

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.55.320 pertaining to classifications of) AMENDMENT
employments and ARM 2.55.408) NO PUBLIC HEARING
pertaining to retrospective rating plans) CONTEMPLATED

TO: All Concerned Persons

1. On January 22, 2010, the Montana State Fund proposes to amend the above-stated rules.

2. The Montana State Fund 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 Montana State Fund no later than 5:00 p.m. on December 30, 2009, to advise us of the nature of the accommodation that you need. Please contact Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana 59604-4759; telephone (406) 444-7725; fax (406) 444-1493; or e-mail nbutler@mt.gov.

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

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) and (2) remain the same.

(3) The State Fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual effective July 1, ~~2008~~ 2009, and assign new or changed classifications as approved by the board. That section of the manual is incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, 5 South Last Chance Gulch, P.O. Box 4759, Helena, Montana 59604-4759.

AUTH: 39-71-2315, 39-71-2316, MCA

IMP: 39-71-2311, 39-71-2316, MCA

REASON: This amendment to ARM 2.55.320 is reasonably necessary at this time to reflect the updates to the State Fund's Underwriting Manual that are now available up to July 1, 2009. The updates are made to the manual each year to reflect changes to the classifications that are made from time to time by the Classification Review Committee established in Title 33, chapter 16, MCA, and which classification changes are adopted by the State Fund.

In accordance with 39-71-2316(1)(e), MCA, "After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when

changing classifications and premium rates." The manual is an administrative manual used by State Fund staff in their usual duties of assigning classifications to insured employers of the State Fund. These classifications each have a premium rate that is adopted by the State Fund board in accordance with the board's ratemaking authority. This rule update and amendment are made each year to adopt the current version of the manual.

2.55.408 RETROSPECTIVE RATING PLANS (1) remains the same.

(2) The board shall establish employer retrospective rating plans for each fiscal year utilizing the methods and formulas published by the National Council on Compensation Insurance Retrospective Rating Manual, ~~1984~~ 2009 edition, ~~as revised to November 27, 1995.~~ The board shall determine the factors, multipliers, ratios, or other formula components for the plan. The board may establish a group retrospective rating plan utilizing the methods, formulas, factors, multipliers, ratios, or other formula components as determined by the board.

(3) through (5) remain the same.

AUTH: 39-71-2315, 39-71-2316, MCA

IMP: 39-71-2316, 39-71-2330, ~~39-71-2341~~, MCA

REASON: This amendment to ARM 2.55.408 is reasonably necessary at this time to reflect the 2009 edition of the National Council on Compensation Insurance Retrospective Rating Manual. Pursuant to 39-71-2316(1)(e), MCA, State Fund must belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization. The National Council on Compensation Insurance (NCCI) is the advisory organization designated by the commissioner pursuant to 33-16-1023, MCA. NCCI provides manuals, including the Retrospective Rating Manual for workers' compensation insurer members. State Fund establishes employer retrospective rating plans utilizing the methods and formulas published in the manual. Section 39-71-2341, MCA, is deleted from the implementing section because this statute was repealed in 2001.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana 59604-4759; telephone (406) 444-7725; fax (406) 444-1493; or e-mail nbutler@mt.gov. Any comments must be received no later than 5:00 p.m., December 30, 2009.

5. 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 a written request for a hearing and submit this request along with any written comments to Nancy Butler at the above address no later than 5:00 p.m., December 30, 2009.

6. 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. Ten percent of those persons directly affected has been determined to be 2,700 persons based on 27,000 policyholders.

7. The Montana State Fund 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, e-mail, and mailing address of the person and specifies that the person wishes to receive notices regarding the Montana State Fund. If you prefer to receive notices by e-mail, please indicate this in your request. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana, 59604-4759; faxed to the office at (406) 444-1493; e-mail nbutler@mt.gov; or may be made by completing a request form at any rules hearing held by the Montana State Fund.

8. An electronic copy of this Notice of Proposed Amendment 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 if a discrepancy exists 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/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Joe Dwyer
Joe Dwyer
Chairman of the Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer

Certified to the Secretary of State November 16, 2009.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.59.1603, 2.59.1604, and	)	AMENDMENT
2.59.1606 pertaining to state, county,)	
and municipal issues, corporate)	
bonds, and other approved	)	NO PUBLIC HEARING
investments	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 30, 2009, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on December 21, 2009, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

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

2.59.1603 STATE, COUNTY, AND MUNICIPAL ISSUES (1) through (3)(a) remain the same.

(b) The default requirements of (2)(c) must be met, and the obligations must have been rated in one of the four highest grades by a recognized national investment rating organization. ~~The rating organization must have been regularly and continuously engaged in rating state and municipal obligations for a period of not less than 10 years.~~ Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the bank's investment policy.

(c) through (5) remain the same.

(a) The default requirements of (2)(c) must be met, and the obligations must have been rated in one of the four highest grades by a recognized national investment rating organization. ~~The rating organization must have been regularly and continuously engaged in rating state and municipal obligations for a period of not less than 10 years.~~ Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the bank's investment policy.

(6) remains the same.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

STATEMENT OF REASONABLE NECESSITY: A Montana financial institution notified the division that the current rule requirement for municipal revenue bonds to be rated by organizations that have been regularly and continuously engaged in rating such issues for at least ten years could unreasonably limit the institution's opportunities to invest in municipal issues. Municipal issues might be rated by smaller organizations with less than ten continuous years of rating history because the larger rating organizations' fees could be cost prohibitive.

The current rule already requires that the obligations be rated by a nationally recognized investment rating organization and so the public protection will not be adversely affected by elimination of the ten-year requirement. The Montana branch of the Federal Reserve Bank favors elimination of the ten-year requirement noting that the list of approved rating organizations on the Security and Exchange Commission web site includes some newer rating organizations with less than ten years of continuous engagement in rating bonds. The elimination of the ten-year requirement and addition of the sentence authorizing use of other rating services where the gradations are equivalent currently exist in other rules and would make this rule consistent with other rules relating to investments in corporate bonds, ARM 2.59.1604, and other approved investments, ARM 2.59.1606.

2.59.1604 CORPORATE BONDS (1) remains the same.

(2) These bonds must be investment grade, i.e., rated in one of the four highest grades by a recognized national investment rating organization. Other rating services may be used if the ~~graduations~~ gradations are equivalent to those above, and the rating services are identified by the bank's investment policy. Corporate bonds should be reviewed as necessary to assure the bank's board of directors that bond quality has not fallen below investment grade.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

STATEMENT OF REASONABLE NECESSITY: In amending ARM 2.59.1604, the division realized this rule states "graduations" instead of "gradations." The proper term is gradation, not graduation. Therefore, the division proposes to amend this rule to reference equivalent gradations by rating agencies.

2.59.1606 OTHER APPROVED INVESTMENTS (1) through (1)(e) remain the same.

(f) banks may invest up to 20% of their capital and surplus, per issuer, in trust preferred securities. These bonds must be investment grade, i.e., rated in one of the four highest grades by a recognized national investment rating organization. Other rating services may be used if the ~~graduations~~ gradations are equivalent to those above, and the rating services are identified by the bank's investment policy.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

STATEMENT OF REASONABLE NECESSITY: In amending ARM 2.59.1606, the division realized this rule states "graduations" instead of "gradations." The proper term is gradation, not graduation. Therefore, the division proposes to amend this rule to reference equivalent gradations by rating agencies.

4. Concerned persons may present their data, views, or arguments, concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov. The data, views, or arguments must be received no later than 5:00 p.m., December 28, 2009.

5. 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 to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov. The requests and comments must be received no later than 5:00 p.m., December 28, 2009.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% 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 six persons based on the number of state-chartered banks, which is currently 63 as of the publication of this notice.

7. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. 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.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to

Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State November 16, 2009.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 2.60.203, 2.60.204, and	)	PROPOSED AMENDMENT AND
2.60.303 pertaining to application	)	REPEAL
procedure for a certificate of)	
authorization for a state-chartered)	
bank; procedural rules for discovery)	
and hearing; and capital adequacy of)	
proposed new banks and the repeal)	
of ARM 2.60.801 through 2.60.811)	
pertaining to foreign capital)	
depositories)	

TO: All Concerned Persons

1. On January 6, 2010, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on December 30, 2009, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

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

2.60.203 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE-CHARTERED BANK (1) One or more individual incorporators desiring to organize a bank shall file with the Commissioner of Banking and Financial Institutions an application to the State Banking Board for a certificate of authorization for a state-chartered bank. The Division of Banking and Financial Institutions of the Department of Administration adopts and incorporates by reference:

(a) the Interagency Charter and Federal Deposit Insurance Application (Expiration Date: 5/21/2010) as the form that shall be completed when applying for a certificate of authorization; and

(b) the Interagency Biographical and Financial Report (Expiration Date: 3/31/2011) for use by individuals in conjunction with the Interagency Charter and Federal Deposit Insurance Application. The application and biographical and financial report are available at the Division of Banking and Financial Institutions,

P.O. Box 200546, Helena, Montana 59620-0546, or on the division web site located at www.banking.mt.gov. Said application shall be signed by each of the incorporators, sworn to before an officer authorized by the laws of this state to administer oaths and contain the following information in addition to any other information as may be required pursuant to part 2 and 3 of chapter 1, Title 32, MCA:

- (a) ~~the names, addresses and principal occupations of the stockholders subscribing to the new bank;~~
- (b) ~~the proposed managing officer, if known, and directors/incorporators of the new bank, with banking experience and personal history of each in compliance with ARM 2.60.302;~~
- (c) ~~a summary of the evidence applicant intends to present at the hearing to demonstrate a persuasive showing of reasonable public necessity and demand for a new bank at the proposed location as required by ARM 2.60.301;~~
- (d) ~~information demonstrating capital adequacy of the proposed new bank as required by ARM 2.60.303;~~
- (e) ~~estimated operating statement and deposit volume at the end of each of the first three years;~~
- (f) ~~proposed expenditures for bank premises, fixtures, furniture and equipment;~~
- (g) ~~financial statements of the incorporators/directors and each of those stockholders controlling 10% or more of the stock in sufficient detail to substantiate their net worth;~~
- (h) ~~statement from the incorporator as to how they intend to meet the insurance requirement of ARM 2.60.304 (i.e., through membership in the federal reserve system or through application to the FDIC as a non-member.)~~

(2) An application fee of \$3,000 \$10,000 shall be paid to the state of Montana at the time of application and thereafter shall not be refundable in whole or in part.

(3) ~~The proposed articles of incorporation shall be submitted with the application for a certificate of authorization.~~ With the application, the applicant must submit a summary of the evidence the applicant intends to present at the hearing for a new bank charter to demonstrate the applicant meets the standards listed in 32-1-203, MCA, so that the board may determine whether to grant or deny the application.

(4) remains the same.

(5) ~~The form for applying for a certificate of authorization (FD-2) may be obtained from the Commissioner of Banking and Financial Institutions, Department of Administration, 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546.~~

(5) The board may request additional information from an applicant if, in its discretion, additional information is needed to reach a decision on the application.

AUTH: 32-1-203, MCA

IMP: 32-1-203, MCA

STATEMENT OF REASONABLE NECESSITY: The Division of Banking and Financial Institutions (division) believes it is important for Montana to be consistent with other states in the forms used to apply for a state charter. The Interagency Charter and Federal Deposit Insurance Application and the Interagency Biographical

and Financial Report have been developed by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation as the uniform charter application forms for all financial institutions seeking to become chartered by any regulatory agency. Financial institutions include national banks, state banks, federal savings banks or associations, and state savings associations. The division believes that these forms are an efficient and uniform method to acquire the information necessary to make a decision concerning whether to charter a financial institution and seeks to adopt the application and biographical statement and financial report as the uniform forms to be used to apply for a state bank charter in Montana.

The Interagency Charter and Federal Deposit Insurance Application requires the submission of the items listed in subsections (1)(a), (b), (d), (e), (f), (g), and (h) of the rule. However, the division proposes to add a section that requires the applicant to submit a summary of evidence the applicant intends to present at the hearing to demonstrate the applicant meets the standards listed in 32-1-203, MCA.

In addition, the division proposes to add a section that the board may request additional information if, in the board's discretion, this information is required to make a decision on the application. In the past, it has not been clear whether the board had the authority to request additional information from an applicant if the information submitted was unclear or lacking in some respect. It is preferable to allow the board to request additional information instead of denying the application for lack of evidence.

The address is being changed because the division has moved and is no longer located at 846 Front Street.

The division is seeking a fee increase from \$3,000 to \$10,000 for applications for new bank charters. The division has not increased the fee for new bank charters since October 30, 1987. The division proposes to set the fee at \$10,000 because the division's senior banking and legal staff must spend significant amounts of time reviewing and analyzing new bank applications. The division is self-funded through assessments on banks and credit unions as well as licensing fees for other programs the division administers. The division receives no general fund appropriation. The increase is necessary to make the fee commensurate with the associated costs. The division staff would not be doing such a review and analysis absent the application for a new bank charter, so it is only fair that the applicant pay the cost of the staff time to analyze the application.

Further, the application for a new bank charter requires the division to convene an in-person meeting of the six-member State Banking Board to review the application. The board members are chosen from across Montana, and they are paid mileage, meals, and expenses of lodging for their trips to Helena to attend board meetings. A hearing officer and a court reporter are retained to conduct and transcribe the proceedings, respectively. Oftentimes, a hearing must be continued and rescheduled one or more times if the State Banking Board has questions or requires additional information. This requires the division to pay the expenses of the hearing several times, until a decision can be made on the application.

The division does not have any pending applications for new banks. The fiscal impact of this proposed fee increase is impossible to predict because the division does not know when it may receive the next application for a new bank. At

times, several years have passed in between the submission of new bank applications.

2.60.204 PROCEDURAL RULES FOR DISCOVERY AND HEARING

(1) The ~~s~~State ~~b~~Banking ~~b~~Board and division adopt and incorporate the ~~a~~Attorney ~~g~~General's model rules dated June 30, ~~1992~~ 2009, by reference, as stated in ARM 1.3.101, ARM 1.3.102, ARM 1.3.201, ARM 1.3.202, ARM 1.3.211 through ARM 1.3.224, and ARM 1.3.226 through ARM 1.3.233, ~~with the exceptions set forth in ARM 8.2.104 through 8.2.106~~. Prehearing discovery procedures shall be allowed in the same manner as specified under the Montana Rules of Civil Procedure relative to district court actions. The time period established in discovery may be shortened at the discretion of the board.

(2) and (3) remain the same.

~~(4)~~(a) A notice of filing for a hearing on the application for a certificate of authorization for a new bank must be mailed to all banks within 100 miles of the proposed location, measured in a straight line. The notice of hearing on applications approved by the division in which the board determines there is a substantial basis for the protest must also be mailed to all banks within 100 miles of the proposed location, measured in a straight line. All of the rights and procedures of contested case proceedings apply to a person or bank filing a written protest with the board;

~~(5)~~(b) A written protest must be filed with the division no later than 15 calendar days following the notice of the filing of an application for a certificate of authorization for a new bank. A written protest on all other applications must be filed no later than 15 calendar days upon the filing of the application with the division; and

(6) remains the same, but is renumbered (c).

(a) through (d) remain the same, but are renumbered (i) through (iv).

AUTH: 32-1-203, MCA

IMP: 32-1-203, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to delete the reference to ARM 8.2.104 through 8.2.106 because they have been repealed.

2.60.303 CAPITAL ADEQUACY OF PROPOSED NEW BANKS

(1) The applicant must provide a reasonable assurance that the proposed new bank will have adequate initial paid-in capital sufficient to accomplish the following:

~~(1)~~ (a) ~~E~~establish an undivided profits account in an amount great enough to absorb initial operating losses under foreseeable business conditions;

~~(2)~~ (b) ~~T~~total capital and surplus accounts of adequate size to permit the proposed investment in building, land, furniture, and fixtures within the limitation of ~~50~~100% of capital and surplus as imposed by 32-1-423, MCA;

~~(3)~~ (c) ~~P~~provide protection for depositors' funds to the same extent that the average of all insured commercial banks in the proposed bank's peer group provides capital protection, measured by the most current peer group data available on total capital accounts and reserves as a percentage of total assets. The proposed bank's

reasonably estimated total assets at the end of its first three years of operation shall be the basis upon which this standard shall be projected; and

(4) (d) ~~To~~ enable the bank to furnish competitive services that will ensure an amount of business sufficient to assure its success.

AUTH: 32-1-203, MCA

IMP: 32-1-203, 32-1-423, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-1-423, MCA, allows for a limit of its paid-up capital and surplus of 100%, rather than 50%. The rule implements 32-1-423, MCA, in addition to 32-1-203, MCA.

4. The department proposes to repeal the following rules:

2.60.801 AUTHORITY, PURPOSE AND SCOPE: DEFINITIONS, found on ARM page 2-6225.

AUTH: 32-8-107, MCA

IMP: 32-8-107, 32-8-201, 32-8-202, 32-8-203, 32-8-205, MCA

2.60.802 APPLICATION PROCEDURE FOR A CHARTER, found on ARM page 2-6226.

AUTH: 32-8-107, MCA

IMP: 32-8-107, 32-8-201, 32-8-205, MCA

2.60.803 EVIDENCE OF GOOD CHARACTER AND PROSPECTIVE COMPLIANCE WITH FEDERAL LAW, found on ARM page 2-6228.

AUTH: 32-8-107, MCA;

IMP: 32-8-107, 32-8-201, 32-8-202, 32-8-301, MCA.

2.60.804 BUSINESS PLAN AND PRO FORMA STATEMENT, found on ARM page 2-6229.

AUTH: 32-8-107, MCA

IMP: 32-8-201, MCA

2.60.805 CAPITAL ADEQUACY, found on ARM page 2-6233.

AUTH: 32-8-107, MCA

IMP: 32-8-201, 32-8-202, MCA

2.60.806 APPLICANTS THAT ARE SUBSIDIARIES OF FOREIGN BANKS, found on ARM page 2-6234.

AUTH: 32-8-107, MCA

IMP: 32-8-201, MCA

2.60.807 NOTICE OF HEARINGS, found on ARM page 2-6235.

AUTH: 32-8-107, MCA
IMP: 32-8-201, 32-8-202, MCA

2.60.808 GROUNDS FOR DENIAL, found on ARM page 2-6236.

AUTH: 32-8-107, MCA
IMP: 32-8-202, MCA

2.60.809 PROCEDURAL RULES FOR DETERMINATIONS: APPROVAL CONDITIONS, found on ARM page 2-6236.

AUTH: 32-8-107, MCA
IMP: 32-8-201, 32-8-205, MCA

2.60.810 ANNUAL FEES, found on ARM page 2-6237.

AUTH: 32-8-107, MCA
IMP: 32-8-205, MCA

2.60.811 PROCEDURAL RULES FOR DISCOVERY AND HEARINGS, found on ARM page 2-6237.

AUTH: 32-8-107, 32-8-205, 32-8-301, MCA
IMP: 32-8-201, 32-8-202, 32-8-203, 32-8-205, 32-8-301, MCA

STATEMENT OF REASONABLE NECESSITY: The statutes relating to foreign capital depositories in Title 32, chapter 8, parts 1 through 6, MCA, were repealed by the 2005 Legislature. Therefore, the department is proposing to repeal the rules located in ARM Title 2, chapter 60, subchapter 8, which implemented the repealed statutes.

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 Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov. The data, views, or arguments must be received no later than 5:00 p.m., January 8, 2010.

6. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. 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 if a discrepancy exists 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.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State November 16, 2009.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration) PROPOSED ADOPTION
of the Quality Schools Grant Program)

TO: All Concerned Persons

1. On the following dates and times, the Department of Commerce will hold public hearings in the following locations to consider the proposed adoption of the above-stated rule:

(a) December 15, 2009, at 8:30 a.m., in Room 228 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana;

(b) December 15, 2009, at 2:30 p.m., in the conference room of the Missoula Area Economic Development Corporation at 1121 East Broadway, Missoula, Montana;

(c) December 16, 2009, at 1:00 p.m., in the Havre Public School District Administration Building, 425 6th Street, Havre, Montana;

(d) December 17, 2009, at 9:00 a.m., in the Poplar Schools Central Office Board Room, 400 4th Avenue West, Poplar, Montana; and

(e) December 18, 2009, at 8:30 a.m., in the Billings Public Schools Board Room, 415 North 30th, Billings, Montana.

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 Department of Commerce no later than 5:00 p.m., November 30, 2009, to advise us of the nature of the accommodation that you need. Please contact Penney Clark, Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549; telephone (406) 841-2800; TDD 841-2702; fax (406) 841-2878; or e-mail pclark2@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE QUALITY SCHOOLS GRANT PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Quality Schools Grant Program Application Guidelines and Administration Manual as rules for the Quality Schools Grant Program - Projects [DRAFT-November 2009].

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the application, award, administration, monitoring, and close-out of school facility and technology project grants to public school districts.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549, or on the Quality Schools Grant Program web site at <http://commerce.mt.gov/QualitySchools>.

AUTH: 90-6-819, MCA

IMP: 90-6-819, MCA

REASON: It is reasonably necessary to adopt these new rules to initiate the department's administration of the school facility and technology grant components of the newly established Quality Schools Grant Program, 90-6-801, *et seq.*, MCA. Public school districts must have these guidelines available before the entities may apply to the department for project financial assistance under the Quality Schools program. The guidelines describe the department requirements with which public school districts must comply in order to apply for, receive, and administer Quality School project grant funds.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at any one of the hearings. Written data, views, or arguments may also be submitted to the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549; telephone (406) 841-2800; TDD 841-2702; fax (406) 841-2878; or e-mail pclark2@mt.gov, and must be received no later than 5:00 p.m., December 28, 2009.

5. Kelly Casillas, Deputy Chief Legal Counsel, Department of Commerce, has been designated to preside over and conduct these hearings.

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 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 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 lgregg@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 was contacted by e-mail and telephone on

November 12, 2009, and a copy of the proposed rule was sent to the primary bill sponsor's address on November 12, 2009.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State November 16, 2009.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through New Rule XVI, the	)	PROPOSED ADOPTION,
amendment of ARM 10.54.3610	)	AMENDMENT, AND REPEAL
through 10.54.3613, 10.54.3620)	
through 10.54.3623, 10.54.3630)	
through 10.54.3633, 10.54.3640)	
through 10.54.3643, and the repeal of)	
ARM 10.54.3010 through 10.54.3013,)	
10.54.3020 through 10.54.3023,)	
10.54.3030 through 10.54.3033,)	
10.54.3040 through 10.54.3043,)	
10.54.3050 through 10.54.3053,)	
10.54.3087 through 10.54.3098,)	
10.54.3210 through 10.54.3213,)	
10.54.3220 through 10.54.3223,)	
10.54.3230 through 10.54.3233,)	
10.54.3240 through 10.54.3243,)	
10.54.3250 through 10.54.3253,)	
10.54.3287 through 10.54.3298,)	
10.54.3410 through 10.54.3413,)	
10.54.3420 through 10.54.3423,)	
10.54.3430 through 10.54.3433,)	
10.54.3440 through 10.54.3443,)	
10.54.3450 through 10.54.3453,)	
10.54.3460 through 10.54.3463,)	
10.54.3487 through 10.54.3498,)	
10.54.3687 through 10.54.3698,)	
10.54.3810 through 10.54.3813,)	
10.54.3820 through 10.54.3823,)	
10.54.3830 through 10.54.3833,)	
10.54.3840 through 10.54.3843,)	
10.54.3887 through 10.54.3898,)	
pertaining to communication arts)	
content standards and performance)	
descriptors)	

TO: All Concerned Persons

1. On December 17, 2009 at 9:00 a.m., the Board of Public Education will hold a public hearing in the conference room of the Office of Public Instruction building, at 1201 11th Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Board of Public Education will make reasonable accommodations for

persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on December 3, 2009, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, Montana, 59620-0601, telephone (406) 444-6576; fax (406) 444-0847; or e-mail smeloy@mt.gov.

3. Reason: The Board of Public Education has determined it is reasonable and necessary to adopt, amend, and repeal rules relating to the communication arts content standards and performance descriptors pursuant to Administrative Rules of Montana 10.54.2503 Standards Review Schedule. The board has determined that to stay consistent with the legislative intent of Senate Bill 152 of the 2005 Montana Legislative Session the board must review and make contemporary amendments to its standards. The Legislature recognizes the need to reassess educational needs on a cyclical basis and the board recognizes its standards represent the minimum standards. These standards are the basis upon which a quality system is built and maintained. The board strives to conform to a five-year review cycle for every chapter of accreditation. The standards review process uses context information, criteria, processes, and procedures identified by the Office of Public Instruction with input from representatives of accredited schools.

The communication arts content standards include, speaking and listening, reading, literature, media literacy, and writing. These standards were previously under separate chapters and are now being combined under communication arts. The communication arts performance descriptors are being adopted as new rules and will be placed in a separate chapter. The chapters which formerly contained the reading, literature, media literacy, and writing standards and performance descriptors are being repealed.

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

NEW RULE I COMMUNICATION ARTS WRITING CONTENT STANDARD 5

(1) To satisfy the requirements of communication arts writing content standard 5, a student must write to communicate effectively for a variety of purposes and audiences.

AUTH: 20-2-114, MCA

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

NEW RULE II BENCHMARK FOR COMMUNICATION ARTS WRITING CONTENT STANDARD 5 FOR END OF GRADE 4

(1) The benchmark for communication arts writing content standard 5 for a student at the end of grade 4 is the ability to:

(a) identify and demonstrate the steps used in the writing process, i.e., prewriting, planning, drafting, revising, editing, and publishing;

(b) select appropriate topics and generate topic sentences that indicate the writer's purpose for writing;

- (c) generate and develop main ideas using supporting details;
- (d) organize writing using a logical progression of ideas;
- (e) demonstrate awareness of language choices and their impact on writing through use of voice, sentence fluency, and word choice when writing;
- (f) identify and practice conventions of standard written English (e.g., usage, punctuation, and spelling), appropriate purpose, audience, and form;
- (g) identify the purpose, audience, and format in one's own writing;
- (h) identify and write using different writing forms and genres;
- (i) demonstrate ability to maintain topical focus through written work;
- (j) use information problem solving process to research a topic;
- (k) identify the owner of ideas and information, with respect to all forms of information (e.g., oral resources), including Montana American Indians;
- (l) set goals for writing progress; and
- (m) recognize and use writing as a means of clarifying thinking and reflecting.

AUTH: 20-2-114, MCA

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

NEW RULE III BENCHMARK FOR COMMUNICATION ARTS WRITING
CONTENT STANDARD 5 FOR END OF GRADE 8 (1)

The benchmark for communication arts writing content standard 5 for a student at the end of grade 8 is the ability to:

- (a) apply the steps of the writing process in a variety of written work;
- (b) select appropriate topics and generate thesis statements that indicate the writer's purpose for writing;
- (c) generate and develop main ideas using a variety of relevant supporting details;
- (d) organize writing using transitions and a logical progression of ideas;
- (e) demonstrate knowledge of language choices and their impact on writing through control of voice, strong sentence fluency, and effective word choice;
- (f) apply conventions of standard written English (e.g., usage, punctuation, and spelling) appropriate for purpose audience and form;
- (g) identify and describe the purpose, audience, format, and tone in one's own writing;
- (h) analyze the characteristics of different writing forms and genres and write in a variety of forms and genres;
- (i) compose written works demonstrating the ability to sustain focus through a variety of forms and genres;
- (j) use information problem solving process to collect and utilize information to research a topic;
- (k) obtain and use information legally and respectfully and appropriately credit ideas and words of others, including those of Montana American Indians;
- (l) set goals, seek feedback, and monitor writing progress; and
- (m) use writing as a means of clarifying thought and reflecting on learning.

AUTH: 20-2-114, MCA

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

NEW RULE IV BENCHMARK FOR COMMUNICATION ARTS WRITING
CONTENT STANDARD 5 UPON GRADUATION

(1) The benchmark for communication arts writing content standard 5 for a student upon graduation is the ability to:

- (a) apply the steps of the writing process to develop, evaluate, and refine writing;
- (b) independently select topics and generate complex thesis statements that indicate the writer's purpose for writing;
- (c) generate, develop, and elaborate upon main ideas using relevant and specific supporting details;
- (d) organize writing using a logical progression of ideas and transitions to effectively convey the relationships among them;
- (e) demonstrate knowledge of language choices and their impact on writing by showing purposeful control of voice, sentence fluency, and word choice;
- (f) apply conventions of standard written English (e.g., usage, punctuation, and spelling) appropriate for purpose, audience, and form;
- (g) articulate and evaluate the purpose and audience and select and use appropriate format and tone in one's own writing;
- (h) write using a variety of forms and genres and evaluate one's own and others' writing for effectiveness of form and genre;
- (i) compose a variety of written works utilizing complex ideas and detailed support that demonstrate the ability to maintain a sustained focus;
- (j) use information problem solving process to effectively synthesize information to research a topic;
- (k) follow copyright laws and fair use guidelines when using the intellectual property of others, including that of Montana American Indians, and appropriately credit ideas and words of others;
- (l) set goals, seek feedback, and evaluate writing progress; and
- (m) select and use forms of writing to clarify thought, extend learning, and reflect on experience.

AUTH: 20-2-114, MCA

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

NEW RULE V GRADE 4 PERFORMANCE DESCRIPTORS AT THE
ADVANCED LEVEL

(1) A student at the advanced level in communication arts demonstrates superior performance. He/she demonstrates highly developed knowledge and skills that reflect a coherent understanding of the subject. He/she can transfer learning to other situations, can apply knowledge to question, reason, and solve problems, and employs metacognitive skills.

- (a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:
- (i) understanding components of the communication process;
 - (ii) using elements of effective speaking;
 - (iii) using elements of effective listening;
 - (iv) selecting topics and organizing information;
 - (v) adapting to audience, setting, and purpose;

- (vi) using feedback to self-monitor;
- (vii) listening and responding to cultural stories; and
- (viii) displaying respect in speaking and listening.

(b) The student demonstrates the knowledge and skills under communication arts reading standard 2 by:

- (i) decoding words;
- (ii) developing vocabulary;
- (iii) reading sight words;
- (iv) using strategies to self-correct;
- (v) making connections to text;
- (vi) making predictions;
- (vii) generating and answering questions;
- (viii) explaining a series of events;
- (ix) identifying main ideas and supporting details;
- (x) making inferences;
- (xi) identifying and using text features;
- (xii) comparing and contrasting information;
- (xiii) identifying cause and effect;
- (xiv) recognizing the author's purpose, point of view, and language; and
- (xv) setting goals.

(c) The student demonstrates the knowledge and skills under communication arts literature standard 3 by:

- (i) identifying literary elements;
- (ii) explaining language use and literary devices;
- (iii) identifying characteristics of genre;
- (iv) identifying culture and history;
- (v) comparing personal experiences with literature; and
- (vi) justifying personal responses to literature.

(d) The student demonstrates the knowledge and skills under communication arts media literacy standard 4 by:

- (i) recognizing techniques and purposes used in media messages;
- (ii) identifying sources of media messages;
- (iii) identifying fact, fiction, and opinion in media messages;
- (iv) recognizing proper use and creation of media messages;
- (v) recognizing guidelines for using and creating media messages;
- (vi) recognizing consequences when using and creating media messages;
- (vii) creating media messages; and
- (viii) recognizing that media embeds values and influences.

(e) The student demonstrates the knowledge and skills under communication arts writing standard 5 by:

- (i) identifying and using steps of the writing process;
- (ii) selecting a topic and generating a topic sentence;
- (iii) developing the main idea;
- (iv) organizing writing;
- (v) identifying language choice and its impact;
- (vi) identifying and practicing conventions;
- (vii) identifying purpose, audience, and format;

- (viii) identifying writing forms and genres;
- (ix) maintaining focus of topic in writing;
- (x) using information problem solving process;
- (xi) using information legally;
- (xii) setting goals for writing; and
- (xiii) recognizing and using writing to think and reflect.

AUTH: 20-2-114, MCA

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

NEW RULE VI GRADE 4 PERFORMANCE DESCRIPTORS AT THE PROFICIENT LEVEL (1) A student at the proficient level in communication arts demonstrates solid academic performance by consistently meeting grade level expectations. He/she demonstrates the knowledge and skills required to be successful.

(a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:

- (i) understanding components of the communication process;
- (ii) using elements of effective speaking;
- (iii) using elements of effective listening;
- (iv) selecting topics and organizing information;
- (v) adapting to audience, setting, and purpose;
- (vi) using feedback to self-monitor;
- (vii) listening and responding to cultural stories; and
- (viii) displaying respect in speaking and listening.

(b) The student demonstrates the knowledge and skills under communication arts reading standard 2 by:

- (i) decoding words;
- (ii) developing vocabulary;
- (iii) reading sight words;
- (iv) using strategies to self-correct;
- (v) making connections to text;
- (vi) making predictions;
- (vii) generating and answering questions;
- (viii) explaining a series of events;
- (ix) identifying main ideas and supporting details;
- (x) making inferences;
- (xi) identifying and using text features;
- (xii) comparing and contrasting information;
- (xiii) identifying cause and effect;
- (xiv) recognizing the author's purpose, point of view, and language; and
- (xv) setting goals.

(c) The student demonstrates the knowledge and skills under communication arts literature standard 3 by:

- (i) identifying literary elements;
- (ii) explaining language use and literary devices;
- (iii) identifying characteristics of genre;

- (iv) identifying culture and history;
 - (v) comparing personal experiences with literature; and
 - (vi) justifying personal responses to literature.
- (d) The student demonstrates the knowledge and skills under communication arts media literacy standard 4 by:
- (i) recognizing techniques and purposes used in media messages;
 - (ii) identifying sources of media messages;
 - (iii) identifying fact, fiction, and opinion in media messages;
 - (iv) recognizing proper use and creation of media messages;
 - (v) recognizing guidelines for using and creating media messages;
 - (vi) recognizing consequences when using and creating media messages;
 - (vii) creating media messages; and
 - (viii) recognizing that media embeds values and influences.
- (e) The student demonstrates the knowledge and skills under communication arts writing standard 5 by:
- (i) identifying and using steps of the writing process;
 - (ii) selecting a topic and generating a topic sentence;
 - (iii) developing the main idea;
 - (iv) organizing writing;
 - (v) identifying language choice and its impact;
 - (vi) identifying and practicing conventions;
 - (vii) identifying purpose, audience, and format;
 - (viii) identifying writing forms and genres;
 - (ix) maintaining focus of topic in writing;
 - (x) using information problem solving process;
 - (xi) using information legally;
 - (xii) setting goals for writing; and
 - (xiii) recognizing and using writing to think and reflect.

AUTH: 20-2-114, MCA

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

NEW RULE VII GRADE 4 PERFORMANCE DESCRIPTORS AT THE NEARING PROFICIENCY LEVEL (1) A student at the nearing proficiency level in communication arts demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency. He/she has some of the required foundational skills and, at low level of complexity and difficulty is able to demonstrate those skills.

(a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:

- (i) understanding components of the communication process;
- (ii) using elements of effective speaking;
- (iii) using elements of effective listening;
- (iv) selecting topics and organizing information;
- (v) adapting to audience, setting, and purpose;
- (vi) using feedback to self-monitor;
- (vii) listening and responding to cultural stories; and
- (viii) displaying respect in speaking and listening.

(b) The student demonstrates the knowledge and skills under communication arts reading standard 2 by:

- (i) decoding words;
- (ii) developing vocabulary;
- (iii) reading sight words;
- (iv) using strategies to self-correct;
- (v) making connections to text;
- (vi) making predictions;
- (vii) generating and answering questions;
- (viii) explaining a series of events;
- (ix) identifying main ideas and supporting details;
- (x) making inferences;
- (xi) identifying and using text features;
- (xii) comparing and contrasting information;
- (xiii) identifying cause and effect;
- (xiv) recognizing the author's purpose, point of view, and language; and
- (xv) setting goals.

(c) The student demonstrates the knowledge and skills under communication arts literature standard 3 by:

- (i) identifying literary elements;
- (ii) explaining language use and literary devices;
- (iii) identifying characteristics of genre;
- (iv) identifying culture and history;
- (v) comparing personal experiences with literature; and
- (vi) justifying personal responses to literature.

(d) The student demonstrates the knowledge and skills under communication arts media literacy standard 4 by:

- (i) recognizing techniques and purposes used in media messages;
- (ii) identifying sources of media messages;
- (iii) identifying fact, fiction, and opinion in media messages;
- (iv) recognizing proper use and creation of media messages;
- (v) recognizing guidelines for using and creating media messages;
- (vi) recognizing consequences when using and creating media messages;
- (vii) creating media messages; and
- (viii) recognizing that media embeds values and influences.

(e) The student demonstrates the knowledge and skills under communication arts writing standard 5 by:

- (i) identifying and using steps of the writing process;
- (ii) selecting a topic and generating a topic sentence;
- (iii) developing the main idea;
- (iv) organizing writing;
- (v) identifying language choice and its impact;
- (vi) identifying and practicing conventions;
- (vii) identifying purpose, audience, and format;
- (viii) identifying writing forms and genres;
- (ix) maintaining focus of topic in writing;
- (x) using information problem solving process;

- (xi) using information legally;
- (xii) setting goals for writing; and
- (xiii) recognizing and using writing to think and reflect.

AUTH: 20-2-114, MCA

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

NEW RULE VIII GRADE 4 PERFORMANCE DESCRIPTORS AT THE NOVICE LEVEL (1) A student at the novice level in communication arts is beginning to attain prerequisite knowledge and skills that are fundamental for proficiency. He/she demonstrates a low level of understanding and with teacher guidance is beginning to attain a foundation of knowledge and skills.

(a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:

- (i) understanding components of the communication process;
- (ii) using elements of effective speaking;
- (iii) using elements of effective listening;
- (iv) selecting topics and organizing information;
- (v) adapting to audience, setting, and purpose;
- (vi) using feedback to self-monitor;
- (vii) listening and responding to cultural stories; and
- (viii) displaying respect in speaking and listening.

(b) The student demonstrates the knowledge and skills under communication arts reading standard 2 by:

- (i) decoding words;
- (ii) developing vocabulary;
- (iii) reading sight words;
- (iv) using strategies to self-correct;
- (v) making connections to text;
- (vi) making predictions;
- (vii) generating and answering questions;
- (viii) explaining a series of events;
- (ix) identifying main ideas and supporting details;
- (x) making inferences;
- (xi) identifying and using text features;
- (xii) comparing and contrasting information;
- (xiii) identifying cause and effect;
- (xiv) recognizing the author's purpose, point of view, and language; and
- (xv) setting goals.

(c) The student demonstrates the knowledge and skills under communication arts literature standard 3 by:

- (i) identifying literary elements;
- (ii) explaining language use and literary devices;
- (iii) identifying characteristics of genre;
- (iv) identifying culture and history;
- (v) comparing personal experiences with literature; and
- (vi) justifying personal responses to literature.

(d) The student demonstrates the knowledge and skills under communication arts media literacy standard 4 by:

- (i) recognizing techniques and purposes used in media messages;
- (ii) identifying sources of media messages;
- (iii) identifying fact, fiction, and opinion in media messages;
- (iv) recognizing proper use and creation of media messages;
- (v) recognizing guidelines for using and creating media messages;
- (vi) recognizing consequences when using and creating media messages;
- (vii) creating media messages; and
- (viii) recognizing that media embeds values and influences.

(e) The student demonstrates the knowledge and skills under communication arts writing standard 5 by:

- (i) identifying and using steps of the writing process;
- (ii) selecting a topic and generating a topic sentence;
- (iii) developing the main idea;
- (iv) organizing writing;
- (v) identifying language choice and its impact;
- (vi) identifying and practicing conventions;
- (vii) identifying purpose, audience, and format;
- (viii) identifying writing forms and genres;
- (ix) maintaining focus of topic in writing;
- (x) using information problem solving process;
- (xi) using information legally;
- (xii) setting goals for writing; and
- (xiii) recognizing and using writing to think and reflect.

AUTH: 20-2-114, MCA

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

NEW RULE IX GRADE 8 PERFORMANCE DESCRIPTORS AT THE ADVANCED LEVEL (1) A student at the advanced level in communication arts demonstrates superior performance. He/she demonstrates highly developed knowledge and skills that reflect a coherent understanding of the subject. He/she can transfer learning to other situations, can apply knowledge to question, reason, and solve problems, and employs metacognitive skills.

(a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:

- (i) analyzing components of the communication process;
- (ii) applying elements of effective speaking;
- (iii) applying elements of effective listening;
- (iv) selecting a specific topic and developing the introduction, body, and conclusion;
- (v) adapting to formal and informal audiences, settings, and purposes;
- (vi) using feedback to monitor and adjust;
- (vii) comparing and contrasting speaking and listening strategies in cultural stories; and
- (viii) displaying respectful communication and orally referencing sources.

(b) The student demonstrates the knowledge and skills under communication arts reading content standard 2 by:

- (i) decoding words;
- (ii) expanding general and specialized vocabulary;
- (iii) adjusting fluency;
- (iv) identifying when comprehension breaks down and self-correcting;
- (v) connecting text to self, text to text, and text to world;
- (vi) revising and explaining predictions;
- (vii) generating and answering literal and higher-order questions;
- (viii) explaining a series of events to draw conclusions;
- (ix) summarizing main ideas and details;
- (x) making and justifying inferences;
- (xi) analyzing text features;
- (xii) comparing and contrasting information to draw a conclusion;
- (xiii) explaining cause and effect across multiple texts;
- (xiv) critiquing the author's purpose, points of view, language use, and credibility; and
- (xv) setting goals and monitoring.

(c) The student demonstrates the knowledge and skills under communication arts literature content standard 3 by:

- (i) comparing and contrasting literary elements;
- (ii) analyzing language use and literary devices;
- (iii) defining characteristics of genre;
- (iv) interpreting influences of culture, history, and literature;
- (v) comparing a variety of perspectives in literature; and
- (vi) justifying personal ideas and feelings in response to literature.

(d) The student demonstrates the knowledge and skills under communication arts media literacy content standard 4 by:

- (i) differentiating how techniques and technologies impact media messages;
- (ii) analyzing credibility of media message sources;
- (iii) analyzing purpose of fact, fiction, opinion, bias, and stereotypes in media messages;
- (iv) applying proper use and creation of media messages;
- (v) applying guidelines for using and creating media messages;
- (vi) creating and analyzing media messages; and
- (vii) identifying how media embeds values and influences.

(e) The student demonstrates the knowledge and skills under communication arts writing content standard 5 by:

- (i) applying steps of the writing process;
- (ii) selecting a topic and generating a thesis;
- (iii) developing a main idea using a variety of details;
- (iv) organizing writing using a progression of ideas;
- (v) demonstrating knowledge of language choice and its impact;
- (vi) applying conventions;
- (vii) identifying and describing purpose, audience, format, style, and tone;
- (viii) analyzing characteristics of writing forms and genres;
- (ix) sustaining focus of topic in writing;

- (x) using information problem solving process;
- (xi) using information legally;
- (xii) setting goals and monitoring writing; and
- (xiii) using writing to think and learn.

AUTH: 20-2-114, MCA

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

NEW RULE X GRADE 8 PERFORMANCE DESCRIPTORS AT THE PROFICIENT LEVEL (1) A student at the proficient level in communication arts demonstrates solid academic performance by consistently meeting grade level expectations. He/she demonstrates the knowledge and skills required to be successful.

(a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:

- (i) analyzing components of the communication process;
- (ii) applying elements of effective speaking;
- (iii) applying elements of effective listening;
- (iv) selecting a specific topic and developing the introduction, body, and conclusion;
- (v) adapting to formal and informal audiences, settings, and purposes;
- (vi) using feedback to monitor and adjust;
- (vii) comparing and contrasting speaking and listening strategies in cultural stories; and
- (viii) displaying respectful communication and orally referencing sources.

(b) The student demonstrates the knowledge and skills under communication arts reading content standard 2 by:

- (i) decoding words;
- (ii) expanding general and specialized vocabulary;
- (iii) adjusting fluency;
- (iv) identifying when comprehension breaks down and self-correcting;
- (v) connecting text to self, text to text, and text to world;
- (vi) revising and explaining predictions;
- (vii) generating and answering literal and higher-order questions;
- (viii) explaining a series of events to draw conclusions;
- (ix) summarizing main ideas and details;
- (x) making and justifying inferences;
- (xi) analyzing text features;
- (xii) comparing and contrasting information to draw a conclusion;
- (xiii) explaining cause and effect across multiple texts;
- (xiv) critiquing the author's purpose, points of view, language use, and credibility; and
- (xv) setting goals and monitoring.

(c) The student demonstrates the knowledge and skills under communication arts literature content standard 3 by:

- (i) comparing and contrasting literary elements;
- (ii) analyzing language use and literary devices;

- (iii) defining characteristics of genre;
 - (iv) interpreting influences of culture, history, and literature;
 - (v) comparing a variety of perspectives in literature; and
 - (vi) justifying personal ideas and feelings in response to literature.
- (d) The student demonstrates the knowledge and skills under communication arts media literacy content standard 4 by:
- (i) differentiating how techniques and technologies impact media messages;
 - (ii) analyzing credibility of media message sources;
 - (iii) analyzing purpose of fact, fiction, opinion, bias, and stereotypes in media messages;
 - (iv) applying proper use and creation of media messages;
 - (v) applying guidelines for using and creating media messages;
 - (vi) creating and analyzing media messages; and
 - (vii) identifying how media embeds values and influences.
- (e) The student demonstrates the knowledge and skills under communication arts writing content standard 5 by:
- (i) applying steps of the writing process;
 - (ii) selecting a topic and generating a thesis;
 - (iii) developing a main idea using a variety of details;
 - (iv) organizing writing using a progression of ideas;
 - (v) demonstrating knowledge of language choice and its impact;
 - (vi) applying conventions;
 - (vii) identifying and describing purpose, audience, format, style, and tone;
 - (viii) analyzing characteristics of writing forms and genres;
 - (ix) sustaining focus of topic in writing;
 - (x) using information problem solving process;
 - (xi) using information legally;
 - (xii) setting goals and monitoring writing; and
 - (xiii) using writing to think and learn.

AUTH: 20-2-114, MCA

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

NEW RULE XI GRADE 8 PERFORMANCE DESCRIPTORS AT THE NEARING PROFICIENCY LEVEL (1) A student at the nearing proficiency level in communication arts demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency. He/she has some of the required foundational skills and, at a low level of complexity and difficulty, is able to demonstrate those skills.

- (a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:
- (i) analyzing components of the communication process;
 - (ii) applying elements of effective speaking;
 - (iii) applying elements of effective listening;
 - (iv) selecting a specific topic and developing the introduction, body, and conclusion;
 - (v) adapting to formal and informal audiences, settings, and purposes;

- (vi) using feedback to monitor and adjust;
 - (vii) comparing and contrasting speaking and listening strategies in cultural stories; and
 - (viii) displaying respectful communication and orally referencing sources.
- (b) The student demonstrates the knowledge and skills under communication arts reading content standard 2 by:
- (i) decoding words;
 - (ii) expanding general and specialized vocabulary;
 - (iii) adjusting fluency;
 - (iv) identifying when comprehension breaks down and self-correcting;
 - (v) connecting text to self, text to text, and text to world;
 - (vi) revising and explaining predictions;
 - (vii) generating and answering literal and higher-order questions;
 - (viii) explaining a series of events to draw conclusions;
 - (ix) summarizing main ideas and details;
 - (x) making and justifying inferences;
 - (xi) analyzing text features;
 - (xii) comparing and contrasting information to draw a conclusion;
 - (xiii) explaining cause and effect across multiple texts;
 - (xiv) critiquing the author's purpose, points of view, language use, and credibility; and
 - (xv) setting goals and monitoring.
- (c) The student demonstrates the knowledge and skills under communication arts literature content standard 3 by:
- (i) comparing and contrasting literary elements;
 - (ii) analyzing language use and literary devices;
 - (iii) defining characteristics of genre;
 - (iv) interpreting influences of culture, history, and literature;
 - (v) comparing a variety of perspectives in literature; and
 - (vi) justifying personal ideas and feelings in response to literature.
- (d) The student demonstrates the knowledge and skills under communication arts media literacy content standard 4 by:
- (i) differentiating how techniques and technologies impact media messages;
 - (ii) analyzing credibility of media message sources;
 - (iii) analyzing purpose of fact, fiction, opinion, bias, and stereotypes in media messages;
 - (iv) applying proper use and creation of media messages;
 - (v) applying guidelines for using and creating media messages;
 - (vi) creating and analyzing media messages; and
 - (vii) identifying how media embeds values and influences.
- (e) The student demonstrates the knowledge and skills under communication arts writing content standard 5 by:
- (i) applying steps of the writing process;
 - (ii) selecting a topic and generating a thesis;
 - (iii) developing a main idea using a variety of details;
 - (iv) organizing writing using a progression of ideas;
 - (v) demonstrating knowledge of language choice and its impact;

- (vi) applying conventions;
- (vii) identifying and describing purpose, audience, format, style, and tone;
- (viii) analyzing characteristics of writing forms and genres;
- (ix) sustaining focus of topic in writing;
- (x) using information problem solving process;
- (xi) using information legally;
- (xii) setting goals and monitoring writing; and
- (xiii) using writing to think and learn.

AUTH: 20-2-114, MCA

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

NEW RULE XII GRADE 8 PERFORMANCE DESCRIPTORS AT THE NOVICE LEVEL

(1) A student at the novice level in communication arts is beginning to attain prerequisite knowledge and skills that are fundamental for proficiency. He/she demonstrates a low level of understanding and with teacher guidance is beginning to attain a foundation of knowledge and skills.

(a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:

- (i) analyzing components of the communication process;
- (ii) applying elements of effective speaking;
- (iii) applying elements of effective listening;
- (iv) selecting a specific topic and developing the introduction, body, and conclusion;
- (v) adapting to formal and informal audiences, settings, and purposes;
- (vi) using feedback to monitor and adjust;
- (vii) comparing and contrasting speaking and listening strategies in cultural stories; and
- (viii) displaying respectful communication and orally referencing sources.

(b) The student demonstrates the knowledge and skills under communication arts reading content standard 2 by:

- (i) decoding words;
- (ii) expanding general and specialized vocabulary;
- (iii) adjusting fluency;
- (iv) identifying when comprehension breaks down and self-correcting;
- (v) connecting text to self, text to text, and text to world;
- (vi) revising and explaining predictions;
- (vii) generating and answering literal and higher-order questions;
- (viii) explaining a series of events to draw conclusions;
- (ix) summarizing main ideas and details;
- (x) making and justifying inferences;
- (xi) analyzing text features;
- (xii) comparing and contrasting information to draw a conclusion;
- (xiii) explaining cause and effect across multiple texts;
- (xiv) critiquing the author's purpose, points of view, language use, and credibility; and
- (xv) setting goals and monitoring.

(c) The student demonstrates the knowledge and skills under communication arts literature content standard 3 by:

- (i) comparing and contrasting literary elements;
- (ii) analyzing language use and literary devices;
- (iii) defining characteristics of genre;
- (iv) interpreting influences of culture, history, and literature;
- (v) comparing a variety of perspectives in literature; and
- (vi) justifying personal ideas and feelings in response to literature.

(d) The student demonstrates the knowledge and skills under communication arts media literacy content standard 4 by:

(i) differentiating how techniques and technologies impact media messages;

(ii) analyzing credibility of media message sources;

(iii) analyzing purpose of fact, fiction, opinion, bias, and stereotypes in media messages;

- (iv) applying proper use and creation of media messages;
- (v) applying guidelines for using and creating media messages;
- (vi) creating and analyzing media messages; and
- (vii) identifying how media embeds values and influences.

(e) The student demonstrates the knowledge and skills under communication arts writing content standard 5 by:

- (i) applying steps of the writing process;
- (ii) selecting a topic and generating a thesis;
- (iii) developing a main idea using a variety of details;
- (iv) organizing writing using a progression of ideas;
- (v) demonstrating knowledge of language choice and its impact;
- (vi) applying conventions;
- (vii) identifying and describing purpose, audience, format, style, and tone;
- (viii) analyzing characteristics of writing forms and genres;
- (ix) sustaining focus of topic in writing;
- (x) using information problem solving process;
- (xi) using information legally;
- (xii) setting goals and monitoring writing; and
- (xiii) using writing to think and learn.

AUTH: 20-2-114, MCA

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

NEW RULE XIII UPON GRADUATION PERFORMANCE DESCRIPTORS
AT THE ADVANCED LEVEL (1) A student at the advanced level in communication arts demonstrates superior performance. He/she demonstrates highly developed knowledge and skills that reflect a coherent understanding of the subject. He/she can transfer learning to other situations, can apply knowledge to question, reason, and solve problems, and employs metacognitive skills.

(a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:

- (i) evaluating the impact of components of the communication;
- (ii) evaluating elements of effective speaking;

- (iii) evaluating elements of effective listening;
- (iv) refining a topic using credible sources and proper organization;
- (v) adapting to public, group, and interpersonal audiences, settings, and purposes;
- (vi) using feedback to monitor, adjust, and evaluate;
- (vii) analyzing the influences of oral traditions in various cultures; and
- (viii) analyzing and evaluating the impact of ethical and responsible communication.

(b) The student demonstrates the knowledge and skills under communication arts reading content standard 2 by:

- (i) decoding words;
- (ii) expanding and utilizing general and specialized vocabulary;
- (iii) adjusting fluency;
- (iv) recognizing when comprehension breaks down and self-correcting;
- (v) recognizing background knowledge increases comprehension;
- (vi) justifying predictions;
- (vii) generating and answering complex literal and higher-level questions;
- (viii) explaining a series of events to hypothesize/justify conclusions;
- (ix) summarizing by distinguishing main ideas;
- (x) making and justifying complex inferences;
- (xi) analyzing and evaluating relevant text features;
- (xii) comparing and contrasting across multiple texts;
- (xiii) explaining cause and effect across multiple texts;
- (xiv) critiquing an author's purpose, point of view, language use, and credibility; and
- (xv) setting goals and evaluating.

(c) The student demonstrates the knowledge and skills under communication arts literature content standard 3 by:

- (i) analyzing literary elements;
- (ii) evaluating language use and literary devices;
- (iii) analyzing and evaluating characteristics of genre;
- (iv) evaluating influence of culture, history, and literature;
- (v) analyzing human experience in literature; and
- (vi) supporting critical and emotive responses to literature.

(d) The student demonstrates the knowledge and skills under communication arts media literacy content standard 4 by:

- (i) evaluating technique and technology impact on meaning and effectiveness of media messages;
- (ii) evaluating credibility of media message sources;
- (iii) evaluating impact of fact, fiction, opinion, bias, and stereotypes in media messages;
- (iv) applying and evaluating the impact of proper use and creating of media messages;
- (v) applying and evaluating the effect of guidelines when using and creating media messages;
- (vi) creating and evaluating media messages; and
- (vii) analyzing and evaluating how media embeds values and shapes

perception.

(e) The student demonstrates the knowledge and skills under communication arts writing content standard 5 by:

- (i) applying the steps of the writing process, evaluating and refining writing;
- (ii) selecting a topic and generating a complex thesis;
- (iii) developing and elaborating upon a main idea using a variety of details;
- (iv) organizing writing using transitions and progression of ideas;
- (v) demonstrating control of language choice;
- (vi) applying conventions;
- (vii) evaluating the purpose and audience; selecting and using format, style, and tone;
- (viii) using a variety of forms and genres and evaluating effectiveness of form and genre;
- (ix) maintaining focus of topic in written work with complex ideas;
- (x) conducting research using information problem solving process;
- (xi) following copyright laws;
- (xii) setting goals and evaluating writing; and
- (xiii) selecting and using writing to think and learn.

AUTH: 20-2-114, MCA

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

NEW RULE XIV UPON GRADUATION PERFORMANCE DESCRIPTORS

AT THE PROFICIENT LEVEL (1) A student at the proficient level in communication arts demonstrates solid academic performance by consistently meeting grade level expectations. He/she demonstrates the knowledge and skills required to be successful.

(a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:

- (i) evaluating the impact of components of the communication;
- (ii) evaluating elements of effective speaking;
- (iii) evaluating elements of effective listening;
- (iv) refining a topic using credible sources and proper organization;
- (v) adapting to public, group, and interpersonal audiences, settings, and purposes;
- (vi) using feedback to monitor, adjust, and evaluate;
- (vii) analyzing the influences of oral traditions in various cultures; and
- (viii) analyzing and evaluating the impact of ethical and responsible communication.

(b) The student demonstrates the knowledge and skills under communication arts reading content standard 2 by:

- (i) decoding words;
- (ii) expanding and utilizing general and specialized vocabulary;
- (iii) adjusting fluency;
- (iv) recognizing when comprehension breaks down and self-correcting;
- (v) recognizing background knowledge increases comprehension;
- (vi) justifying predictions;

- (vii) generating and answering complex literal and higher-level questions;
 - (viii) explaining a series of events to hypothesize/justify conclusions;
 - (ix) summarizing by distinguishing main ideas;
 - (x) making and justifying complex inferences;
 - (xi) analyzing and evaluating relevant text features;
 - (xii) comparing and contrasting across multiple texts;
 - (xiii) explaining cause and effect across multiple texts;
 - (xiv) critiquing an author's purpose, point of view, language use, and credibility; and
 - (xv) setting goals and evaluating.
- (c) The student demonstrates the knowledge and skills under communication arts literature content standard 3 by:
- (i) analyzing literary elements;
 - (ii) evaluating language use and literary devices;
 - (iii) analyzing and evaluating characteristics of genre;
 - (iv) evaluating influence of culture, history, and literature;
 - (v) analyzing human experience in literature; and
 - (vi) supporting critical and emotive responses to literature.
- (d) The student demonstrates the knowledge and skills under communication arts media literacy content standard 4 by:
- (i) evaluating technique and technology impact on meaning and effectiveness of media messages;
 - (ii) evaluating credibility of media message sources;
 - (iii) evaluating impact of fact, fiction, opinion, bias, and stereotypes in media messages;
 - (iv) applying and evaluating the impact of proper use and creating of media messages;
 - (v) applying and evaluating the effect of guidelines when using and creating media messages;
 - (vi) creating and evaluating media messages; and
 - (vii) analyzing and evaluating how media embeds values and shapes perception.
- (e) The student demonstrates the knowledge and skills under communication arts writing content standard 5 by:
- (i) applying the steps of the writing process, evaluating and refining writing;
 - (ii) selecting a topic and generating a complex thesis;
 - (iii) developing and elaborating upon a main idea using a variety of details;
 - (iv) organizing writing using transitions and progression of ideas;
 - (v) demonstrating control of language choice;
 - (vi) applying conventions;
 - (vii) evaluating the purpose and audience; selecting and using format, style, and tone;
 - (viii) using a variety of forms and genres and evaluating effectiveness of form and genre;
 - (ix) maintaining focus of topic in written work with complex ideas;
 - (x) conducting research using information problem solving process;
 - (xi) following copyright laws;

- (xii) setting goals and evaluating writing; and
- (xiii) selecting and using writing to think and learn.

AUTH: 20-2-114, MCA

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

NEW RULE XV UPON GRADUATION PERFORMANCE DESCRIPTORS AT THE NEARING PROFICIENCY LEVEL (1) A student at the nearing proficiency level in communication arts demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency. He/she has some of the required foundational skills and, at a low level of complexity and difficulty, is able to demonstrate this knowledge and skill.

(a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:

- (i) evaluating the impact of components of the communication;
- (ii) evaluating elements of effective speaking;
- (iii) evaluating elements of effective listening;
- (iv) refining a topic using credible sources and proper organization;
- (v) adapting to public, group, and interpersonal audiences, settings, and purposes;
- (vi) using feedback to monitor, adjust, and evaluate;
- (vii) analyzing the influences of oral traditions in various cultures; and
- (viii) analyzing and evaluating the impact of ethical and responsible communication.

(b) The student demonstrates the knowledge and skills under communication arts reading content standard 2 by:

- (i) decoding words;
- (ii) expanding and utilizing general and specialized vocabulary;
- (iii) adjusting fluency;
- (iv) recognizing when comprehension breaks down and self-correcting;
- (v) recognizing background knowledge increases comprehension;
- (vi) justifying predictions;
- (vii) generating and answering complex literal and higher-level questions;
- (viii) explaining a series of events to hypothesize/justify conclusions;
- (ix) summarizing by distinguishing main ideas;
- (x) making and justifying complex inferences;
- (xi) analyzing and evaluating relevant text features;
- (xii) comparing and contrasting across multiple texts;
- (xiii) explaining cause and effect across multiple texts;
- (xiv) critiquing an author's purpose, point of view, language use, and credibility; and
- (xv) setting goals and evaluating.

(c) The student demonstrates the knowledge and skills under communication arts literature content standard 3 by:

- (i) analyzing literary elements;
- (ii) evaluating language use and literary devices;
- (iii) analyzing and evaluating characteristics of genre;

- (iv) evaluating influence of culture, history, and literature;
 - (v) analyzing human experience in literature; and
 - (vi) supporting critical and emotive responses to literature.
- (d) The student demonstrates the knowledge and skills under communication arts media literacy content standard 4 by:
- (i) evaluating technique and technology impact on meaning and effectiveness of media messages;
 - (ii) evaluating credibility of media message sources;
 - (iii) evaluating impact of fact, fiction, opinion, bias, and stereotypes in media messages;
 - (iv) applying and evaluating the impact of proper use and creating of media messages;
 - (v) applying and evaluating the effect of guidelines when using and creating media messages;
 - (vi) creating and evaluating media messages; and
 - (vii) analyzing and evaluating how media embeds values and shapes perception.
- (e) The student demonstrates the knowledge and skills under communication arts writing content standard 5 by:
- (i) applying the steps of the writing process, evaluating and refining writing;
 - (ii) selecting a topic and generating a complex thesis;
 - (iii) developing and elaborating upon a main idea using a variety of details;
 - (iv) organizing writing using transitions and progression of ideas;
 - (v) demonstrating control of language choice;
 - (vi) applying conventions;
 - (vii) evaluating the purpose and audience; selecting and using format, style, and tone;
 - (viii) using a variety of forms and genres and evaluating effectiveness of form and genre;
 - (ix) maintaining focus of topic in written work with complex ideas;
 - (x) conducting research using information problem solving process;
 - (xi) following copyright laws;
 - (xii) setting goals and evaluating writing; and
 - (xiii) selecting and using writing to think and learn.

AUTH: 20-2-114, MCA

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

NEW RULE XVI UPON GRADUATION PERFORMANCE DESCRIPTORS
AT THE NOVICE LEVEL (1) A student at the novice level in communication arts is beginning to attain prerequisite knowledge and skills that are fundamental for proficiency. He/she demonstrates a low level of understanding and with teacher guidance is beginning to attain a foundation in prerequisite knowledge and skills.

- (a) The student demonstrates the knowledge and skills under communication arts speaking and listening content standard 1 by:
- (i) evaluating the impact of components of the communication;
 - (ii) evaluating elements of effective speaking;

- (iii) evaluating elements of effective listening;
- (iv) refining a topic using credible sources and proper organization;
- (v) adapting to public, group, and interpersonal audiences, settings, and purposes;
- (vi) using feedback to monitor, adjust, and evaluate;
- (vii) analyzing the influences of oral traditions in various cultures; and
- (viii) analyzing and evaluating the impact of ethical and responsible communication.

(b) The student demonstrates the knowledge and skills under communication arts reading content standard 2 by:

- (i) decoding words;
- (ii) expanding and utilizing general and specialized vocabulary;
- (iii) adjusting fluency;
- (iv) recognizing when comprehension breaks down and self-correcting;
- (v) recognizing background knowledge increases comprehension;
- (vi) justifying predictions;
- (vii) generating and answering complex literal and higher-level questions;
- (viii) explaining a series of events to hypothesize/justify conclusions;
- (ix) summarizing by distinguishing main ideas;
- (x) making and justifying complex inferences;
- (xi) analyzing and evaluating relevant text features;
- (xii) comparing and contrasting across multiple texts;
- (xiii) explaining cause and effect across multiple texts;
- (xiv) critiquing an author's purpose, point of view, language use, and credibility; and
- (xv) setting goals and evaluating.

(c) The student demonstrates the knowledge and skills under communication arts literature content standard 3 by:

- (i) analyzing literary elements;
- (ii) evaluating language use and literary devices;
- (iii) analyzing and evaluating characteristics of genre;
- (iv) evaluating influence of culture, history, and literature;
- (v) analyzing human experience in literature; and
- (vi) supporting critical and emotive responses to literature.

(d) The student demonstrates the knowledge and skills under communication arts media literacy content standard 4 by:

- (i) evaluating technique and technology impact on meaning and effectiveness of media messages;
- (ii) evaluating credibility of media message sources;
- (iii) evaluating impact of fact, fiction, opinion, bias, and stereotypes in media messages;
- (iv) applying and evaluating the impact of proper use and creating of media messages;
- (v) applying and evaluating the effect of guidelines when using and creating media messages;
- (vi) creating and evaluating media messages; and
- (vii) analyzing and evaluating how media embeds values and shapes

perception.

(e) The student demonstrates the knowledge and skills under communication arts writing content standard 5 by:

- (i) applying the steps of the writing process, evaluating and refining writing;
- (ii) selecting a topic and generating a complex thesis;
- (iii) developing and elaborating upon a main idea using a variety of details;
- (iv) organizing writing using transitions and progression of ideas;
- (v) demonstrating control of language choice;
- (vi) applying conventions;
- (vii) evaluating the purpose and audience; selecting and using format, style, and tone;
- (viii) using a variety of forms and genres and evaluating effectiveness of form and genre;
- (ix) maintaining focus of topic in written work with complex ideas;
- (x) conducting research using information problem solving process;
- (xi) following copyright laws;
- (xii) setting goals and evaluating writing; and
- (xiii) selecting and using writing to think and learn.

AUTH: 20-2-114, MCA

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

5. The board proposes to amend the following rules, new matter underlined, deleted matter interlined.

10.54.3610 COMMUNICATION ARTS SPEAKING AND LISTENING

CONTENT STANDARD 1 (1) To satisfy the requirements of communication arts speaking and listening content standard 1, a student must know and understand the role demonstrate knowledge and understanding of the communication process and demonstrate effective speaking and listening skills.

AUTH: 20-2-114, MCA

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

10.54.3611 BENCHMARK FOR COMMUNICATION ARTS SPEAKING AND LISTENING CONTENT STANDARD 1 FOR END OF GRADE 4 (1) The benchmark for communication arts speaking and listening content standard 1 for a student at the end of grade 4 is the ability to:

- (a) recognize the important role of speaking and listening in daily life; and identify and describe the components of the communication process (sender/ speaker, receiver/listener, message, medium/channel, feedback, and interference/ noise);
- (b) identify oneself in various roles in the communication process and recognize the shared communication responsibilities of the speaker and the listener. identify and use verbal and nonverbal techniques to deliver oral messages;
- (c) identify and use effective listening strategies;
- (d) choose topics and organize information to present effective oral

messages;

- (e) adapt communication to a variety of audiences, settings, and purposes;
- (f) use feedback to monitor speaking and listening effectiveness;
- (g) use appropriate strategies to listen and respond to stories from the oral traditions of different cultures, including Montana American Indians; and
- (h) display respectful behavior when speaking and listening.

AUTH: 20-2-114, MCA

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

10.54.3612 BENCHMARK FOR COMMUNICATION ARTS SPEAKING AND LISTENING CONTENT STANDARD 1 FOR END OF GRADE 8 (1) The benchmark for communication arts speaking and listening content standard 1 for a student at the end of grade 8 is the ability to:

- (a) observe and describe the importance of speaking and listening in personal relationships; and analyze and explain how the components of the communication process affect communication;
- (b) identify and define the components of the communication process. apply verbal and nonverbal delivery techniques to communicate effectively;
- (c) apply effective listening strategies to fit the purpose, situation, and setting of the communication;
- (d) select and narrow topics for specific occasions and develop an appropriate introduction, body, and conclusion to deliver speeches;
- (e) adapt communication to a variety of formal and informal audiences, settings, and purposes;
- (f) use feedback to monitor and adjust speaking and listening effectiveness;
- (g) compare and contrast the verbal and nonverbal aspects of storytellers, the behaviors of audiences, and the settings and purposes of stories in the oral traditions of different cultures, including Montana American Indians; and
- (h) explain the importance of communicating ethically, including effectively referencing sources and displaying respectful communications to individuals and groups.

AUTH: 20-2-114, MCA

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

10.54.3613 BENCHMARK FOR COMMUNICATION ARTS SPEAKING AND LISTENING CONTENT STANDARD 1 UPON GRADUATION (1) The benchmark for communication arts speaking and listening content standard 1 for a student upon graduation is the ability to:

- (a) explain the importance of effective oral communication in creating meaning, influencing thought, and making decisions; and analyze the complex relationship of the components of the communication process and evaluate their impact on effectiveness;
- (b) identify and analyze the relationships among the components of the communication process. adapt verbal and nonverbal delivery techniques to effectively enhance messages of varying lengths and formats;

(c) apply and evaluate effective listening strategies to fit the purpose, situation, and setting of the communication;

(d) select, test, and refine topics for specific purposes and occasions, choose credible courses for supporting materials, and effectively organize and deliver speeches;

(e) adapt communication to a variety of public, group, and interpersonal audiences, settings, and purposes;

(f) use feedback to monitor, adjust, and evaluate speaking and listening effectiveness;

(g) use appropriate strategies to listen to stories from different cultures; analyze how oral traditions, including Montana American Indian oral traditions, shape culture and influence individuals; and

(h) analyze the legal and ethical issues associated with responsible communication.

AUTH: 20-2-114, MCA

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

10.54.3620 COMMUNICATION ARTS READING SPEAKING AND LISTENING CONTENT STANDARD 2

(1) To satisfy the requirements of speaking and listening communication arts reading content standard 2, a student must distinguish among and use appropriate types of speaking and listening for a variety of purposes read by applying foundational skills and strategies to comprehend, interpret, analyze, and evaluate texts.

AUTH: 20-2-114, MCA

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

10.54.3621 BENCHMARK FOR SPEAKING AND LISTENING COMMUNICATION ARTS READING CONTENT STANDARD 2 FOR END OF GRADE 4 (1) The benchmark for speaking and listening communication arts reading content standard 2 for a student at the end of grade 4 is the ability to:

(a) recognize the techniques of listening in a variety of situations (e.g., focusing attention, reflecting, interpreting, analyzing, responding to messages); decode unknown words combining the elements of phonics, use of word parts, and context clues;

(b) demonstrate appropriate speaking and listening behaviors in communicating with peers and others in formal and informal classroom situations; develop and apply general and content specific vocabulary through the use of context clues, analysis of word parts, and reference sources;

(c) speak and listen effectively for a range of purposes (e.g., reading aloud and listening to oral readings, sharing and listening to personal experiences, presenting and listening to oral reports, clearly giving and understanding directions and instructions); read sight words and materials fluently, applying word accuracy, phrasing, rate, and expressing;

(d) identify and appropriately use different types of presentations (e.g.,

storytelling, narrative, description); and use appropriate strategies (reread, read ahead, use decoding and context clues, recognize media features) to monitor comprehension and self-correct when comprehension breaks down;

(e) identify and use different types of listening appropriate to the listening situation (e.g., casual, appreciative, attentive). activate prior knowledge to make connections to text;

(f) make and revise predictions;

(g) generate and answer questions to clarify meaning by locating specific information in text;

(h) recall and explain a series of events or the sequence of information;

(i) identify main ideas and supporting details;

(j) make inferences based on context clues and/or background knowledge;

(k) identify and use text features to enhance comprehension;

(l) identify the organizational structure of a selection, including sequential, problem-solution, and cause-effect;

(m) compare and contrast information to explain and explore relationships within and across texts;

(n) recognize author's purpose, point of view, and language use in culturally diverse texts, including those by and about Montana American Indians; and

(o) set goals for reading progress.

AUTH: 20-2-114, MCA

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

10.54.3622 BENCHMARK FOR SPEAKING AND LISTENING COMMUNICATION ARTS READING CONTENT STANDARD 2 FOR END OF GRADE 8 (1) The benchmark for speaking and listening communication arts reading content standard 2 for a student at the end of grade 8 is the ability to:

(a) analyze one's own techniques of listening in a variety of situations (e.g., focusing attention, reflecting, interpreting, analyzing, responding to messages); apply knowledge of word and sentence structure, analysis of word parts, and context to decode unknown words;

(b) demonstrate appropriate speaking and listening behaviors in communicating with various audiences; expand and apply general and specialized vocabulary through the use of context clues, analysis of word parts, and reference sources;

(c) speak and listen effectively for an expanded range of purposes (e.g., giving and understanding information, presenting and appreciating creative performances, delivering and analyzing persuasive messages); adjust fluency based on purpose and content;

(d) identify and appropriately use different types of presentations (e.g., reports, expository speeches, dramatic presentations, persuasive appeals); and identify when comprehension breaks down, analyze causes, and self-correct using effective strategies;

(e) identify and use different types of listening appropriate to the listening situation (e.g., interpretive and empathic listening). activate prior knowledge to connect text to self, text to text, and text to world;

- (f) make, revise, and explain predictions;
- (g) generate and answer literal, inferential, critical, and interpretive questions;
- (h) recall and explain a series of events or the sequence of information to draw conclusions;
- (i) summarize by stating main ideas and supporting details;
- (j) make and justify inferences based on context clues and/or background knowledge;
- (k) analyze text features to enhance comprehension;
- (l) identify and explain the impact of the organizational structure of a selection, including order of importance, spatial, problem-solution, and cause-effect;
- (m) compare and contrast information to explain relationships and draw conclusions within and/or across texts;
- (n) analyze author's purpose, point of view, language use, and credibility in culturally diverse texts, including those by and about Montana American Indians; and
- (o) set and monitor goals and reading progress.

AUTH: 20-2-114, MCA

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

10.54.3623 BENCHMARK FOR SPEAKING AND LISTENING
COMMUNICATION ARTS READING CONTENT STANDARD 2 UPON
GRADUATION

(1) The benchmark for speaking and listening communication arts reading content standard 2 for a student upon graduation is the ability to:

(a) explain, apply, and evaluate one's own and others' techniques of listening in a variety of situations (e.g., focusing attention, reflecting, interpreting, analyzing, responding to messages); select and apply knowledge of syntax clues, word origins, roots and fixes, and context to decode unknown words;

(b) demonstrate effective adjustment of speaking and listening behaviors in communicating with various audiences; expand and utilize general and specialized vocabulary through the use of context clues, analyze word origins, and reference sources;

(c) speak and listen effectively for a broad range of purposes (e.g., delivering and evaluating entertaining or inspiring messages, presenting and critically evaluating problems and solutions); adjust fluency based on purpose, complexity, and technical content;

(d) identify and use different types of presentations appropriate to the purpose for speaking (e.g., impromptu, extemporaneous, manuscript, memorized deliveries, inter-personal endeavors); and recognize when comprehension breaks down, select strategy to self-correct, and evaluate effectiveness of the selected strategy;

(e) identify and use different types of listening appropriate to the listening situation (e.g., critical listening). recognize the need for background knowledge and research to enhance comprehension;

(f) make, revise, and justify predictions;

(g) generate and answer complex literal, inferential, evaluative, and interpretive questions;

(h) recall and explain a series of events or the sequence of information to hypothesize and/or justify conclusions;

(i) summarize text by determining the main idea and analyzing essential and nonessential supporting details;

(j) make and justify complex inferences within and among multiple texts and/or forms or media;

(k) analyze and evaluate relevant text features of multiple forms of media to enhance comprehension;

(l) evaluate and compare the effectiveness of organizational structures within and across complex texts;

(m) compare and contrast information, draw conclusions, and synthesize ideas within and across texts to synthesize information and draw conclusions;

(n) critique author's purpose, point of view, bias, language use, and credibility to deepen understanding with and across culturally diverse texts, including those by and about Montana American Indians; and

(o) set goals and evaluate reading progress.

AUTH: 20-2-114, MCA

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

10.54.3630 SPEAKING AND LISTENING COMMUNICATION ARTS LITERATURE CONTENT STANDARD 3 (1) To satisfy the requirements of speaking and listening communication arts literature content standard 3, a student must apply a range of skills and strategies to speaking and listening. select, interpret, and respond to a range of literature.

AUTH: 20-2-114, MCA

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

10.54.3631 BENCHMARK FOR SPEAKING AND LISTENING COMMUNICATION ARTS LITERATURE CONTENT STANDARD 3 FOR END OF GRADE 4 (1) The benchmark for speaking and listening communication arts literature content standard 3 for a student at the end of grade 4 is the ability to:

(a) communicate in a focused and organized manner; identify basic literary elements (setting, plot, problem/solution, character);

(b) select and use appropriate verbal language to convey intended meaning; explain how authors' choices of language and use of devices contribute to the meaning of literary works;

(c) identify and begin to use appropriate verbal and non-verbal skills to enhance presentations and manage communication anxiety; identify the characteristics of select literary genres;

(d) monitor understanding by identifying and using strategies (e.g., asking relevant questions, restating information); identify how culture and history are represented in literary works, including works of Montana American Indians;

(e) distinguish new from familiar material, significant from insignificant information, fact from opinion, and fantasy from reality; identify similarities and differences between personal experiences and literary works, including the works of

Montana American Indians; and

~~(f) draw connections between one's experiences, information, and insights, and experiences communicated by others; express and justify personal responses to literature.~~

~~(g) identify characteristics of enjoyable listening experiences by examining rhythm in music and visualization of images; and~~

~~(h) identify, anticipate, and manage barriers to listening.~~

AUTH: 20-2-114, MCA

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

10.54.3632 BENCHMARK FOR SPEAKING AND LISTENING

COMMUNICATION ARTS LITERATURE CONTENT STANDARD 3 FOR END OF

GRADE 8 (1) The benchmark for speaking and listening communication arts literature content standard 3 for a student at the end of grade 8 is the ability to:

~~(a) communicate with a clear purpose, well-developed organization, and support from a variety of sources; compare and contrast the literary elements (setting, plot, character, conflict, resolution, point of view, mood) across texts;~~

~~(b) use verbal language appropriate to occasion, audience, and topic; analyze how authors' choices of words, uses of figurative language, and stylistic devices contribute to the meaning of literary works;~~

~~(c) explain and appropriately use verbal and non-verbal skills to enhance presentations and manage communication anxiety; understand and define the characteristics of literary genres;~~

~~(d) monitor understanding by identifying and using strategies (e.g., inquiring, taking notes, summarizing oral and visual clues); interpret how literature influences societies and, conversely, how factors such as history and culture influence literature, including works of Montana American Indians;~~

~~(e) distinguish information from persuasion, and logic from emotion; compare and contrast a variety of perspectives among culturally diverse literary works, including the works of Montana American Indians; and~~

~~(f) compare and contrast one's own experiences, information, and insights with the message received in a variety of communication situations; express personal ideas and feelings generated as a result of engaging with literature and offer justification.~~

~~(g) compare and contrast enjoyable listening experiences by examining different renditions of the same work (e.g., same selection interpreted by different performers); and~~

~~(h) identify, anticipate, and manage barriers to listening.~~

AUTH: 20-2-114, MCA

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

10.54.3633 BENCHMARK FOR SPEAKING AND LISTENING

COMMUNICATION ARTS LITERATURE CONTENT STANDARD 3 UPON

GRADUATION (1) The benchmark for speaking and listening communication arts literature content standard 3 for a student upon graduation is the ability to:

~~(a) communicate with an identifiable thesis, logically developed points with appropriate supporting resources, and clear sequencing of ideas and transitions; analyze the ways in which authors develop literary elements (setting, plot, character, conflict, point of view, mood, tone, theme) to impact works and readers;~~

~~(b) use informal, standard, and technical verbal language effectively to fit the purpose, audience, occasion, and task; evaluate how diction, figurative language, imagery, detail, organization, and style shape meaning and impact works and readers;~~

~~(c) apply, analyze, and evaluate effective verbal and non-verbal skills to enhance presentations and manage communication anxiety; analyze and define the characteristics of literary genres and evaluate the effect of genres on readers;~~

~~(d) monitor understanding by identifying and using strategies (e.g., asking probing questions, paraphrasing, interpreting, evaluating oral and visual clues); evaluate how literature reflects a society, including literature by and about Montana American Indians;~~

~~(e) recognize and analyze points of view, purposes, emotional appeals, and logical fallacies in verbal and nonverbal messages; analyze diverse literature to compare common human experiences among time periods, literary movements, places, and cultures, including Montana American Indians; and~~

~~(f) compare and contrast one's experiences, information, and insights with the message in a variety of communication situations; create and support critical and emotive responses to ideas and feelings generated as a result of engaging with literature.~~

~~(g) analyze and evaluate aesthetic listening experiences by examining speakers' style, interpreting characters in a dialogue, and studying the projection of emotion; and~~

~~(h) identify, anticipate, and manage barriers to listening.~~

AUTH: 20-2-114, MCA

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

~~10.54.3640 SPEAKING AND LISTENING COMMUNICATION ARTS MEDIA LITERACY CONTENT STANDARD 4 (1) To satisfy the requirements of speaking and listening communication arts media literacy content standard 4, a student must identify, analyze, and evaluate the impacts of effective speaking and evaluative listening effectively evaluate and create media messages.~~

AUTH: 20-2-114, MCA

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

~~10.54.3641 BENCHMARK FOR SPEAKING AND LISTENING COMMUNICATION ARTS MEDIA LITERACY CONTENT STANDARD 4 FOR END OF GRADE 4 (1) The benchmark for speaking and listening communication arts media literacy content standard 4 for a student at the end of grade 4 is the ability to:~~
~~(a) identify the characteristics of effective speaking and listening; recognize that media messages are constructed using specific techniques for specific purposes (e.g., entertain, persuade, inform);~~

~~(b) reflect on one's effectiveness as a speaker and as a listener, and set personal goals; and identify the sources of media messages;~~

~~(c) show respect for the feelings and values of others when speaking and listening. identify fact, fiction, and opinion in various media messages, including messages about Montana America Indians;~~

~~(d) recognize the norms, rules, laws, and etiquette that govern the use and creation of media messages;~~

~~(e) recognize consequences to self and others when using and creating media messages;~~

~~(f) create media messages for specific audiences and purposes (e.g., inform, entertain, or persuade); and~~

~~(g) recognize that media messages embed values and influence individuals, cultures, and societies;~~

AUTH: 20-2-114, MCA

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

10.54.3642 BENCHMARK FOR SPEAKING AND LISTENING

COMMUNICATION ARTS MEDIA LITERACY CONTENT STANDARD 4 FOR END OF GRADE 8 (1) The benchmark for speaking and listening communication arts media literacy content standard 4 for a student at the end of grade 8 is the ability to:

~~(a) analyze and apply the characteristics of effective speaking and evaluative listening; interpret and differentiate how techniques and technologies impact media messages;~~

~~(b) use feedback to evaluate one's own effectiveness as a speaker and as a listener, and set personal goals; and analyze the credibility of the sources of media messages;~~

~~(c) explain the importance of speaking and listening in our democratic society within a culturally diverse world. analyze the purpose and recognize the effects of fact, fiction, opinion, bias, and stereotypes in media messages on diverse groups of people, including Montana American Indians;~~

~~(d) apply appropriate norms, rules, laws, and etiquette in the use and creation of media messages;~~

~~(e) analyze the inherent consequences to self and others in the use and creation of media messages;~~

~~(f) create and analyze media messages for specific audiences and purposes; and~~

~~(g) identify how media messages embed values and influence individuals, cultures, and societies.~~

AUTH: 20-2-114, MCA

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

10.54.3643 BENCHMARK FOR SPEAKING AND LISTENING

COMMUNICATION ARTS MEDIA LITERACY CONTENT STANDARD 4 UPON GRADUATION (1) The benchmark for speaking and listening communication arts media literacy content standard 4 for a student upon graduation is the ability to:

(a) analyze the characteristics and evaluate the impact of informative, persuasive, and artistic presentations of self, peers, public figures, and the media; evaluate how techniques and technologies influence the meaning and effectiveness of the media messages;

(b) use feedback to evaluate one's own effectiveness as a speaker and as a listener, and set personal goals; and evaluate the credibility of the sources of media messages;

(c) analyze the legal and ethical issues associated with responsible communication. evaluate the impact of fact, opinion, bias, and stereotypes in media messages about diverse groups of people, including Montana American Indians;

(d) apply knowledge and evaluate the impact of norms, rules, laws, and etiquette in the use and creation of media messages;

(e) evaluate the inherent consequences to individuals and societies in the use and creation of media messages;

(f) create and evaluate media messages for a variety of audiences and purposes; and

(g) analyze the embedded values and evaluate the media's role in shaping perceptions of reality for individuals, cultures, and societies.

AUTH: 20-2-114, MCA

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

6. The board proposes to repeal the following rules:

10.54.3010 READING CONTENT STANDARD 1 AUTH: 20-2-114, MCA;
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3011 BENCHMARK FOR READING CONTENT STANDARD 1 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3012 BENCHMARK FOR READING CONTENT STANDARD 1 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3013 BENCHMARK FOR READING CONTENT STANDARD 1 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3020 READING CONTENT STANDARD 2 AUTH: 20-2-114, MCA;
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3021 BENCHMARK FOR READING CONTENT STANDARD 2 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3022 BENCHMARK FOR READING CONTENT STANDARD 2 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101,

MCA

10.54.3023 BENCHMARK FOR READING CONTENT STANDARD 2 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3030 READING CONTENT STANDARD 3 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3031 BENCHMARK FOR READING CONTENT STANDARD 3 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3032 BENCHMARK FOR READING CONTENT STANDARD 3 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3033 BENCHMARK FOR READING CONTENT STANDARD 3 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3040 READING CONTENT STANDARD 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3041 BENCHMARK FOR READING CONTENT STANDARD 4 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3042 BENCHMARK FOR READING CONTENT STANDARD 4 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3043 BENCHMARK FOR READING CONTENT STANDARD 4 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3050 READING CONTENT STANDARD 5 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3051 BENCHMARK FOR READING CONTENT STANDARD 5 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3052 BENCHMARK FOR READING CONTENT STANDARD 5 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3053 BENCHMARK FOR READING CONTENT STANDARD 5 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3087 ADVANCED READING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3088 PROFICIENT READING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3089 NEARING PROFICIENCY READING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3090 NOVICE READING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3091 ADVANCED READING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3092 PROFICIENT READING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3093 NEARING PROFICIENCY READING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3094 NOVICE READING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3095 ADVANCED READING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3096 PROFICIENT READING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3097 NEARING PROFICIENCY READING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3098 NOVICE READING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3210 LITERATURE CONTENT STANDARD 1 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3211 BENCHMARK FOR LITERATURE CONTENT STANDARD 1

FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3212 BENCHMARK FOR LITERATURE CONTENT STANDARD 1 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3213 BENCHMARK FOR LITERATURE CONTENT STANDARD 1 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3220 LITERATURE CONTENT STANDARD 2 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3221 BENCHMARK FOR LITERATURE CONTENT STANDARD 2 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3222 BENCHMARK FOR LITERATURE CONTENT STANDARD 2 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3223 BENCHMARK FOR LITERATURE CONTENT STANDARD 2 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3230 LITERATURE CONTENT STANDARD 3 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3231 BENCHMARK FOR LITERATURE CONTENT STANDARD 3 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3232 BENCHMARK FOR LITERATURE CONTENT STANDARD 3 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3233 BENCHMARK FOR LITERATURE CONTENT STANDARD 3 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3240 LITERATURE CONTENT STANDARD 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3241 BENCHMARK FOR LITERATURE CONTENT STANDARD 4 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3242 BENCHMARK FOR LITERATURE CONTENT STANDARD 4 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3243 BENCHMARK FOR LITERATURE CONTENT STANDARD 4 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3250 LITERATURE CONTENT STANDARD 5 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3251 BENCHMARK FOR LITERATURE CONTENT STANDARD 5 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3252 BENCHMARK FOR LITERATURE CONTENT STANDARD 5 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3253 BENCHMARK FOR LITERATURE CONTENT STANDARD 5 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3287 ADVANCED LITERATURE PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3288 PROFICIENT LITERATURE PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3289 NEARING PROFICIENCY LITERATURE PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3290 NOVICE LITERATURE PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3291 ADVANCED LITERATURE PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3292 PROFICIENT LITERATURE PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3293 NEARING PROFICIENCY LITERATURE PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3294 NOVICE LITERATURE PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3295 ADVANCED LITERATURE PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3296 PROFICIENT LITERATURE PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3297 NEARING PROFICIENCY LITERATURE PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3298 NOVICE LITERATURE PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3410 WRITING CONTENT STANDARD 1 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3411 BENCHMARK FOR WRITING CONTENT STANDARD 1 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3412 BENCHMARK FOR WRITING CONTENT STANDARD 1 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3413 BENCHMARK FOR WRITING CONTENT STANDARD 1 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3420 WRITING CONTENT STANDARD 2 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3421 BENCHMARK FOR WRITING CONTENT STANDARD 2 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3422 BENCHMARK FOR WRITING CONTENT STANDARD 2 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3423 BENCHMARK FOR WRITING CONTENT STANDARD 2 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3430 WRITING CONTENT STANDARD 3 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3431 BENCHMARK FOR WRITING CONTENT STANDARD 3 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3432 BENCHMARK FOR WRITING CONTENT STANDARD 3 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3433 BENCHMARK FOR WRITING CONTENT STANDARD 3 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3440 WRITING CONTENT STANDARD 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3441 BENCHMARK FOR WRITING CONTENT STANDARD 4 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3442 BENCHMARK FOR WRITING CONTENT STANDARD 4 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3443 BENCHMARK FOR WRITING CONTENT STANDARD 4 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3450 WRITING CONTENT STANDARD 5 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3451 BENCHMARK FOR WRITING CONTENT STANDARD 5 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3452 BENCHMARK FOR WRITING CONTENT STANDARD 5 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3453 BENCHMARK FOR WRITING CONTENT STANDARD 5 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3460 WRITING CONTENT STANDARD 6 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3461 BENCHMARK FOR WRITING CONTENT STANDARD 6 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3462 BENCHMARK FOR WRITING CONTENT STANDARD 6 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54. 3463 BENCHMARK FOR WRITING CONTENT STANDARD 6 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3487 ADVANCED WRITING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3488 PROFICIENT WRITING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3489 NEARING PROFICIENCY WRITING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3490 NOVICE WRITING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3491 ADVANCED WRITING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3492 PROFICIENT WRITING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3493 NEARING PROFICIENCY WRITING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3494 NOVICE WRITING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3495 ADVANCED WRITING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3496 PROFICIENT WRITING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3497 NEARING PROFICIENCY WRITING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3498 NOVICE WRITING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3687 ADVANCED SPEAKING AND LISTENING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3688 PROFICIENT SPEAKING AND LISTENING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3689 NEARING PROFICIENCY SPEAKING AND LISTENING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3690 NOVICE SPEAKING AND LISTENING PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3691 ADVANCED SPEAKING AND LISTENING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3692 PROFICIENT SPEAKING AND LISTENING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3693 NEARING PROFICIENCY SPEAKING AND LISTENING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3694 NOVICE SPEAKING AND LISTENING PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3695 ADVANCED SPEAKING AND LISTENING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3696 PROFICIENT SPEAKING AND LISTENING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3697 NEARING PROFICIENCY SPEAKING AND LISTENING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3698 NOVICE SPEAKING AND LISTENING PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3810 MEDIA LITERACY CONTENT STANDARD 1 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3811 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 1 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3812 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 1 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3813 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 1 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3820 MEDIA LITERACY CONTENT STANDARD 2 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3821 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 2 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3822 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 2 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3823 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 2 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3830 MEDIA LITERACY CONTENT STANDARD 3 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3831 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 3 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3832 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 3 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-

101, MCA

10.54.3833 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 3 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3840 MEDIA LITERACY CONTENT STANDARD 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3841 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 4 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3842 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 4 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3843 BENCHMARK FOR MEDIA LITERACY CONTENT STANDARD 4 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3887 ADVANCED MEDIA LITERACY PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3888 PROFICIENT MEDIA LITERACY PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3889 NEARING PROFICIENCY MEDIA LITERACY PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3890 NOVICE MEDIA LITERACY PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3891 ADVANCED MEDIA LITERACY PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3892 PROFICIENT MEDIA LITERACY PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3893 NEARING PROFICIENCY MEDIA LITERACY PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3894 NOVICE MEDIA LITERACY PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3895 ADVANCED MEDIA LITERACY PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3896 PROFICIENT MEDIA LITERACY PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3897 NEARING PROFICIENCY MEDIA LITERACY PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.3898 NOVICE MEDIA LITERACY PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Steve Meloy, Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601; telephone (406) 444-6576; fax (406) 444-0847; or e-mail smeloy@mt.gov, and must be received no later than 5:00 p.m., December 22, 2009.

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

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the board.

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

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

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

/s/ Steve Meloy
Steve Meloy
Rule Reviewer

/s/ Patty Myers
Patty Myers
Chairperson
Board of Public Education

Certified to the Secretary of State November 16, 2009.

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

In the matter of the amendment of) NOTICE OF PROPOSED AMENDMENT
ARM 12.11.3215 regarding) NO PUBLIC HEARING
recreational water use on Holter Lake) CONTEMPLATED

TO: All Concerned Persons

1. On March 25, 2010, the Fish, Wildlife and Parks Commission (commission) proposes to amend the above-stated rule.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than December 11, 2009, to advise us of the nature of the accommodation that you need. Please contact Stella Cureton, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail scureton@mt.gov.

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

12.11.3215 HOLTER LAKE (1) Holter Lake is located in Lewis and Clark County.

(2) Holter Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Gates of Mountains marina on (Upper Holter Lake) within 300 feet of docks or as buoyed;

(b) Bureau of Land Management boat landing on Holter Lake as buoyed;

(c) Juniper Bay;

(d) Log Gulch;

(e) Departure Point;

(f) Merriweather Camp; and

(g) Holter Lake lodge docks.

(3) Holter Lake is closed ~~to water skiing~~ on Saturday and Sunday of each week and on all legal holidays from the mouth of the canyon on upper Holter Lake to the Gates of the Mountains near Mann Gulch, as marked, to:

(a) water skiing, tubing, or any similar activity in which a vessel is towing a person; and

(b) wake surfing or any similar activity in which a person is riding the wake of a vessel.

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

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

REASONABLE NECESSITY: The commission prohibited water skiing on Saturday and Sunday of each week and legal holidays from the mouth of the canyon on upper Holter Lake to the Gates of the Mountains near Mann Gulch as a safety precaution because of the narrowness of the canyon and high density of boat traffic through the canyon at these times. The commission is proposing amending the rule to include all activities involving a motorboat or vessel towing a person, including tubes and other water borne activities that have become popular since the adoption of the rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Ron Jendro, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; fax (406) 444-7894; or e-mail rjendro@mt.gov, and must be received no later than December 24, 2009.

5. 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 Jessica Fitzpatrick at the above address. A written request for a hearing must be received no later than December 24, 2009.

6. If the commission 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. Ten percent of those persons directly affected has been determined to be greater than 25 people based on the fact that every Montana citizen has access to Holter Lake.

7. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request, which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

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

/s/ Dan Vermillion

Dan Vermillion, Vice-Chairman
Fish, Wildlife and Parks Commission

/s/ William A. Schenk

William A. Schenk
Rule Reviewer

Certified to the Secretary of State November 16, 2009.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF EXTENSION OF
38.5.1411, pertaining to medical)	HEARING REQUEST AND
emergencies)	COMMENT PERIOD ON
)	PROPOSED AMENDMENT
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On September 24, 2009, the Department of Public Service Regulation (PSC) published MAR Notice No. 38-2-204 regarding a notice of proposed amendment on the above-stated rule at page 1647, 2009 Montana Administrative Register, issue number 18. The initial comment period was scheduled to end on October 28, 2009.

2. The PSC is extending the time within which to submit written comments. Concerned persons may submit their written data, views, or arguments (original and 10 copies) to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than December 28, 2009 at 5:00 p.m., or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form) no later than December 28, 2009. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-09.10.1-RUL.") Any previous comments will be included in the rulemaking record.

3. Inadvertently, the initial proposal notice was not sent to persons on the interested persons list for the department's rulemaking proceedings, within three days of the initial publication as required by 2-4-302, MCA. The extended comment and request for public hearing period is intended to provide these persons with the opportunity to submit written comments or request a public hearing.

4. The rule proposed to be amended remains the same as published in MAR Notice No. 38-2-204.

5. On December 30, 2009, the PSC proposes to amend the above-stated rule. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 Justin Kraske, Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail jkraske@mt.gov to be received no later than 5:00 p.m., December 28, 2009.

6. If the PSC receives requests for a public hearing on the proposed action from either 10% 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. Ten percent of those directly affected has been determined to be 50 persons based on 500 medical exemption customers.

7. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or who need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on December 16, 2009, to advise us of the nature of the accommodation you need. Please contact Verna Stewart, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6170; TTD (406) 444-6199; fax (406) 444-7618; or e-mail vstewart@mt.gov.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes that name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Verna Stewart at (406) 444-7618, e-mailed to vstewart@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State, November 16, 2009.+

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
10.57.102, 10.57.201, 10.57.204,)
10.57.215, 10.57.301, 10.57.413,)
10.57.420, 10.57.425, 10.57.426, and)
10.57.437 pertaining to educator)
licensure)

TO: All Concerned Persons

1. On October 15, 2009, the Board of Public Education published MAR Notice No. 10-57-253 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1712 of the 2009 Montana Administrative Register, Issue Number 19.

2. The board has adopted NEW RULE I (10.57.438) as proposed.

3. The board has amended the following rules as proposed: ARM 10.57.102, 10.57.201, 10.57.204, 10.57.215, 10.57.301, 10.57.413, 10.57.420, 10.57.425, 10.57.426, and 10.57.437.

4. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's response are as follows:

COMMENT #1: Eric Feaver, on behalf of MEA-MFT, stated that he supported the rules as written.

RESPONSE #1: The board thanks Mr. Feaver for his support.

/s/ Steve Meloy
Steve Meloy
Rule Reviewer

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

Certified to the Secretary of State November 16, 2009.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.14.101, 12.14.105, 12.14.115,)
12.14.120, 12.14.125, 12.14.135,)
12.14.140, 12.14.150, 12.14.160 and)
12.14.165, regarding commercial use)
rules in Montana)

TO: All Concerned Persons

1. On August 27, 2009, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-351 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1436 of the 2009 Montana Administrative Register, Issue No. 16.

2. The commission has amended ARM 12.14.105, 12.14.115, 12.14.120, 12.14.125, 12.14.135, 12.14.140, 12.14.150, 12.14.160, and 12.14.165 as proposed.

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

ARM 12.14.101 DEFINITIONS

(1) through (11) remain as proposed.

(12) "Nonprofit organization" means an organization that ~~does not distribute its surplus funds to owners or shareholders and exists solely to provide programs and services that are of public benefit. While they are able to earn a profit, more accurately called a surplus, such earnings must be retained by the organization for its future provision of programs and services. Earnings may not benefit individuals or stake holders. Examples include charities and service organizations.~~ is officially registered as a 501(c)(3) tax exempt organization.

(13) through (19) remain as proposed.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

4. Simultaneous to the administrative rulemaking process the commission amended the commercial use permit commission fee rule. The commission received five comments on the commercial use administrative rules and the commission fee rule. We are only addressing the comments that deal with the commercial use administrative rules in this notice. The commission conducted one public hearing in Helena. Two people attended the hearing. No one provided testimony at the hearing.

Comment #1: A fishing outfitters association supported the proposed amendments to the rules. In particular the language allowing the department to establish a short-term fishing access site permit; definitions for outfitter and guide that are in line with Montana Board of Outfitters rules and laws; and the language providing added flexibility to adjust fees for community service groups, events, and nonprofits.

Response #1: The commission appreciates the support of the fishing outfitters association.

Comment #2: One person expressed concern about the lack of options to conduct commercial use on a restricted river where commercial use permits have been allocated based on historical use; in particular, the permit system on the Alberton Gorge. They referenced ARM 12.14.115(3) that states historical commercial use of a site does not convey a right to conduct commercial use in the future and that if it becomes necessary to ration and allocate commercial use, the department is not required to allocate opportunities based on historical use of a site. They commented that this rule should also mean that the lack of historical use should not preclude future use.

Response #2: The commission's intention in this rule was to convey that historical use does not convey a right to conduct commercial use in the future. This rule also, as this comment suggests, allows the commission to allocate use whether or not historical use was conducted. However, on the Alberton Gorge, the commission has already determined, in a separate rulemaking process, the allocation of and rationing of use based upon historic use. Any changes to that permit system would occur in a separate rulemaking process.

/s/ Dan Vermillion
Dan Vermillion, Vice Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State November 16, 2009

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.56.101, 17.56.309, 17.56.402,)	
17.56.407, 17.56.408, and 17.56.1407)	(UNDERGROUND STORAGE
pertaining to underground storage tank)	TANKS)
operation requirements, leak detection,)	
and license renewal training)	

TO: All Concerned Persons

1. On August 27, 2009, the Department of Environmental Quality published MAR Notice No. 17-292 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1450, 2009 Montana Administrative Register, issue number 16.

2. The department has amended ARM 17.56.101, 17.56.309, 17.56.402, 17.56.407, and 17.56.1407 exactly as proposed and has amended ARM 17.56.408 as proposed but with the following changes, stricken matter interlined, new matter underlined:

17.56.408 METHODS OF RELEASE DETECTION FOR PIPING (1) through (4) remain as proposed.

(5) Testing conducted pursuant to (3) must be accomplished by a licensed installer or compliance inspector pursuant to this chapter. Initial sump functional tests at each facility must ~~occur~~ be conducted prior to ~~the expiration of the facility's current operating permit, but are not required before December 31, 2010~~ December 31, 2012.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: The Montana Petroleum Marketers C-Store Association (Association) supports the proposed amendment in ARM 17.56.309(7) allowing the department to establish an alternative time period for corrections of violations that have moderate or minor gravity. We appreciate the consideration of these events.

RESPONSE: The department acknowledges the comment.

COMMENT NO. 2: The Association supports the proposed amendment in ARM 17.56.402 that will require a tank owner to observe leak test results. However, we would ask for clarification from the department in adopting the rules, on what "types" of observations are acceptable.

RESPONSE: In ARM 17.56.402(2), "observation" means a visual observation. In the event of a failed test result, the department wants an owner, operator, or facility employee to know about the failed test and respond to it immediately.

COMMENT NO. 3: The Association supports the proposed amendments in ARM 17.56.407(1)(d), (e), (f), and (g) regarding the disabling of pumping systems and investigation of failed leak tests. However, we would ask for clarification regarding required investigations in accordance with ARM 17.56.501 through 17.56.508. ARM 17.56.407 incorporates by reference water quality standards WQB-7, RBCA Tier 1 standards, etc. Does this mean that every time an alarm triggers a tank owner would have to investigate to that level if a problem can't be detected or a technician is not available? We don't believe this is the intent but it could be interpreted that way. If it is the intent, then support of this section could become one of opposition. Perhaps this section is written too broadly.

RESPONSE: The department agrees that every triggered alarm requires an investigation. This requirement is in the existing rules (ARM 17.56.503(1) and 17.56.504(1)), and the proposed revisions do not change the requirement. The proposed revisions require prompt observation of the leak testing results, and, if the leak detection system has the capability, temporarily disabling of the pumping system after a failed leak test.

COMMENT NO. 4: The Association is not opposed to the concept of what the proposed amendments in ARM 17.56.101(53), defining "primary leak detection methods," and the proposed amendments in ARM 17.56.408(2), (3), and (4), for testing of sumps, are attempting to address. While some perceive that tank owners who have installed interstitial monitoring systems are being penalized for investing in "better" technology, it is the view of the majority that the end result will outweigh the short term burdens.

RESPONSE: The department acknowledges the comment.

COMMENT NO. 5: This Association is opposed to the proposed amendment in ARM 17.56.408(5) that would require sump testing to be conducted no later than December 21, 2010. In 2010 all credit card acceptance devices at retail fuel dispensers, (Point of Sale or POS PIN acceptance devices) must be exchanged for systems that secure customer data in a globally consistent manner. This is referred to as Payment Card Industry (PCI) Data Security Standard compliance, and it addresses the theft of a card holder's personal information. It is required by the five leading credit card companies in order to offer their card services at retail locations. The average cost to a facility to install the new systems, depending on the number of dispensers, will be \$12,000 to \$20,000 per location. This will result in a great financial burden, especially for medium to small operators (not just petroleum retailers). In consulting with industry service providers, it is estimated the cost to test sumps at UST systems will be \$5,000 to \$7,000, which will be financially burdensome to tank owners. We do not believe a vast majority of our members in Montana can withstand the cost of both the PCI compliance requirements and an additional large cost for sump testing. Another issue to consider is that there are limited providers available in this industry to conduct the types of services required by the "change-out" for POS systems, let alone adding the testing of sumps in the same year. It will be challenging for some retailers in outlying areas to secure a contractor to complete PCI compliance. Therefore, we ask that the proposed

amendment in ARM 17.56.408(5) state that: "Initial sump functional tests at each facility must occur prior to December 31, 2012."

RESPONSE: In ARM 17.56.408(5), the department's intent was to require sump testing before the owner or operator's next operating permit renewal date, but not before December 21, 2010. Because an operating permit is valid for three years, the Association's suggested language "Initial sump functional tests at each facility must occur prior to December 31, 2012" is close to the department's intent. The department has amended ARM 17.56.408(5) to clarify the requirement.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

By: /s/ Richard H. Opper
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, November 16, 2009.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V pertaining to underground storage tank operator training))))
NOTICE OF ADOPTION
(UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On September 10, 2009, the Department of Environmental Quality published MAR Notice No. 17-293 regarding a notice of public hearing on the proposed adoption of the above-stated rules at page 1529, 2009 Montana Administrative Register, issue number 17.

2. The department has adopted New Rule V (17.56.1505) exactly as proposed and has adopted New Rules I (17.56.1501), II (17.56.1502), III (17.56.1503), and IV (17.56.1504) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (17.56.1501) OPERATOR TRAINING DEFINITIONS For purposes of ARM 17.56.1502 through 17.56.1505, the following definitions apply:

(1) "Class A operator" means an owner, or operator, ~~or employee~~ of an UST facility whose primary responsibility is to operate and maintain the UST system. A Class A operator's responsibilities also include managing resources and personnel to achieve and maintain compliance with regulatory requirements.

(2) "Class B operator" means an owner, or operator, ~~or employee~~ of an UST facility whose primary responsibility is to implement the applicable underground storage tank regulatory requirements and standards in the field. A Class B operator implements day-to-day aspects of operating, maintaining, and recordkeeping for underground storage tanks at one or more facilities.

(3) "Class C operator" means an person employee of the owner or operator of the facility who is responsible for responding to alarms or other indications of emergencies caused by spills or releases from UST systems. A Class C operator notifies the Class B or Class A operator and appropriate emergency responders when necessary.

(4) remains as proposed.

NEW RULE II (17.56.1502) OPERATOR TRAINING (1) through (3) remain as proposed.

~~(4) An UST owner or operator shall notify the department within 30 days after a new Class A, B, or C operator replaces an existing Class A, B, or C operator.~~

~~(5) (4)~~ (4) If the department determines that an UST system does not meet EPA's significant operational compliance (SOC) requirements for release prevention and release detection measures identified at ~~http://www.epa.gov/oust/emplastc/sec.htm~~, the appropriate operators, as determined by the department, must be retrained. Retraining must include the subjects in which the UST system was found

to be not in significant compliance. Retraining must occur within 90 days after the department's determination that an UST system does not meet EPA's SOC requirements for release prevention and release detection measures, or within a reasonable longer time frame established by the department in writing, on a case-by-case basis. For purposes of this chapter, the department adopts and incorporates by reference the EPA SOC requirements ~~identified at~~ <http://www.epa.gov/oust/emplaste/soc.htm> dated March 2005. Copies of the documents incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

NEW RULE III (17.56.1503) OPERATOR TRAINING: AUTHORIZED PROVIDERS; REQUIRED SUBJECTS (1) Training of UST system operators must be performed by the department or by a third-party trainer approved by the department pursuant to [New Rule ~~IV~~ V (17.56.1505)], except that a trained Class A or B operator also may train a Class C operator.

(2) through (4)(c) remain as proposed.

(5) Class A and B operators who choose department-sponsored training shall pass a department-administered test with at least an 80% score.

(6) Class C operators who:

(a) choose department-sponsored training, shall pass a department-administered test with at least an 80% score; or

(b) are trained by a trained Class A or B operator, shall successfully complete a practical demonstration or other evaluation procedure determined to be acceptable by the department and pre-approved by the department in writing.

NEW RULE IV (17.56.1504) OPERATOR TRAINING: RECORDKEEPING

(1) remains as proposed.

(2) The owner or operator shall keep the operator training record for a person at least three years after the person served as a Class A, B, or C operator at the facility.

3. The following comments were received and appear with the department's responses:

New Rule I

COMMENT NO. 1: We generally support the definitions of "Class A Operator," "Class B Operator," and "Class C Operator," which are consistent with the definitions in the EPA Guidelines. However, the proposed new rule goes beyond the requirements of the EPA Guidelines in one key respect by requiring that a Class A and Class B operator be "an owner, operator, or employee" of the UST facility. Proposed New Rule I(1) and (2). In addition, the proposed new rule is ambiguous with respect to whether Class C operators must be an owner, operator, or employee.

We believe that owners should have the flexibility to hire contractors or consultants to serve as operators. The EPA Guidelines do not prohibit third parties from serving as UST operators under the direction of owners. Moreover, we do not

believe there would be any compromise in protection of the environment, health, or safety if contractors or consultants were allowed to serve as UST operators. Owners would continue to be responsible for ensuring that persons serving as UST operators, including contractors or consultants, are trained in accordance with the rules. Owners also would have the flexibility to reduce compliance costs by utilizing the most qualified and experienced UST professionals available, including those with intimate knowledge of the UST systems at a facility, without sacrificing any of the environmental or safety benefits of having trained operators.

To ensure that contractors or consultants can serve as operators, we ask that the definition of "Class A Operator," "Class B Operator," and "Class C Operator" be changed to allow a contractor or consultant to serve as an operator for each operator class.

RESPONSE: The department agrees that EPA's guidelines (Grant Guidelines to States For Implementing the Operator Training Provision of the Energy Policy Act of 2005, page 7 (August 2007)) do not state that Class A and B operators must be employees, but the guidelines do provide that Class C operators must be employees. The department has amended New Rule I(3) to state that a Class C operator must be an employee of the owner or operator of the facility.

The comment requests that the phrase "contractor or consultant" be added to the definitions of Class A, B, and C operators. The definitions of Class A, B, and C operators include the term "operator," which is defined in 75-11-203, MCA. The definition of "operator" provides: "... a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system." Therefore, the definition of "operator" could include a contractor or consultant. The definitions of Class A and B operators do not need to be amended to include contractors or consultants that meet the definition of "operator" provided in 75-11-203, MCA. However, the EPA guidelines provide that a Class C operator must be an employee, which would exclude a contractor or consultant from being a Class C operator. Therefore, the department declines to amend the definitions of Class A, B, and C operators by adding "contractor or consultant" to the definitions.

New Rule II

COMMENT NO. 2: The recordkeeping requirements proposed in Proposed New Rule IV, which would require owners and operators to make operator training records available to the Montana Department of Environmental Quality (MDEQ), would serve the same purpose as the notification requirement in New Rule II(4). Because proposed New Rule II(2) would require that a new Class A or B operator be trained within 30 days of assuming Class A or B responsibilities and that Class C operators be trained before assuming Class C responsibilities, training records for new Class A, B, and C operators would be available to MDEQ within 30 days of each operator assuming its responsibilities. Requiring an additional notification step on top of training and recordkeeping is unnecessarily duplicative.

The proposed recordkeeping requirements in New Rule IV are sufficient to meet the informational requirements set forth in the EPA Guidelines. We therefore request that the department eliminate the requirement to notify the MDEQ when an operator is replaced.

RESPONSE: The department agrees that the notification requirement in New Rule II(4) is not necessary, and the department has deleted it. See Comment No. 3.

COMMENT NO. 3: The department received several comments concerning the notification requirement in New Rule II(4). The comments stated concerns about the high turnover of Class C operators, and the number of notifications that would be required.

RESPONSE: The department agrees that there may be significant turnover of Class C operators and has removed the notification requirement in New Rule II(4).

COMMENT NO. 4: In New Rule II(1) and (2), the department is requiring that Class A, B, and C operators be trained by August 8, 2010. The EPA deadline is August 8, 2012. We request that the state requirement be changed to August 8, 2012.

RESPONSE: The department believes that the operator training, which includes spill prevention, overfill prevention, release detection, and emergency response, is beneficial to the owner or operator and the environment. The training may result in earlier release detection that would reduce environmental contamination and the associated cleanup costs. Also, the department is providing the training free of charge, and the training is currently available either on-line or by obtaining a CD from the UST Program. The department believes it is in the best interest of affected owners and operators to complete the training as soon as practicable.

Therefore, the department has not amended the rule as requested.

COMMENT NO. 5: New Rule II(2), states: "a trained Class A or B operator of a UST system may be replaced by an untrained operator if within 30 days after assuming operation responsibilities the new operator receives training in accordance with New Rule III." We would like to see the 30 days changed to 90 days. (Another commentor requested that 30 days be changed to 60 days.)

RESPONSE: Because the department receives federal UST program funding (Subtitle I funding), the department is required to adopt rules that implement the operator training provision of the Energy Policy Act of 2005, and the proposed rules adopt EPA's guidelines concerning the 30-day requirement.

Because 30 days is the preferred time period in the EPA Guidelines, the department has not amended the rule as requested.

COMMENT NO. 6: New Rule II(5), states: "Retraining must occur within a reasonable time frame established by the department." We would rather see a deadline that's not relative or at the discretion of the department. We would like the rule to state that retraining must occur within X number of days. What is reasonable to one person may not be reasonable to others.

RESPONSE: The department agrees with the comment and has amended New Rule II(4) to provide: "Retraining must occur within 90 days of the department's determination that an UST system does not meet EPA's significant

operational compliance (SOC) requirements for release prevention and release detection measures, or within a longer time frame established by the department in writing, on a case-by-case basis."

New Rule III

COMMENT NO. 7: The EPA commented that its Guidelines require that the operator training rules provide for an evaluation of operator knowledge of the minimum training required for each class of operator. The evaluation of operator knowledge is imposed on third-party training courses (New Rule V Operator Training: Third-Party Training Course Approval, (2)(b) "a description of the evaluation method." However, we do not see it stated for the department-sponsored training.

RESPONSE: The department agrees with the comment and has amended New Rule III to provide for evaluation of operator knowledge.

COMMENT NO. 8: Proposed New Rule III would allow operators to satisfy the training requirements by attending training conducted by the department or a state-approved third-party provider. New Rule III(I).

While we support the proposed new rule's provisions allowing third parties to conduct training, we also believe that the proposed new rule should be changed in order to allow owners to provide training to their operators.

RESPONSE: The EPA Guidelines do not provide for untrained owners to provide training to operators. Because the department receives federal UST program funding (Subtitle I funding), the department is required to adopt rules that would implement the operator training provision of the Energy Policy Act of 2005, and the proposed rules adopt EPA's guidelines concerning who may provide training. The department does not have the discretion to permit the training of operators by untrained owners.

However, an owner may provide training if the owner's training program is approved by the department pursuant to New Rule V. Also, an owner who is a trained Class A or B operator may provide training to a Class C operator. Therefore, the department has not amended the rule as requested in the comment.

COMMENT NO. 9: Proposed New Rule III(1) states that a Class C operator "may" be trained by a Class A or Class B operator." We ask that the MDEQ clarify who may provide Class C training. Specifically, we request that the proposed new rule be revised to allow owners to train Class C operators by methods that would include on-line training.

RESPONSE: New Rule III has been amended to clarify who may provide Class C training.

Pursuant to New Rule III(1), an owner may train a Class C operator if the owner is a trained Class A or B operator. However, the EPA Guidelines do not provide that an untrained owner may train a Class C operator. Because the department receives federal UST program funding (Subtitle I funding), the department is required to adopt rules that implement the operator training provision of the Energy Policy Act of 2005, and the proposed rules adopt EPA's guidelines

concerning the training of Class C operators. Therefore, the department does not have the discretion to permit the training of Class C operators by untrained owners.

New Rules III and V would allow the department to approve on-line training if it meets the requirements of those rules. Therefore, the department has not amended New Rule V, concerning on-line training, as requested in the comment.

New Rule IV

COMMENT NO. 10: We ask that proposed New Rule IV be revised to clarify that records of operator training must be kept only as long as the person serves as a Class A, B, or C operator at the facility, but not longer than five years.

RESPONSE: The department agrees and has amended New Rule IV by adding a timeline for record retention.

COMMENT NO. 11: Proposed New Rule IV(1)(b) states records must be kept either "at the UST system site" or "at a readily available alternative site and must be available for inspection by the department upon request." We believe this provision would allow an owner to keep training records in a centralized location, such as a principle place of business, as long as those records can be made available to the department upon request. Allowing an owner to maintain records at a central location would enable the owner to streamline its oversight of facilities and ensure that all the facilities it owns are in compliance with the training requirements. Therefore, we ask that the department clarify that records may be kept at an owner's principle place of business or other centralized location.

RESPONSE: New Rule IV(1)(b) allows maintenance of records at a centralized location, such as a principle place of business, as long as those records can be made available to the department upon request. The department does not believe it's necessary to amend New Rule IV(1)(b).

New Rule V

COMMENT NO. 12: We ask that the proposed new rules be revised to state that operator training may be provided in a computer-based format that communicates the required training content, or, alternatively, that MDEQ clarify that computer-based training is an acceptable training format. Such a revision or clarification would bring the proposed new rule in line with the EPA Guidelines, which allow for "on-line" training if it includes an evaluation of operator knowledge. 72 Fed. Reg. at 44,526.

RESPONSE: New Rules III and V would allow the department to approve on-line training if it meets the requirements of those rules. Therefore, the department has not amended the rule as requested in the comment.

COMMENT NO. 13: Under proposed New Rule V(5), the MDEQ would recognize Class A or Class B operator training from another state "if the training requirements ... are at least as stringent as the training requirements under this subchapter. Proposed New Rule V(5). We strongly support recognition of training conducted in other states because it benefits owners, operators, and consumers by

eliminating the need to provide redundant training and thereby lowering compliance costs. Reciprocity provisions are particularly important to owners, including our client, that operate fueling stations in multiple states. Therefore, we strongly support the reciprocity provision in the proposed new rule, with the modification, addition, and clarification suggested below.

We ask that Montana eliminate the requirement that another state's training requirements be at least as stringent as Montana's training requirements. We ask that, instead, Montana recognize training from any other state that has promulgated an operator training program that meets minimum EPA requirements.

RESPONSE: Because Montana's UST program, administrative rules, and associated policies are different from many other states' UST requirements, it is necessary to base reciprocity for operator training on meeting the requirements of Montana's operator training rules. Therefore, the department has not amended the rule as requested in the comment.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

By: /s/ Richard H. Opper
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, November 16, 2009.

BEFORE THE ALTERNATIVE HEALTH CARE BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.111.401 fees, and the) ADOPTION
adoption of NEW RULE I pertaining)
to licenses)

TO: All Concerned Persons

1. On September 10, 2009, the Alternative Health Care Board (board) published MAR Notice No. 24-111-23 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1550 of the 2009 Montana Administrative Register, issue no. 17.

2. On October 1, 2009, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments were received.

3. The board has amended ARM 24.111.401 exactly as proposed.

4. The board has adopted New Rule I (24.111.409) exactly as proposed.

ALTERNATIVE HEALTH CARE BOARD
MAGGI BEESON, ND, CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 16, 2009

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.23.101, 32.23.102, 32.23.201,)
32.23.301, 32.24.301, 32.24.506,)
32.24.511, 32.24.520, 32.24.523)
pertaining to purchase and resale of)
milk)

TO: All Concerned Persons

1. On October 15, 2009, the Department of Livestock published MAR Notice No. 32-9-199 regarding the proposed amendment of the above-stated rules at page 1762 of the 2009 Montana Administrative Register, issue number 19.

2. The Department of Livestock has amended the above stated rules exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

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

Certified to the Secretary of State November 16, 2009.

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
36.12.1901, Filing a Change Application)
and 36.12.1902, Change Application -)
Historic Use)

To: All Concerned Persons

1. On May 28, 2009, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-134 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 814 of the 2009 Montana Administrative Register, Issue No. 10.

2. The department has amended ARM 36.12.1901 and 36.12.1902 as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

36.12.1901 FILING A CHANGE APPLICATION (1) An applicant who desires to change the point of diversion, place of use, purpose of use, or place of storage of a water right must file an application to change a water right (Form No. 606) and applicable addendum; ~~all materials must include, but are not limited to the information required by Title 36, Chapter 12.~~

(2) remains as proposed.

(3) In addition to the change application rules, a temporary change application for instream flow must submit the information required under 85-2-407 and , 85-2-408, ~~and or~~ 85-2-436, MCA.

(4) through (14)(c) remain as proposed.

(d) the applicant must provide information to show that the historic flow rate diverted will be adequate for the new use, even though ~~the~~ additional stock tanks may be farther away from the source of supply.

(15) remains as proposed.

36.12.1902 CHANGE APPLICATION - HISTORIC USE (1) The description of the historic information is related to a date that is dependent on the type of water right being changed. The following dates are applicable for each type of water right:

(a) historic information for a statement of claim must be described as it was used prior to July 1, 1973, unless the Water Right Claim was subject to a previous change in which case it is the date of completion of the change;

(b) through (5) remain as proposed.

(6) For an application to change water rights that overlap the historic place of use, an applicant shall include those water rights in the change application or shall explain how each of the water rights has been historically used and how the unchanged water rights will be used if the change authorization were granted. If water will continue to be used at the historic place of use, the applicant shall explain

how the continued use will not increase the combined historic maximum diverted flow rate, the historic diverted volume, and the historic consumptive volume.

(7) through (7)(e) remain as proposed.

(f) typical historic diversion schedule and operation pattern;

(g) through (7)(k) remain as proposed.

(l) typical historic period of use for each purpose;

(m) remains as proposed.

(n) the annual or monthly historic consumptive volume for each purpose;

(i) for irrigation, an applicant may choose to use the methodology described in ~~(15)~~ (16); and

(ii) for irrigation, an applicant who chooses not to use the methodology described in ~~(15)~~ (16), shall provide the factual basis for the historic consumptive volume calculation and why the historic consumptive use is less than or greater than the methodology described in ~~(15)~~ (16);

(o) through (9) remain as proposed.

(10) Calculations for each water right showing how the historic flow rate, consumed and diverted volumes for each water right, and capacity were determined must be included in the application materials, and the methodology employed must be described.

(11) The annual or monthly historic diverted volume must be based on the appropriator's typical historic operation of their diversion, irrigation, and harvest schedule throughout the period of diversion and the period of use. If applicable, in addition to the information required in 36.12.1902(7), the historic operation information must include if a discussion of the primary diversion from the source and secondary diversion from a ditch or reservoir exists, an applicant shall identify the diversion means and the typical operation of that secondary diversion.

(12) remains as proposed.

(13) The following may be used to calculate ditch capacity, historic available water supply, and reservoir capacity:

(a) Manning's equation;

(b) Orsborn's equation;

(c) Blaney-Criddle equation; and

(d) the department will determine the acceptability of other reports or methods on a case-by-case basis.

~~(13)~~ (14) The methodology in ~~(15)~~ (16) may be used to determine the historic consumptive volume for irrigation. The methodology is based on data from the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), and generated using the USDA NRCS Irrigation Water Requirements (IWR) program. If the applicant chooses not to use the methodology, they shall provide evidence showing how the historical consumptive use was calculated and why that amount is less than or greater than the methodology described in ~~(15)~~ (16).

~~(14)~~ (15) IWR Data for Seasonal Alfalfa Evapotranspiration County Management Factor are shown in Table 1 and may be used to identify the historic consumptive volume. If this table is used to establish the historic consumptive volume, the department will recognize that volume as a reasonable calculation, unless a valid objection is received which offers proof that the volume is inaccurate.

(15) remains as proposed but is renumbered (16).

Table 1 - Montana County Weather Station IWR Data for Seasonal Alfalfa Evapotranspiration and Montana County Management Factor.

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
Beaverhead	Dillon	5239	18.3417.05	20.7419.78	63.7 %
	Wisdom	6060	7.346.72	9.298.82	
	Jackson	6480	8.357.73	10.309.83	
	Lakeview	6710	8.397.52	10.6710.02	
	Lima	6583	13.7512.72	16.0115.23	
Big Horn	Busby	3430	20.3218.96	22.8821.87	55.4 %
	Hardin	2905	27.4626.01	29.9628.88	
	Hysham 25	3100	20.2518.84	22.8621.80	
	Wyola	3750	19.1917.79	21.8920.84	
Blaine	Yellowtail Dam	3305	28.0726.12	31.3029.83	58.7 %
	Chinook	2420	20.8019.12	23.5722.32	
	Harlem	2362	21.6219.99	24.2723.05	
Broadwater	Townsend	3840	19.4217.93	21.8820.77	69.2 %
	Trident	4040	20.6419.07	23.3122.14	
Carbon	Joliet	3776	22.4120.94	25.1224.03	58.3 %
	Red Lodge	5500	15.5714.28	18.4117.44	
Carter	Ekalaka	3425	20.1318.38	23.1421.83	38.4 %
	Ridgeway	3320	20.2818.70	23.0121.83	
Cascade	Cascade 20	4600	14.1212.83	16.6315.67	57.3 %
	Cascade 5	3360	17.9016.31	20.7519.56	
	Great Falls	3675	19.7818.21	22.5521.37	
	Neihart	4945	12.1710.73	15.0814.01	
	Sun River	3340	18.1016.68	20.6519.59	
Chouteau	Big Sandy	2700	21.5219.76	24.3723.06	52.5 %
	Fort Benton	2640	21.9820.32	24.7523.51	
	Geraldine	3130	20.3018.55	23.2721.95	
	Iliad	2950	21.5519.89	24.2723.03	
	Loma	2700	22.6421.00	25.3724.14	
	Shonkin	4300	13.3211.64	16.7015.44	
Custer	Miles City	2628	26.6824.89	29.5528.21	54.5 %
	Mizpah	2480	23.8022.14	26.5725.32	
	Powderville	2800	24.8323.09	27.6826.38	
Dawson	Glendive	2076	26.0124.08	28.9927.54	56.8 %

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
Deer Lodge	No weather station				See appropriate adjacent county
Fallon	Plevna	2780	<u>22.48</u> 20.79	<u>25.34</u> 24.07	47.6 %
Fergus	Denton	3620	<u>15.39</u> 13.87	<u>18.12</u> 16.97	48.8 %
	Grass Range	3490	<u>18.93</u> 17.16	<u>21.93</u> 20.60	
	Lewistown	4167	<u>15.54</u> 13.96	<u>18.44</u> 17.25	
	Roy	3450	<u>19.94</u> 18.23	<u>22.78</u> 21.50	
	Winifred	3240	<u>17.86</u> 16.18	<u>20.75</u> 19.50	
Flathead	Creston	2949	<u>14.97</u> 13.49	<u>17.81</u> 16.70	87.6 %
	Hungry Horse Dam	3160	<u>14.66</u> 13.18	<u>18.06</u> 16.95	
	Kalispell	2972	<u>16.45</u> 15.21	<u>19.03</u> 18.10	
	Olney	3165	<u>12.50</u> 11.37	<u>15.16</u> 14.31	
	Polebridge	3600	<u>10.20</u> 9.36	<u>12.50</u> 11.87	
	West Glacier	3154	<u>13.74</u> 12.48	<u>16.78</u> 15.83	
	Whitefish	3100	<u>15.74</u> 14.32	<u>18.61</u> 17.55	
Gallatin	Bozeman Exp Farm	4775	<u>16.84</u> 15.41	<u>19.55</u> 18.48	73.5 %
	Bozeman MT State	4913	<u>18.42</u> 16.78	<u>21.39</u> 20.16	
	Hebgen Dam	6667	<u>10.09</u> 9.13	<u>12.77</u> 12.05	
Garfield	Cohagen	2710	<u>22.36</u> 20.81	<u>24.99</u> 23.83	43.4 %
	Jordan	2661	<u>23.58</u> 21.91	<u>26.32</u> 25.07	
	Mosby	2750	<u>24.51</u> 22.76	<u>27.34</u> 26.03	
Glacier	Babb	4300	<u>12.12</u> 10.70	<u>14.87</u> 13.80	59.7 %
	Cut Bank	3855	<u>16.01</u> 14.54	<u>18.60</u> 17.50	
	Del Bonita	4340	<u>14.61</u> 13.10	<u>17.30</u> 16.17	
	East Glacier	4810	<u>10.60</u> 9.61	<u>13.26</u> 12.53	
	St Mary	4560	<u>13.64</u> 12.37	<u>16.60</u> 15.64	
Golden Valley	Ryegate	4440	<u>17.60</u> 16.16	<u>20.17</u> 19.09	62.6 %
Granite	Philipsburg Ranger Station	5270	<u>12.90</u> 11.83	<u>15.26</u> 14.46	86.5 %
Hill	Fort Assiniboine	2613	<u>22.42</u> 20.72	<u>25.20</u> 23.93	54.1 %
	Guilford	2820	<u>19.54</u> 18.00	<u>22.06</u> 20.91	
	Havre	2585	<u>20.94</u> 19.46	<u>23.46</u> 22.35	

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
	Simpson	2815	<u>19.67</u> 18.15	<u>22.13</u> 21.00	
Jefferson	Boulder	4904	<u>17.08</u> 15.78	<u>19.47</u> 18.50	61.0 %
Judith Basin	Moccasin Exp Station	4243	<u>16.17</u> 14.51	<u>19.06</u> 17.83	49.3 %
	Raynesford	4220	<u>16.14</u> 14.54	<u>19.05</u> 17.86	
	Stanford	4860	<u>16.74</u> 15.06	<u>19.69</u> 18.43	
Lake	Bigfork	2910	<u>17.37</u> 15.67	<u>20.61</u> 19.33	55.0 %
	Polson	2949	<u>20.46</u> 18.95	<u>23.23</u> 22.10	
	Polson Kerr Dam	2730	<u>21.37</u> 19.85	<u>24.08</u> 22.95	
	St Ignatius	2940	<u>19.53</u> 18.01	<u>22.33</u> 21.18	
Lewis & Clark	Augusta	4070	<u>17.51</u> 16.06	<u>20.13</u> 19.04	60.1 %
	Austin	4790	<u>15.41</u> 14.19	<u>17.96</u> 17.04	
	Helena	3828	<u>20.23</u> 18.82	<u>22.69</u> 21.63	
	Holter Dam	3490	<u>23.88</u> 22.18	<u>26.61</u> 25.34	
	Lincoln Ranger Station	4575	<u>12.87</u> 11.93	<u>15.22</u> 14.51	
Liberty	Chester	3132	<u>19.28</u> 17.79	<u>21.74</u> 20.62	54.8 %
	Joplin	3300	<u>19.01</u> 17.53	<u>21.40</u> 20.29	
	Tiber Dam	2850	<u>22.98</u> 21.41	<u>25.46</u> 24.29	
Lincoln	Eureka Ranger Station	2532	<u>20.63</u> 19.21	<u>23.26</u> 22.20	47.1 %
	Fortine	3000	<u>16.09</u> 14.77	<u>18.69</u> 17.70	
	Libby Ranger Station	2096	<u>21.20</u> 20.06	<u>23.71</u> 22.86	
	Libby	3600	<u>11.06</u> 10.29	<u>13.36</u> 12.79	
	Troy	1950	<u>19.90</u> 18.70	<u>22.68</u> 21.78	
Madison	Alder	5800	<u>14.33</u> 13.13	<u>16.75</u> 15.85	65.2 %
	Ennis	4953	<u>17.19</u> 15.86	<u>19.71</u> 18.71	
	Glen	5050	<u>17.81</u> 16.57	<u>20.01</u> 19.09	
	Norris	4750	<u>20.88</u> 19.06	<u>23.97</u> 22.61	
	Twin Bridges	4777	<u>16.98</u> 15.75	<u>19.22</u> 18.30	
	Virginia City	5770	<u>15.57</u> 14.30	<u>18.13</u> 17.17	
McCone	Brockway	2630	<u>20.74</u> 19.12	<u>23.35</u> 22.14	43.7 %
	Circle	2480	<u>22.23</u> 20.55	<u>25.01</u> 23.75	
	Fort Peck Power Plant	2070	<u>25.37</u> 23.54	<u>28.16</u> 26.79	
	Vida	2400	<u>21.74</u> 19.93	<u>24.65</u> 23.30	

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
Meagher	Lennepe	5880	<u>11.93</u> 10.82	<u>14.38</u> 13.55	57.3 %
	Martinsdale	4800	<u>15.19</u> 13.83	<u>17.73</u> 16.71	
	White Sulphur Spr	5060	<u>16.41</u> 15.12	<u>18.89</u> 17.92	
Mineral	St Regis Ranger Stn	2680	<u>17.61</u> 16.54	<u>20.05</u> 19.26	56.1 %
	Superior	2710	<u>21.94</u> 20.64	<u>24.54</u> 23.57	
Missoula	Lindbergh Lake	4320	<u>14.63</u> 13.65	<u>17.22</u> 16.48	69.5 %
	Missoula	3420	<u>18.85</u> 17.52	<u>21.49</u> 20.50	
	Missoula WSO AP	3199	<u>19.45</u> 18.23	<u>21.89</u> 20.98	
	Potomac	3620	<u>14.05</u> 13.18	<u>16.26</u> 15.60	
	Seeley Lake Ranger Station	4100	<u>14.86</u> 13.85	<u>17.31</u> 16.55	
Musselshell	Melstone	2920	<u>24.22</u> 22.42	<u>27.17</u> 25.83	50.0 %
	Roundup	3386	<u>23.98</u> 22.26	<u>26.79</u> 25.50	
Park	Cooke City	7460	<u>8.68</u> 7.36	<u>11.63</u> 10.64	56.9 %
	Gardiner	5275	<u>22.46</u> 21.22	<u>24.70</u> 23.77	
	Livingston	4870	<u>16.59</u> 15.05	<u>19.41</u> 18.25	
	Livingston FAA AP	4656	<u>18.63</u> 17.11	<u>21.39</u> 20.25	
	Wilsall	5840	<u>13.20</u> 11.84	<u>16.01</u> 14.98	
Petroleum	Flatwillow	3133	<u>22.27</u> 20.63	<u>25.01</u> 23.78	44.0 %
Phillips	Content	2340	<u>21.15</u> 19.86	<u>23.97</u> 23.00	54.7 %
	Malta 35	2650	<u>20.28</u> 18.63	<u>22.99</u> 21.76	
	Malta 7	2262	<u>21.61</u> 19.88	<u>24.39</u> 23.10	
	Port of Morgan	2830	<u>20.15</u> 18.44	<u>22.72</u> 21.44	
	Saco	2180	<u>20.13</u> 18.61	<u>22.70</u> 21.56	
	Zortman	4660	<u>14.38</u> 12.67	<u>17.40</u> 16.12	
Pondera	Conrad	3550	<u>16.93</u> 15.57	<u>19.42</u> 18.40	71.4 %
	Valier	3810	<u>18.31</u> 16.73	<u>20.96</u> 19.77	
Powder River	Biddle	3597	<u>21.87</u> 20.24	<u>24.66</u> 23.45	38.5 %
	Broadus	3032	<u>23.03</u> 21.52	<u>25.69</u> 24.56	
	Moorhead	3220	<u>23.72</u> 22.12	<u>26.42</u> 25.22	
	Sonnette	3900	<u>18.32</u> 16.89	<u>20.96</u> 19.89	
Powell	Deer Lodge	4678	<u>13.14</u> 12.09	<u>15.32</u> 14.53	77.6 %
	Ovando	4109	<u>12.28</u> 11.41	<u>14.43</u> 13.77	
Prairie	Mildred	2510	<u>22.92</u> 21.32	<u>25.58</u> 24.39	59.6 %
	Terry	2248	<u>22.82</u> 21.21	<u>25.47</u> 24.26	

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
	Terry 21	3260	18.6517.09	21.3420.17	
Ravalli	Darby	3880	18.9117.68	21.4420.52	79.5 %
	Hamilton	3529	19.9318.75	22.3421.45	
	Stevensville	3380	19.1918.16	21.4420.67	
	Sula	4475	12.0911.09	14.4213.67	
	Western Ag Research	3600	19.8218.63	22.1521.25	
Richland	Savage	1990	23.6121.70	26.5925.16	56.0 %
	Sidney	1931	22.4920.63	25.4524.06	
Roosevelt	Bredette	2638	19.9918.18	22.8621.50	46.5 %
	Culbertson	1942	20.8419.01	23.7322.36	
	Wolf Point	1985	24.1622.29	27.0325.63	
Rosebud	Birney	3160	24.5722.98	27.2926.10	47.7 %
	Brandenberg	2770	23.8322.32	26.5225.38	
	Colstrip	3218	23.3221.69	26.1024.87	
	Forsythe	2520	25.1723.42	28.0426.73	
	Ingomar	2780	23.1821.61	25.8324.65	
	Rock Springs	3020	21.3519.79	23.9322.76	
Sanders	Heron	2240	14.8213.70	17.7616.92	58.8 %
	Thompson Falls Power	2380	22.4921.15	25.3624.36	
	Trout Cr Ranger Station	2356	16.6015.54	19.4018.61	
Sheridan	Medicine Lake	1975	21.6419.82	24.4923.14	44.8 %
	Plentywood	2063	20.6418.86	23.4822.15	
	Raymond Border Station	2384	19.1317.26	22.0420.64	
	Redstone	2300	17.8616.22	20.5819.36	
	Westby	2120	18.1016.27	21.0319.66	
Silverbow	Butte FAA AP	5545	14.7313.61	17.0616.22	68.8 %
	Divide	5350	15.2514.09	17.5816.72	
Stillwater	Columbus	3602	22.3120.76	25.0923.93	46.5 %
	Mystic Lake	6544	13.5712.19	16.5715.54	
	Nye	4840	15.0013.39	17.9316.73	
	Rapelje	4125	20.3518.84	23.0721.94	
Sweet Grass	Big Timber	4100	20.6018.97	23.4722.25	44.7 %
	Melville	5370	12.8311.51	15.4914.50	

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
Teton	Blackleaf	4240	14.7413.33	17.3416.28	68.8 %
	Choteau Airport	3845	20.5318.88	23.0721.83	
	Fairfield	3980	19.1017.53	21.7620.58	
	Gibson Dam	4724	13.5712.23	16.2215.22	
Toole	Goldbutte	3498	16.3014.79	18.9617.83	51.8 %
	Sunburst	3610	18.7417.11	21.4620.24	
	Sweetgrass	3466	18.2216.32	21.2219.80	
Treasure	Hysham	2660	25.0123.35	27.7826.54	53.4 %
Valley	Glasgow WSO AP	2293	23.4821.78	26.1224.85	57.9 %
	Hinsdale	2670	22.1820.23	25.2523.79	
	Opheim 10	2878	16.1914.60	18.8617.67	
	Opheim 16	3258	16.7315.18	19.3418.19	
Wheatland	Harlowton	4162	17.8316.26	20.5619.38	46.6 %
	Judith Gap	4573	13.7712.37	16.4015.36	
	Carlyle				See appropriate adjacent county
Wibaux		3030	19.8718.19	22.7521.49	
	Wibaux	2696	18.6917.02	21.5020.25	
Yellowstone	Billings Water Plant	3097	26.1624.53	28.9227.70	59.5 %
	Billings WSO	3648	25.4923.94	28.2227.06	
	Huntley Exp Station	3034	21.9220.39	24.6123.47	

3. The following comments were received and appear with the department's responses. The department noted that in the various comments there are two misconceptions that need to be addressed. Those are addressed below under "General Response", prior to the specific comments and responses.

GENERAL RESPONSE:

There are two general misconceptions that should be addressed prior to addressing specific comments.

(1) The proposed consumptive use table and figures are not mandatory. An applicant for change can elect to use the consumptive use table. Alternatively, an applicant can bring forward proof of the actual amount of water diverted and consumed. In so doing, the applicant will have to demonstrate that the factual

conditions exist for the use of formulas and guides, such as the Montana Irrigation Guide. For example, the Montana Irrigation Guide assumes optimum conditions, including but not limited to water availability. The applicant will have to make this showing in the absence of use of the rules. The proposed rules provide an option to applicants who want to change a water right, but have no knowledge of the actual historic use or who would rather not expend resources to determine the historic use.

(2) Elements of a water right include the priority date; flow rate; volume; point of diversion and place of use. A water right that has been preliminarily decreed may not show a figure for the volume (acre-foot) limit of the right, but the right is decreed with the statement that the volume is limited to the historic use. In a change proceeding, previous case law and department orders limit the change to the historic diverted flow rate, historic diverted volume, and the historic consumptive use cannot be increased. An increase in historic consumptive use would generally reduce return flows. While the limit of a water right for the purposes of changing the right has is historic consumptive use, this figure has not typically been recorded on the water right. The DNRC is not reducing the right through a change process. It is identifying those figures so that the record contains that information for future changes to the water right. The identification of the consumed volume by a change applicant is critical to both junior and senior water right owners. That water not consumed generally creates return flows upon which seniors and juniors are entitled to rely. If the historic consumptive use is unknown, it would be difficult in a change proceeding for applicants to prove that it will not be increasing the amount of water consumed from the source.

A water right owner who wishes to change the point of diversion of a water right still has the right to the flow rate of water historically diverted and may divert under the same diversion practices as has been done previously; however, at present the water right will show a figure that identifies the amount of water currently consumed. A water right owner who wants to change the purpose from irrigation to municipal use, can only change the amount of water diverted from the source, less the amount of water returned to a source. If the change were not limited to the historic consumptive use, the operation of the right could reduce the return flow of water to which others have a right (see "Thompson v. Harvey" (1974), 164 Mont. 133, 519 P.2d 963; "McIntosh v. Graveley" (1972), 159 Mont. 72, 495 P.2d 186; "Head v. Hale" (1909), 38 Mont. 302, 100 P. 222 [cannot so change water use as to deprive lower appropriators of their rights, already acquired]; "Gassert v. Noyes" (1896), 18 Mont. 216, 44 P. 959 [change unlawful, downstream water users entitled to return flow]). The portion of a water right not changed due to lack of proof of historic use remains as stated under the applicable Statement of Claim. Water rights are not forfeited through a change process (see Beck, Robert E., Water and Water Rights at § 14.04(c)(1)(b), pp. 14-50, 51 (1991 edition); Wells A. Hutchins, "Water Rights and Laws in the Nineteen Western States", at 624 (1971)).

COMMENT 1:

Commenter said that historic consumptive use only applies to instream flow, and based on Montana law, that language should only apply to changes to instream flow and not for general changes.

RESPONSE 1:

DNRC has determined that in all change application proceedings, an applicant must identify the historic consumptive use of each water right that is being changed. Also, see General Response.

COMMENT 2:

By disallowing maximum beneficial use as the measure of a historic water right, the application of ARM 36.12.1902 has resulted in change applicants losing the right to the continued use of water that was historically used, and therefore results in a taking.

RESPONSE 2:

The proposed rules do not disallow the maximum beneficial use of a historic water right. An applicant can bring forward proof of the actual amount of water diverted and consumed. In so doing, the applicant should be aware that it will have to demonstrate that the factual conditions exist for the use of formulas and guides, such as the Montana Irrigation Guide. For example, the Montana Irrigation Guide assumes optimum conditions including, but not limited to water availability. The applicant will have to make this showing in the absence of the use of the rules.

The proposed rules provide an option to applicants who want to change a water right, but have no knowledge of the historic use, or who would rather not expend resources to determine the historic use. The proposed rules do not mandate use of the methodology by an applicant for change of a water right. These rules are for optional use, if an applicant so chooses. The portion of a water right not changed due to lack of proof of historic use remains as stated under the applicable Statement of Claim. Water rights are not forfeited through a change process. The rights simply are not authorized for a different use.

COMMENT 3:

DNRC only allows "net consumptive use" instead of total consumptive use. Net consumptive use subtracts seasonal rainfall from the amount of water consumptively used by irrigating a crop even though that rainfall would contribute to surface water if not consumed by the crop.

RESPONSE 3:

Please refer to the General Response. As explained, "consumptive use has been defined as 'diversions less returns, the difference being the amount of water physically removed (depleted) from the stream through evapotranspiration by: irrigated crops or consumed by industrial processes, manufacturing, power generation or municipal use' (Beck 1991)."

A water right is limited to the legal flow rate of water diverted by the appropriator's diversion works. The flow rate and volume of water that an appropriator has a legal right to is the maximum flow rate diverted and the maximum volume diverted minus the volume of water that is not consumed. An appropriator may gain a benefit from rainfall because the appropriator may not have to divert water as often; however, the appropriator cannot lay claim to water that is naturally dispersed on the place of use.

COMMENT 4:

Few people can document pre-1973 water usage, and commenter believes it is critically important for DNRC to provide applicants with a reasonable and reliable method to estimate consumptive use.

RESPONSE 4:

DNRC agrees and believes the proposed amendments will afford a reasonable and reliable option to applicants who want to change a water right. Evidence of, and establishing the historic use of a water right is by far the most important evidence presented in a change application. Prior to filing a change application, an applicant must thoroughly research a water right so that it is known to the applicant whether the water right is a "paper" right or a "real" water right. The applicant must know that the water right they propose to change is real and that the facts pertaining to the historic use are accurate. Without those two components being known, an applicant would have a difficult time meeting the statutory requirement that changing a water right will not create an adverse affect. DNRC recognizes the challenges in proving historic use, and this is why it is offering this rule as an option.

COMMENT 5:

The rule of law in Montana has provided that the total award of water should be fixed as "the largest area ever irrigated by" the use ("Conrow v. Huffine", (1914) 48 Mont. 437, 446, 138 p. 1094). Use of the management factor, the normal year crop consumption, and net consumptive use would abrogate this ruling by decreasing the maximum amount of water historically used. It would result in too little water available under the historic right to irrigate the historical acreage (or a changed place of use of equal acreage under the same crop). Commenter believes that any rules promulgated by DNRC should result in a consumptive use estimate based on maximum historic use. The IWR software program uses crop irrigation requirements for a normal year to estimate consumptive use. Commenter believes instead that the driest year should be used to replicate maximum historic use. It is not unreasonable to assume that all irrigated lands have consumed the maximum volume of water identified by the IWR program for a dry year at least once in their past production history. Therefore, commenter encourages DNRC to promulgate rules that recognize maximum beneficial use and take into account the difficulties in proving water use prior to 1973.

RESPONSE 5:

DNRC agrees that a water right is limited to the maximum acres irrigated. Further, as a result of comments DNRC received, the proposed consumptive use table will reflect the figures as shown in a dry year. DNRC notes that while it may be difficult

to prove historic water use, it is not impossible. These rules merely provide an option for applicants in the absence of any other evidence as to the amount of irrigation historically applied to irrigated property. Applicant is free to bring forward whatever proof he or she wishes as to the actual historic use on the irrigated land.

Additionally, the department believes it is unreasonable to assume that all irrigated lands have consumed the maximum volume of water identified by the IWR program for a dry year at least once in their past production history. There are many factors that determine the extent of actual, historic water use. The department has a long history of processing applications for irrigation changes, conducting extensive research on individual irrigation projects, and field investigating projects that show maximum consumptive use as portrayed by the IWR program was not possible. Further, the department has worked with agriculture producers for 35+ years who also indicate the impossibility of maximum production on select parcels of land. Each irrigation parcel is different and requires specific evaluation for historic use. If the department were to assume maximum values for all irrigated acres it would be sanctioning water right expansions that adversely affect existing water rights. A primary impetus for passage of the Water Use Act was to protect existing water users and shift the legal burden of proof to new water users or those wishing to change their existing water rights.

COMMENT 6:

Commenter strongly feels that the methodology used to calculate the management factor unrealistically under-weights the pre-1973 yield, and therefore skews the management factor to the low side.

RESPONSE 6:

Available literature suggests that alfalfa requires approximately five to six inches of water to produce one ton per acre of dried alfalfa hay. That response is linear, so each subsequent ton of hay produced requires another five to six inches of water (Smith et al., 1998; Bauder, 1977, 1978, 2001; Irmak, 2007; Hill, 2002; Hanson and Putnam, 2000).

To be conservative, DNRC analysis adopted a statewide value of six inches of water to produce each ton per acre of dried alfalfa. This value is similar to data from North Dakota, but slightly lower than the value reported for Kimberly, Idaho (Sammis, 1981; Shewmaker et. al., date unknown).

The estimated obtainable yield at each weather station was determined by dividing the total crop water requirement calculated with the IWR program by six inches per ton per acre. These estimated yields were then divided by the countywide alfalfa hay yields from the NASS data for the four analysis periods to obtain a management factor. The management factors give an estimate of what percent of the obtainable yield producers are typically obtaining in the field at a particular area. However, there are challenges with calculating a management factor for a specific site when NASS data is a countywide average.

The greatest challenge is whether the elevation of the weather station used for the IWR computed yields is applicable to all of the irrigated land in the county. For counties where the elevation is relatively uniform, this does not present a problem. But in Beaverhead County for instance, where there are large differences in elevation, problems occur. Some of these problems can be seen in Table 3 for higher elevation sites such as Wisdom and Jackson. The alfalfa hay yields at these higher elevation sites are likely well below the Beaverhead County average, as are the corresponding crop irrigation requirements. But when the relatively high countywide hay yields averages are multiplied by the six inches of water per ton and then subsequently divided by the relatively low evapotranspiration (ET) requirements for these high elevation sites, a management factor of over 100 percent can result.

DNRC's approach resolves this issue by calculating a countywide management factor that was most representative for the majority of the irrigated lands in that county. The first step in this analysis was to determine the most representative weather station for the county-wide NASS data. GIS data was used to determine the average elevation and the approximate centroid of irrigated land within each county (the GIS data did not indicate any irrigated land in Wibaux county). The data was then compared to elevation and coordinate data for the weather stations to determine the most representative station for each county. In counties with only one weather station, that station was considered to be the most representative. Once the most representative weather station was chosen, the methodology described above was used to find the management factor.

Multiple regression and climatic area approaches were also tested; however, the results still did not reduce management factors below 100 percent.

DNRC used the best information it could find to determine the management factor. However, if an applicant believes the management factor is too low, applicant should provide information in the application that would support the management factor determined by the applicant. Use of DNRC's rule is not mandatory and applicant can present its own information to support its calculation.

COMMENT 7:

Ranchers are distrustful of providing information to the government, especially information such as crop records that could potentially be used to tax them at a higher rate. As a result, most ranchers understate the production from their land. Ranchers do not always subtract the footprint of their house, out buildings, roads and other nonirrigated areas from the total property acreage, in which can result in low yield per acre estimates.

RESPONSE 7: The USDA National Agriculture Statistics Service (NASS) conducts hundreds of surveys every year and prepares reports covering virtually every aspect of U.S. agriculture. Production and supplies of food and fiber, prices paid and received by farmers, farm labor and wages, farm finances, chemical use, and changes in the demographics of U.S. producers are only a few examples.

After data collection, NASS processes the data independent of names and addresses. Original paper questionnaires are kept in a secure area, and then destroyed as prescribed by law. Names, addresses, phone numbers, and other personal identifiers are held securely by NASS and used only to conduct official business. The Confidential Information Protection and Statistical Efficiency Act and 7 USC 2276 prohibit public disclosure of individual information or personal information, including reported data, and is protected from legal subpoena and Freedom of Information Act requests.

Individual participants in a NASS survey can rest assured that summary data will not be published in a way that would identify them or data for their operation without their written permission. For instance, if only one farm in a county produced a particular crop, then NASS will protect the privacy of that individual farm by combining the data for that crop with reports from other counties and publish only combined totals.

The survey's questions for agriculture production separate irrigated and nonirrigated land in Montana; however, other states do not make that designation. The survey also asks how many total acres are owned by an operator and how many of those acres are covered by the farmstead, including roads and storage facilities. The survey also separates acres in cropland from the acres in permanent pasture, wastelands, and wetlands. DNRC determined the information from the NASS to be a credible source for use in development of these rules.

COMMENT 8:

The highest alfalfa yields come from developed fields that are three to five years old. While the second year may produce 80 percent of maximum yield, the first year usually produces about 50 percent. Fields older than five years produce 80 percent or less. As a result of the different ages of developed fields, averaged annual estimates are not representative of maximum obtainable yield or the maximum historic consumptive use. Wind-blown hay (common in the Helena Valley); over drying of hay; and loss of crop to mold or hail due to untimely weather are known to cause a reduction in crop yield, and are not accounted for in the management factor.

RESPONSE 8:

The sampling of producers selected by NASS statisticians for data collection is varied yearly to ensure the results presented are accurate and that the data collection method will stand up to both the science community and the scrutiny of the multiple individuals relying on the data. The NASS statisticians are highly knowledgeable of agriculture practices commenter's problems above. They select the method for collection to ensure the usefulness of the collected data.

COMMENT 9:

Commenter said the data is confidential and it cannot be accessed and reviewed to verify whether a particular property meets or exceeds the countywide value for historic production.

RESPONSE 9:

The commenter is correct that the data collected by NASS is confidential. However, individual producers can provide their own data to the commenter, and that data can be compared to the countywide value.

COMMENT 10:

Because the NASS data cannot be reviewed and verified, it represents hearsay evidence. A system that puts so much weight on short-term, hearsay data that cannot be reviewed and verified is clearly flawed.

RESPONSE 10:

Most producers would not provide data if it were not kept confidential. As such, information can generally be relied upon as accurate. This information is used worldwide. An applicant is not required to use the rule and can certainly provide his or her firsthand evidence of historic use to support applicant's calculations.

COMMENT 11: Under the proposed rule, a producer will need to get an additional water use permit if he can plant, fertilize, harvest, or irrigate more efficiently to increase crop yield, profit, and food supply in order to increase that yield.

RESPONSE 11: Commenter is generally correct. The Montana Water Use Act requires that increased water use that occurs after June 30, 1973, must be authorized by the DNRC.

COMMENT 12:

Any erroneous volume reductions only provide water to downstream states and contradict the state's obligation to protect existing Montana water rights.

RESPONSE 12:

The commenter concludes that requiring an applicant to identify the historic consumptive use would contradict the state's obligation to protect existing rights. Protection of existing water rights refers to those water rights protected under law prior to July 1, 1973, and does not infer that the state should overlook historic consumptive use in order to reserve water for Montana. Again, the rule is not mandatory and an applicant can present his or her own evidence.

COMMENT 13:

Commenter's understanding of the amendment to ARM 36.12.1901(3) is that it will allow an applicant that is addressing multiple water rights that may have historic use on different acres to be changed under the cover of a single application if the change contributes to a single project. Commenter believes that makes sense in the realm of instream flow changes, where there is often the necessity to work with multiple users on the same ditch.

However, commenter questioned whether a single application under ARM 36.12.1901(8) can encompass multiple water right owners. If it is the intent to allow more than one ownership of water rights to apply under a single application, it would

be useful to indicate that in the rule. Commenter suggested adding the following language: "Multiple water rights, regardless of ownership, may be changed on one application."

RESPONSE 13: The rule intent is to allow multiple water rights that are owned by a single owner or owners who hold an undivided interest to be applied for on a single change application—if all of the rights are being changed to accomplish a single new project. Multiple water right owners who may be seeking to accomplish a single project will have to file separate change applications.

COMMENT 14:

Commenter said that while most of the proposed changes to ARM 36.12.1902(7) generally make sense, the prefatory language ... "including the following of each water right being changed..." seems to require information at a level of precision that may be impossible to achieve in many cases. This may be particularly true as to subsection (7)(f), "historic diversion schedule and operation pattern". In many cases where the pre-July 1, 1973, use is sought, the people who originally irrigated and who would know that information are often long gone. While it may be possible to extrapolate the pattern to some extent based on local custom and practice and based upon review of aerial photos, it is nonetheless likely to be an educated guess or estimate. If that would be acceptable, it would be useful to indicate that in this subsection.

RESPONSE 14:

DNRC agrees and the term "typical" has been added to ARM 36.12.1902(7)(f) and 36.12.1902(7)(l).

COMMENT 15:

Commenter said the opportunity to provide calculations of ditch capacities has been offered in ARM 36.12.1902(9)(h). To the extent that DNRC can identify methodologies such as Manning's equation—or any others that DNRC considers acceptable—it would be useful to do so within the rule.

RESPONSE 15:

DNRC agrees and has added 36.12.1902(13) accordingly.

COMMENT 16:

Commenter said that ARM 36.12.1902(14) requires a "discussion" of primary and secondary diversions, without describing what the discussion should include. Commenter asked if DNRC is looking for an acknowledgment that there are secondary diversions, or if DNRC wants more details, such as how much water went down each lateral? The latter may be imposing an impossible hurdle to clear. Commenter said if it is the former—or at least something less draconian than estimates of each secondary diversion's flow rate and volume—then DNRC should clarify the rule.

RESPONSE 16:

A primary diversion must identify all of the requirements in ARM 36.12.1707. DNRC does not need to know the flow rate and volume used at a secondary diversion, simply how the diversion is operated. The rules have been changed to clarify DNRC's intent.

COMMENT 17:

Commenter's concern with ARM 36.12.1902(14) lies in the last sentence: "...the department will recognize that volume, unless a valid objection is received." The last phrase makes it possible to defeat the applicant's use and the DNRC's recognition of this new methodology by simply filing an objection. An applicant could file an objection, offer no proof that the estimate based on the methodology is wrong, and an applicant's reliance on the DNRC's methodology is nullified. If an applicant can offer up evidence that calls the methodology into question, applicant should be allowed to do so. Commenter said it is wrong to allow the defeat of an applicant's estimates based on this methodology by the simple filing of an application. Commenter suggested removing the phrase after "that volume", and replacing it with, "unless an objector offers proof that the volume is inaccurate", or something to similar effect.

RESPONSE 17:

DNRC agrees and has made the change.

COMMENT 18: Commenter said the only management factor given in Table 1 is for a single location in each county. However, DNRC provided management factors for multiple locations within each county in an explanatory memo from fall 2008.

With the exception of outliers like Beaverhead County, where the management factor seems really strange for places like Wisdom, it makes sense to provide management factors as locally as possible. Table 1 does not clarify whether DNRC intends to preclude the use of more local management factors; but if not, it would be useful to put them back in to Table 1. Commenter said if DNRC does not intend to recognize a local management factor, then it should explain why.

RESPONSE 18:

Table 1 still includes the management factors for various locations. However, the rules table does not include the management factors for various years as shown in DNRC explanation memorandum. DNRC's opinion is that historic consumptive use refers to that amount of use that existed before July 1, 1973, because after that date, any increase in use would have to have a provisional permit that grants the additional water use. Therefore, the rules table only displays the management factor for 1964 through 1973. Again, use of the table is not mandatory.

COMMENT 19:

As written, ARM 36.12.1901(3) could be interpreted to require an applicant who wishes to convert an historic right to instream flow to comply with three different statutes. Commenter recommends this rule be reworded to compel applicants to "submit information as required by 85-2-407, 85-2-408, and 85-2-436, MCA."

RESPONSE 19:

The rule as stated requires an applicant to submit information required under those statutes, if applicable. The only change made by the commenter is to the words "as" and "by". The department doesn't think the word change adds to the understanding of the rule.

COMMENT 20:

Commenter agrees that a water right is defined by its historic use and development (ARM 36.12.1902). Commenter cautions DNRC in the interpretation of the rule as drafted. The operation of any water right is not static. Operators are continually adjusting their operations in response to environmental, technical, and market changes. While historic used defines a water right, a snap-shot at July 1, 1973, is an over simplification of historic use (ARM 36.12.1902(7)).

In combination, the proposed rules can be read to imply that submitted evidence must be actual measurement of pre-1973 conditions. A 2009 measurement of ditch capacity combined with some evidence that relates today's conditions to pre-1973 conditions would be adequate. DNRC should be aware that it is rare to have pre-1973 measurements of water use and production.

RESPONSE 20:

DNRC understands that operators continue to adjust their operations. The rules are not meant to imply that evidence of pre-1973 water rights requires actual physical measurements. However, if the changes in the operation result in the use of additional water after June 30, 1973, the Montana Water Use Act requires the additional water use be authorized in a provisional permit. An analysis of yields over 40+ years shows an increase of 2.5 tons per acre to 3.2 tons per acre. Statewide these increases average 0.7 tons per acre. While some increase in yield is due to fertilizers and irrigation systems that allow for better coverage, an increase in yield often results in increased water use. If one were to attribute only half of the increase (0.35 tons per acre) to additional water use, on a 100 acre field, the increase in water use would be about 17.5 acre feet (af). Statewide, some two million acres are irrigated. If all of those were increased by 0.35 tons, the total additional water used is 350,000 acre-feet. Again the rule is not mandatory and an applicant can present his or her own information and evidence. That evidence can include evidence of today's operation as relevant to historic practices. Presentation of this type of evidence is not precluded.

COMMENT 21: Commenter FWP recommended that ARM 36.12.1902(11) through (15) be put in a new rule titled "Determining Historic Consumption".

RESPONSE 21: This comment will be considered by DNRC in a subsequent rulemaking action.

COMMENT 22:

Column F of Table 1 (ARM 36.12.1902(15)) is derived from the USDA county-by-county survey of production. These crop production figures are used to adjust the consumptive water use. The column should be deleted. The IWR process defines site-specific crop water requirements. The use of countywide production averages dilutes the validity of the IWR process. Commenter suggests that a more accurate evaluation of crop consumption would include the use of monthly IWR crop requirement data applied to the water right specific period of use, which is in turn limited by water supply and priority date of the water right involved.

RESPONSE 22:

Commenter provides an alternative approach to using the NASS production information; however, the suggestion requires additional information from an applicant that may not be known. The IWR only estimates the amount of water that the crop needs for evapotranspiration; it does not estimate the amount of water that needs to be delivered to the field, which is the crop irrigation requirement divided by the irrigation efficiency. The management factors give an estimate of what percent of the obtainable yield producers are typically obtaining in the field at a particular area.

COMMENT 23:

ARM 36.12.1901(7)(f) and (l) through (n) require the applicant to report the information that defines the irrigation period of use. The issue of full service versus partial service irrigation is far more important than any increase in consumption related to irrigation improvements post-1973. However, even that issue is minimized since ARM 36.12.1902(1) makes it clear that DNRC is going to evaluate the water right based upon the method of water application in place pre-1973, not the center pivot that might be in place today. The proposed rules are silent as to how DNRC will evaluate irrigation efficiency standards for both conveyance and on-field efficiency post change. The amount of water historically consumed is often a small fraction of the amount of water historically diverted by the applicant. Overall irrigation efficiencies are historically 25 to 50 percent over much of Montana. The fate of this nonconsumed water can have a much higher impact on other water users than the consumptive portion. The proposed rules, "while requiring an applicant to quantify the historic rate of diversion, do not tell the water user how much of the non-consumptive portion may be changed."

Commenter strongly suggests that DNRC address the change of nonconsumptive portions of water rights in these proposed rules, or through a separate proposed rule. This could include an evaluation of water use design standards for irrigation and other uses as well as rules related to acceptable water use and conveyance standards.

RESPONSE 23:

DNRC believes commenter may have overlooked an existing rule that was not changed in this rulemaking effort. Existing ARM 36.12.1902(2) states:

"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."

DNRC believes that the rule cited explains how much water a change applicant has a right to change. In response to the last sentence of the comment, DNRC is reluctant to set acceptable water use and conveyance standards. The Montana Water Use Act does not incorporate efficiency standards and the beneficial use criteria simply require an applicant to explain the benefit to the applicant, in addition to explaining why the flow rate and volume are the amount necessary for the purpose. In some instances, albeit inefficient by some standards, a project that is only 20 percent efficient could be deemed a benefit to an appropriator. A project that is only 20 percent efficient would likely contribute return flows downstream to other water users and could benefit those users because the timing of the return flows is better suited to their needs.

COMMENT 24:

Commenter believes that ARM 36.12.1901(8) is a beneficial amendment for water right changes to instream flow, in that it will allow for a more efficient process to change multiple water rights involved in a single instream flow project. While the language currently does not necessarily preclude changing multiple water rights with different owners on one application, it would be helpful for the rule to clarify that this is acceptable and specifically allow for multiple applicants/water right owners to file a joint application involving multiple water rights to be changed for a single project.

RESPONSE 24:

Please see Response 13.

COMMENT 25:

While commenter agrees that the information required under ARM 36.12.1902(7)(a) through (t) is relevant in determining the historic use of a water right; however, the commenter is concerned that a bright-line rule requiring actual information (which is what the proposed introductory language seems to indicate) on the operation of a historic water right will be difficult to achieve for pre-July 1, 1973, water rights, because much of this information never existed and/or is no longer attainable because those with first-hand knowledge of historic irrigation practices are no longer available to interview.

Commenter appreciates DNRC's delineation of the necessary information, but believes that eliminating the "best available estimate" language will unduly burden applicants by requiring actual information that may not exist. Commenter would like to see some acknowledgement in the rule that an estimate or approximation of historic use is appropriate where actual records are not available. This estimate would be based on physical information such as ditch capacities, number of acres irrigated, aerial photographs, etc. However, the first-hand information on the actual practice of using the water right that cannot be determined from that information,

such as "diversion schedule and operation patterns", will not be available in most cases for pre-July 1, 1973, water rights.

RESPONSE 25:

DNRC found that the language "best available estimate" was used inappropriately in many applications and therefore removed that language. Rather than locate and provide information from reliable sources, applicants simply said that the information provided was the best available estimate and the department knew otherwise. DNRC however, added the term "typical" to (f) and (l) so that an applicant may find information for those two elements from interviewing others in the area who may have irrigated in the same manner or from reports that may include such information (see Comment/Response 14).

COMMENT 26:

Commenter asked that language be included in ARM 36.12.1902(14) that states that any valid objection must include specific reasons why the historic consumptive use value obtained by using the table is not appropriate. Otherwise, it appears from this language that if an unsupported objection is filed, DNRC will be forced to require the applicant to further substantiate historic consumptive use even if the objection is not well founded. That would defeat the purpose of providing the table.

RESPONSE 26:

Please see Comment/Response 17.

COMMENT 27:

Commenter said the requirement that all materials must include all information required by Title 36, chapter 12 is too broad.

RESPONSE 27: DNRC agrees and has made the change.

COMMENT 28:

ARM 36.12.1902(7)(a) and (d) ignore the fact that an element of a water right is the right to perfection. The right to perfection was not cut off as of July 1, 1973. The 1973 Water Use Act recognized explicitly that the right to the use of the water in existence on July 1, 1973, is protected under the law as it existed prior to July 1, 1973, that included the right to perfection which could exceed many years after July 1, 1973, depending on the type of water right and the reasonable diligence being exercised to perfect the water right.

Commenter said (a) and (d) should read:

"(a) historic information for a statement of claim must be described as it was used through the date of the perfection of the water right."

"(d) historic information for an exempt or nonfiled water right must be described as it was completed through the date of the perfection of the water right."

A junior user has to expect that that there may be a period of time necessary to perfect a right. The DNRC went through this analysis in great detail in its City of Deer Lodge decision, but appears to fail to recognize this under these proposed rule changes (see "In the Matter of the Petition For Declaratory Judgment by the City of Deer Lodge No. 97514-766", Mont. Admin. Reg. No. 1, at 194-202 (Jan. 15, 1998).

RESPONSE 28:

Rarely was a water right was not perfected as of July 1, 1973 (see generally, "General Agriculture Corp. v. Moore" (1975), 166 Mont. 510, 534 P.2d 859 [limited exception for perfection]). The relevant date for historic use will be July 1, 1973, with rare exception. Statute defines "existing right" or "existing water right" as "right to the use of water that would be protected under the law as it existed prior to July 1, 1973," (85-2-102(12), MCA). The relevant date is before July 1, 1973, because no changes could have been made to those rights after that date without DNRC's approval (85-2-401 and 85-2-402, MCA). This assumes no intervening change authorizations were granted post-July 1, 1973. If applicants would like to make an argument that their water rights were not perfected until after July 1, 1973, they may certainly do so. These rules set a minimum of information to be submitted.

COMMENT 29:

Order on Petition for Judicial Review, Cause No. BDV-2008-750, First Judicial District, Judge Sherlock, June 9, 2009, calls into question the validity of ARM 36.12.1901 as it exists, and as proposed for amendment. The Order puts in question the DNRC's enactment of the entirety of its historic consumptive use rules.

In requiring detailed information regarding historic consumptive use, DNRC is essentially requiring information regarding historic return flows. The DNRC should take notice of the court's ruling in "Hohenlohe v. DNRC", where the court held:

"There is no requirement in any applicable statutes requiring the Hohenlohes to provide the in-depth analysis regarding historic and current return flows to the extent required by DNRC in this case. Nothing in the statutes requires the Hohenlohes to prove either historic or current return flows. Both DNRC and the hearing examiner interpret Section 85-2-408(7), MCA, as requiring such proof— even though the statute does not contain the term 'return flows.'" (Hohenlohe v. DNRC , Order on Petition for Judicial Review, Cause No. BDV-2008-750, First Judicial District, Judge Sherlock, June 9, 2009, at 10).

The primary purpose of the doctrine of historic use in Montana is to protect the vested rights of junior water right holders to the maintenance of stream conditions that existed at the time of their appropriation. The doctrine of historic use is not intended to protect senior users, because they are already protected by the doctrine of prior appropriation.

RESPONSE 29:

Commenter is mistaken in the very broad reading of the recent decision. The district court disagreed with DNRC's factual determination on historic use, not that the examination of historic use was not relevant or that the rule was in question. The district court's decision as to the factual finding on historic use was based on specific information in the file including an affidavit, testimony, and statements as to historic use beyond simply presenting evidence that a water right claim exists. The decision is fact-specific and based on an instream flow change. Although not relevant to these rules, the decision is also currently on appeal. Commenter should review "McDonald v. State", (1986) 220 Mont. 519, 722 P.2d 598, where the Supreme Court stated:

"...what is preserved to owners of appropriated or decreed water rights by the provision of the 1972 Constitution is what the law has always contemplated in this state as the extent of a water right: such amount of water as, by pattern of use and means of use, the owners or their predecessors put to beneficial use. Thus an owner may have a decreed right to a certain number of miner's inches of water; or a statutory appropriative right to a stated amount; or a right depending upon mere use; or even a prescriptive right to a stated amount; nonetheless, the Water Use Act contemplates that all water rights, regardless of prior statements or claims as to amount, must nevertheless, to be recognized, pass the test of historical, unabandoned beneficial use. ... no matter how the water right is expressed in the decrees of the water court, either in flow rate or in acre feet or a combination thereof, such expression of amount is not the final determining factor. It is best expressed in the statutes of other states: beneficial use shall be the basis, the measure and the limit of all rights to the use of water." (220 Mont. at 530, 722 P.2d at 605).

COMMENT 30:

Commenter said by requiring historic use information on pre-1973 existing water rights, the Legislature has delegated authority for adjudicating historic use solely to the Water Court (Title 85, chapter 2, part 2, MCA). If the Water Court makes a determination as to historic use, the DNRC should be required to accept it and not use a change application to readjudicate rights. As authorized by the Legislature, DNRC's sole authority for reducing an existing right that has been adjudicated by the Water Court is to bring an abandonment proceeding, where DNRC bears the burden of proof (82-2-405, MCA).

For pre-1973 claimed existing rights, this rule essentially creates a shift in burden regarding the proof of the elements of an existing right that is not authorized anywhere in the statutes. According to 85-2-227(1), MCA, for existing rights being adjudicated, "a claim of an existing right . . . constitutes prima facie proof of its content", and that after adjudication, "[f]or the purposes of administering water rights, the provisions of a temporary preliminary decree or temporary decree...supersede a claim of existing right."

Commenter said these rules place a new burden on the owner of an existing right, requiring the owner of the right to provide factual proof of all contents and elements

of the right, even after the water right was adjudicated. During the adjudication the burden was on objectors and the department to provide facts and evidence that contradicted the contents of the claimed right, and then the right was either granted as claimed, modified, or terminated by the Water Court. Under this rule, without any direction by the legislature or statutory authority, DNRC essentially places a new and shifted burden on the owner of an existing right to provide factual proof of all its contents and elements, even after the right has been adjudicated by the Water Court.

RESPONSE 30:

DNRC notes for the record that commenter is currently in litigation with DNRC over these very issues. These issues will be resolved as to the commenter's specific complaints in that litigation and will not herein be litigated. Nevertheless, DNRC will respond to these general assertions.

DNRC does not adjudicate water rights as part of the change process. Any water rights not approved in a change authorization remain exactly as they have been decreed and are unaffected by the department's actions. DNRC is charged with applying and deciding the criteria under 85-2-402, MCA, which is not within the purview of the Water Court. Historic use is an integral part of that determination because only when one knows how the water right has been used can one determine if there will be adverse effect (85-2-402(2)(a), MCA) from a new use. Other appropriators have a vested right to have the stream conditions maintained substantially as they existed at the time of their appropriations ("Spokane Ranch & Water Co. v. Beatty" (1908), 37 Mont. 342, 96 P. 727; Robert E. Beck, "Water and Water Rights" § 14.04(c)(1) (1991 edition); W. Hutchins, "Selected Problems in the Law of Water Rights in the West" 378 (1942)).

While 85-2-227(1), MCA, does provide that for existing rights being adjudicated, "a claim of an existing right ...constitutes prima facie proof of its content", this applies to proceedings in the Water Court not before DNRC in a change proceeding under the specific change criteria. In Montana and other prior appropriation over 100 years of western law provides that, "beneficial use is the basis, the measure and the limit of a water right." (See for discussion above on, "McDonald v. State", (1986) 220 Mont. 519, 722 P.2d 598; "In re Application for Water Rights in Rio Grande County", 53 P.3d 1165, 1169 -1170 (Colo.,2002). The McDonald case provides a good discussion of the principle. See also "Toohey v. Campbell", (1900), 24 Mont. 13, 60 P. 396).

Finally, it should be clarified that DNRC bears no burden of proof in the adjudication. DNRC is not a party, but provides factual analysis in the form of claims examination as technical assistance to the Montana Water Court. It should also be noted that many Water Court Claims are decreed without a volume.

COMMENT 31:

Commenter said rule changes would place a new and unfair burden on any water user that currently, or historically implemented farming practices that resulted in

yields exceeding an average yield. Such a burden of proof is not supported anywhere in the authorizing statutes, and essentially penalizes good farming practices.

RESPONSE 31:

DNRC recognizes that the methodology may help producers that did not employ good farming practices and may penalize those who did. However, as stated in ARM 36.12.1902(13), the methodology in (15) (now renumbered (14) and (16), respectively) may be used to determine the historic consumptive volume for irrigation. The use of the methodology is optional. An applicant may choose to provide other data that would better support the historic use purported. If the applicant provides other data, then as required in (13), if the amount is less than or greater than the amount determined by using the methodology, then the applicant simply needs to prove the difference. An applicant always bears the burden of proof in a change proceeding (85-2-402, MCA).

COMMENT 32:

A beneficial and existing use of water includes the right to use the full amount of the IWR in "any" year if the water is available, and the elements of the right supports that level of use. Under these rules, the presumption would be that the water user's right is limited or restricted to the amount of water required for an average precipitation year.

RESPONSE 32:

Please see General Response and Response 33.

COMMENT 33:

The DNRC's values expressed in columns D and E are expressed as seasonal ET for two application methodologies—they are not. The IWR calculations for ET are consistently higher and there is no explanation in the proposed rules nor footnote at the bottom of the table as to where the values come from.

RESPONSE 33:

Columns D and E are the total irrigation season alfalfa crop water requirement (inches) minus that portion of the total crop water requirement (inches) that was supplied by precipitation. An applicant for change cannot claim as part of their consumptive use the amount of water that was supplied by rainfall. See Response 3.

COMMENT 34:

Commenter said that for pre-1973 existing claimed, exempt, and nonfiled water rights, the ability and practicality of obtaining the information required in these rules will become more difficult as more time passes since 1973. No new pre-1973 data can be collected other than by personal knowledge in some instances, and the people with that knowledge are getting older and older.

RESPONSE 34:

DNRC agrees and as a result proposed to implement the subject optional historic consumption rules.

COMMENT 35:

For changes involving pre-1973 water rights that have been previously changed post-1973, the frame of reference should be relative to the current operation of that right (ARM 36.12.1902(1)). That is what the other users on the source have been accustomed to relative to their operations, not an estimate of pre-1973 use.

RESPONSE 35:

A change application that was issued after January 1, 2005, will have been reviewed using rules that required identification of the historic consumptive use. In those instances, the historic consumptive use would likely remain the same, provided no new evidence is presented that would show that the previous determination was in error. For changes that were issued prior to January 1, 2005, the historic consumptive use may not have been identified. If not, the applicant would be required to provide that information in the new application.

COMMENT 36:

Commenter asked if ARM 36.12.1902(5) refers to the historic place of use or the proposed place of use? Commenter suggested the insertion of the word "historic".

RESPONSE 36:

DNRC agrees and has made the change.

COMMENT 37:

Commenter asked if applicants cannot change a water right if they cannot provide corroborated substantial credible information about every item under ARM 36.12.1902(7)?

RESPONSE 37:

An applicant for change must provide the information described in (7). The applicant may not find an individual who can corroborate the information; however, if practices have not changed since 1973, one could make an argument that the current practices reflects the historic practice. If that is not the case, the applicant will need to find other information sources to support the facts being presented. DNRC recommends talking with those familiar with typical historical practices for the type of use being changed, including the other farmers and ranchers in the area, USDA, or NRCS staff. Also, research on the internet may be found that would confirm the applicant's historic water use. However, an applicant does bear the burden to prove that the criteria in 85-2-402, MCA are met and the scope of the right to be changed.

COMMENT 38:

ARM 36.12.1902(7)(d) and (m), present similar situations for the period of diversion and monthly or annual diverted volume. Diversion schedules can be variable. Dry years are different from wet years, early or late spring thaws and run-off can affect the timing and quantity of irrigation. Farming practices vary over time. Commenter

asked what applicant can do if "old timers" with pre-1973 knowledge are not available?

Also, being able to produce evidence of the historic efficiency of the system as required in (7)(o), would be very difficult. It is not possible to create data for a practice that occurred 30, 40, or even 100 years ago. Additionally, the diversion, conveyance, and system efficiency may not be relevant in some instances. If required information does not contribute substantively to the evaluation of a change application, the applicant should not have the burden of producing said information.

Commenter concluded the level of detail required by the items in (7) goes beyond the information that would be necessary both to substantiate that a water right has historically been exercised, and to arrive at a reasonable figure of the amount of water that was historically used. Water rights and water use are not an exact science. There is no single answer to: "what was the historic use?".

RESPONSE 38:

An applicant is entitled to the longest diversion period that was used historically. The applicant is also entitled to change for beneficial use the maximum amount of water that was historically diverted, and the amount of water that was consumptively used. DNRC is uncertain why the commenter believes that diversion, conveyance, and system efficiency may not be relevant. An applicant who does not believe that the required rule information is relevant may document the reasons for that belief in an application. However, if DNRC determines the information is relevant, DNRC will include its assessment in a deficiency letter.

The commenter raise concerns about the validity of a water right. A water right that has not been used for a long period of time (and therefore has limited historic data available) may present a problem for the applicant. A water right user, regardless of water right priority date, does not have an inherent right to make a change to a water right. In a change proceeding, the applicant must first prove that there is a water right to change. Then the applicant must document the historic use of the water right before the applicant moves on to prove the criteria for a change authorization can be met. Also, see Response 37.

COMMENT 39:

Commenter asked if the application would fail because no commissioner field notes are available (ARM 36.12.1902(9)(e))?

RESPONSE 39:

ARM 36.12.1902(9) is not mandatory. It only describes some sources of information that may help an applicant to support the historic use of a water right.

COMMENT 40:

Commenter asked if an application could be successful if first hand evidence cannot be produced for one or more of the items 36.12.1902(7) if the applicant is willing to accept the historic consumptive use values described in ARM 36.12.1902(15)?

RESPONSE 40:

There may be circumstances documented by an applicant that would allow an application to go forward; however, without knowing such details, DNRC cannot respond to the comment affirmatively or negatively. An applicant must remember that in a change proceeding, the applicant must first prove that there is a water right to change. The applicant must then document the historic use of the water right before moving on to prove that the criteria for a change authorization can be met. Only when the scope of the historical right is known can potential adverse effect to other appropriators be evaluated.

COMMENT 41:

Commenter asked what the scientific basis was for flood, handline and wheelline irrigation having a lower seasonal ET than center pivot irrigation?

RESPONSE 41:

DNRC talked to the NRCS about application rates of various irrigation systems. Hand line and wheel line systems are far less efficient than center pivots and those systems would be more similar to flood systems and for the purposes of these rules, hand lines and wheel lines were included with the flood systems. Flood irrigation, hand lines and wheel lines typically have an application rate of four inches per irrigation compared to an application rate of one inch per irrigation for center pivots. Since the amount of carryover moisture available to the crop each spring is 25 percent of the irrigation application there is more water available to the plants in the spring under flood, hand line and wheel line systems (one inch) compared to center pivot systems (0.25 inches). Because there is more water available in the soil under flood, hand line and wheel lines systems, less water is needed early in the season to satisfy crop ET, which leads to less water required over the entire season. In addition, center pivots require more irrigation applications per year due to their lower application rate, which leads to more surface evaporation from saturated leaf area and soil surfaces. The combination of lower carryover moisture and higher surface evaporation results in center pivot irrigation having a higher seasonal irrigation ET demand than flood, hand-line and wheel-line irrigation.

COMMENT 42:

The values in columns D and E of Table 1 appear to be consistently lower than the values arrived at by running the IWR program under the default settings (50 degrees Fahrenheit as the beginning of the season and 28 degrees Fahrenheit as the end of the season as per the Historic Consumptive Use Public Meetings Memo issued by Kim Overcast on September 9, 2008).

RESPONSE 42:

The values as shown in the memorandum are exactly the same as shown in these rules. However, the memorandum included total ET, whereas the rules do not. The reason for that is the total ET includes rainfall. Also, see Response 3.

COMMENT 43:

A significant component of consumptive use is left out of these estimates for acreage that was sprinkler irrigated prior to 1973. That is the amount of water that is evaporated between the sprinkler head and the plant canopy or the soil surface. The University of Nebraska publication states that "the amount of water lost between the sprinkler nozzle and the top of the crop canopy, air evaporation and drift is three percent for low-angle impact sprinklers and one percent for spray heads."

RESPONSE 43:

Irrigation systems vary in design, such as in nozzle types and heights above the ground. Also, wind conditions vary across the state; therefore, DNRC does not believe it would be feasible to apply a standard adjustment for evaporation loss from sprinklers. However, DNRC encourages an applicant to provide this data in an application.

COMMENT 44:

Commenter questioned the accuracy of the numbers in Column F of Table 1. The method as described by Mike Roberts of the DNRC to arrive at the management factor was evaluated for all the weather stations in Yellowstone and Ravalli counties. Also, commenter said there is a discrepancy between the average value for the obtainable yield/average production ratio and the management factor and asked that it be explained.

RESPONSE 44:

DNRC's management factor is based on the most representative weather station for the majority of irrigated lands in that county, not the average of the weather stations in the county. GIS data was used to determine the average elevation and the approximate centroid of irrigated land within each county (the GIS data did not indicate any irrigated land in Wibaux County). The data was then compared to elevation and coordinate data for the weather stations to determine the most representative station for each county. In counties with only one weather station, that station was considered to be the most representative.

COMMENT 45:

Commenter said one requirement of any rule or law is that it is practicable to be in compliance with said rule or law. DNRC has said that an applicant can only change the consumptive volume of its water right. In many cases, it is not feasible for an applicant to be able to accurately measure the consumptive volume of a new use. This puts an overly onerous requirement on recipients of change authorizations when water measurements are required by order or condition.

RESPONSE 45:

DNRC is uncertain if the comment is pertaining to the proposed rules or to the existing rules. Therefore, DNRC cannot respond to the comment.

COMMENT 46:

Commenter's concern is the use of the modified Blaney-Criddle (B-C) method and SCS Technical Release 21 (SCS TR-21) in the proposed rule change as the basis

for determining ET and the IWR. The B-C method significantly underestimates ET and has been replaced by more accurate methods worldwide since at least the 1980s. The use of the B-C method in the proposed rule change will result in estimates of historic consumptive use that are significantly smaller than the actual historic consumptive use, thus shortchanging irrigators that submit a change application.

The new methods are supported by dedicated weather stations across Montana that were established for the specific purpose of recording the data required by the modern methods of measuring ET. These weather stations are operated by the U.S. Bureau of Reclamation and are referred to as AgriMet stations. Twenty-six AgriMet stations are present in Montana at locations selected to provide representative values of ET throughout those parts of the state where agriculture uses irrigation. Although most AgriMet stations provide records beginning in 1997, the conventional practices and procedures include methods for statistical correlation of the record since 1997 to early weather station records. That way, the modern methods can be used to determine ET for historic weather conditions, including those during the period of historic irrigation prior to July 1, 1973, and at weather stations not located immediately near an AgriMet station.

Values of AgriMet ET from the period 1997 through the present statistically adjusted to the pre-1973 period of historic consumptive use will not differ significantly from the current AgriMet values ET. Therefore, use of the AgriMet ET for the current period of record (beginning generally in 1997 in Montana) will provide as good an estimate of historic consumptive use as AgriMet ET values statistically adjusted to the pre-1973 weather conditions. Certainly, these values are better than those estimated with the B-C method.

The B-C method calculates 23.92 inches of total seasonal ET at Dillon, Montana. The average total seasonal ET measured at the AgriMet station at Dillon for the years 1997 through 2008 is 29.61 inches. Accordingly, the Blaney-Criddle method as applied by DNRC (using the NRCS IWR model to calculate total seasonal ET and net IWR) underestimates the measured ET for alfalfa by 5.69 inches per year (19 percent) at Dillon. From a technically correct point of view, the difference between the B-C IWR and the AgriMet IWR will change slightly if effective precipitation is calculated from the AgriMet ET values rather than the Blaney-Criddle values. The DNRC's calculated value of effective precipitation is used in this example as an estimate of effective precipitation for the purpose of simplifying the illustration. Recalculation of effective precipitation from the AgriMet station information will not change the final conclusions of this analysis, even if effective precipitation and IWR values change somewhat.

Also, in the Montana Irrigation Guide, the effective precipitation for alfalfa at Dillon, Montana is 4.13 inches in a normal year. Accordingly, the 6.87 inches of effective precipitation indicated by the numbers in the proposed rule change is questionable and may unrealistically reduce the irrigation water requirement calculated in the proposed rule change.

RESPONSE 46:

DNRC chose to use NRCS Irrigation Water Requirements (IWR) program because the method utilizes some 180 weather stations throughout Montana. The B-C (TR21) method is the only IWR methodology applicable to Montana. The B-C method is simple, using measured data on temperature only. However, the method may not be accurate especially under "extreme" climatic conditions. In windy, dry, or sunny areas, the ET_0 may be underestimated while in calm, humid, clouded areas, the ET_0 may be overestimated. The B-C method was compared with other evapotranspiration methods by USGS. Those results indicate B-C produces acceptable predictability (Cruft and Thompson, 1967). There are a large number of theoretical methods to determine the ET. Many of them have been determined and tested locally. If such local formulae are available, they should be used. If such local formulae are not available then an applicant may choose to use the methods in these proposed rules. Also, see Response 2.

COMMENT 47:

Commenter said the problem is the proposed amendments require that historic consumptive use be determined by multiplying the management factor percentage by the IWR in column D, Table 1. That is not the correct way to apply the management factor percentage. In order to obtain the correct value of historic consumptive use, the management factor percentage must be multiplied by the total consumptive use (total ET in the growing season) of the crop plant because the management factor percentage is based on total ET, not the IWR (which is ET minus effective precipitation).

The management factor percentage is calculated as the ratio of obtained crop production, divided by potential maximum crop production. Potential maximum crop production is based on total ET. Accordingly, the management factor percentage is based on total ET and must be multiplied by the total ET to calculate historic consumptive use.

This matter is further confused by the fact that in columns D and E of Table 1, the IWR for flood and center pivot irrigation are labeled "IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)" and "IWR Center Pivot Irrigation Seasonal ET (inches)". The term "Seasonal ET" is not a term generally used in the literature regarding ET determination and is confusing because it is not defined in the proposed amendments. It appears to be used by the DNRC as the ET that occurs during the growing season (irrigation season), as compared to total annual ET. IWR and "seasonal" ET are not the same thing, and the interchangeable use of the terms "IWR" and "seasonal ET" by DNRC is very confusing. Commenter said this could be indicative of a failure by DNRC to distinguish between the two variables. That conclusion is suggested by the fact that the amendments require the management factor percentage to be incorrectly multiplied by the IWR to determine historic consumptive use when it should be multiplied times the ET for the growing season, uncorrected for effective precipitation or carryover moisture.

The values in column D are used in the proposed rule change method as if they are total ET. However, the values in column D are not total ET; they are the IWR, which is equal to ET minus effective precipitation. Both of the columns showing IWR for flood and center pivot irrigation are essentially unnecessary for correct application of the MFP to estimate historic consumptive use, and could be completely eliminated from the proposed rule change and replaced with one column that is the total ET. The values for total ET (based on the B-C method) are provided in the Draft DNRC Consumptive Use Review Document dated September 8, 2008 (Attachment B), in the fourth column of Table 2: IWR data for seasonal alfalfa evapotranspiration, under the column heading "IWR Total Seasonal ET (in)".

For example, at Dillon, Montana, DNRC determined a countywide average production of alfalfa of 2.54 tons per acre per year for the historic irrigation period of 1964 to 1973. This value is provided in Table 1: NASS county data broken into four time periods, in the Draft DNRC Consumptive Use Review document. In the same document, the DNRC concludes that six inches of water are required to produce one ton of alfalfa per acre per year. Therefore, the historic consumptive use associated with production of 2.54 tons per acre per year is necessarily 15.24 inches per year ($2.54 \text{ ton/ac/yr} \times 6 \text{ in/ton/ac/yr} = 15.24 \text{ inches/yr}$). This is the simplest form of determining historic consumptive use. It is not a sufficient basis for determining historic diversion requirements, which require a separate determination of effective precipitation.

Commenter said the value of 15.24 inches per year (based on 6-in/ton/ac/yr and 2.54 ton/ac/yr) is correct, whereas the value of 10.86 inches is incorrect because a consumptive use of 10.86 inches per year would only produce 1.81 ton/ac/yr. That is considerably less than the recorded countywide average production of 2.54 ton/ac/yr. The incorrect value of 10.86 inches is obtained because the proposed rule change multiplies the management factor percentage by the IWR in Column D, not by the ET. If the management factor percentage is multiplied times the total seasonal ET of 23.92 inches for alfalfa at Dillon, as provided in "Table 2: IWR data for seasonal alfalfa evapotranspiration", an historic consumptive use value of 15.24 inches is obtained ($0.637 \times 23.92 \text{ inches} = 15.24 \text{ inches}$). This is the same value of consumptive use obtained by multiplying 2.54 ton/ac/yr by 6 in/ton/ac/yr. Accordingly, the method presented in the proposed amendments is flawed and must be changed to obtain the correct values of historic irrigation. Historic consumptive use must be calculated by multiplying the management factor percentage times total ET, not by the IWR.

RESPONSE 47:

Please see Response 3.

COMMENT 48:

The proposed method can make a significant difference to an irrigator who can document historically high crop yields. The methods in the proposed amendments will favor irrigators who have no documentation of historic crop yields or irrigation application rates by providing a reasonable amount of historic consumptive use

based on historic countywide crop yields. However, the amendments will penalize irrigators who have good documentation of historic irrigation and produced high crop yields.

RESPONSE 48:

The proposed amendments are not mandatory. An irrigator who has documentation of historic yields may present that data in their change application.

COMMENT 49:

The total ET for alfalfa at Dillon, Montana, measured at the AgriMet station, is 29.61 inches per year. This indicates a potential maximum alfalfa production of 4.94 ton/ac/yr (29.61 inches ÷ 6 in/ton/ac/yr = 4.94 ton/ac/yr). Accordingly, the management factor percentage for Beaverhead County should be 2.54 ton/ac/yr divided by 4.94 ton/ac/yr (51.4 percent). The MFP of 51.4 percent multiplied by the total seasonal ET of 29.61 inches, indicates a historic consumptive use of 15.22 inches per year (0.514 x 29.61 inches = 15.22 inches), or essentially the same value obtained for 2.54 ton/ac/yr times 6 in/ton/ac/yr of 15.24 inches. Thus, the results of this calculation are consistent with the DNRC conclusion that 6 inches of water will produce one ton of alfalfa per acre per year. The method provided in the proposed amendments that result in an historic consumptive use of 10.83 inches per year, is inconsistent with those results, indicates an annual production of only 1.81 ton/ac/yr.

The proposed amendments incorrectly calculate historic consumptive use as the product of the MFP and IWR, an approach that should be corrected as shown above. The management factor percentage is a clever concept used in the proposed DNRC rule change to take into account all of the various inefficiencies that result in irrigators obtaining crop yields that are less than the maximum yield potentially allowed by the consumptive use of water by the crop plant (total irrigation season ET). The inefficiencies may include water shortages, poor management of irrigation water applications, lack of fertilizer or nutrients, crop loss to pests or hail, overly mature alfalfa stands, or a host of other problems that can effect crop production.

It is virtually impossible to take all of these factors into account individually in estimating historic consumptive use; but, the management factor percentage takes them into account collectively. However, the historic consumptive use determined as the product of the management factor percentage and the crop ET does not indicate how much water was historically diverted and applied to result in the historic consumptive use. After the historic consumptive use is determined, it is necessary to further adjust it to determine the historic diversion required to result in the historic consumptive use. Application of the DNRC proposed rule change will diminish the amount of water allowed to operators who can document historic production rates that approach the maximum that is possible with the ET for their local area. The principal factor contributing to diminishment of water for efficient irrigators with documentation of high crop yields is the old and inaccurate B-C equation used in the proposed rule change.

RESPONSE 49:

The total ET values calculated at the AgriMet stations accounts for all water consumed by alfalfa. This includes water applied through irrigation, antecedent soil moisture, and effective precipitation. Because the DNRC is concerned with water rights, and therefore water diverted from source to apply as irrigation, the values that the management factor is multiplied by in the proposed methodology do not include effective precipitation as the AgriMet total ET data does. Therefore, the approach used in Comment 49 will show significantly larger historic consumptive use but that value will not reflect water used by irrigation and thus is an incorrect accounting to serve the purpose of the proposed methodology.

COMMENT 50:

Commenter suggested the Penman-Monteith equation that is adopted as the American Society of Civil Engineers, "Standardized Reference Evapotranspiration Equation", (ASCE, 2005), and adopted by the NRCS as a standard method in the Soil Conservation Service, "Part 623 National Engineering Handbook", chapter 2, Irrigation Water Requirements as the standard method for the State of Montana to calculate total seasonal ET. This is also the standard method used in the AgriMet stations to calculate mean daily ET at each station, based on precise measurements of the factors governing ET.

RESPONSE 50:

DNRC looked for a standardized method that could be utilized statewide and the data required to drive the Penman-Monteith equation (and the Kimberly-Penman equation which is what is actually used by AgriMet) is not available statewide. However, an applicant whose acreage is located near an AgriMet site or another data source for humidity, wind speed, and radiation can certainly apply these equations and submit that information with the change application.

COMMENT 51:

The proposed regulatory amendments pose several technical concerns and set a standard of proof far higher than has ever been required before by either DNRC or the Montana Water Court. The proposed amendments at least impliedly limit the amount of water that can be changed in a change application to the amount of water historically consumed, which is inaccurate and contrary to existing law.

RESPONSE 51:

Please see General Response and Response 30. Generally, a change applicant may change its historic diverted volume and flow rate, but may not increase its historic consumptive use.

COMMENT 52:

Commenter expressed concerns about the use of the B-C method, similar to the concerns in Comment 46. Commenter also said that inaccurately underestimating the amount of water available for a change application could have a significant impact on the development community in particular. For example, by underestimating the amount of water available for a change to instream flow for mitigation purposes, use of the B-C method could require developers of workforce

housing to acquire additional existing water rights in order to have enough water available for mitigation purposes, as calculated under the proposed amendments. Underestimation of historic use and an increased need for mitigation water could very easily accelerate Montana's fledging water market to the point where existing irrigators and developers of workforce housing are priced out of the water market.

An accurate and reliable method for determining historic consumptive use, such as the Penman-Montieth equation that has now widely replaced the outmoded B-C method, would ensure that existing water right holders retain the ability to use the full extent of their water rights. It would reduce the possibility of over-mitigation and the consequential water market impacts.

RESPONSE 52:

Please see responses 46 and 50.

COMMENT 53:

Applying the B-C method has the very real potential to under-credit the owner of the changed surface water right for the water left instream, while actually leaving a larger amount of instream water than was calculated to have been historically applied to beneficial use. The under-calculation could result in a significant benefit to other existing water right holders, in that there would be more water available instream than ever before.

Commenter said it is agreed that the amount of water historically applied to beneficial use is the limit of the amount of water that can be changed for mitigation purposes, to apply a method known to under calculate historic use robs water right holders of the full benefit of their rights, resulting in an undeserved windfall to other water users. Additionally, this under-crediting could even contribute to acceleration of the water market by requiring applicants for new water right to obtain excessive rights for mitigation due to under-calculation of existing surface water rights available for mitigation purposes.

RESPONSE 53:

Use of the proposed rules is not mandatory. Please see General Comment and Response 2.

COMMENT 54:

Commenter's concern with the proposed regulatory amendments is that the proposed amendments for determining historic use set a far higher standard than has ever before been applied by either DNRC in evaluating change applications or the Montana Water Court, the entity properly and solely authorized to adjudicate historic water rights. ARM 36.12.1902(7)(i) and (m), require an application for a change authorization to provide substantial credible information on the maximum historic diverted flow rate and volume, respectively, as well as an explanation of how each amount was determined. Even in cases where an individual with firsthand knowledge of the historic use of water is available, to expect that precise records of diverted flow rate and volume were kept is not only unreasonable, but unrealistic.

Particularly in cases of irrigation water, the water users simply do not have the time, capacity, or need to keep such detailed records. Commenter also refers to Hohenlohe case.

RESPONSE 54:

An individual who has firsthand knowledge of historic water use may not have kept flow rate or volume records; however, that individual would very likely know or have information about the capacity of the diversion and the diversion schedule. Using that information one can identify the diverted flow rate and diverted volume. The individual may not know how much of the diverted water was consumed, but the individual can determine that consumed amount using the method proposed in the rules or other methods that may be available to the individual. The identification of the historic consumptive use has been a requirement of a change application for many years, even though not expressly set forth by rule (see "In the Matter of the Application for Beneficial Use Permit No. 20736-s41H by the City of Bozeman and In the Matter of the Application to Sever or Sell Appropriation Water Right 20737-s41H" (1985) (change from irrigation to municipal use)). The current rules, adopted in 2005, require the identification of the historic consumptive use. Also, see Response 29.

COMMENT 55:

Commenter has significant concerns with the implied, if not outright, limit on the amount of water that can be changed in a change application to the amount of water historically consumed. Consideration of historic consumptive volume fails to take into consideration the amount of water required for carriage water. In the case of historic irrigation, particularly by means of flood irrigation or water conveyed to the place of use via lengthy ditch systems, the amount of carriage water required can be significant and is considered to be part of the existing water right, as carriage water is water applied to beneficial use. The proposed amended amendments are unclear as to whether—and how much—carriage water can be taken into consideration when determining the amount of water that has historically been applied to beneficial use and, therefore, is available for a change application. To disregard or discount carriage water is yet another significant reduction to existing water rights and another unwarranted windfall to other existing water users. The proposed amendments should be modified to clarify that carriage water will be considered as part of the amount of water available to be changed to a new purpose or otherwise modified in a change authorization.

RESPONSE 55: A change applicant has the right to change the historic diverted flow rate and volume but may not increase the historic consumed volume of water. Also, see General Comment.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Anne Yates

ANNE YATES

Rule Reviewer

Certified to the Secretary of State November 16, 2009.

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 June 30, 2009. This table includes those rules adopted during the period July 1, 2009, through September 30, 2009, and any proposed rule action that was pending during the past six-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 June 30, 2009, 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 2009 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 2009 appear. Vacancies scheduled to appear from December 1, 2009, through February 28, 2010, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 2009.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Alternative Health Care Board (Labor and Industry)			
Ms. Molly Danison Missoula Qualifications (if required): midwife	Governor	reappointed	10/8/2009 9/1/2013
Alternative Livestock Advisory Council (Fish, Wildlife and Parks)			
Mr. Ron Moody Lewistown Qualifications (if required): Fish, Wildlife and Parks Commission representative	Governor	Workman	10/8/2009 1/1/2011
Ms. Linda Nielsen Nashua Qualifications (if required): Board of Livestock representative	Governor	reappointed	10/8/2009 1/1/2011
Board of Athletic Trainers (Labor and Industry)			
Mr. George Harper Helena Qualifications (if required): public representative	Governor	reappointed	10/19/2009 10/1/2013
Mr. Shawn Ruff Great Falls Qualifications (if required): public representative	Governor	reappointed	10/19/2009 10/1/2013
Board of Medical Examiners (Labor and Industry)			
Ms. Patricia Bollinger Helena Qualifications (if required): Labor and Industry	Governor	nutritionist	10/8/2009 9/1/2013

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Medical Examiners (Labor and Industry) cont.			
Mr. Ryan Burke Great Falls Qualifications (if required): volunteer emergency medical technician	Governor	not listed	10/8/2009 9/1/2013
Ms. Linda Cetrone Levy Billings Qualifications (if required): Labor and Industry	Governor	public representative	10/8/2009 9/1/2013
Ms. Carole Erickson Missoula Qualifications (if required): Labor and Industry	Governor	reappointed	10/8/2009 9/1/2013
Dr. Kris Spanjian Billings Qualifications (if required): doctor of medicine	Governor	reappointed	10/8/2009 9/1/2013
Mr. Dwight Thompson Harlowton Qualifications (if required): Labor and Industry	Governor	licensed physician assistant	10/8/2009 9/1/2013
Board of Outfitters (Labor and Industry)			
Mr. Lee Kinsey Livingston Qualifications (if required): fishing outfitter	Governor	reappointed	10/14/2009 10/1/2012

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Outfitters (Labor and Industry) cont.			
Mr. Shawn McNeely Bozeman	Governor	reappointed	10/14/2009 10/1/2012
Qualifications (if required): fishing outfitter			
Board of Personnel Appeals (Labor and Industry)			
Mr. Michael Thiel Kalispell	Governor	Rowe	10/14/2009 1/1/2011
Qualifications (if required): office of a labor union or an association recognized by the board			
Board of Pharmacy (Labor and Industry)			
Ms. Rebecca H. Deschamps Missoula	Governor	not listed	10/19/2009 7/1/2014
Qualifications (if required): licensed pharmacist			
Board of Physical Therapy Examiners (Labor and Industry)			
Mr. Christian Appel Bozeman	Governor	not listed	10/27/2009 7/1/2012
Qualifications (if required): physical therapist			
Board of Public Accountants (Labor and Industry)			
Mr. Rick Reisig Great Falls	Governor	not listed	10/1/2009 7/1/2013
Qualifications (if required): Certified Public Accountant			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Radiologic Technologists (Labor and Industry)			
Ms. Sharlett Dale Harlowton Qualifications (if required): radiologic technician	Governor	not listed	10/27/2009 7/1/2012
Board of Veterinary Medicine (Labor and Industry)			
Dr. Bruce Sorensen Belgrade Qualifications (if required): veterinarian	Governor	reappointed	10/8/2009 7/31/2014
Capital Finance Advisory Council (Administration)			
Atty. General Steve Bullock Helena Qualifications (if required): Attorney General	Governor	reappointed	10/29/2009 10/29/2011
Rep. David Ewer Helena Qualifications (if required): Budget Director	Governor	reappointed	10/29/2009 10/29/2011
Director Janet Kelly Helena Qualifications (if required): Department of Administration director	Governor	reappointed	10/29/2009 10/29/2011
Secretary of State Linda McCulloch Helena Qualifications (if required): Secretary of State	Governor	reappointed	10/29/2009 10/29/2011

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Capital Finance Advisory Council (Administration) cont.			
Mr. Stephen M. Barrett Bozeman Qualifications (if required): Budget Director	Governor	reappointed	10/29/2009 10/29/2011
Ms. Teresa Cohea Helena Qualifications (if required): Board of Investments representative	Governor	reappointed	10/29/2009 10/29/2011
Mr. J.P. Crowley Helena Qualifications (if required): Board of Investments representative	Governor	reappointed	10/29/2009 10/29/2011
Mr. Fred Flanders Helena Qualifications (if required): Montana Higher Education Student Assistance Corporation representative	Governor	reappointed	10/29/2009 10/29/2011
Rep. Roy Hollandsworth Brady Qualifications (if required): Legislator	Governor	Wilmer	10/29/2009 10/29/2011
Mr. Bill Kearns Townsend Qualifications (if required): Facility Finance Authority representative	Governor	reappointed	10/29/2009 10/29/2011
Director Jim Lynch Helena Qualifications (if required): Department of Transportation director	Governor	Wilmer	10/29/2009 10/29/2011

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Capital Finance Advisory Council (Administration) cont.			
Director Richard Opper Helena	Governor	Wilmer	10/29/2009 10/29/2011
Qualifications (if required): Department of Environmental Quality director			
Director Anthony Preite Helena	Governor	Wilmer	10/29/2009 10/29/2011
Qualifications (if required): Department of Commerce director			
Director Mary Sexton Helena	Governor	Wilmer	10/29/2009 10/29/2011
Qualifications (if required): Department of Natural Resources director			
Clinical Laboratory Science Practitioners (Labor and Industry)			
Ms. Alison Mizner Kalispell	Governor	not listed	10/19/2009 7/1/2014
Qualifications (if required): licensed pharmacist			
Historical Records Advisory Council (Historical Society)			
Ms. Faith Bad Bear-Bartlett Crow Agency	Governor	reappointed	10/9/2009 10/9/2011
Qualifications (if required): public representative			
Ms. Judy Ellinghausen Great Falls	Governor	Allison-Bunnell	10/27/2009 10/9/2011
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Historical Records Advisory Council (Historical Society) cont.			
Ms. Jodie Foley Helena Qualifications (if required): state archivist	Governor	reappointed	10/9/2009 10/9/2011
Ms. Peggy Gow Deer Lodge Qualifications (if required): public representative	Governor	reappointed	10/9/2009 10/9/2011
Ms. Donna McCrea Missoula Qualifications (if required): public representative	Governor	reappointed	10/9/2009 10/9/2011
Ms. Samantha K. Pierson Libby Qualifications (if required): public representative	Governor	reappointed	10/9/2009 10/9/2011
Mr. Kim Allen Scott Bozeman Qualifications (if required): public representative	Governor	reappointed	10/9/2009 10/9/2011
Montana Local Government Records Committee (Historical Society)			
Ms. Marcia Porter Missoula Qualifications (if required): none specified	Director	not listed	10/14/2009 12/31/2011

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Local Government Records Committee (Historical Society) cont.			
Ms. Martha Rehbein Missoula	Director	not listed	10/14/2009 12/31/2011
Qualifications (if required): none specified			
Montana Organic Commodity Advisory Committee (Agriculture)			
Tennyson Doney Harlem	Director	not listed	10/9/2009 8/18/2011
Qualifications (if required): none specified			
Ms. Kathee Dunham Arlee	Director	not listed	10/9/2009 8/18/2011
Qualifications (if required): none specified			
Prescription Drug Abuse Advisory Council (Justice)			
Rep. Tom Berry Roundup	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			
Ms. Starla Blank Helena	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			
Mr. James R. Cashell Bozeman	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Prescription Drug Abuse Advisory Council (Justice) cont.			
Mr. Joseph Doyle Hardin	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			
Dr. Bill Gallea Helena	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			
Mr. Wyatt Glade Miles City	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			
Mr. Mark A. Long Helena	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			
Judge Thomas M. McKittrick Great Falls	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			
Mr. Michael Metzger Billings	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			
Dr. Andrew Michel Helena	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Prescription Drug Abuse Advisory Council (Justice) cont.			
Ms. Trudy Mizner Missoula Qualifications (if required): none specified	Attorney General	not listed	10/2/2009 10/2/2011
Mr. Mark Muir Missoula Qualifications (if required): none specified	Attorney General	not listed	10/2/2009 10/2/2011
Mr. Russ Papke Kalispell Qualifications (if required): none specified	Attorney General	not listed	10/2/2009 10/2/2011
Mr. Karl Rosston Helena Qualifications (if required): none specified	Attorney General	not listed	10/2/2009 10/2/2011
Mr. Ryan C. Rusche Wolf Point Qualifications (if required): none specified	Attorney General	not listed	10/2/2009 10/2/2011
Sen. Trudi Schmidt Great Falls Qualifications (if required): none specified	Attorney General	not listed	10/2/2009 10/2/2011
Mr. Rich St. John Billings Qualifications (if required): none specified	Attorney General	not listed	10/2/2009 10/2/2011

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Prescription Drug Abuse Advisory Council (Justice) cont.			
Sen. Fred R. Van Valkenburg Missoula	Attorney General	not listed	10/2/2009 10/2/2011
Qualifications (if required): none specified			
Professional Engineers and Land Surveyors (Labor and Industry)			
Mr. Ruhul Amin Bozeman	Governor	Cundy	10/29/2009 7/1/2011
Qualifications (if required): licensed mechanical engineer and an instructor			
Respiratory Care Practitioners (Labor and Industry)			
Mr. Rusty Davies Billings	Governor	not listed	10/27/2009 1/1/2013
Qualifications (if required): respiratory care practitioner/pulmonary function speciality			
State Emergency Response Commission (Military Affairs)			
Ms. Susan Taylor Billings	Governor	Willis	10/8/2009 10/1/2011
Qualifications (if required): representative of petroleum industry			
Tourism Advisory Council (Commerce)			
Ms. Meg O'Leary Big Sky	Governor	Ringer	10/19/2009 7/1/2011
Qualifications (if required): resident of Yellowstone County			

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Livestock Advisory Council (Fish, Wildlife and Parks) Dr. Don E. Woerner, Laurel Qualifications (if required): veterinarian	Governor	1/1/2010
Mr. Stan Frasier, Helena Qualifications (if required): sportsperson	Governor	1/1/2010
Mr. James Bouma, Choteau Qualifications (if required): alternative livestock industry representative	Governor	1/1/2010
Board of Chiropractors (Labor and Industry) Dr. Thomas P. Fullerton DC, Kalispell Qualifications (if required): practicing chiropractor with at least one year experience	Governor	1/1/2010
Board of Horseracing (Livestock) Ms. Susan Austin, Kalispell Qualifications (if required): resident of district 5	Governor	1/20/2010
Mr. Charles Carruthers, Butte Qualifications (if required): industry representative	Governor	1/20/2010
Mr. Ray "Topper" Tracy, Stevensville Qualifications (if required): industry representative	Governor	1/20/2010
Mr. John Ostlund, Billings Qualifications (if required): resident of district 2	Governor	1/20/2010

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Pardons and Parole (Corrections)		
Mr. Darryl Dupuis, Polson	Governor	1/1/2010
Qualifications (if required): education or experience in criminology, education, psychiatry, psychology, law & sociology		
Ms. Margaret Hall-Bowman, Pablo	Governor	1/1/2010
Qualifications (if required): education or experience in criminology, education, psychiatry, psychology, law & sociology		
Board of Public Education (Education)		
Mr. Storrs M. Bishop, Ennis	Governor	2/1/2010
Qualifications (if required): Republican from District 2		
Board of Regents of Higher Education (Education)		
Rep. Lila V. Taylor, Busby	Governor	2/1/2010
Qualifications (if required): representative of District 4 and a Republican		
Children's Trust Fund (Public Health and Human Services)		
Rep. Rosalie Buzzas, Missoula	Governor	1/1/2010
Qualifications (if required): public representative		
Ms. Betty Hidalgo, Great Falls	Governor	1/1/2010
Qualifications (if required): public representative		
Ms. Mary Gallagher,	Governor	1/1/2010
Qualifications (if required): agency representative		
Ms. Nancy Wikle, Helena	Governor	1/1/2010
Qualifications (if required): agency representative		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Children's Trust Fund (Public Health and Human Services) cont. Ms. Tara Jensen, Helena Qualifications (if required): agency representative</p>	Governor	1/1/2010
<p>Ms. JoAnn Eder, Red Lodge Qualifications (if required): public representative</p>	Governor	1/1/2010
<p>Crime Victims Advisory Council (Corrections) Ms. Anita Richards, Seeley Lake Qualifications (if required): Victim</p>	Director	12/1/2009
<p>Ms. Mikie Hajek, Great Falls Qualifications (if required): Crime Victim and Cascade County victim/witness advocate</p>	Director	12/1/2009
<p>Ms. Tanya Campbell, no city listed Qualifications (if required): Crime Victim and Missoula County victim/witness advocate</p>	Director	12/1/2009
<p>Rep. Tim Furey, Milltown Qualifications (if required): mother of a negligent homicide (DUI) victim</p>	Director	12/1/2009
<p>Ms. Rose Everett, no city listed Qualifications (if required): Victim and professional mediator</p>	Director	12/1/2009
<p>Ms. Darla Gillespie, no city listed Qualifications (if required): Victim and Dawson County victim/witness advocate</p>	Director	12/1/2009
<p>Ms. Cathy Johnson, no city listed Qualifications (if required): Victim Services staff/Board of Pardons and Parole</p>	Director	12/1/2009

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Crime Victims Advisory Council (Corrections) cont.		
Ms. Eve Malo, no city listed Qualifications (if required): Victim/professor of Restorative Justice at UM-Dillon	Director	12/1/2009
Ms. Linda Moodry, no city listed Qualifications (if required): Montana State Prison Victim Information Officer	Director	12/1/2009
Ms. Linda Paulsen, no city listed Qualifications (if required): Victim of attempted deliberate homicide	Director	12/1/2009
Ms. Lori Ruttenbur, no city listed Qualifications (if required): Victim	Director	12/1/2009
Ms. Annamae Siegfried-Derrick, no city listed Qualifications (if required): Montana Women's Prison Victim Information Officer	Director	12/1/2009
Ms. Wendy Sturn, no city listed Qualifications (if required): Board of Crime Control staff	Director	12/1/2009
Ms. Dawn Wakefield, no city listed Qualifications (if required): Victim	Director	12/1/2009
Mr. Jeff Walter, no city listed Qualifications (if required): Victim Services staff/Board of Pardons and Parole	Director	12/1/2009
Judicial Nomination Commission (Justice)		
Judge Ted O. Lympus, Kalispell Qualifications (if required): elected	District Court	1/1/2010

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Judicial Nomination Commission (Justice) cont. Mr. Paul Tuss, Havre Qualifications (if required): public representative</p>	Governor	1/1/2010
<p>Lottery Commission (Administration) Mr. Thomas M. Keegan, Helena Qualifications (if required): attorney</p>	Governor	1/1/2010
<p>Ms. Beth O'Halloran, Missoula Qualifications (if required): public member</p>	Governor	1/1/2010
<p>Montana Alfalfa Seed Committee (Agriculture) Mr. Tim Wetstein, Joliet Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2009
<p>Mr. John Wold, Laurel Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2009
<p>Montana Arts Council (Arts Council) Mr. Tim Holmes, Helena Qualifications (if required): resident of Montana</p>	Governor	2/1/2010
<p>Mr. Wilbur Wood, Roundup Qualifications (if required): resident of Montana</p>	Governor	2/1/2010
<p>Ms. Youpa Stein, Missoula Qualifications (if required): resident of Montana</p>	Governor	2/1/2010

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Arts Council (Arts Council) cont. Mr. Mark Kuipers, Missoula Qualifications (if required): public representative</p>	Governor	2/1/2010
<p>Montana Council on Developmental Disabilities (Commerce) Ms. Sara Casey, Helena Qualifications (if required): agency representative</p>	Governor	1/1/2010
<p>Sen. Carol Williams, Missoula Qualifications (if required): legislator</p>	Governor	1/1/2010
<p>Mr. Roger Holt, Billings Qualifications (if required): advocacy representative</p>	Governor	1/1/2010
<p>Ms. Anna Whiting-Sorrell, Helena Qualifications (if required): DPHHS Director</p>	Governor	1/1/2010
<p>Rep. Tim Furey, Milltown Qualifications (if required): legislator</p>	Governor	1/1/2010
<p>Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Sonny Obrecht, Turner Qualifications (if required): grazing district preference holder</p>	Governor	1/1/2010
<p>Montana Pulse Crop Advisory Committee (Agriculture) Mr. Grant Zerbe, Frazer Qualifications (if required): none specified</p>	Director	2/13/2010

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Pulse Crop Advisory Committee (Agriculture) cont. Ms. Leta Campbell, Harlem Qualifications (if required): none specified</p>	Director	2/13/2010
<p>Small Business Health Insurance Pool Board (State Auditor) Ms. Gail Briese-Zimmer, Helena Qualifications (if required): management level individual with knowledge of medicaid services</p>	Governor	1/1/2010
<p>Ms. Betty Beverly, Helena Qualifications (if required): consumer</p>	Governor	1/1/2010
<p>State Employee Charitable Giving Campaign Advisory Council (Administration) Ms. JereAnn Nelson, Helena Qualifications (if required): Department of Administration representative</p>	Director	1/4/2010
<p>Mr. Dave Paton, Helena Qualifications (if required): Department of Administration representative</p>	Director	1/4/2010
<p>State Employee Group Benefits Advisory Council (Administration) Ms. Amy Sassano, Helena Qualifications (if required): Executive Branch Agencies representative</p>	Director	1/23/2010
<p>Statewide Independent Living Council (Public Health and Human Services) Ms. Peggy Williams, Helena Qualifications (if required): Independent Living Center representative</p>	Governor	12/1/2009

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Statewide Independent Living Council (Public Health and Human Services) cont. Rep. Carol Lambert, Broadus Qualifications (if required): public representative	Governor	12/1/2009
Sen. Gerald Pease, Lodge Grass Qualifications (if required): public representative	Governor	12/1/2009
Mr. Robert Bushing, Billings Qualifications (if required): public representative	Governor	12/1/2009
Mr. Gerald Hutch, Helena Qualifications (if required): public representative	Governor	12/1/2009
Mr. Dave Swanson, Billings Qualifications (if required): public representative from the disabilities community	Governor	12/1/2009
Traumatic Brain Injury Advisory Council (Public Health and Human Services) Mr. Ian Elliot, Billings Qualifications (if required): survivor	Governor	1/1/2010
Mr. James Hunt, Helena Qualifications (if required): advocate for brain injured	Governor	1/1/2010
Mr. James Hunt, Helena Qualifications (if required): advocate for brain injured	Governor	1/1/2010