parasite ID procedures Ccontact lab
- ~~(10)~~ (11) PCR Testing:
  - ~~(a)~~ (c) tritrichomonas foetus (call laboratory if arrival will be on a weekend [do not freeze] use SV69 obtained from Montana State Veterinarian, Helena) \$27.00/sample
  - (i) pooled (5 samples) \$50.00
  - (ii) retest in positive pools \$27.00/sample
  - ~~(b)~~ (a) BVD \$35.00 \$30.00
  - (c) remains the same but is renumbered (b).
  - (d) other PCR \$25.00 to \$50.00
- ~~(11)~~ (12) 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:
  - (a) FA examination (small animal) \$25.00 \$30.00
  - (b) FA examination (large animal) \$50.00 \$55.00
  - (c) carcass disposal (does not apply to except bats or small rodents) see Necropsy Carcass Disposal
- ~~(12)~~ (13) 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.
  - (a) anaplasmosis (eELISA; 0.5cc serum required) \$7.50 \$7.00

(b) avian influenza (AGID; 0.5cc serum):	
(i) through (iv) remain the same.	
(c) bluetongue (AGID; 0.5cc serum)	\$5.50 <u>\$6.00</u>
(d) bluetongue (eELISA; 0.5cc serum):	
<u>(i) 1 to 100</u>	\$8.25
<u>(ii) 101 to 500</u>	<u>\$6.00</u>
<u>(iii) 501 or more</u>	<u>\$3.50</u>
(e) bovine leukemia virus (ELISA; 1cc serum):	
<u>(i) 1 to 100</u>	\$6.50
<u>(ii) 101-500</u>	<u>\$5.50</u>
<u>(iii) 501 or more</u>	<u>\$3.50</u>
(f) bovine respiratory syncytial virus <u>BRSV</u> (SN; 1cc serum)	\$6.50
(g) bovine virus diarrhea type 1 and 2 <u>I and II</u> (SN; 1cc serum)	\$13.00
(h) bovine virus diarrhea (ELISA; 1cc serum or 1/2 sq. inch ear notch)	\$5.00
(i) <u>(h) calves under 3 months ear notch only - over 100 samples</u>	each \$4.00
<u>caprine progressive pneumonia:</u>	
<u>(i) AGID</u>	<u>\$6.00</u>
<u>(ii) ELISA</u>	<u>\$6.00</u>
(j) <u>(i) brucella abortus (1.5cc serum for series; no charge for slaughter samples):</u>	
(i) card, BAPA, FP or RAP	each \$1.50 <u>each</u>
(ii) CF, RAP, Rivanol, SPT, or STT	each \$2.50 <u>each</u>
<del>(k)</del> <u>(j) brucella ovis (ELISA; .5cc serum)</u>	\$7.50
<del>(l)</del> <u>(k) epizootic hemorrhagic disease (AGID; 0.5cc serum)</u>	\$10.00
<del>(m)</del> <u>(l) equine infectious anemia (AGID-[Goggins]; .5cc serum):</u>	
(i) 1 to 15 samples	each \$7.00 <u>each</u>
(ii) 16 to 50 samples	each \$5.50 <u>each</u>
(iii) <del>over 50 samples</del> <u>51 or more</u>	each \$4.50 <u>each</u>
<del>(n)</del> <u>(m) equine infectious anemia (eELISA; 0.5cc serum):</u>	
<u>(i) 1 to 15 samples</u>	\$12.50
<u>(ii) 16 to 50 samples</u>	<u>\$10.00</u>
<u>(iii) 51 or more</u>	<u>\$9.00</u>
<del>(o)</del> <u>(n) infectious bovine rhinotracheitis (SN; 1cc serum)</u>	\$6.50
<del>(p)</del> <u>(o) johne's ELISA [paratuberculosis] (ELISA; .05cc serum):</u>	
<u>(i) 1 to 100</u>	\$7.50
<u>(ii) 101 to 500</u>	<u>\$5.50</u>
<u>(iii) 501 or more</u>	<u>\$3.50</u>
<del>(q)</del> <u>(p) leptospirosis MAT (8 5 routine serovars - L aut, L bra, L can, L grp, L har, L ict, L pom, L tara) - MAT; 1cc serum:</u>	\$7.00 <u>\$10.00</u>
<u>(i) leptospirosis individual MAT</u>	<u>\$2.00 each serovar</u>
<del>(r)</del> <u>(q) ovine progressive pneumonia/caprine arthritis encephalitis:</u>	
(i) AGID	\$5.50 <u>\$6.00</u>
(ii) ELISA (0.5cc serum)	\$6.00
<del>(s)</del> <u>(r) parainfluenza-3 (HA; 1cc serum)</u>	\$5.00
<del>(t)</del> <u>(s) pseudorabies (ELISA; 1cc serum) gB-ELISA</u>	\$5.50
<del>(u)</del> <u>(t) salmonella pullorum (MAT; 0.5cc serum)</u>	\$4.50

- ~~(v)~~ (u) vesicular stomatitis (CF; 1cc serum) ~~(transport only; diagnostic)~~ contact lab -\$45.00
- ~~(w)~~ (v) vesicular stomatitis - New Jersey and Indiana (NJ, IN SN; 1cc serum) \$13.00
- ~~(x)~~ (w) west nile virus (IgM ELISA; 1cc serum): referral \$50.00
- (x) prices for large shipments (over 200) may be negotiated based on individual cost.
- ~~(i)~~ (i) May through October contact lab
- ~~(ii)~~ (ii) November through April referral
- ~~(13)~~ (14) Serology – small animal (use SV43 form):
- ~~(a)~~ (a) brucella canis (Ccard; 0.5cc serum) \$22.00 contact lab
- ~~(b)~~ (b) feline infectious peritonitis (ELISA; 0.5cc serum) \$25.00 \$27.00
- ~~(c)~~ (c) feline leukemia virus (ELISA; 0.5cc serum) \$15.00 \$17.00
- ~~(d)~~ (d) feline leukemia/feline immunodeficiency virus (ELISA; 0.5cc serum) \$25.00 \$27.00
- (14) remains the same but is renumbered (15).
- ~~(15)~~ (16) Virology (use SV43 form):
- (a) bovine leukemia virus ELISA:
- (i) 1 to 100 \$6.50
- (ii) 101 to 500 \$5.50
- (iii) 501 or more \$3.50
- ~~(a)~~ (b) bovine virus diarrhea (see above under serology - use SV2A serology form) ELISA:
- (i) 1 to 100 samples \$5.00 each
- (ii) 101 or more \$4.00 each
- ~~(b)~~ (c) canine parvovirus (ELISA; feces) \$20.00 \$24.00
- ~~(c)~~ (d) electron microscopy (where applicable) \$25.00 \$30.00
- ~~(d)~~ (e) fluorescent antibody testing BRSV, BVD, bovine coronavirus, EHV-1, IBR, leptospira, or PI-3 \$8.00/agent each
- (f) leptospirosis MAT \$10.00
- (i) 2 servars \$2.00
- (g) pseudorabies LA/bB ELISA \$5.50
- ~~(e)~~ (h) rotavirus (ELISA; feces) \$25.00
- ~~(f)~~ (i) virus isolation (livestock only) \$25.00/virus
- ~~(16)~~ (17) Miscellaneous charges/supplies:
- (a) culturette (3 swabs) \$3.50 \$3.00
- (b) remains the same.
- (c) handling fee \$7.00 plus \$8.00 + shipping
- (d) remains the same.
- (e) large shipper \$11.50 \$18.75
- (f) minimum fee \$7.00 \$8.00
- (g) remains the same.
- ~~(h)~~ (h) organizational fee (submission abuse) \$1.00 minimum \$60.00/hour minimum
- (i) referral testing referral lab testing cost plus fee + mailing costs and \$6.00 \$8.00 handling fee
- (j) and (k) remain the same.

(17) and (18) remain the same but are renumbered (18) and (19).

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., July 8, 2013.

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., July 8, 2013.

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 May 28, 2013.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.2.405, 32.18.107, and	)	AMENDMENT AND ADOPTION
32.18.110 and the adoption of NEW	)	
RULE I pertaining to Department of	)	NO PUBLIC HEARING
Livestock miscellaneous fees, change	)	CONTEMPLATED
in brand recording, recording and	)	
transferring of brands, and	)	
rerecording of brands	)	

To: All Concerned Persons

1. On July 15, 2013, the Department of Livestock proposes to amend and adopt the above-stated rules.

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, June 26, 2013 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 rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

32.2.405 DEPARTMENT OF LIVESTOCK MISCELLANEOUS FEES

- (1) brand book CD \$15.00
- (2) brand book - data download (~~limited counties~~) ~~\$15.00~~ fee commensurate with cost
- (3) brand book - paper copy (per county) \$30.00
- (4) Certified copy of brand or mark record and duplicate certificate ~~\$5.00~~ \$10.00
- (5) through (9) remain the same.
  - (a) if more than ten animals of the same type are offered for inspection on the same day by the same owner, starting with the eleventh animal ~~4.00~~ 3.00 a head
- (10) remains the same.
- (11) Livestock inspection before removal from a county or before change of ownership as required by 81-3-205, MCA ~~50~~ 75 cents a head
  - (a) cow/calf pairs-spring going to pasture only ~~50~~ 75 cents per pair
- (12) Livestock inspection before being sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse as required by 81-3-205, MCA ~~50~~ 75 cents a head

(13) remains the same.

(14) Recording a new mark or brand, recording a mark or brand transfer, ~~or recording a mark or brand~~ as required by 81-3-107, MCA \$100.00 200.00

(a) rerecording a mark or brand as required by 81-3-107, MCA \$100.00

(15) Releasing an animal, except horses, mules, or asses, for purpose of removal from a licensed livestock market as required by 81-3-205, MCA 50 75 cents a head

(16) remains the same.

AUTH: 81-1-102, 81-22-102, MCA

IMP: 81-3-107, 81-3-205, 81-3-211, 81-8-304, 81-9-112, MCA

32.18.107 CHANGE IN BRAND RECORDING (1) Once the department has begun processing a recording of a brand, any changes proposed in the original application will be considered a new application and an additional recording fee of ~~\$400~~ 200 will be charged.

(a) the fee for rerecording of a brand or mark will remain at \$100.00.

AUTH: 81-1-102, MCA

IMP: 81-1-102, 81-3-107, MCA

32.18.110 RECORDING AND TRANSFERRING OF BRANDS (1) through (4) remain the same.

(a) fifty percent of the fee to record or transfer a brand is nonrefundable;

(b) through (5)(c)(ii) remain the same.

(iii) the applicant will have ten working days from the date of the offer letter to accept the offered available option.

(iv) If the applicant's reply is received after the ten working days deadline it will be considered a new application and must be rechecked for conflicts and will require an additional ~~\$400~~ \$200 fee.

(6) and (6)(a) remain the same.

(b) if the original owner of the transferring brand is deceased, a copy of the death certificate and ~~power of attorney or~~ appropriate documentation (i.e., personal representative or executor paperwork) must be provided to complete the transfer;

(c) through (d)(i) remain the same.

(ii) businesses and trusts must be registered with the Montana Secretary of State's office, ~~or provide proof of registry with another state;~~

(e) through (7) remain the same.

(8) Changes to image, species, or position require submission of a new brand application and an additional ~~\$400~~ \$200 fee.

(9) through (11) remain the same.

AUTH: 81-1-102, 81-3-104, 81-3-106, MCA

IMP: 81-1-102, MCA

4. The proposed new rule provides as follows:

NEW RULE I RERECORDING OF BRANDS (1) Rerecording of brands is required each tenth year after 1921 per 81-3-104, MCA.

(a) The rerecord fee is \$100 per brand.

(i) Brand owners requesting transfer while rerecording their brand shall be charged a separate \$100 for the completion of the transfer.

(b) Between January and June of each rerecord year the department shall publish a notice to the effect that the year is a rerecord year for brands, in a newspaper in each county.

(c) The department shall mail to each recorded brand holder a similar notice addressed to the person at the last address shown in department records.

(i) Said notice shall advise the brand holder of the rerecord deadline and that no brand continues of record unless rerecorded prior to designated deadline.

(ii) A brand not originally rerecorded with the department by 12 midnight on December 31 of the rerecord year is not of record in the department.

(d) A former brand holder who has failed to rerecord in the preceding rerecord year and has therefore dropped the brand must reapply and submit the \$200 application fee.

(i) Such reapplication must be treated as a new brand application and is subject to all applicable new brand restrictions.

AUTH: 81-1-102, MCA  
IMP: 81-1-102, 81-3-107, MCA

REASON: Fees must, by statute, be set at levels commensurate with the costs of performing duties as required. Brand enforcement duties and services were evaluated and fees were adjusted accordingly. The department must continue to provide much-utilized services to the Montana livestock industry in order to assure that the mission of the department continues. Rerecord processes and restrictions per 81-3-104 and 81-3-106, MCA were not in department administrative rule and have been included to provide clarification to potential and present brand holders. Rerecord, by statute, takes place every tenth year from 1921 with the brands division utilizing ten percent for each of the next ten years for division administration.

The fees charged by the department will potentially affect approximately 1,500 brand applicants and transfers. The cumulative amount of the brand application/transfer fee increase will be \$150,000 based on this number of requests. The inspection fee increase will apply to approximately 1,800,000 cattle inspections for a cumulative fee increase of \$450,000.

5. 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., July 8, 2013.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make 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., July 8, 2013.

7. 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 have been determined to be more than 25, based upon the population of the state.

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 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the 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 department intends to apply these rule amendments effective July 1, 2013.

11. 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 May 28, 2013.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 36.12.102, 36.12.103, ) PROPOSED AMENDMENT AND  
36.12.905, 36.12.1301, 36.12.1702, ) ADOPTION  
36.12.1902 and the adoption of New )  
Rule I regarding water right permitting )

To: All Concerned Persons

1. On June 26, 2013, 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 and adoption 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 June 24, 2013, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. 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:

36.12.102 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 (ae) remain the same.
- (af) Form No. 648, "Petition to Subordinate a State Water Reservation"; ~~and~~
- (ag) Form No. 649, "Surface Water Measurement Data Form";
- (ah) Form No. 650, "Temporary Lease of Appropriation Right";
- (ai) Form No. 651, "Petition to Modify a Permit or Change Authorization"; and
- (aj) Form No. 652, "Petition for Net Depletion Zone".

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-314, 85-2-316, 85-2-402, 85-2-424, 85-2-427, 85-20-401, MCA

REASONABLE NECESSITY: The 2013 Legislature passed several bills that impact water right permitting. The 2013 Legislature passed HB 37 which will be codified as 85-2-427, MCA (Chapter 236, 2013 Laws of Montana). HB 37 created a mechanism for water right holders to temporarily lease their water rights and provided for rulemaking by DNRC to implement the statute. Form No. 650 is needed to obtain the necessary information from water right owners who wish to temporarily lease their water right(s). HB 106 (Chapter 335, Session Laws of Montana) contains a provision for permittees or holders of a change authorization to petition the department to modify or remove a condition of approval or reduce the amount of the permit or change authorization. Form No. 651 is needed to obtain the necessary information from the permittees and holders of change authorizations who would like to modify their permit or change authorization. SB 346 creates a process to define a stream depletion zone through a petition to the department. Form No. 652 is needed to obtain the necessary information from the petitioners who wish to identify a stream depletion zone.

36.12.103 FORM AND SPECIAL FEES

- (1) remains the same.
- (2) The department will assess the following filing fees:
  - (a) through (w) remain the same.
  - (x) \$200 for Form No. 646, Geothermal Heating/Cooling Notice of Completion; and
  - (y) \$125 for Form No. 647, Notice of Completion of Emergency Fire Protection Development;
  - (z) \$200 for Form No. 650, Temporary Lease of Appropriation Right;
  - (aa) \$400 for Form No. 651, Petition to Modify a Permit or Change Authorization; and
  - (ab) \$750 for Form No. 652, Petition for Net Depletion Zone.
- (3) and (4) remain the same.

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-312, 85-2-314, 85-2-402, 85-2-427, 85-2-436, 85-20-401, MCA

REASONABLE NECESSITY: Pursuant to 85-2-113, MCA, the department may prescribe fees for public service provided under the Montana Water Use Act (Title 85, MCA). The department evaluated processing costs for the new forms to determine the fee amounts for forms 650, 651, and 652. The proposed fees are expected to generate the following revenues (for a total of \$14,050 per year) and affect the following numbers of individuals: (1) Form No. 650: \$10,000 per year, approximately 50 people; (2) Form No. 651: \$1600 per year, approximately four people; (3) Form No. 652: \$1500 per year, approximately two people.

36.12.905 HORSE CREEK CONTROLLED GROUNDWATER AREA

- (1) There is designated a Horse Creek Controlled Groundwater Area. Horse Creek Controlled Groundwater Area (HCCGWA) means an area of approximately

7995 acres or 12 square miles located southwest of Absarokee, Montana, and is generally described as follows:

(a) remains the same.

(b) the legal land descriptions are in the following table:

Quarter Section	Section	Township	Range
<del>S2 SESE</del>	33	3S	18E
<del>S2 S2</del>	36	3S	18E
All	10, 15, 16, 21	4S	18E
Portions of	9, 11, 12, 14, 20, 22, 29	4S	18E
<del>W2</del>	1	4S	18E
<del>E2, E2SW</del>	4	4S	18E
<del>NWNW</del>	23	4S	18E
<del>N2</del>	28	4S	18E
<del>NE, NW NW</del>	29	4S	18E
<del>S2 SW, SW SE</del>	36	4S	18E

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

(2) through (8) remain the same.

AUTH: 85-2-506, 85-2-508, MCA

IMP: 85-2-506, 85-2-508, MCA

REASONABLE NECESSITY: The table is redundant as it was generated based on information already contained in ARM 36.12.905(1) and (2). Additionally, the table contains errors that are inconsistent with (1) and (2).

36.12.1301 PERMIT AND CHANGE APPLICATION ACCEPTANCE

(1) remains the same.

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

(a) through (c) remain the same

(d) the applicant's signature;

~~(d)~~ a map conforming to standards identified in ARM 36.12.111; and

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

AUTH: 85-2-113, MCA

IMP: 85-2-310, MCA



REASONABLE NECESSITY: The amendments correct a typographical error which resulted in a nonexistent ARM citation; and, add the requirement of the applicant's signature, which is required in section (1) of the rule, but was inadvertently left out of section (2) when the rules were last amended in October 2012.

36.12.1702 PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE WATER AVAILABILITY

(1) and (2) remain the same.

(3) If actual flow rate and volume data are not available to estimate the ~~monthly~~ median of the mean monthly flows, then the department shall 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 (5).

(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) remains the same.

(b) If it is not possible to take measurements every month due to high spring flow conditions or other limiting conditions approved by the department, at least ~~one~~ three measurements must be collected during the ~~lowest flow period of proposed appropriation~~. These measurements should be taken during each of the following periods:

(i) high flow conditions (May through June for mountain streams and March through May for prairie streams);

(ii) following runoff and prior to baseflow (July through August for mountain streams and May through June for prairie streams); and

(iii) baseflow (August through March for all streams).

(c) remains the same.

(d) A request for a variance from measurement requirements may be submitted for nonperennial streams. The request must be submitted in writing to the appropriate regional office.

(5) The following reports may contain accepted methods for estimating surface water flow rates and volumes:

~~(a) "Methods for Estimating Monthly Stream Flow Characteristics at Ungaged Sites in Western Montana," USGS Open-File Report 89-40;~~

(b) remains the same but is renumbered (a);

~~(c) "Stream Flow Characteristics of Mountain Streams in Western Montana," USGS Open-File Report 84-244;~~

(d) through (g) remain the same but are renumbered (b) through (e).

~~(h)~~ (f) "Mean Annual Runoff and Peak Flow Estimates Based on Channel Geometry of Streams in Northeast and Western Montana," USGS Water Resources Investigation Report 83-4046; and

(ig) "Estimates of Mean Monthly Stream Flow for Selected Sites in the Musselshell River Basin, Montana," USGS Water Resources Investigation Report 89-4165;

(h) "Synthesis of Monthly and Annual Streamflow Records (Water Years 1950-2003) for Big Sandy, Clear, Peoples, and Beaver Creeks in the Milk River Basin, Montana", USGS SIR 2005-5216;

(i) "Synthesis of Monthly Natural Flows for Selected Sites in the Musselshell River Basin, Montana, Base Period 1929-89", USGS WRIR 96-4094;

(j) "Synthesis of Natural Flows at Selected Sites in and near the Milk River Basin, Montana, 1928-89", USGS WRIR 95-4022;

(k) "Estimates of Monthly Streamflow Characteristics and Dominant Discharge Hydrographs for Selected Sites in the Lower Missouri and Little Missouri Basins in Montana", USGS WRIR 94-4098;

(l) "Streamflow Characteristics of Small Tributaries of Rock Creek, Milk River Basin, Montana, Base Period Water Years 1983-87", USGS WRIR 89-4206;

(m) "Methods for Estimating Monthly Streamflow Characteristics at Ungaged Sites in Western Montana", USGS WSP 2365; and

(n) "Streamflow Characteristics of Mountain Streams in Western Montana", USGS WSP 2260.

(6) remains the same.

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

IMP: 85-2-302, MCA

REASONABLE NECESSITY: There was confusion by applicants what the department meant by lowest flow period, and in some cases resulted in a measurement of zero. One measurement, particularly if it is zero, is not sufficient data to use in conjunction with a measurement technique. Therefore, three new measurement criteria have been added during each of the three flow stages in order to obtain representative amounts for use with the estimation techniques. Also, the "Open File Reports" cited in (5)(a) and (c) are obsolete and have been replaced by USGS with the "Water Supply Papers" which are listed in (5)(h) through (n).

#### 36.12.1902 CHANGE APPLICATION - HISTORIC USE

(1) and (2) remain the same.

(3) The amount of water being changed for each water right cannot exceed or increase the flow rate historically diverted under the historic use, nor exceed or increase the historic volume consumptively used under the existing use.

(a) The department may use column H in Table 1 for proposed irrigation to compare the historic consumptive use (HCU) to the amount of water being changed.

(4) through (15) remain the same.

(16) To determine the historic consumptive volume using the table, the department will complete the following steps:

(a) and (b) remain the same.

(c) identify the county in which the irrigated acres are located to determine the county management factor percentage (column F or G);

(d) multiply the IWR estimate found in column D or E by the management factor percentage in column F or G. The result is the number of inches used per irrigated acre;

(e) through (g) remain the same.

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>Column H</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 (pre-July 1, 1973 HCU)</b>	<b>Management Factor Percentage 1973 – 2006 (post-July 1, 1973 HCU)</b>	<b>Management Factor Percentage 1997 – 2006 (proposed use)</b>
Beaverhead	Dillon	5239	18.34	20.74	63.7%	<u>82.8%</u>	<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>78.7%</u>	<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>63.6%</u>	<u>66.0%</u>
	Harlem	2362	21.62	24.27			
Broadwater	Townsend	3840	19.42	21.88	69.2%	<u>79.5%</u>	<u>87.1%</u>
	Trident	4040	20.64	23.31			
Carbon	Joliet	3776	22.41	25.12	58.3%	<u>66.8%</u>	<u>70.8%</u>
	Red Lodge	5500	15.57	18.41			
Carter	Ekalaka	3425	20.13	23.14	38.4%	<u>54.7%</u>	<u>54.1%</u>
	Ridgeway	3320	20.28	23.01			
Cascade	Cascade 20	4600	14.12	16.63	57.3%	<u>70.0%</u>	<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>64.9%</u>	<u>77.9%</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>72.0%</u>	<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>63.6%</u>	<u>72.0%</u>
Deer Lodge	No weather station				See appropriate adjacent county		
Fallon	Plevna	2780	22.48	25.34	47.6%	<u>47.8%</u>	<u>47.6%</u>

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 – 1973 (pre-July 1, 1973 HCU)	Management Factor Percentage 1973 – 2006 (post-July 1, 1973 HCU)	Management Factor Percentage 1997 – 2006 (proposed use)
Fergus	Denton	3620	15.39	18.12	48.8%	<u>65.8%</u>	<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>94.5%</u>	<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>92.1%</u>	<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>50.6%</u>	<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>73.6%</u>	<u>73.9%</u>
	Cut Bank	3855	16.01	18.60			
	Del Bonita	4340	14.61	17.30			
	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>65.5%</u>	<u>64.6%</u>
Granite	Philipsburg Ranger Station	5270	12.90	15.26	86.5%	<u>87.4%</u>	<u>96.6%</u>
Hill	Fort Assiniboine	2613	22.42	25.20	54.1%	<u>59.8%</u>	<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>77.9%</u>	<u>81.1%</u>
Judith Basin	Moccasin Exp Station	4243	16.17	19.06	49.3%	<u>68.0%</u>	<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>69.2%</u>	<u>68.7%</u>
	Polson	2949	20.46	23.23			
	Polson Kerr Dam	2730	21.37	24.08			

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 – 1973 (pre-July 1, 1973 HCU)	Management Factor Percentage 1973 – 2006 (post-July 1, 1973 HCU)	Management Factor Percentage 1997 – 2006 (proposed use)
	St Ignatius	2940	19.53	22.33			
Lewis & Clark	Augusta	4070	17.51	20.13	60.1%	79.0%	79.7%
	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%	65.7%	63.9%
	Joplin	3300	19.01	21.40			
	Tiber Dam	2850	22.98	25.46			
Lincoln	Eureka Ranger Station	2532	20.63	23.26	47.1%	56.3%	58.8%
	Fortine	3000	16.09	18.69			
	Libby Ranger Station	2096	21.20	23.71			
	Libby	3600	11.06	13.36			
	Troy	1950	19.90	22.68			
Madison	Alder	5800	14.33	16.75	65.2%	79.0%	83.3%
	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%	55.0%	60.6%
	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%	70.4%	78.3%
	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%	63.3%	63.6%
	Superior	2710	21.94	24.54			
Missoula	Lindbergh Lake	4320	14.63	17.22	69.5%	67.5%	69.4%
	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			

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
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Musselshell	Melstone	2920	24.22	27.17	50.0%	<u>58.7%</u>	<u>56.2%</u>
	Roundup	3386	23.98	26.79			
Park	Cooke City	7460	8.68	11.63	56.9%	<u>66.1%</u>	<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>50.0%</u>	<u>43.2%</u>
Phillips	Content	2340	21.15	23.97	54.7%	<u>54.7%</u>	<u>54.9%</u>
	Malta 35	2650	20.28	22.99			
	Malta 7	2262	21.61	24.39			
	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>81.0%</u>	<u>83.7%</u>
	Valier	3810	18.31	20.96			
Powder River	Biddle	3597	21.87	24.66	38.5%	<u>49.3%</u>	<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>90.0%</u>	<u>100.0%</u> <sup>1</sup>
	Ovando	4109	12.28	14.43			
Prairie	Mildred	2510	22.92	25.58	59.6%	<u>73.6%</u>	<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>88.6%</u>	<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>72.9%</u>	<u>88.4%</u>
	Sidney	1931	22.49	25.45			
Roosevelt	Bredette	2638	19.99	22.86	46.5%	<u>64.9%</u>	<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>67.7%</u>	<u>72.7%</u>
	Brandenberg	2770	23.83	26.52			
	Colstrip	3218	23.32	26.10			
	Forsythe	2520	25.17	28.04			

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 – 1973 (pre-July 1, 1973 HCU)	Management Factor Percentage 1973 – 2006 (post-July 1, 1973 HCU)	Management Factor Percentage 1997 – 2006 (proposed use)
	Ingomar	2780	23.18	25.83			
	Rock Springs	3020	21.35	23.93			
Sanders	Heron	2240	14.82	17.73	58.8%	69.1%	62.8%
	Thompson Falls Power	2380	22.49	25.36			
	Trout Cr Ranger Station	2356	16.60	19.40			
Sheridan	Medicine Lake	1975	21.64	24.49	44.8%	68.5%	80.7%
	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%	90.3%	93.6%
	Divide	5350	15.25	17.58			
Stillwater	Columbus	3602	22.31	25.09	46.5%	62.9%	72.5%
	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%	53.6%	49.4%
	Melville	5370	12.83	15.49			
Teton	Blackleaf	4240	14.74	17.34	68.8%	80.2%	88.4%
	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%	66.5%	70.8%
	Sunburst	3610	18.74	21.46			
	Sweetgrass	3466	18.22	21.22			
Treasure	Hysham	2660	25.01	27.78	53.4%	75.2%	91.5%
Valley	Glasgow WSO AP	2293	23.48	26.12	57.9%	66.6%	74.9%
	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%	58.7%	54.4%
	Judith Gap	4573	13.77	16.40			
Wibaux	Carlyle	3030	19.87	22.75	See appropriate adjacent county		
	Wibaux	2696	18.69	21.50			

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 – 1973 (pre-July 1, 1973 HCU)	Management Factor Percentage 1973 – 2006 (post-July 1, 1973 HCU)	Management Factor Percentage 1997 – 2006 (proposed use)
Yellowstone	Billings Water Plant	3097	26.16	28.92	59.5%	71.4%	77.8%
	Billings WSO	3648	25.49	28.22			
	Huntley Exp Station	3034	21.92	24.61			

<sup>1</sup>The 1997-2006 county management factor was calculated to be slightly greater than 100%, therefore the 1997-2006 Management Factor is set to 100%.

(17) In addition to the amount determined by the methodology described in (14) and (15), the department will add the following consumptive loss components to account for irrecoverable losses at the field:

- (a) 5% of the volume applied to the field for flood systems; and
- (b) 10% of the volume applied to the field for sprinkler systems.

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

REASONABLE NECESSITY: The department determines the historic consumptive use for an application to change water rights by implementing a methodology that calculates the net irrigation requirement using the Natural Resources and Conservation Services Irrigation Water Requirements (NRCS IWR) Program. Column F provides for historic consumptive use for water rights that existed pre-July 1, 1973. Column G would provide for historic consumptive use for those appropriations that existed post-July 1, 1973.

The department applies a management factor when determining historic consumptive use to provide a reasonable estimate of actual crop use. In order to get a reasonable comparison for a new proposed use under a change, a "modern" management factor, Column H, should be considered. This "modern" management factor was generated using the same methodology used for columns F and G. A ten-year base period provides consistency with the pre-July 1, 1973, historic use management factors. Based on National Agricultural Statistics Service (NASS) data availability, the most appropriate continuous period for a modern management factor is 1997 through 2006.

There are irrecoverable evaporative losses at the field associated with irrigation systems that are not accounted for in ARM 36.12.1902(14) and (15). These evaporative losses are a factor of relative humidity, wind speed, temperature, and system design. The percentages identified in (17) were developed based on existing documentation quantifying irrecoverable losses for flood and sprinkler irrigation. After a correct and complete determination, the applicant may submit



additional information for the department to consider in order to modify those percentages.

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

NEW RULE I TEMPORARY LEASE OF APPROPRIATION RIGHT

(1) An appropriator wishing to temporarily lease a water right must file an application to temporarily lease an appropriation right (Form 650). An application may only be filed by the owner of the water right as recorded in the department's water rights records.

(2) A place of use may not be retired for lease purposes more than two years within any consecutive ten-year period, though that place of use may have multiple water rights that could be leased separately.

(3) The applicant must provide evidence that the water right has been used within the five years prior to the date an application is filed. Evidence of use under this subsection includes, but is not limited to the following:

(a) dated photographs or aerial imagery demonstrating irrigation at the place of use;

(b) notarized affidavit(s); or

(c) power bills, if the conveyance system includes a pump.

(4) The department will use the following standards for consumptive use when reviewing applications for temporary leases:

(a) for irrigation, consumptive use is 1.0 acre-foot per acre irrigated as defined in 85-2-427, MCA;

(b) for domestic use by one household, consumptive use is 0.1 acre-foot per year based on ten percent of 1.0 acre-foot per year of water for year-round use;

(c) for lawn and garden, shrubbery, and shelterbelts, consumptive use is 1.5 acre-feet per acre per year based on 60 percent of 2.5 acre-feet per acre per year;

(d) for stockwater, consumptive use is 15 gallons per day or 0.017 acre-foot per year per animal unit based on ARM 36.12.115. Animal unit equivalencies for water consumption are set out in ARM 36.12.101 and the water conversion table, Form No. 615; and

(e) other consumptive uses not covered in this subsection will be determined by the department.

(i) An application for consumptive uses not set forth in (4)(a) through (d) must include a completed waiver of timelines form signed by the applicant.

(ii) The department will make a determination with regard to consumptive uses not set forth in (4)(a) through (d) within 90 days of the date the application is received.

(5) An application must include a written narrative addressing the applicant's plan to prevent potential adverse effects to existing water rights, certificates, permits, and water reservations, including any mitigation to prevent adverse effect.

(a) The applicant's plan must demonstrate:

(i) the operation of the proposed lease will not exceed historic use, including flow rate, historic diverted volume, and historic consumptive volume; and

(ii) the proposed lease is capable of being implemented and operated to prevent adverse effect.

(b) The applicant's plan must document the effects to other water rights including the following:

- (i) water rights using the same point of diversion;
- (ii) other ditch users;
- (iii) the effect to water rights dependent on the return flow; and
- (iv) the effects of changing the historic diversion pattern including rate and timing of depletions.

(c) The applicant's plan must describe any mitigation that will be used to prevent adverse effect to existing water rights, certificates, permits, and water reservations.

(6) If the approved temporary lease is for two years and the years are not consecutive, the applicant must notify the department in writing prior to the commencement of the second year of the lease.

AUTH: 85-2-113, 85-2-427, MCA  
IMP: 85-2-427, MCA

REASONABLE NECESSITY: The 2013 Legislature passed HB 37 which will be codified as 85-2-427, MCA (Chapter 236, 2013 Laws of Montana). HB 37 created a mechanism for water right holders to temporarily lease their water rights and provided for rulemaking by the department to implement the statute, including specifically: "...definitions of consumptive uses and criteria for determining if an appropriation right has been used in the five years prior to the temporary lease application".

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 in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m. on July 5, 2013.

6. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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, P.O. 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. An electronic copy of this proposal notice is available through the department's web site at <http://www.dnrc.mt.gov>. The department 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.

9. 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 May 24, 2013.

/s/ John E. Tubbs

JOHN E. TUBBS

Director

Natural Resources and Conservation

/s/ Brian Bramblett

BRIAN BRAMBLETT

Rule Reviewer

Certified to the Secretary of State on May 28, 2013.

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 XI pertaining to ) PROPOSED ADOPTION  
licensure requirements for outpatient )  
centers for surgical services )

TO: All Concerned Persons

1. On June 26, 2013, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at 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 June 19, 2013, 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 PURPOSE (1) The purpose of these rules is to establish the minimum licensing requirements for the licensure of outpatient centers for surgical services.

AUTH: 50-5-103, MCA  
IMP: 50-5-103, MCA

NEW RULE II SCOPE (1) For purposes of this subchapter, outpatient centers for surgical services include facilities described at 50-5-101(42), MCA.

AUTH: 50-5-103, MCA  
IMP: 50-5-103, MCA

NEW RULE III DEFINITIONS (1) "Accreditation Association for Ambulatory Health Care (AAHC)" means the organization nationally recognized by that name and surveys outpatient centers for surgical services upon their request and grants accreditation status to the outpatient center for surgical services that it finds meets its standards and requirements.

(2) "Medical director" means a physician licensed under Title 37, chapter 3 MCA, who oversees the services provided in an outpatient center for surgical services. The medical director may also serve in the outpatient center as a licensed health care professional. The medical director can also serve as the outpatient center administrator.

(3) "Outpatient center" for purposes of this subchapter, refers to an outpatient center for surgical services. Outpatient centers are limited to provide care for periods of less than 24 hours.

(4) "Safe manner" means that physicians and other clinical staff must follow acceptable surgical standards of practice in all phases of a surgical procedure, beginning with the preoperative preparation of the patient, through to the postoperative recovery and discharge.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

NEW RULE IV MINIMUM STANDARDS FOR OUTPATIENT CENTERS FOR SURGICAL SERVICES (1) An outpatient center must:

(a) meet the requirements of ARM Title 37, chapter 106, subchapter 3 relating to the minimum standards for all health care facilities;

(b) to the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of this subchapter, the rules in this subchapter will apply;

(c) have a written policy and procedure manual as described in [NEW RULE V] available to, and followed by, all personnel;

(d) establish a coordinated transfer of care for patients who require services longer than 24 hours or for patients requiring care beyond the capabilities of the outpatient center. This coordinated transfer of care must include one of the following:

(i) a written transfer agreement with the receiving hospital;

(ii) one or more physicians with surgical privileges in the outpatient center must have admitting privileges at the receiving hospital and are present in the outpatient center during any surgical procedure; or

(iii) the receiving hospital writes a coordinated transfer policy and specifies the respective roles and responsibilities of the outpatient center upon arrival at the receiving hospital; and

(e) in transferring patients, the outpatient center must:

(i) coordinate and provide notice to the receiving hospital, including the reason for the transfer prior to the patient's transfer; and

(ii) provide the patient's medical records to the receiving hospital during the transfer.

(2) An outpatient center may:

(a) show written evidence of current accreditation by the Accreditation Association for Ambulatory Health Care (AAAHC) including recommendations for future compliance as a condition of licensure; or

(b) meet the standards as specified in [NEW RULE V through XI].

AUTH: 50-5-103, MCA  
IMP: 50-5-103, MCA

NEW RULE V WRITTEN POLICIES AND PROCEDURES (1) Each outpatient center must maintain a policy and procedure manual. The policy and procedure manual must be reviewed by the medical director or administrator and updated as necessary, but at least annually. The manual must contain policies and procedures for:

- (a) preadmission;
- (b) patient education;
- (c) preoperative assessment;
- (d) postoperative assessment;
- (e) observation and recovery;
- (f) discharge planning;
- (g) emergency procedures of the outpatient center to include information on the transfer agreement with the receiving hospital;
- (h) anesthesia policies as described in [NEW RULE X];
- (i) business practices; and
- (j) patient and staff security.

(2) The policy and procedure manual must include a current organizational chart delineating the lines of authority, responsibility, and accountability for the administration and provision of all outpatient center patient services.

(3) Each outpatient center must have policies and procedures that address the criteria for clinical staff privileges and the process the governing body uses when reviewing physician credentials and determining whether to grant privileges.

(4) The outpatient center must implement a policy and a process which addresses the Food and Drug Administration (FDA) or manufacturer recall of drugs, vaccines, blood and blood products, medical devices, equipment, and supplies. The policy must address:

- (a) the sources of information;
- (b) methods for notifying staff;
- (c) methods to determine if the recalled product is present at the facility;
- (d) documentation of response to the recalled product;
- (e) disposition or return of the recalled product; and
- (f) patient notification as appropriate.

AUTH: 50-5-103, MCA  
IMP: 50-5-103, MCA

NEW RULE VI OPERATIONAL STANDARDS FOR OUTPATIENT CENTERS FOR SURGICAL SERVICES (1) An outpatient center is organized under a governing body that sets policy and is responsible for the organization. This governing body must meet regularly, but at least quarterly.

- (2) The outpatient center administration must:
  - (a) operate under clearly defined mission, goals, and objectives for the organization;
  - (b) employ qualified personnel, both medical and managerial;

- (c) adopt policies and procedures necessary for the orderly conduct of the organization, including the scope of clinical and surgical activities;
  - (d) ensure that the quality of care is evaluated and that identified problems are appropriately addressed;
  - (e) maintain effective communication throughout the organization, including ensuring a correlation between quality management and improvement activities and other management functions of the organization; and
  - (f) follow generally accepted accounting principles.
- (3) Facility requirements for an outpatient center include:
- (a) compliance with regulations established in the local jurisdiction, including applicable local and state codes for construction, fire prevention, public safety and access, and annual inspections by the fire department; and
  - (b) an emergency plan for use in the event of fire or natural disaster and documents exercise of the plan on an annual basis. The "exercise" may involve a functional review of the process. That review must be documented accordingly.
- (4) Each outpatient center for surgical services will have a quality management and improvement plan which must include:
- (a) a peer review process that includes:
    - (i) at least two licensed health care professionals one of whom is a physician, and operating within their scope of practice; and
    - (ii) that the results of the peer review are reported to the governing body.
  - (b) a credentialing process that provides a monitoring function to ensure the continued maintenance of licensure and certification, or both, of professional personnel who provide health care services at the outpatient center;
  - (c) a quality improvement program that:
    - (i) is ongoing;
    - (ii) is data-driven;
    - (iii) is broad in scope;
    - (iv) addresses clinical and administrative issues as well as actual patient outcomes;
    - (v) has a defined set of quality improvement goals and objectives;
    - (vi) actively seeks patient feedback, evaluates complaints and suggestions, and works to improve patient satisfaction;
    - (vii) includes the active participation of the medical staff;
    - (viii) respects the health care rights of all patients, including the right to privacy;
    - (ix) at least annually conducts evaluation of outpatient center effectiveness;
    - (x) describes to the outpatient center's governing board the reports, findings, and activities relating to quality improvement; and
    - (xi) analyzes ongoing comprehensive self-assessment of the quality of care, including medical necessity of care or procedures performed and appropriateness of care. The findings from this process should be used to update facility policies and procedures.
  - (d) a risk management plan that:
    - (i) has a designated individual or committee that is responsible for the risk management program; and
    - (ii) addresses safety of patients and other important issues including:

- (A) consistent application of the risk management program throughout the organization;
- (B) review of all deaths, trauma, or other adverse incidents including reactions to drugs and materials;
- (C) review and analysis of all actual and potential infection control occurrences and breaches, surgical site infections, and other health care acquired infections;
- (D) review of patient complaints;
- (E) impaired health care professionals;
- (F) establishment and documentation of coverage after normal working hours;
- (G) methods for prevention of unauthorized prescribing; and
- (H) periodic review of clinical records and clinical record policies.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

#### NEW RULE VII STAFFING AND PERSONNEL REQUIREMENTS

- (1) Staffing and personnel requirements for an outpatient center for surgical services include:
- (a) professional staff who are licensed under Title 37, MCA, to practice in their profession and have the knowledge and skills required to provide the services offered by the outpatient center;
  - (b) all personnel assisting in the provision of health care services are appropriately trained, qualified, and supervised according to the policies and procedures of the outpatient center; and
  - (c) the outpatient center must keep a schedule for clinical staff, to make sure all shifts are adequately covered.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

#### NEW RULE VIII MEDICAL, CLINICAL, AND HEALTH RECORD INFORMATION

- (1) An individual clinical record must be established for each person receiving care. Each record must be accurate, legible, and promptly completed. The record must include at least the following:
- (a) patient identification;
  - (b) significant medical history and results of physical examination;
  - (c) preoperative diagnostic studies, if performed;
  - (d) findings and techniques of the operation including a pathologist's report on all tissues removed during surgery, except those exempted by the governing body;
  - (e) any allergies and abnormal drug reactions;
  - (f) entries related to anesthesia administration;
  - (g) documentation of properly executed informed patient consent which includes notice of transfer when deemed appropriate;
  - (h) discharge diagnosis; and



- (i) discharge recommendations and instructions given to the patient.
- (2) To ensure confidentiality, security, and physical safety of a patient's medical record, the outpatient center must designate a person to oversee and manage the clinical records.
- (3) The outpatient center must have policies concerning clinical records. The policies must include:
  - (a) the retention of active records;
  - (b) the retirement of inactive records;
  - (c) the timely entry of data in records; and
  - (d) the release of information contained in records.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

#### NEW RULE IX INFECTION PREVENTION, CONTROL, AND SAFETY

- (1) The outpatient center must maintain an infection control program that seeks to minimize infections and communicable diseases. The outpatient center is responsible for providing a plan of action for preventing, identifying, and managing infections and communicable diseases, and for immediately implementing corrective and preventive measures that result in improvement.
  - (a) The infection prevention and control program must include documentation that the outpatient center has considered, selected, and implemented nationally recognized infection control guidelines.
  - (b) The infection prevention and control program is under the direction of a designated and qualified infection control officer who is a licensed health care professional and has training in infection control.
- (2) The outpatient center must have written policies that also address cleaning of patient treatment and care areas to include:
  - (a) cleaning before use; and
  - (b) cleaning between patients.
- (3) The outpatient center will have policies and processes in place for:
  - (a) the monitoring and documentation of the cleaning, high level disinfection, and sterilization of medical equipment, accessories, instruments, and implants; and
  - (b) minimizing the sources and transmission of infections, including adequate surveillance techniques.
- (4) The outpatient center must designate a safety officer who is responsible for the facility's safety plan.
- (5) The outpatient center must have a safety program which addresses the organization's environment of care and safety for all patients, staff, and others. The elements of the safety program include:
  - (a) a process for identifying hazards, potential threats, near misses, and other safety concerns;
  - (b) a process for reporting known adverse incidents to proper authorities;
  - (c) a process for reducing and avoiding medication errors; and
  - (d) prevention of falls or physical injuries involving patients, staff, and others.
- (6) The outpatient center must have a written emergency and disaster preparedness plan. The plan must address both internal and external emergencies

and must also address provision for the safe evacuation of individuals during an emergency, especially for individuals who are at greater risk.

(a) The outpatient center must complete a written evaluation of each drill and promptly implement any corrections identified during the drill. This documentation must be on site at the facility for the period of licensure.

(7) The outpatient center must have a policy concerning the training of outpatient center staff in terms of the emergency and disaster plan.

(8) Products, including medications, reagents, and solutions that carry an expiration date are monitored and disposed of accordingly.

(9) Prior to use, appropriate education is provided to intended operators of newly acquired devices or products to be used in the care of patients.

(10) A system must exist for the proper identification, management, handling, transport, storage, and disposal of biohazardous materials and wastes, whether solid, liquid, or gas.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

NEW RULE X ANESTHESIA RISK AND EVALUATION (1) The outpatient center must:

(a) prohibit the use of flammable anesthesia;

(b) have a policy which defines the types of anesthesia that will be used within the facility. Similarly, the outpatient center must address in this policy the level of American Society of Anesthesiologists (ASA) Physical Status Classification System level appropriate to receive surgical services in these types of facilities;

(c) conduct an assessment prior to the patient's admission as well as prior to surgery to evaluate the risk of anesthesia and of the procedure to be performed; and

(d) have policies that address the basis or criteria used in conducting the assessments.

(2) Supplies and exhaust systems for windowless anesthetizing locations must be arranged to automatically vent smoke and products of combustion.

(a) Ventilating systems for anesthetizing locations using general anesthesia must be provided that automatically:

(i) prevent recirculation of smoke originating within the surgical suite; and

(ii) prevent the circulation of smoke entering the system intake, without, in either case, interfering with the exhaust function of the system.

(3) Anesthesia must be administered only by:

(a) a qualified anesthesiologist;

(b) a physician qualified to administer anesthesia;

(c) a certified registered nurse anesthetist (CRNA);

(d) an anesthesiologist assistant is a person who:

(i) works under the direction of an anesthesiologist;

(ii) is in compliance with all applicable requirements of Montana state law, including any licensure requirements the state of Montana imposes on nonphysician anesthetists; and

(iii) is a graduate of a medical school-based anesthesiologist's assistant educational program that:

(A) is accredited by the Committee on Allied Health Education and Accreditation; and

(B) includes approximately two years of specialized basic science and clinical education in anesthesia at a level that builds on a premedical undergraduate science background.

(e) an anesthesiologist assistant may administer anesthesia when under the direct supervision of an anesthesiologist. The anesthesiologist must be immediately available if needed, meaning:

(i) the supervising anesthesiologist is physically present in the facility; and

(ii) is prepared to immediately conduct hands on intervention if needed.

(f) a supervised trainee in an approved educational program under the supervision of a licensed anesthesiologist; or

(g) a trainee who is a physician in training to be an anesthesiologist in a recognized graduate medical education program, or a student in a recognized nurse anesthesia or anesthesiologist assistance education program may administer anesthesia when supervised by the physician performing the operation.

(4) Before discharge, each patient must be evaluated by a physician or by an anesthetist in accordance with applicable state health and safety laws, standards of practice, and facility policy. This postanesthesia assessment must include evaluation of:

(a) respiratory function, including respiratory rate, airway patency, and oxygen saturation;

(b) cardiovascular function, including pulse rate and blood pressure;

(c) mental status and level of consciousness, or both;

(d) temperature;

(e) pain;

(f) nausea and vomiting; and

(g) postoperative hydration.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

NEW RULE XI SURGICAL AND RELATED SERVICES (1) Surgical procedures must be performed in a safe manner by qualified physicians functioning within their scope of practice and who limit the surgical procedures to those that are approved by the governing body in accordance to the facility policies and procedures.

(2) The outpatient center uses acceptable standards of practice to ensure proper identification of the patient and the surgical site in order to avoid wrong site/wrong person/wrong procedure errors. Generally accepted procedures to avoid such errors include:

(a) a preprocedure verification process to make sure all relevant documents and related information are available, are correctly identified, match the patient, and are consistent with the procedure the patient and the surgical staff are expecting to perform;

(b) marking of the intended procedure site by the physician who will be performing the procedure so that it is clear where the procedure is to be performed on the patient's body;

(c) verification that a current health history is complete which includes a list of current prescription and nonprescription medications and dosages, physical examination, and pertinent preoperative diagnostic studies have been completed; and

(d) a recheck of the procedures listed in (a) through (c).

(3) Each operating or procedure room is designed and equipped so that the types of surgery conducted can be performed in a manner that protects the lives and ensures the physical safety of all persons in the area. Only nonflammable agents are to be present in the operating or procedure room.

(4) All personnel with direct patient contact will maintain skills in basic cardiac life support and are available whenever there is a patient in the facility.

(5) A safe environment for treating surgical patients, including adequate safeguards to protect the patient from cross-infection, is ensured through the provision of adequate space, equipment, supplies, and personnel including:

(a) all persons entering the operating or procedure room are properly attired as defined by the governing body;

(b) acceptable aseptic techniques are used by all persons in the surgical area;

(c) only authorized persons are allowed in the surgical or treatment areas; and

(d) measures are implemented to prevent skin and tissue injury from chemicals, cleaning solutions, and other hazardous exposure.

(6) The outpatient center has established protocols for instructing patients in self-care following surgery.

(7) The outpatient center has a procedure to address when sponge, sharps, and instrument counts will occur.

(8) Suitable equipment for rapid and routine sterilization is available to ensure the operating room materials are sterile. Sterilized materials are packaged, labeled, and stored in a manner to maintain sterility and identify sterility dates. Sterility requirements also include:

(a) processes for cleaning and sterilization of supplies and equipment must comply with manufacturer's instructions and recommendations; and

(b) internal and external indicators are used to demonstrate the safe processing of items undergoing high level disinfection and sterilization.

(9) Periodic calibration and preventive maintenance, or both of equipment is provided.

(10) An alternate source of power must be available in the event of power shortages, surges, or loss of utility.

(a) In accordance to National Fire Protection Association (NFPA) 110 Standard the outpatient center must have a generator which automatically starts within 10 seconds of loss of the utility. An Uninterrupted Power Supply (UPS) system is not acceptable as a substitute in any location using general anesthesia.

(b) UPS systems are permitted in settings where a patient is not under general anesthesia.

AUTH: 50-5-103, MCA  
IMP: 50-5-103, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing the adoption of New Rules I through XI pertaining to the licensure of Outpatient Centers for Surgical Services. In establishing these rules the department has outlined a set of requirements specific to the outpatient facility; in addition, the department is exercising its authority to accept American Association for Ambulatory Health Care (AAAHC) accreditation as outlined in 50-5-103(7), MCA for purposes of licensing. If the latter is the facility's chosen course, the department will license the outpatient center for surgical services based upon its accreditation in the same manner as the department does with hospitals and other health care facilities.

The department has, in the past, had one primary rule, ARM 37.106.1001, that pertained to all outpatient facilities. When the department adopted rules for the Outpatient Centers for Primary Care found in ARM 37.106.1008 through 37.106.1016, the language of ARM 37.106.1001 was inadvertently struck, thus leaving the department with no rule to govern the licensure of outpatient surgical facilities; therefore, the need for this new set of proposed rules.

##### New Rules I and II

These rules are being proposed under the authority of 50-5-103, MCA to establish the minimum licensing requirements for outpatient centers for surgical services.

##### New Rule III

This rule is being proposed to identify the various terms used throughout the rule.

##### New Rule IV

The department is proposing a set of minimum standards that any outpatient center for surgical services must meet. In this set of minimums, the department proposes that the center shows evidence of accreditation by the AAAHC or alternatively meet the set of standards set out in New Rules V through XI.

This proposed rule provides a basic tool for measuring the overall health and safety of the patient receiving services in the surgical center. The requirement for accreditation is proposed because as a national "designation of approval" accredited programs generally meet or exceed the minimum requirements proposed through a licensing process. In other areas of health care facility licensure, the department has acknowledged accreditation as a basis for licensure. New Rule V establishes an equivalent set of health and safety requirements in the event that a surgical center chooses to not become accredited.

Outpatient centers are limited to provide care for periods of less than 24 hours. If a patient needs care beyond the 24-hour care limitation or needs care beyond what the outpatient center can provide, the department requires in New Rule IV(1)(d) and (e) that the center has formal arrangements for the immediate transfer of the patient to a hospital. The rule requires the facility to indicate the process and the records to be sent with the patient for a coordinated transfer of care.

#### New Rule V

All health care facilities are required to develop, implement, and maintain a policy and procedure manual for the overall operation of the facility. Outpatient centers for surgical services are included in the definition of a health care facility under 50-5-101(23), MCA and must have established policies and procedures for their operation.

#### New Rule VI

Like other health care facilities, a surgical center must have a designated governing body that exercises oversight for all surgical center activities. The governing body is responsible for establishing the facility policies, making sure that the policies are implemented and monitoring internal compliance. They also review policies at least annually to determine if revisions to policies are needed. Ultimately, it is the governing body's responsibility to create a safe environment where patients can receive quality health care. The rules as proposed will make such a process mandatory for governing boards of outpatient surgical centers. Research and current standards of practice show that facilities that create an active, integrated, peer-based program of quality management and improvement, including a risk management process, improve the quality of care to patients.

#### New Rule VII

Surgical and related services in an outpatient center for surgical services must be performed in a safe manner by health care professionals who have the proper training, are operating within the scope of their particular occupational license, and have been granted privileges to perform those procedures by the governing board. To do anything less would mean inadequate care for patients. The proposed regulations outlined in New Rule VII describe the staffing requirements and specifies the necessity of proper training for all professionals within the surgical setting.

#### New Rule VIII

The proposed text in (1) requires that the surgical center have a complete, comprehensive, and accurate medical record for each patient. This information is necessary to assure that adequate care is delivered to each patient. The core objective of this regulation is to ensure the patient can tolerate the surgical experience, the anesthesia risk and recovery have been properly assessed, the

postoperative care and recovery are adequately evaluated, and the patient has received proper discharge planning. Each medical record must contain the elements defined in New Rule VIII. Additionally, this proposed language helps to determine whether there is anything in the patient's overall condition that would affect the planned surgical procedure or related service such as a medication allergy or a new or existing condition that requires additional interventions to reduce risk to the patient or which may even indicate that the surgical center setting might not be an appropriate setting for the patient's surgery. In order to ensure confidentiality, security, and physical safety of a patient's medical record, there should be a designated person who oversees the medical records. The most important reason for keeping medical records is to provide information on a patient's care to other health care professionals. Another major rationale is that a medical record that is well documented provides support for the physician's defense in the event of a medical malpractice action. Without the medical record, the physician might not be able to show that the care he or she provided was appropriate and met the standard of care. The regulation, as proposed, allows surgical centers to define this process by policy.

#### New Rule IX

This proposed rule requires the outpatient center to maintain an active program for the minimization of infectious and communicable diseases. The outpatient center setting presents a unique challenge for infection control because: patients remain in common areas, often for prolonged periods of time; surgical prep, recovery rooms, and operating rooms (ORs) are turned around quickly; patients with infections or communicable diseases may not be identified; and there is a risk of infection at the surgical site. Due to these reasons, it is critical that the outpatient center have a comprehensive and effective infection control program.

Also critical to the overall infection control program, is the designation of a qualified individual who has training in infection control. This individual is responsible to lead the outpatient center's infection control program and to ensure that plans of action for preventing, identifying, and managing infections and communicable disease are properly implemented. New Rule IX is designed to specify the importance of a program focused on minimizing facility acquired infections in the outpatient setting.

#### New Rule X

The purpose for this proposed rule is to define the types of anesthesia to be used in the outpatient center as well as outline who can administer that anesthesia. Certain procedures require certain types and levels of anesthesia; which may or may not be a procedure offered by the specific outpatient center. The purpose of the assessment as indicated in (1)(b) prior to surgery is to evaluate whether the risks associated with the anesthesia fall within those ranges for a patient to have the procedure performed within the outpatient setting. While the proposed regulation in (1)(c) does not specify the content or methodology to be employed in conducting the assessment, it is critical that the outpatient center have policies around the patient

assessment. Such policies and subsequent classification systems serve the purpose of predicting operative risks, and are useful in predicting morbidity and mortality.

### New Rule XI

The purpose of this new rule is to make certain that procedures performed in outpatient centers must be performed in a safe manner. New Rule III(4) provided a definition for "safe manner." The other requirements contained within this new rule are important components of the provision of services being provided in a "safe manner." Additionally, acceptable standards of practice include the use of a standard procedure to ensure proper identification of the patient and the surgical site, in order to avoid wrong site/wrong person/wrong procedure errors.

Conducting surgery in a "safe manner" also requires appropriate use of liquid germicides in the operating room. It is estimated that approximately 100 surgical fires occur each year in the United States (US) resulting in roughly 20 serious patient injuries. New Rule XI(3) is specifically written to address this issue.

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: 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., July 5, 2013.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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 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.

/s/ Kurt R. Moser  
Kurt R. Moser  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State May 28, 2013.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.4.301, relating to residential ) PROPOSED AMENDMENT  
property tax credits )

TO: All Concerned Persons

1. On July 8, 2013, at 11 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, in Helena, Montana, to consider the amendment of the above-stated rule. Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., June 24, 2013, 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) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.4.301 DEFINITIONS The following definitions apply to this subchapter:

(1) and (2) remain the same.

(3) "Land surrounding the eligible residence for the elderly homeowner/renter credit" is the one-acre farmstead or primary acre associated with the primary residence.

(a) If the one-acre farmstead or primary acre is not separately identified on the tax bill or assessment notice from the other acreage and the ownership is less than 20 acres, the allowable credit shall be calculated as follows: total amount of property tax billed ~~on the land~~, multiplied by 80 percent or divided by the total acreage, whichever is higher, to equal the allowable amount of property tax used in the credit calculation.

(b) Land ownership of 20 acres or more that does not have the one-acre farmstead or primary acre separately identified on the tax bill or assessment notice must be submitted to the department's local office for computation of the allowable amount of property tax used in the credit calculation.

(4) remains the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-2337, 15-30-2338, 15-30-2340, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.301, to allow homeowners with more than one acre of land to more fairly receive credit for the property taxes they pay when they apply for the Elderly

Homeowner Tax Credit. The proposed amendment will result in an Elderly Homeowner Renter Tax Credit (Form 2EC) instruction that directs such taxpayers to use 80 percent of the property taxes they paid when calculating their credit or the result of the property taxes paid divided by the total acreage, whichever method produces the higher result.

4. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendments to the rule contained in this notice will not significantly or directly impact small businesses.

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: 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](mailto:canderson@mt.gov) and must be received no later than July 12, 2013.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. 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 "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule 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.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and 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. A written request may be mailed or delivered to the person in number 5 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.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Mike Kadas  
MIKE KADAS  
Director of Revenue

Certified to the Secretary of State May 28, 2013

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF ADOPTION AND  
RULE I and amendment of ARM ) AMENDMENT  
10.55.701, 10.55.704, 10.55.708, )  
10.55.804, and 10.55.906 relating to )  
accreditation standards )

TO: All Concerned Persons

1. On March 28, 2013, the Board of Public Education published MAR Notice No. 10-55-265 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 357 of the 2013 Montana Administrative Register, Issue Number 6.

2. The board has adopted NEW RULE I (ARM 10.55.911) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.55.911 OFFICIAL HIGH SCHOOL TRANSCRIPT (1) through (b) remain as proposed.

(c) statewide school identifier, school name, school address, school phone, school system name, school system code, and school code;

(d) through (n) remain as proposed.

3. The board has amended ARM 10.55.906 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.55.906 HIGH SCHOOL CREDIT (1) through (4) remain as proposed.

(a) 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 high school transcript as defined in ARM 10.55.911.

4. The board has amended ARM 10.55.701, 10.55.704, 10.55.708 and 10.55.804 as proposed.

5. The following comments or testimony were received with the board's responses as follows:

COMMENT: Susan Murray of the Office of Public Instruction requested that student phone number be added to New Rule I(b) and school system name, school system code, and school code be added to New Rule I(c) as these are data elements needed for federal and state data collection.

RESPONSE: The board thanks Ms. Murray for her comment and concurs with her suggestion that the school system name, school system code, and school code be added to New Rule I(c).

COMMENT: Ann Gilkey, Chief Legal Counsel for the Superintendent of Public Instruction stated that she was a proponent for the proposed rules and suggested that New Rule I be referenced in ARM 10.55.906(4)(a). She also commented that a student's phone number is not a required data element, may be hard to obtain, and may result in the unintended consequence of a district not being able to issue a transcript because of not having the student's phone number. Ms. Gilkey requested that the student's phone number not be required on an official transcript.

RESPONSE: The board thanks Ms. Gilkey for her comments and concurs with her suggestions.

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

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

Certified to the Secretary of State May 28, 2013.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
17.53.105 pertaining to incorporation by )  
reference ) (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On April 25, 2013, the Department of Environmental Quality published MAR Notice No. 17-346 regarding a notice of public hearing on proposed amendment of the above-stated rules at page 554, 2013 Montana Administrative Register, issue number 8.

2. The department has amended the rules exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ John F. North  
JOHN F. NORTH  
Rule Reviewer

By: /s/ Tracy Stone-Manning  
TRACY STONE-MANNING, DIRECTOR

Certified to the Secretary of State, May 28, 2013.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 18.8.512 and 18.8.902 )  
pertaining to motor carrier services )

TO: All Concerned Persons

1. On March 28, 2013 the Department of Transportation published MAR Notice No. 18-141 pertaining to the proposed amendment of the above-stated rules at page 365 of the 2013 Montana Administrative Register, Issue Number 6.
2. The department has amended ARM 18.8.512 exactly as proposed.
3. The department is not adopting the proposed amendments to ARM 18.8.902 following a determination by staff that the proposed amendments need further revision.
4. No comments or testimony were received.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

/s/ Michael T. Tooley  
Michael T. Tooley  
Director  
Department of Transportation

Certified to the Secretary of State May 28, 2013.

BEFORE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT  
RESIDENTIAL OR OUTDOOR PROGRAMS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.181.301 definitions and )  
24.181.2101 renewals )

TO: All Concerned Persons

1. On November 23, 2012, the Board of Private Alternative Adolescent Residential or Outdoor Programs (board) published MAR notice no. 24-181-6 regarding the public hearing on the proposed amendment of the above-stated rules, at page 2310 of the 2012 Montana Administrative Register, issue no. 22.

2. On December 17, 2012, a public hearing was held on the proposed amendment of the above-stated rules in Helena.

3. In response to public request, the board decided to extend the public comment period to 5:00 p.m., March 8, 2013. On February 14, 2013, the board published the notice of extension of comment period for MAR notice no. 24-181-6 at page 208 of the 2013 Montana Administrative Register, issue no. 3. Several comments were received by the March 8, 2013, comment deadline.

4. The board has amended ARM 24.181.2101 exactly as proposed.

5. The board received numerous comments in opposition to the proposed amendments to ARM 24.181.301. The board is not amending ARM 24.181.301 at this time.

BOARD OF PRIVATE ALTERNATIVE  
ADOLESCENT RESIDENTIAL OR  
OUTDOOR PROGRAMS  
DR. JOHN SANTA, CHAIRPERSON

/s/ DARCEE L. MOE  
Darcee L. Moe  
Rule Reviewer

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 28, 2013



BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 32.2.405, 32.3.502, 32.18.101,	)	
and 32.18.110 pertaining to	)	
Department of Livestock	)	
miscellaneous fees, official	)	
trichomoniasis testing and	)	
certification requirements, hot iron	)	
brands required, freeze branding, and	)	
recording and transferring of brands	)	

TO: All Concerned Persons

1. On April 11, 2013, the Department of Livestock published MAR Notice No. 32-13-232 regarding the proposed amendment of the above-stated rules at page 514 of the 2013 Montana Administrative Register, issue number 7.
2. The department has amended the above-stated rules exactly as proposed.
3. No comments or testimony were received.

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 May 28, 2013.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 37.114.101, 37.114.105, ) REPEAL  
37.114.201, 37.114.203, 37.114.204, )  
37.114.205, 37.114.301, 37.114.312, )  
37.114.313, 37.114.314, 37.114.315, )  
37.114.501, 37.114.503, 37.114.512, )  
37.114.515, 37.114.530, 37.114.531, )  
37.114.540, 37.114.542, 37.114.546, )  
37.114.552, 37.114.561, 37.114.563, )  
37.114.571, and 37.114.583, and the )  
repeal of ARM 37.114.504, )  
37.114.506, 37.114.507, 37.114.509, )  
37.114.510, 37.114.514, 37.114.516, )  
37.114.518, 37.114.519, 37.114.521, )  
37.114.522, 37.114.524, 37.114.525, )  
37.114.528, 37.114.533, 37.114.534, )  
37.114.536, 37.114.537, 37.114.539, )  
37.114.544, 37.114.548, 37.114.549, )  
37.114.551, 37.114.554, 37.114.555, )  
37.114.557, 37.114.558, 37.114.560, )  
37.114.565, 37.114.566, 37.114.568, )  
37.114.570, 37.114.573, 37.114.574, )  
37.114.575, 37.114.577, 37.114.578, )  
37.114.579, 37.114.581, 37.114.582, )  
37.114.585, 37.114.588, 37.114.589, )  
37.114.591, 37.114.592, and )  
37.114.595, pertaining to )  
communicable disease control )

TO: All Concerned Persons

1. On January 17, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-624 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 14 of the 2013 Montana Administrative Register, Issue Number 1. On April 11, 2013, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment at page 518 of the 2013 Montana Administrative Register, Issue Number 7.

2. The department has amended ARM 37.114.101, 37.114.105, 37.114.201, 37.114.205, 37.114.301, 37.114.312, 37.114.313, 37.114.314, 37.114.315, 37.114.501, 37.114.503, 37.114.512, 37.114.515, 37.114.530, 37.114.531,

37.114.540, 37.114.542, 37.114.546, 37.114.552, 37.114.561, 37.114.571, and 37.114.583, as proposed.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.114.203 REPORTABLE DISEASES AND CONDITIONS (1) The following communicable diseases and conditions are reportable:

(a) AIDS, as defined by the Centers for Disease Control and Prevention, and HIV infection, as determined by a positive result from a test approved by the Federal Food and Drug Administration for the detection of HIV, including, but not limited to, antibody, antigen, and all HIV nucleic acid tests ~~irrespective of result, and CD4 and other tests used to monitor HIV disease;~~

(b) through (bp) remain as proposed.

AUTH: 50-1-202, 50-17-103, 50-18-105, 50-18-106, MCA

IMP: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.204 REPORTS AND REPORT DEADLINES (1) remains as proposed.

(2) A local health officer must transmit by telephone or secure electronic means to the department the information required by ARM 37.114.205(1) and (2) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) Information about a case of one of the following diseases should be submitted within 24 hours by telephone by the local health officer:

(i) through (iii) remain as proposed.

(iv) Influenza-associated hospitalization and mortality, ~~pediatric~~;

(v) through (5) remain as proposed.

(6) A laboratory that performs testing for respiratory syncytial virus (RSV) must submit to the department on a weekly basis, October 1 through June 1, a summary of the total number of RSV-specific antigen direct detection tests performed, the number of positive tests for each type, and the testing method (rapid or molecular testing) used for each specimen result on a form provided by the department.

(7) A laboratory that performs testing associated with HIV infection must report all test results that confirm HIV infection, all CD4 T-lymphocyte test results with or without confirmed HIV infection unless it is known that the test was performed in association with a disease other than HIV infection, positive p24 antigen assays, HIV nucleic acid viral load tests irrespective of results, positive results for qualitative nucleic acid tests for the detection of HIV infection and all test results for assays designed to assess HIV infection resistance to antiretroviral drugs.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.563 PERTUSSIS (1) remains as proposed.

(2) ~~An individual identified by the local health officer as a close contact household contact or individual at high risk of severe illness or an individual who has close contact with a person at high risk of severe illness~~ must be referred by the officer to a physician for chemoprophylaxis. Persons at high risk for severe illness include infants under 12 months, pregnant women, or individuals with preexisting health conditions that may be exacerbated by a pertussis infection. Other individuals identified as close contacts may be referred for chemoprophylaxis depending on the circumstances of the case or cases.

(3) ~~A person~~ An individual identified by the local health officer as a close contact must be monitored by the local health officer for respiratory symptoms for 21 days after the person's last contact with the case.

(4) If ~~a~~ an individual identified as a close contact shows respiratory symptoms consistent with pertussis, the health officer must order the ~~contact individual~~ to avoid contact with anyone outside of the ~~contact's~~ individual's immediate family until a medical evaluation indicates that the ~~contact~~ individual is not developing pertussis.

(5) Surveillance for susceptible close contacts must be initiated immediately by the local health officer and immediate immunizations recommended by the officer must be administered to identified susceptible close contacts.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

4. The department has repealed ARM 37.114.504, 37.114.506, 37.114.507, 37.114.509, 37.114.510, 37.114.514, 37.114.516, 37.114.518, 37.114.519, 37.114.521, 37.114.522, 37.114.524, 37.114.525, 37.114.528, 37.114.533, 37.114.534, 37.114.536, 37.114.537, 37.114.539, 37.114.544, 37.114.548, 37.114.549, 37.114.551, 37.114.554, 37.114.555, 37.114.557, 37.114.558, 37.114.560, 37.114.565, 37.114.566, 37.114.568, 37.114.570, 37.114.573, 37.114.574, 37.114.575, 37.114.577, 37.114.578, 37.114.579, 37.114.581, 37.114.582, 37.114.585, 37.114.588, 37.114.589, 37.114.591, 37.114.592, and 37.114.595 as proposed.

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: One commenter recommended that the department add all positive and negative respiratory syncytial virus (RSV) results throughout the year so as to identify the beginning and end of active RSV season.

RESPONSE #1: The department agrees with the recommendation and has changed the language in ARM 37.114.204 to incorporate laboratory reporting of RSV.

COMMENT #2: A commenter wrote of concerns about the reporting of all CD4 (T-cells) tests as those tests pertain to HIV infection due to the fact that this test is sometimes performed in association with other conditions. The commenter suggested language to address tests utilized in conjunction with HIV infection.

RESPONSE #2: The department researched the issue of CD4 and laboratory reporting and addressed the issue by removing the text under ARM 37.114.203(1)(a) and added more specific language under ARM 37.114.204. This added language allows tests not associated with HIV infection to not be reported and the incorporation of more specific language regarding laboratory reporting as it relates to HIV infection.

COMMENT #3: A comment was received regarding the clarity of the use of the words "individual" and "close contact" in the amended language for pertussis control measures.

RESPONSE #3: The department agrees with the recommendation and the language under ARM 37.114.563 is being changed to clarify this issue.

/s/ Shannon L. McDonald  
Shannon L. McDonald  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State May 28, 2013

## **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  
Subject

1. Consult ARM Topical Index.  
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

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 December 31, 2012. This table includes those rules adopted during the period January 1, 2013, through March 31, 2013, 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 December 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 2012/2013 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.

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