

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Section 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.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

STATE AUDITOR, Title 6

6-176 (Classification Review Committee) Notice of Proposed Amendment - Updating References to the NCCI Basic Manual for New Classifications for Various Industries. No Public Hearing Contemplated.	1173-1175
---	-----------

EDUCATION, Department of, Title 10

10-7-117 (Superintendent of Public Instruction) Notice of Public Hearing on Proposed Adoption and Amendment - School Finance.	1176-1197
---	-----------

(Board of Public Education)

10-54-244 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Technology Content Standards and Performance Descriptors.	1198-1222
--	-----------

10-54-245 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Information Literacy/Library Media Content Standards and Performance Descriptors.	1223-1251
--	-----------

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-346 (Department and Fish, Wildlife and Parks Commission) Notice of Public Hearings on Proposed Amendment and Adoption - Gray Wolf Management in Montana.	1252-1260
---	-----------

LIVESTOCK, Department of, Title 32

32-8-193 (Board of Horse Racing) Notice of Public Hearing on Proposed Adoption - Parimutuel Wagering on Fantasy Sports Leagues.	1261-1277
---	-----------

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-128 Notice of Public Hearing on Proposed Amendment - Permit Application - Existing Legal Demands - Permit Application Criteria - Adverse Effect.	1278-1280
--	-----------

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-445 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Medicaid Inpatient Hospital Reimbursement.	1281-1300
---	-----------

REVENUE, Department of, Title 42

42-2-794 Notice of Public Hearing on Proposed Amendment - Real Property and Agricultural Land.	1301-1307
---	-----------

RULE SECTION

COMMERCE, Department of, Title 8

NEW Administration of Treasure State Endowment (TSEP) Grants Awarded by the 2007 Legislature.	1308
--	------

(Hard-Rock Mining Impact Board) Corrected Notice of Amendment - Organization and Procedural Rules of the Hard-Rock Mining Impact Board.	1309
---	------

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)

NEW Angling Restrictions and Fishing Closures.	1310-1316
--	-----------

NEW Delegating Commission Authority to Close Public Waters to the Department in the Event of a Fire Emergency.	1317-1318
---	-----------

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

AMD	(Board of Land Commissioners and the Department) Coal Leasing Rules.	1319
-----	--	------

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD	Medicaid Nursing Facility Reimbursement.	1320-1324
-----	--	-----------

NEW	Medicaid Eligibility.	
AMD		1325-1328

SECRETARY OF STATE, Office of, Title 44

NEW	Elections.	
AMD		1329

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	1330-1331
---	-----------

How to Use ARM and MAR.	1332
-------------------------	------

Accumulative Table.	1333-1342
---------------------	-----------

Boards and Councils Appointees.	1343-1348
---------------------------------	-----------

Vacancies on Boards and Councils.	1349-1363
-----------------------------------	-----------

BEFORE THE CLASSIFICATION REVIEW COMMITTEE OF
THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 6.6.8301	)	AMENDMENT
concerning updating references to the)	
NCCI Basic Manual for new	)	NO PUBLIC HEARING
classifications for various industries	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 4, 2008, the department proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Classification Review Committee not later than 5:00 p.m., July 28, 2008, to advise us of the nature of the accommodation that you need. Please contact Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226; telephone (303) 969-9456; fax (303) 969-9423; or e-mail tim_hughes@ncci.com.

3. The rule shown below was recently amended, and no changes will be made to that rule. However, there are codes referenced by this rule that are being updated.

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION
PLAN NO. 2 (1) and (2) remain the same.

AUTH: 33-16-1012, MCA

IMP: 2-4-103, 33-16-1012, MCA

4. STATEMENT OF REASONABLE NECESSITY: It is necessary to amend ARM 6.6.8301 to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications that apply to various industries. The proposed changes are as follows:

A. Horticulture

Revise the phraseology of Code 0035--Farm--Florist & Drivers to further clarify the proper assignment of acreage or facilities devoted to the raising and cultivating of potted house plants, fresh cut flowers, and flower bulbs; and raising and harvesting annuals, perennials, or other bedding plants. Wording will also be added to clarify the inclusion of algae growing, harvesting, and processing; mushroom farming; and retail or wholesale sales from the farm location. Discontinue the cross-reference phraseology of Code 0035--Farm--

Vegetable Growing--Hydroponic & Drivers. The assignment of Code 0035 for hydroponic vegetable growing will be referenced in the phraseology note of Code 0035--Farm--Florist & Drivers.

NCCI recommends that Montana not adopt the newly proposed national phraseology for nursery farms but instead revise their state special phraseology for Code 0005--Nursery Employees & Drivers to more closely align with the national proposal for Code 0005. NCCI also recommends that Montana discontinue their state special Classification Code 0131--Farm--Christmas Tree & Drivers and combine these exposures into Code 0005.

B. Fruit Farms

Revise the phraseology of Code 0016--Farm--Orchard & Drivers to include "or Grove" on the phraseology and to further clarify the assignment of fruits, nuts, or avocados and other crops to Code 0016.

Revise the phraseology of Code 0079--Farm--Berry or Vineyard & Drivers to further clarify the assignment of acreage devoted to the raising of berries, grapes, or hops to Code 0079, and discontinue the cross-reference phraseology of Code 0079--Farm--Vineyard or Berry & Drivers.

Revise the cross-reference phraseology of Code 0050--Clearing of Right of Way--Electric, Power, Telephone, Burglar, or Fire Alarm Lines: Brush or Weed Control--Chemical & Drivers to further clarify the assignment of brush or weed control using chemicals on existing right of ways for electric, power, telephone, burglar, or fire alarm lines.

C. Sugar Manufacturing

Amend the phraseology of Code--2021--Sugar Refining to include "manufacturing" and to clarify the assignment of sugar manufacturing or refining from sugar cane and sugar beets.

Discontinue the cross reference phraseologies of Code--2021--Beet Sugar Mfg.; Molasses or Syrup Refining, Blending or Mfg.; Sugar Mfg.--Beet; and Syrup or Molasses Refining, Blending, or Manufacturing. The assignment of Code 2021 for these operations will be referenced in the phraseology and note of Code 2021--Farm--Sugar Manufacturing or Refining From Sugar Cane or Sugar Beets.

D. Tobacco Manufacturing

Revise the phraseology of Code--2172--Cigarette Mfg., to clarify the assignment of cigar and tobacco manufacturing to Code 2172. Can manufacturing will continue to be separately rated.

Discontinue the cross-reference phraseologies of Code--2172--Cigar Mfg., and Tobacco Mfg. NOC.

Revise the phraseology of Code 2174--Tobacco Rehandling or Warehousing to clarify the assignment of tobacco auction houses.

5. This amendment is intended to be applied effective July 1, 2010.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com no later than July 28, 2008.

7. 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 Tim Hughes at the above address no later than July 28, 2008.

8. If the committee 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 150 persons based on the 15 businesses who have indicated interest in the rules of this committee and who the committee has determined could be directly affected by these rules.

9. The Montana Classification Review Committee maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this committee. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding rulemaking actions of the Classification Review Committee. Such written requests may be mailed or delivered to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, CO 80226, or by e-mail to tim_hughes@ncci.com, or by completing a request form at any rules hearing held by the Montana Classification Review Committee.

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

/s/ Cliff Hanson

Cliff Hanson

Review Committee Chairperson

/s/ Christina L. Goe

Christina L. Goe

Rule Reviewer

State Auditor's Office

Certified to Secretary of State June 16, 2008.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of	)	NOTICE OF PUBLIC HEARING
New Rule I and the amendment of ARM	)	ON PROPOSED ADOPTION AND
10.7.101, 10.7.104, 10.7.105, 10.7.106,	)	AMENDMENT
10.7.106A, 10.7.109, 10.7.111, 10.7.113,)	
10.7.118, 10.10.301, 10.10.306, 10.10.310,)	
10.15.101, 10.16.3818, 10.20.102,)	
10.20.102A, 10.20.104, 10.21.101B,)	
10.21.101H, 10.21.201, 10.21.202, 10.21.203,)	
10.21.204, 10.22.102, and 10.23.103,)	
relating to school finance)	

TO: All Concerned Persons

1. On July 30, 2008 at 9:00 a.m. a public hearing will be held in the superintendent's conference room at 1227 11th Avenue, Helena, Montana, to consider the adoption and amendment of the above-stated rules.

2. The State Superintendent will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Superintendent's office no later than 5:00 p.m. on July 16, 2008, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Legal Division, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406) 444-3172, TDD number: (406) 444-0235, FAX: (406) 444-2893, e-mail: opirules@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I INITIAL YEAR OF OPERATION OF A FULL-TIME KINDERGARTEN PROGRAM - ANB CALCULATION (1) School district trustees may apply to the Superintendent of Public Instruction for increased ANB for the initial year of operation of a full-time kindergarten program as provided in 20-9-313, MCA.

(2) The additional ANB for the ensuing year shall be calculated by elementary budget unit as follows:

(a) determine the average prior year kindergarten enrollment for the semiannual enrollment counts;

(b) multiply the amount calculated in (2)(a) by the anticipated percentage of kindergarten students enrolled in the district in 20XX-1, rounding the percentage to two decimal places (i.e., XX.XX%);

(c) recalculate the district's ANB per ARM 10.20.102 using the adjusted average kindergarten enrollment count calculated in (2)(b); and

(d) determine the increase in ANB by subtracting the original ANB from the ANB calculated in (2)(c).

AUTH: 20-3-106, 20-9-102, MCA
IMP: 20-9-166, 20-9-311, 20-9-314, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to adopt this rule to implement full-time kindergarten programs adopted under SB 2 in the 2007 Special Legislative Session.

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

10.7.101 INTRODUCTION (1) and (2) remain the same.

(a) By July 1 a district must send copies of all completed school bus contracts to the county superintendent.

~~(a)~~ (b) By the ~~fourth Monday in June~~ July 1 a district must do all of the following:

(i) complete and sign transportation contracts (~~four~~ three copies) for the ensuing year;

(ii) send to the county superintendent copies of all completed individual transportation contracts; and

(iii) submit individual transportation contracts electronically to the Superintendent of Public Instruction.

~~(b) By July 1 a district must send to the county superintendent copies of all completed school bus contracts and copies of all completed individual transportation contracts.~~

(c) By the fourth Monday in ~~June~~ July a county transportation committee (CTC) must act to approve or not approve all bus routes established by districts. The CTC must also act on all applications for increased individual payments due to isolation. Approval of board of trustees for increased payments is required prior to CTC action.

~~(d) By July 10 the county superintendent must send one copy of all individual transportation contracts to the Superintendent of Public Instruction.~~ By October 1, the county superintendent must electronically acknowledge receipt of all individual transportation contracts and electronically authorize individual transportation contracts for which the CTC has approved increased payments due to isolation.

(e) and (f) remain the same.

~~(g) By October 1 a district must send the county superintendent two copies of the TR-1 for each bus route.~~ By November 1 a district must send the county superintendent one copy of the TR-1 for each bus route and submit a TR-1 for each bus route electronically to the Superintendent of Public Instruction.

~~(h) By October 15 the county superintendent must send the state Superintendent of Public Instruction the TR-1 for each bus route.~~ By November 10 the county superintendent must electronically approve each TR-1 submitted by the district in (2)(g).

(i) By mid-November the Superintendent of Public Instruction must electronically notify county superintendents and district clerks of the approved rates for individual and isolated contracts.

~~(i) By mid-October OPI must notify county superintendents and district clerks of the approved rates for individual and isolated contracts.~~

(j) Upon receipt of the approved rates required in (2)(i) a district must provide a copy of the contract to each parent, guardian, or emancipated minor with whom the district holds a contract.

(k) remains the same.

~~(l) By mid-January OPI will mail the TR-5, School District Claim for Individual Transportation, and TR-6, Claim for Reimbursement for School Bus Transportation, to districts.~~

(m) remains the same but is renumbered (l).

~~(n) (m)~~ By February 15 a district must send the county superintendent ~~two~~ one copy of transportation claims TR-5 and TR-6 and submit the claims electronically to the Superintendent of Public Instruction.

(n) By February 22 the county superintendent must electronically authorize each district TR-5 and TR-6 claim for the first semester.

~~(o) By February 15 the county superintendent must send the Superintendent of Public Instruction one copy of each district's completed TR-5 and TR-6 claims for first semester transportation reimbursement.~~

~~(p) (o)~~ Upon receipt of electronic claims, the ~~state~~ Superintendent of Public Instruction verifies the claims and disburses the approved amount of state reimbursement for first semester transportation. Payments will be made on or before March 31.

~~(q) (p)~~ Upon receipt of electronic state payment notice the county superintendent orders the disbursement of county reimbursement for first semester transportation on the basis of state reimbursement.

~~(r) By April 30 OPI will mail the TR-5, School District Claim for Individual Transportation, and TR-6, Claim for Reimbursement for School Bus Transportation, to districts.~~

~~(s) (q)~~ By May 40 24 a district must send the county superintendent ~~two~~ one copy of completed transportation claims TR-5 and TR-6 and submit the claims electronically to the Superintendent of Public Instruction.

(r) By June 1 the county superintendent must electronically authorize each district TR-5 and TR-6 claim for the second semester.

~~(t) By May 24 the county superintendent must send the Superintendent of Public Instruction one copy of each district's completed TR-5 and TR-6 claims for second semester transportation reimbursement.~~

~~(u) (s)~~ Upon receipt of electronic claims the ~~state~~ Superintendent of Public Instruction verifies the claims and disburses the approved amount of state reimbursement for second semester transportation. Payments will be made on or before June 30.

~~(v) (t)~~ Upon receipt of electronic state payment notice the county superintendent orders the disbursement of county reimbursement for second semester transportation on the basis of state reimbursement.

~~(w) (u)~~ Whenever necessary, new individual transportation contracts received by the school district after final budget adoption are completed by the board of trustees. ~~The original contract is transmitted to the county superintendent. The county superintendent forwards the original to the Superintendent of Public~~

~~Instruction-~~ The district will enter and submit the contract electronically to the Superintendent of Public Instruction and submit the original to the county superintendent.

~~(x)~~ (v) Whenever required, the board of trustees issues Montana school bus driver certification to bus drivers and transmits the required copies to the county superintendent ~~and the Superintendent of Public Instruction. The district will submit new and amended driver certifications electronically, as they are updated, to the Superintendent of Public Instruction.~~

(y) remains the same but is renumbered (w).

AUTH: 20-3-106, 20-10-112, MCA

IMP: 20-9-134, 20-9-166, 20-10-101, 20-10-124, 20-10-147, 20-10-201, 20-10-202, 20-10-203, 20-10-204, 20-10-205, 20-10-206, 20-10-207, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.101, 10.7.104, 10.7.105, 10.7.106, 10.7.109, 10.7.111, and 10.7.118 to reflect changes in processes resulting from the OPI's implementation of an electronic reporting system for transportation.

10.7.104 CLAIM PROCEDURE (1) First semester:

(a) By February 15, the board of trustees must provides the county superintendent with ~~two~~ one complete ~~copies~~ copy of the first semester transportation claim, using forms provided electronically by the Superintendent of Public Instruction. The district claims must be signed by the chairman of the board of trustees and a copy must be retained on file at the district for audit purposes.

(b) By February 15, 22 the county superintendent must reviews each district's claim for completeness and accuracy, and ~~submits to~~ electronically notify the Superintendent of Public Instruction ~~a copy of the county superintendent's approval~~ of each district's first semester transportation claim.

~~(c)~~ Valid claims ~~received by the Superintendent of Public Instruction submitted by the district and approved by the county superintendent~~ after February 15 22 will be paid with the second semester transportation reimbursement.

(2) Second semester:

(a) By May 10, 24 the board of trustees must provides the county superintendent with ~~two~~ one complete ~~copies~~ copy of the second semester transportation claim, using forms provided electronically by the Superintendent of Public Instruction. The district claims must be signed by the chairman of the board of trustees and a copy must be retained on file at the district for audit purposes.

(b) By ~~May 24~~ June 1, the county superintendent must reviews each district's claim for completeness and accuracy, and ~~submits to~~ electronically notify the Superintendent of Public Instruction ~~a copy of the county superintendent's approval~~ of each district's second semester transportation claim.

~~(c)~~ Valid claims ~~received by the Superintendent of Public Instruction submitted by the district and approved by the county superintendent~~ after May 24 and by June 30 will be paid by September 30 of the following school year.

AUTH: 20-3-106, 20-10-112, MCA
IMP: 20-10-145, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.104 for the reasons stated following ARM 10.7.101.

10.7.105 PUPIL TRANSPORTATION CONTRACTS (1) School districts are required to have individual transportation contracts for the ensuing year signed by ~~the fourth Monday in June~~ July 1.

(2) ~~Four~~ Three copies of the contract form are needed: one for the individual or contractor providing the service, one for the district clerk, and one for the county superintendent ~~and one for the Superintendent of Public Instruction~~.

(3) and (4) remain the same.

AUTH: 20-3-106, 20-10-112, MCA
IMP: 20-10-121, 20-10-124, 20-10-143, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.105 for the reasons stated following ARM 10.7.101.

10.7.106 CONTENTS AND LIMITATIONS OF PUPIL TRANSPORTATION CONTRACTS (1) through (9) remain the same.

(10) The contract must be completed in its entirety, signed by the parent, legal guardian, or emancipated minor, ~~and signed by the chairman of the board of trustees on or before the fourth Monday in June preceding July 1 of the school year~~ for which the transportation is being provided. The signed contract is the authorization of the board of trustees to budget for that transportation expenditure necessary to meet the obligation imposed on the district by the contract. Each party to the contract and the county superintendent must receive a copy of the contract.

(11) remains the same.

(12) The district clerk must transmits each transportation contract to the county superintendent and submit each contract electronically to the Superintendent of Public Instruction by July 1, or as received and accepted by the board of trustees.

(13) ~~By July 10~~ October 1, or as received from the district, the county superintendent ~~transmits the original copy~~ must electronically verify the County Transportation Committee's receipt of each transportation contract to the Superintendent of Public Instruction. All individual contracts made between the same parent or legal guardian and different school districts (in the same county or in different counties) are gathered electronically by the Superintendent of Public Instruction and allocation of district responsibility for payment is made in compliance with the law and the Board of Public Education policy.

(14) ~~By mid-October~~ November, the Superintendent of Public Instruction electronically provides approved contract rates to the county superintendent and to each district clerk of a district providing individual contracts for transportation.

(15) remains the same.

(16) The district must retain a copy of each signed individual transportation contract on file for audit purposes.

AUTH: 20-3-106, 20-10-112, MCA

IMP: 20-5-321, 20-9-166, 20-10-101, 20-10-111, 20-10-112, 20-10-121, 20-10-124, 20-10-142, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.106 for the reasons stated following ARM 10.7.101.

10.7.106A TRANSPORTATION COSTS ALLOCATED BY OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) through (3) remain the same.

(4) In accordance with 20-5-323, MCA, the over-schedule costs charged under an attendance agreement for the school year ~~199X~~ 20XX may not exceed the lesser of:

(a) through (9) remain the same.

AUTH: 20-10-112, MCA

IMP: 20-5-320, 20-5-321, 20-5-323, 20-10-141, 20-10-142, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.106A to correct a reference to a date.

10.7.109 BUS TRANSPORTATION REIMBURSEMENT-SCHOOL DISTRICT APPLICATION TR-1 FOR REGISTRATION OF SCHOOL BUSES AND STATE REIMBURSEMENT (1) remains the same.

(a) The trustees shall send ~~two copies~~ one copy of a TR-1 for each route to the county superintendent by ~~October 1. No later than October 15, the county superintendent must send one copy of a TR-1 for each route to the state Superintendent of Public Instruction for approval. November 1 and must submit the information for each route electronically to the Superintendent of Public Instruction.~~

(2) County and State approval of the electronic TR-1 is a prerequisite to reimbursement.

AUTH: 20-3-106, 20-10-112, MCA

IMP: 20-10-112, 20-10-128, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.109 for the reasons stated following ARM 10.7.101.

10.7.111 QUALIFICATION OF BUS DRIVERS (1) through (3) remain the same.

(4) The holding of a Montana school bus driver certificate is proof that the driver meets all the qualifications of the school transportation law. The bus driver

certificate forms are provided electronically by the Superintendent of Public Instruction for use by the board of trustees. The board issues a certificate to each driver who is authorized and qualified to drive, and files a copy with the county superintendent and ~~a copy~~ electronically files the certification information with the Superintendent of Public Instruction.

(5) and (6) remain the same.

(7) Districts must retain a signed copy of each bus driver certificate on file for audit purposes.

AUTH: 20-3-106, 20-10-112, MCA

IMP: 20-10-103, 20-10-112, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.111 for the reasons stated following ARM 10.7.101.

10.7.113 "TWO CONTRACT AMOUNT" REGULATION (1) through (1)(b) remain the same.

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

AUTH: 20-3-106, 20-10-112, MCA

IMP: 20-10-142, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.113 to correct a term defined in implementing ANB for full-time kindergarten programs under SB 2 (2007 Special Legislative Session).

10.7.118 SCHOOL TRANSPORTATION FORMS LISTED BY FORM NUMBER (1) remains the same.

(a) Forms supplied electronically by the Superintendent of Public Instruction;

(b) Forms completed by district officials, due in county superintendent's office by ~~October 4~~ November 1;

(c) Completed forms transmitted by county superintendent electronically to ~~the state~~ Superintendent of Public Instruction by ~~October 15~~ November 1;

(d) Forms electronically authorized by the county superintendent by November 10;

(e) Forms processed electronically, rated, and approved by the Superintendent of Public Instruction.

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

(b) Forms electronically supplied by the Superintendent of Public Instruction;

(c) Forms completed by district officials, due in county superintendent's office by ~~October 4~~ November 1;

- (d) and (3) remain the same.
- (a) Forms electronically supplied by the Superintendent of Public Instruction;
- (b) remains the same.
- (c) Forms completed by families and district officials by ~~fourth Monday in June~~ July 1 or as accepted by the district;
- (d) Completed forms due in the county superintendent's office by July 1 or as received from the district;
- (e) ~~Original~~ Electronic copy of each contract transmitted by the ~~county superintendent~~ district to the Superintendent of Public Instruction by ~~July 1~~ 10 ~~or as received from the county~~ and as electronically approved by the county superintendent;
- (f) The contracts are processed electronically, rated, and approved by the Superintendent of Public Instruction and the approved rates ~~sent~~ are available electronically to the county superintendent and district by mid-October.
- (4) remains the same.
- (a) Forms supplied electronically by the ~~state~~ Superintendent of Public Instruction each semester;
- (b) remains the same.
- (i) first semester by February 4, 15;
- (ii) second semester by May 10 24;
- (c) ~~Completed forms transmitted by the county superintendent to~~ authorizes the claim electronically the Superintendent of Public Instruction:
- (i) first semester by February 15, 22;
- (ii) second semester by ~~May 10~~ June 1;
- (d) Forms are verified electronically by the Superintendent of Public Instruction. After claims are verified, each district official and county superintendent receives from the Superintendent of Public Instruction a notification of the amount of reimbursement to be received by the district. The county treasurer receives from the Superintendent of Public Instruction a state payment with a list of districts and the amount each district is to receive.
- (5) remains the same.
- (a) Forms electronically supplied by the ~~state~~ Superintendent of Public Instruction each semester;
- (b) remains the same.
- (i) first semester by February 15, 22;
- (ii) second semester by May 10 24;
- (c) ~~Completed forms transmitted by the county superintendent to~~ authorizes the claim electronically the Superintendent of Public Instruction:
- (i) first semester by February 15, 22;
- (ii) second semester by ~~May 24~~ June 1;
- (d) Forms are electronically verified by the Superintendent of Public Instruction. After claims are verified, each district official and the county superintendent receive from the Superintendent of Public Instruction a notification of the amount of reimbursement to be received by the district. The county treasurer receives from the Superintendent of Public Instruction a state payment with a list of districts and the amount each district is to receive.
- (6) through (8) remain the same.

- (a) Forms supplied electronically by the Superintendent of Public Instruction;
- (b) through (d) remain the same.
- ~~(i) Superintendent of Public Instruction,~~
- ~~(ii) county superintendent of schools;~~
- ~~(iii) (ii) district official;~~
- ~~(iv) (iii) Montana Highway Patrol official.~~
- (9) remains the same.
- (a) Certificate forms supplied electronically by the Superintendent of Public Instruction;
- ~~(b) Copies of certificate forms mailed to district officials upon request (county superintendent may request forms for district official's use);~~
- ~~(c) Certificates issued by the board of trustees to drivers authorized to drive school buses;~~
- ~~(d) (c) Completed copies of certificates filed with county superintendent of schools and~~ filed electronically with the Superintendent of Public Instruction.

AUTH: 20-3-106, 20-10-112, MCA

IMP: 20-9-166, 20-10-101, 20-10-103, 20-10-111, 20-10-112, 20-10-124, 20-10-128, 20-10-132, 20-10-141, 20-10-142, 20-10-145, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.118 for the reasons stated following ARM 10.7.101.

10.10.301 CALCULATING TUITION RATES (1) The maximum regular education tuition rate a district may charge per student is 20% of the per ANB rate established in 20-9-306(10), MCA, for the first ANB for the year of attendance. For a kindergarten student enrolled in a half-time program as provided in 20-1-301(2)(a), MCA, and a preschool child with disabilities the rate is one-half the rate for an elementary student.

(2) through (5) remain the same.

AUTH: 20-5-312, 20-9-102, 20-9-201, MCA

IMP: Title 20, ch. 5, pt. 3, 20-6-702, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.301 to implement the creation of full-time kindergarten programs under 20-7-117, MCA and the provisions allowing districts to include full-time kindergarten students for purposes of ANB funding under 20-9-311, MCA (HB 2, 2007 Special Legislative Session). This change allows a district to charge parents of nonresident full-time kindergarten students the elementary tuition rate.

10.10.306 BANK ACCOUNTS OR OTHER DEPOSITORIES (1) remains the same.

(a) accounts with the state Board of Investments or investment firms maintaining a unified investment program in accordance with ARM ~~10.10.317~~

10.10.625;

(b) through (2) remain the same.

AUTH: 20-9-102, 20-9-201, MCA

IMP: 20-9-212, 20-9-504, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to correct the reference to administrative rule because ARM 10.10.317 was repealed in 2002 and the relevant provisions transferred to ARM 10.10.625.

10.10.310 UNOBLIGATED TUITION MONEY IN THE MISCELLANEOUS PROGRAMS FUND (1) remains the same.

(2) In accordance with generally accepted accounting principles, transfers due to the general fund are to be accrued by June 30 in the district's accounting records as operating transfers. The actual cash transfer to the general fund shall be made before September 30 of the next fiscal year.

AUTH: 20-9-102, MCA

IMP: 20-5-324, 20-9-321, 20-9-507, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.310 to clarify the applicability of generally accepted accounting principles to the unused year-end balance of tuition receipts deposited under 20-5-324, MCA. This change mirrors current policy for other year-end transfers to the general fund as seen in ARM 10.10.312 and 10.10.315. The addition to this rule adds clarity for readers and makes similar procedures consistent.

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

(1) and (2) remain the same.

(3) "Average daily attendance" or "ADA" is the average number of students present on the dates used to report fall and spring disaggregated enrollment and attendance data. The total number of students present in grades 1-12 and kindergarten students enrolled and present in a full-time kindergarten program, as reported on the fall and spring disaggregated enrollment and attendance data reports, will be added together and divided by two to determine the average daily attendance for that school year. The number of students enrolled and present in prekindergarten and kindergarten students enrolled and present in a half-time kindergarten program, as reported on those data collections, will be added together and divided by four to determine average daily attendance for that school year.

(4) through (8) remain the same.

(9) "Basic entitlement" means the minimum dollar amount as defined in 20-9-306, MCA, that each high school, elementary, accredited middle school or 7-8 grade program, or K-12 district will receive if in operation. ~~Elementary districts that have an accredited 7th-8th grade program receive a prorated basic entitlement. A~~

district's total per-ANB entitlement and its basic entitlement determine its general fund budget limits.

(10) through (19) remain the same.

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

(21) through (29) remain the same.

(30) "Full-time kindergarten" or "FTK" means a kindergarten program offered in accordance with 20-7-117, MCA for the minimum aggregate hours defined in 20-1-301, MCA.

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

(34) "Half-time kindergarten" means a kindergarten program established in accordance with 20-7-117, MCA for the minimum aggregate hours defined in 20-1-301, MCA.

(33) through (53) remain the same but are renumbered (35) through (55).

~~(54)~~ (56) "Statewide elementary GTB ratio" or "statewide high school GTB ratio" for GTBA funding of eligible districts' FY 20XX+1 BASE budgets means the ratio of ~~475~~ 193% of the CY 20XX-1 statewide taxable valuation to the statewide elementary or high school total of FY 20XX GTBA budget area.

(55) through (61) remain the same but are renumbered (57) through (63).

AUTH: 20-9-102, MCA

IMP: Title 20, ch. 9, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.15.101 to implement the creation of full-time kindergarten programs under 20-7-117, MCA and the provisions allowing districts to include full-time kindergarten students for purposes of ANB funding under 20-9-311, MCA (SB 2, 2007 Special Legislative Session). This rule is also being changed to amend references to the prorated elementary basic entitlement for districts having accredited 7-8 programs, which SB 2 (2007 Special Legislative Session) replaced with a separate middle school basic entitlement.

10.16.3818 SPECIAL EDUCATION TUITION RATES (1) through (3) remain the same.

(a) Option A: The additional charge shall be calculated by determining the number of hours during which direct special education and related services are being provided each week, as established on the student's individualized education program (IEP). If the total hours are less than 15 (7 1/2 for half-time kindergarten), tuition may not exceed the general education tuition rate. If the total hours per week are 15 (7 1/2 for half-time kindergarten) or more, the total hours will be divided by 30 (the average number of school hours per week, 15 for half-time kindergarten), and multiplied by the maximum general education tuition rate in ARM 10.10.301 to determine the amount which may be added to the rate in ARM 10.10.301.

(b) through (7) remain the same.

AUTH: 20-5-323, MCA

IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-306, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.16.3818 to make the formula for calculating tuition for special education students consistent with implementation of full-time and half-time kindergarten programs under SB 2 (2007 Special Legislative Session).

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) and (2) remain the same.

(3) If the school district has not received accreditation by the Board of Public Education for students in grades 7 and 8 funded at the high school per-ANB entitlement rate, the ~~Office~~ Superintendent of Public Instruction shall certify the regularly enrolled 7th and 8th grade students as elementary pupils for ANB purposes. The school district must budget accordingly.

(4) The official count of enrolled students, as defined in ARM 10.15.101, is taken on the first Monday in October and the 1st of February, or the first school day that follows the count date if the official count date is not a school day.

(a) A school district may not count as enrolled on the count date for purposes of ANB calculations a student who:

~~(a)~~ has been absent for the 11th consecutive pupil instruction days immediately prior to and including the official count date;

(b) A school district may not count as enrolled on the count date a student who:

(b) through (e) remain the same but are renumbered (i) through (iv).

(5) After a student is dropped from the rolls in accordance with (4)(b), student absences will not be included for absence and attendance calculations, and student enrollment may not be considered in ANB calculations unless attendance is resumed on or before the date of the official count.

(6) and (7) remain the same.

(a) a kindergarten student enrolled in a program designed to provide less than ~~484~~ 180 hours of pupil instruction time per school year is reported as enrolled but is excluded from eligibility for purposes of ANB. A kindergarten student enrolled in a program designed to provide ~~484~~ 180 hours or more of pupil instruction time per school year is reported as enrolled and is included in eligibility for purposes of ANB.

(b) a student in grades 4 FTK through 12 enrolled in a program designed to provide:

(i) less than ~~484~~ 180 hours of pupil instruction time per school year is reported as enrolled but is excluded from eligibility for purposes of ANB;

(ii) ~~484~~ 180 to 359 hours of pupil instruction time per school year is reported as ~~part-time~~ one-quarter time enrolled;

(iii) through (10) remain the same.

(11) Trustees may apply for increased ANB for early graduates who are enrolled as of the first Monday of October as a senior in high school, in the seventh semester of secondary school, and who complete the graduation requirements prior to the February 1 enrollment count in accordance with 20-9-313, MCA, by ~~filing a~~

~~request with the state Superintendent of Public Instruction stating in the enrollment reports submitted to the Superintendent of Public Instruction the names of pupils which were not included in the February 1 enrollment count because they graduated early and the date of the pupils' graduation. The application information must be submitted by the deadline in ARM 10.20.103 preceding the year for which ANB is being calculated.~~

(12) and (13) remain the same.

(14) A school district must conduct a minimum of 360 hours of pupil instruction for a half-time kindergarten program, a minimum of 720 hours of pupil instruction for grades 4 FTK-3, and a minimum of 1,080 hours of pupil instruction for grades 4-11, ~~and a minimum of 1,050 hours for grade 12.~~

(a) through (15)(a) remain the same.

(i) the enrollment reported by the school district on the October and February enrollment report forms to the Superintendent of Public Instruction, pursuant to 20-9-311, MCA, will be adjusted and averaged by budget unit as follows:

By budget unit: [(enrollment for first Monday in October + enrollment for February 1) - (kindergarten enrollment for students receiving less than ~~484~~ 180 hours of pupil instruction time per school year) - (one-half kindergarten enrollment for students enrolled in a half-time kindergarten program receiving ~~484~~ 180 hours or more of pupil instruction time per school year) - (prekindergarten enrollment) - (part-time enrollment for students in grades 4 FTK through 12 receiving less than ~~484~~ 180 hours of pupil instruction time per school year) - (0.75 times the part-time enrollment for students in grades 4 FTK through 12 receiving ~~484~~ 180 through 359 hours of pupil instruction time per school year) - (0.50 times the part-time enrollment for students in grades 4 FTK through 12 receiving 360 through 539 hours of pupil instruction time per school year) - (0.25 times part-time enrollment for students in grades 4 FTK through 12 receiving 540 through 719 hours of pupil instruction time per school year) - (enrolled students reaching 19 years of age by September 10 of the school year) + (early graduates)] divided by 2 to get the average of the two enrollment counts by budget unit;

(ii) remains the same.

(iii) add the additional approved enrollment, as determined in ARM 10.20.103 and [NEW RULE I], to the enrollment used to calculate the current ANB.

(b) To calculate three-year ANB, the Superintendent of Public Instruction will do the following:

(i) sum total the current ANB by budget unit for the budget year and the two years preceding the year for which three-year ANB could be used for funding, divide the sum by three, and round up to the nearest whole number; and

(ii) add the additional approved enrollment as determined in [NEW RULE I] to the enrollment used to calculate three-year ANB.

(c) remains the same.

(16) When an audit or other review determines the enrollment used for calculating ANB was incorrectly reported, the Superintendent of Public Instruction will make an adjustment as follows:

(a) If the enrollment reporting error is discovered and reported to the Superintendent of Public Instruction before the budget for FY 20XX is adopted and before the date by which the trustees must commence the final budget meeting

required by 20-9-131, MCA, the Superintendent of Public Instruction will recalculate and recertify the district's current or three-year ANB for the FY 20XX budget using the corrected enrollment figures in the ANB calculations.

(b) Except as provided in (16)(c), if an enrollment reporting error is discovered and reported to the Superintendent of Public Instruction on or after the date by which the trustees must commence the FY 20XX final budget meeting required by 20-9-131, MCA, the Superintendent of Public Instruction will determine the direct state aid and guaranteed tax base aid payments the district would have received for FY 20XX if enrollment had been correctly reported and will make a payment adjustment in the current year. Funding will be adjusted, but ANB figures will not be changed for the current year or changed for use in future years' ANB calculations or budgets.

(c) If the Superintendent of Public Instruction determines the enrollment reporting error detected as described in (16)(b) would materially affect the ANB of a future year, resulting either in significant financial hardship or significant overpayment of state funds to a district's general fund budget for a future year if not corrected, the superintendent may use the correct enrollment to certify ANB for the following year's budget. That is, the enrollment error will be corrected and will be used in ANB calculations affecting future years only if the financial impacts are significant.

AUTH: 20-9-102, 20-9-346, 20-9-369, MCA

IMP: 20-1-301, 20-1-302, 20-1-304, 20-7-117, 20-9-311, 20-9-313, 20-9-314, 20-9-805, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.20.102 to provide clarification, implement the creation of full-time kindergarten programs under 20-7-117, MCA and the provisions allowing districts to include full-time kindergarten students for purposes of ANB funding under 20-9-311, MCA (SB 2, 2007 Special Legislative Session), correct references to 181 hours for consistency with 20-9-311, MCA, make minor wording changes to reflect changes in OPI business processes caused by implementation of the new student data system for collecting enrollment data, and establish processes for adjusting payments when audits and desk reviews discover errors in enrollment data reported for prior years which affect the three year enrollment averages.

10.20.102A BUDGET UNIT (1) remains the same.

(2) Those students in the 7th and 8th grade who are enrolled in programs which were approved and accredited by the Board of Public Education will be considered high school pupils for ANB purposes and for determining the total per-ANB entitlement as provided in 20-9-306, MCA. The basic entitlement for the budget unit which includes those students will be ~~prorated based on the percentage of total enrollment ANB in grade K-6 times the elementary basic entitlement and the percentage of total enrollment ANB in grades 7 and 8 in the accredited program times the high school basic entitlement.~~ For purposes of the proration of the basic entitlement, ~~the percentages of ANB will be rounded to the nearest whole percentage point before multiplying by the entitlement amount~~ calculated as

provided in 20-9-306, MCA.

AUTH: 20-9-102, MCA

IMP: 20-9-311, 20-9-313, 20-9-314, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.20.102A to change the references to the prorated elementary basic entitlement for districts which have accredited 7-8 grade programs, which SB 2 (2007 Special Legislative Session) replaced with a separate middle school basic entitlement.

10.20.104 ANTICIPATED UNUSUAL ENROLLMENT INCREASE - ANB CALCULATION (1) and (2) remain the same.

(a) Estimate the district's anticipated enrollment for the next October count using information known to be accurate at the time the estimate is made. By budget unit: [(estimated enrollment for first Monday in October) - (estimated kindergarten enrollment for students receiving less than ~~484~~ 180 hours of pupil instruction time per school year) - (one-half estimated kindergarten enrollment for students enrolled in a half-time kindergarten program and receiving ~~484~~ 180 hours or more of pupil instruction time per school year) - (estimated prekindergarten enrollment) - (estimated part-time enrollment for students in grades 4 FTK through 12 receiving less than ~~484~~ 180 hours of pupil instruction time per school year) - (0.75 times the part-time estimated enrollment for students in grades 4 FTK through 12 receiving ~~484~~ 180 through 359 hours of pupil instruction time per school year) - (0.50 times the estimated part-time enrollment for students in grades 4 FTK through 12 receiving 360 through 539 hours of pupil instruction time per school year) - (0.25 times estimated part-time enrollment for students in grades 4 FTK through 12 receiving 540 through 719 hours of pupil instruction time per school year) - (estimated enrolled students reaching 19 years of age by September 10 of the school year) + early graduates]. This is anticipated enrollment (AE).

(b) through (4) remain the same.

AUTH: 20-3-106, 20-9-102, MCA

IMP: 20-9-166, 20-9-311, 20-9-314, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.20.104 to implement full-time kindergarten programs adopted under SB 2 in the 2007 Special Legislative Session and corrects references to 181 hours for consistency with 20-9-311, MCA.

10.21.101B CALCULATION OF STATEWIDE GTBA (1) The statewide elementary or high school GTB ratio for purposes of calculating FY 20XX+1 general fund GTBA is: ~~4.75~~ 1.93 x calendar year 20XX-1 statewide taxable valuation / total FY 20XX elementary or high school GTBA budget area.

(2) through (4) remain the same.

AUTH: 20-9-102, 20-9-369, MCA

IMP: 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.21.101B to change the guaranteed tax base calculation as adopted in SB 2 in the 2007 Special Legislative Session.

10.21.101H CALCULATION OF DEBT LIMITS (1) For an elementary or high school district that is ineligible to receive guaranteed tax base aid under the provisions of 20-9-367, MCA, the maximum amount for which the district may become indebted by the issuance of bonds is ~~45~~ 50% of the taxable valuation of the property within the district.

(2) remains the same.

(a) For an elementary district,

Statewide mill value per elementary ANB x Elementary ANB x 1000 x ~~45~~ 50%;

(b) For a high school district,

Statewide mill value per high school ANB x High School ANB x 1000 x ~~45~~ 50%.

(3) remains the same.

(4) The district average number belonging (ANB) applicable to the calculation in (2) is the district budgeted ANB for the school year in which the bonds are sold. Enrollment increases approved under 20-9-166, MCA after October 1 do not constitute an increase in ANB for the purpose of calculating the district's maximum bonded indebtedness.

(5) remains the same.

AUTH: 20-9-102, MCA

IMP: 20-9-406, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.21.101H to implement HB 672 (2007 Legislative Session).

10.21.201 QUALITY EDUCATOR PAYMENTS - GENERAL FUND

(1) remains the same.

(2) The number of FTE used to determine the payment for FY 20XX+2 will be based on the full time equivalent (FTE) personnel assignments and associated FTE units reported by the district to the Superintendent of Public Instruction on the annual data collection report submitted in the fall of 20XX.

(a) The number of FTE in (2) may be increased if ANB is increased as provided for in 20-9-313, MCA for the purpose of implementing a full-time kindergarten program.

(i) If the additional ANB in (2)(a) is more than 10, the number of FTE will be increased by 1.0 FTE for every 12.6 ANB, rounded to the nearest tenth.

(ii) If the additional ANB is 10 or less, there will be no increase in the number of FTE.

(3) through (6) remain the same.

AUTH: 20-3-106, MCA
IMP: 20-9-327, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.21.201 to fund quality educator payments under 20-9-327, MCA, for new staff hired for the districts' first year implementation of a full-time kindergarten program created under SB 2 of the 2007 Special Legislative Session.

10.21.202 AT RISK STUDENT PAYMENTS - GENERAL FUND (1) and (2) remain the same.

(3) A district's at-risk student payment for FY 20XX will be calculated as follows:

(a) Divide the district's allocation under 20 U.S.C. 6332, et seq. for FY 20XX-1 by the state total of funds allocated to all Montana districts that applied for funds under that program for FY 20XX-1;

(b) Multiply the ratio calculated in (3)(a) by the total state appropriation for at-risk student payments for FY 20XX.

(4) School districts that did not receive funding under the federal program referred to in 20-9-328, MCA, for FY 20XX-1 will not receive an at-risk student payment for FY 20XX.

AUTH: 20-3-106, MCA
IMP: 20-9-328, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.21.202 to clarify the superintendent's method of calculating at-risk student payments under 20-9-328, MCA. At-risk payments are based on the proportionate amounts of federal Title I, Part A funds distributed to each district for the prior year.

10.21.203 INDIAN EDUCATION FOR ALL PAYMENTS - GENERAL FUND

(1) and (2) remain the same.

(3) The annual report required in 20-9-329, MCA for FY 20XX will be based on information reported on the trustees' financial summary for FY 20XX and the annual data collection report submitted by the district to the Superintendent of Public Instruction in the fall of 20XX-1.

AUTH: 20-3-106, MCA
IMP: 20-9-329, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.21.203 to clarify the sources of information used for the annual report on the districts' use of Indian Education for All payments as required by 20-9-329, MCA.

10.21.204 AMERICAN INDIAN ACHIEVEMENT GAP PAYMENTS - GENERAL FUND (1) The Superintendent of Public Instruction will determine and report the American Indian achievement gap payment for each school district by March 1 for the ensuing school year.

(2) The number of students used to determine the payment for FY 20XX+2 1 will be the number of American Indian students enrolled in the district in grades K-12 as reported on the fall enrollment count submitted by the district to the Superintendent of Public Instruction in ~~the fall of~~ FY 20XX. Students reported as not enrolled but receiving special education services and students who were aged 19 or older on or before September 10 of the school year of the count date will not be counted for purposes of this payment.

(3) and (4) remain the same.

AUTH: 20-3-106, MCA

IMP: 20-9-330, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.21.204 to establish the process for determining the number of American Indian students in each district to be funded under the American Indian Achievement Gap payments under 20-9-330, MCA, passed in the 2005 Legislative Session.

10.22.102 GENERAL FUND SPENDING LIMITS (1) ~~This rule is effective for fiscal year 2006-07 only.~~

~~(2) The trustees must adopt a budget at least equal to the BASE budget.~~

(2) For purposes of determining general fund spending limits, the trustees may add to the current year budget:

(a) the sum of any increases in state funding for any/all of the following:

(i) the quality educator payment;

(ii) the at-risk student payment;

(iii) the Indian Education for All payment deposited into the general fund; and

(iv) the American Indian achievement gap payment.

(b) in the initial year of implementation of a full-time kindergarten program, an amount equal to (one-half the kindergarten enrollment in the current year) times (the sum of the maximum per-ANB rate for an elementary ANB and the Indian Education for All payment for an ANB for the current year).

(3) If a district's current year budget, including any additions from (2), does not exceed the ensuing year's maximum budget ~~and the district did not adopt a budget from FY 2000-01 to FY 2004-05 that exceeded the maximum general fund budget limit for that year,~~ the following limits apply.

(a) Without voter approval, the trustees may adopt a budget equal to the sum of the following:

(i) the ensuing year's BASE budget;

(ii) the previous year's over-BASE levy amount;

(iii) the fund balance available to reappropriate to fund the over-BASE budget;

(iv) the prior year's excess reserves under 20-9-141, MCA, available to fund

the over-BASE budget; and

(v) the estimated tuition revenue available to fund the over-BASE budget.

(b) With voter approval of the budget exceeding (3)(a), the trustees may adopt a budget not greater than the ensuing year's maximum.

(4) If a district's current year budget, including any additions in (2), does not exceed the ensuing year's maximum budget and the district adopted a budget in at least one year from FY 2000-01 to FY 2004-05 that exceeded the maximum general fund budget limit for that year, the following limits apply:

(a) If the highest budget for FY 2000-01 to FY 2004-05 is less than the ensuing year maximum budget the trustees, ~~without~~ without voter approval, the trustees may adopt a budget equal to the sum of:

(i) the ensuing year's BASE budget;

(ii) the previous year's over-BASE levy amount;

(iii) the fund balance available to reappropriate to fund the over-BASE budget;

(iv) the prior year's excess reserves under 20-9-141, MCA, available that will be used to fund the over-BASE budget; and

(v) the estimated tuition revenue available to fund the over-BASE budget.

(b) ~~If the highest budget adopted for FY 2000-01 to FY 2004-05 exceeds the ensuing year maximum budget the trustees, without voter approval, may adopt the ensuing year maximum.~~

~~(c) With voter approval of the amount of budget exceeding (4)(a), the trustees may adopt the greater of the ensuing year maximum or the highest budget adopted for FY 2000-01 to FY 2004-05 a budget not greater than the current year budget with additions as calculated in (2).~~

(5) ~~If a district's current year budget exceeds the ensuing year's maximum budget, the following limits apply:~~

~~(a) Without voter approval the trustees may adopt a budget equal to the greater of:~~

~~(i) the ensuing year maximum budget; or~~

~~(ii) the sum of:~~

~~(A) the ensuing year's BASE budget;~~

~~(B) the previous year's over-BASE levy amount;~~

~~(C) the fund balance available to reappropriate to fund the over-BASE budget;~~

~~(D) the prior year's excess reserves under 20-9-141, MCA, available to fund the over-BASE budget; and~~

~~(E) the estimated tuition revenue available to fund the over-BASE budget.~~

~~(b) With voter approval of the amount of budget exceeding (5)(a):~~

~~(i) if the district did not adopt a budget in at least one year from FY 2000-01 to FY 2004-05 that exceeded the maximum general fund budget limit for that year, the trustees may adopt the prior year's adopted budget; and~~

~~(ii) if the district adopted a budget in at least one year from FY 2000-01 to FY 2004-05 that exceeded the maximum general fund budget limit for that year, the trustees may adopt the highest budget adopted for FY 2000-01 to FY 2004-05.~~

(6) For a nonoperating district that is reopening, budget limitations for the general fund shall be based on the last operating year's budget for the general fund.

~~This budget will be considered the prior year's budget and used in calculations to determine budget limitations for the year of reopening. These budget limitation calculations may not allow a general fund budget below BASE or above maximum as calculated for the year of reopening. The general fund budget adopted for the last year in which the district operated a school will be considered the prior year's budget for purposes of determining budget limitations for the year of reopening. The district must adopt a general fund budget that is at least equal to BASE and does not exceed the maximum general fund budget for the year of reopening.~~

(a) For a nonoperating district that reopens a school under 20-6-502, MCA, the applicability of school isolation provisions in 20-9-302, MCA, will be determined by applied based on the budgeted ANB in the last operating year and the budgeted ANB in the year the school reopens.

~~(7)~~ (6) For purposes of determining the spending limit for a school district participating in a full service cooperative for special education programs, the BASE budget amount and maximum general fund budget may include a portion of the payments received by the full service cooperative in support of special education programs. The state Superintendent of Public Instruction will notify each school district participating in a cooperative of its payments for use in setting its BASE budget and maximum general fund budget for the ensuing school fiscal year.

~~(8)~~ (7) The state Superintendent of Public Instruction shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in 20-9-308, MCA. The state Superintendent of Public Instruction may request a revised budget from any district whose general fund budget is not within the limits using the guidelines established in ARM 10.10.503.

~~(9)~~ (8) When budgeting for the first year of operation following a consolidation or annexation:

(a) the budgets of the combining districts for the year preceding the first year of operation as a consolidated or annexed district will be summed;

(b) the amount calculated in ~~(9)~~ (8)(a) will be used in place of the current year budget in sections (2) through (4) for purposes of determining the consolidated or annexed district's ensuing year budget limitations; and

(c) regardless of the relationship of the individual combining districts' adopted budgets to their individual BASE and maximum budgets for the year preceding the first year operating as a newly consolidated district, the amount calculated in ~~(9)~~ (8)(a) will be assumed to have been no more than the maximum budget of that year for purposes of determining the ensuing year's budget of the newly consolidated district; and

~~(d) if a newly consolidated district adopts a budget that exceeds the maximum budget for the ensuing year, it will be assumed to be the first year of over-maximum budgeting for the purposes of applying the limit on the number of years the district is allowed to adopt a budget that exceeds the maximum budget under 20-9-308, MCA.~~

AUTH: 20-9-102, MCA

IMP: 20-9-308, 20-9-315, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction

has determined it is reasonable and necessary to amend ARM 10.22.102 to implement a new set of general fund budget limitations and voting requirements adopted in HB 363 (2007 Legislative Session).

10.23.103 VOTED AMOUNT (1) remains the same.

~~(2) Except as provided in (3), if adopting a general fund budget that exceeds the ensuing year's maximum general fund budget and is within limits of 20-9-308, MCA, the trustees must obtain voter approval for any amount budgeted above the ensuing year's maximum budget.~~

~~(3) For FY 2005-06 and FY 2006-07, the trustees adopting a general fund budget that exceeds the ensuing year's maximum general fund within the limits of 20-9-308, MCA, must obtain voter approval for the amount budgeted above the greater of:~~

~~(a) the ensuing year's maximum budget; or~~

~~(b) the sum of the BASE, plus the previous year's over-BASE levy amount, plus the fund balance reappropriated available to fund the over-BASE budget, plus the prior year's excess reserves used to fund the over-BASE budget, plus the estimated tuition revenues used to fund the over-BASE.~~

AUTH: 20-9-102, MCA

IMP: 20-9-353, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.23.103 to implement general fund budget limitations and voting requirements adopted in HB 363 (2007 Legislative Session).

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 by mail to the Superintendent of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@mt.gov and must be received no later than 5:00 p.m. on July 30, 2008.

6. Kathleen Magone, OPI Chief Legal Counsel, has been designated to preside over and conduct the hearing.

7. The Office of Public Instruction 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 Legal Division, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the Superintendent of Public Instruction.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified on December 17, 2007 by mail.

9. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Linda McCulloch

Linda McCulloch

State Superintendent of Public Instruction

/s/ Kathleen Magone

Kathleen Magone

Rule Reviewer

Certified to the Secretary of State June 16, 2008.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of NEW RULE I through NEW	)	ON PROPOSED ADOPTION,
RULE XLVIII, amendment of	)	AMENDMENT, AND REPEAL
ARM 10.54.7510 through 10.54.7513,)	
10.54.7520 through 10.54.7523,)	
10.54.7530 through 10.54.7533,)	
10.54.7540 through 10.54.7543, and)	
repeal of ARM 10.54.7550 through)	
10.54.7553, 10.54.7560 through)	
10.54.7563, and 10.54.7587 through)	
10.54.7598, rules relating to technology)	
content standards and performance)	
descriptors)	

TO: All Concerned Persons

1. On July 17, 2008 at 1:00 p.m. a public hearing will be held in the OCHE conference room at 46 North Last Chance Gulch, Helena, Montana, to consider the 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 public hearing 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 July 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@montana.edu.

3. Statement of Reasonable Necessity: The Board of Public Education has determined it is reasonable and necessary to adopt, amend, and repeal rules relating to technology content standards and performance descriptors pursuant to ARM 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 Legislative Session it 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.

4. The proposed new rules provide as follows:

NEW RULE I GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT
STANDARD 1 AT THE ADVANCED LEVEL (1) A fourth grade student at the advanced level in technology demonstrates superior performance. He/she:

- (a) consistently uses digital tools and resources for problem solving and decision making;
- (b) effectively uses assigned digital tools to identify a problem;
- (c) brainstorms ways to generate possible solutions;
- (d) uses assigned digital tools to collect data and information from a variety of resources;
- (e) uses assigned digital tools to organize data and information;
- (f) effectively identifies accurate and inaccurate information;
- (g) understands diversity and points of view, including those of Montana American Indians;
- (h) identifies and notes the work of others; and
- (i) understands the concept of digital media ownership.

AUTH: 20-2-114, MCA

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

NEW RULE II GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT
STANDARD 1 AT THE PROFICIENT LEVEL (1) A fourth grade student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) uses digital tools and resources for problem solving and decision making;
- (b) effectively uses assigned digital tools to identify a problem;
- (c) uses guided brainstorming to generate possible solutions;
- (d) explores assigned digital tools to collect data and information from a variety of resources;
- (e) uses assigned digital tools to organize data and information;
- (f) differentiates between accurate and inaccurate information;
- (g) recognizes diversity and points of view, including those of Montana American Indians;
- (h) recognizes that using the work of others needs to be noted; and
- (i) explores the concept of digital media ownership.

AUTH: 20-2-114, MCA

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

NEW RULE III GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT
STANDARD 1 AT THE NEARING PROFICIENT LEVEL (1) A fourth grade student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she:

- (a) with guidance, examines digital tools and resources for problem solving and decision making;
- (b) with guidance, uses digital tools to identify a problem;
- (c) chooses a solution from a teacher-provided list;
- (d) with guidance, explores assigned digital tools to collect data and information from a variety of resources;

- (e) uses an assigned digital template to organize data and information;
- (f) with guidance, differentiates between accurate and inaccurate information;
- (g) with guidance, recognizes diversity and points of view, including those of Montana American Indians;
- (h) with guidance, recognizes that using the work of others needs to be noted; and
- (i) with guidance, explores the concept of digital media ownership.

AUTH: 20-2-114, MCA

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

NEW RULE IV GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NOVICE LEVEL (1) A fourth grade student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she:

- (a) demonstrates limited understanding of digital tools and resources for problem solving and decision making;
- (b) has limited understanding of digital tools used to identify a problem;
- (c) with assistance, chooses a solution from a teacher-provided list;
- (d) with assistance, uses a basic digital tool to collect data and information;
- (e) with assistance, uses an assigned digital template to organize data and information;
- (f) has limited understanding of accurate and inaccurate information;
- (g) has limited understanding of diversity and points of view, including those of Montana American Indians;
- (h) has limited recognition of the concept of using the work of others; and
- (i) has limited understanding of the concept of digital media ownership.

AUTH: 20-2-114, MCA

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

NEW RULE V GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE ADVANCED LEVEL (1) An eighth grade student at the advanced level in technology demonstrates superior performance. He/she:

- (a) independently uses multiple approaches to explore alternative solutions;
- (b) thoughtfully collects relevant data and information on a subject from a variety of digital resources;
- (c) clearly demonstrates analysis and ethical use of data and information from digital resources;
- (d) evaluates the accuracy, diversity, relevance, and points of view, including those of Montana American Indians, of digital information;
- (e) consistently demonstrates ethical practices when sharing data and information; and
- (f) appropriately cites sources using multiple styles.

AUTH: 20-2-114, MCA

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

NEW RULE VI GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE PROFICIENT LEVEL (1) An eighth grade student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) demonstrates clear understanding of multiple approaches to explore alternative solutions;
- (b) collects relevant data and information on a subject from a variety of digital resources;
- (c) analyzes and ethically uses data and information from digital resources;
- (d) understands the concepts of accuracy, diversity, relevance, and points of view, including those of Montana American Indians, of digital information;
- (e) demonstrates ethical practices when sharing data and information; and
- (f) correctly cites digital sources.

AUTH: 20-2-114, MCA

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

NEW RULE VII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NEARING PROFICIENT LEVEL (1) An eighth grade student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she, with guidance:

- (a) explores multiple approaches to explore alternative solutions;
- (b) collects relevant data and information on a subject from a variety of digital sources;
- (c) understands the analysis and ethical use of data and information from digital resources;
- (d) occasionally recognizes accuracy, relevance, and points of view, including those of Montana American Indians, of digital information;
- (e) demonstrates ethical practices when sharing data and information; and
- (f) cites digital sources.

AUTH: 20-2-114, MCA

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

NEW RULE VIII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NOVICE LEVEL (1) An eighth grade student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she:

- (a) has difficulty selecting approaches to explore alternative solutions;
- (b) has limited success collecting relevant data and information on a subject from digital resources;
- (c) has difficulty analyzing data and information from digital resources;
- (d) has difficulty understanding ethical use of data and information from digital resources;
- (e) has difficulty identifying accuracy, relevance, and points of view, including

those of Montana American Indians, of digital information;

- (f) has limited success sharing data and information ethically; and
- (g) has difficulty citing sources appropriately.

AUTH: 20-2-114, MCA

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

NEW RULE IX UPON GRADUATION PERFORMANCE DESCRIPTORS
FOR CONTENT STANDARD 1 AT THE ADVANCED LEVEL (1) A graduating student at the advanced level in technology demonstrates superior performance. He/she:

- (a) independently applies multiple approaches and diverse perspectives, including those of Montana American Indians, to explore alternative solutions;
- (b) independently and effectively collects relevant data and information on a subject from a variety of digital resources;
- (c) independently explores and implements an appropriate digital tool to organize and analyze data from a variety of resources;
- (d) routinely evaluates and synthesizes data and information;
- (e) consistently shares data and information ethically; and
- (f) independently cites sources in the appropriate style.

AUTH: 20-2-114, MCA

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

NEW RULE X UPON GRADUATION PERFORMANCE DESCRIPTORS
FOR CONTENT STANDARD 1 AT THE PROFICIENT LEVEL (1) A graduating student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) applies multiple approaches and diverse perspectives, including those of Montana American Indians, to explore alternative solutions;
- (b) consistently collects relevant data and information on a subject from a variety of digital resources;
- (c) successfully selects from an array of digital tools to organize and analyze data from a variety of resources;
- (d) effectively evaluates and synthesizes data and information;
- (e) shares data and information ethically; and
- (f) cites sources in the appropriate style.

AUTH: 20-2-114, MCA

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

NEW RULE XI UPON GRADUATION PERFORMANCE DESCRIPTORS
FOR CONTENT STANDARD 1 AT THE NEARING PROFICIENT LEVEL (1) A graduating student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she, with guidance:

- (a) uses multiple approaches and diverse perspectives, including those of

Montana American Indians, to explore alternate solutions;

(b) collects relevant data and information on a subject from a variety of digital resources;

(c) selects from a designated set of digital tools to organize and analyze data from a variety of resources;

(d) evaluates and synthesizes data and information;

(e) shares data and information ethically; and

(f) appropriately cites sources.

AUTH: 20-2-114, MCA

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

NEW RULE XII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NOVICE LEVEL (1) A graduating student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she:

(a) has limited success using multiple approaches and diverse perspectives, including those of Montana American Indians, and difficulty exploring alternative solutions;

(b) has difficulty finding relevant data and information on a subject from a variety of digital resources;

(c) has difficulty selecting digital tools to organize and analyze data from a variety of resources;

(d) can seldom evaluate and synthesize data and information;

(e) can seldom share data and information ethically; and

(f) has difficulty citing sources.

AUTH: 20-2-114, MCA

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

NEW RULE XIII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE ADVANCED LEVEL (1) A fourth grade student at the advanced level in technology demonstrates superior performance. He/she:

(a) independently uses digital tools to synchronously and asynchronously communicate with other age-level students outside their classroom environment;

(b) independently uses digital tools to collaborate with peers on projects and assignments outside their classroom environment;

(c) identifies and consistently uses safe, legal, and responsible practices in using communication and collaboration technologies;

(d) shares the results of research with peers using digital presentation tools both online and in person; and

(e) independently identifies and uses technologies that provide learning opportunities beyond the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XIV GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE PROFICIENT LEVEL (1) A fourth grade student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) uses digital tools to synchronously and asynchronously communicate with other age-level students in their classroom environment;
- (b) uses digital tools to collaborate with peers on projects and assignments in their classroom environment;
- (c) identifies safe, legal, and responsible practices in using communication and collaboration technologies;
- (d) shares the results of research with peers using digital presentation tools either online or in person; and
- (e) identifies technologies that provide learning opportunities beyond the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XV GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NEARING PROFICIENT LEVEL (1) A fourth grade student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she, with guidance:

- (a) uses digital tools to synchronously and asynchronously communicate with other age-level students in their classroom environment;
- (b) uses digital tools to collaborate with peers on projects and assignments in their classroom environment;
- (c) identifies safe, legal, and responsible practices in using communication and collaboration technologies;
- (d) shares the results of research with peers using digital presentation tools either online or in person; and
- (e) identifies technologies that provide learning opportunities beyond the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XVI GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NOVICE LEVEL (1) A fourth grade student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she, with assistance:

- (a) uses simple digital tools to synchronously or asynchronously communicate with other age-level students in their classroom environment;
- (b) uses simple digital tools to collaborate with peers on projects and assignments in their classroom environment;
- (c) identifies core safe, legal, and responsible practices in using communication and collaboration technologies;

(d) shares the results of research with peers using digital presentation tools either online or in person; and

(e) identifies basic technologies that provide learning opportunities beyond the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XVII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE ADVANCED LEVEL (1) An eighth grade student at the advanced level in technology demonstrates superior performance. He/she:

(a) independently selects the most effective digital tools to synchronously and asynchronously communicate with other age-level students in and out of their classroom environment;

(b) independently selects the most effective digital tools to collaborate with peers on projects and assignments in and out of their classroom environment;

(c) independently uses safe, legal, and responsible practices in using communication and collaboration technologies;

(d) independently and effectively shares the results of research with peers using a variety of digital presentation tools both online and in person; and

(e) independently and effectively uses a variety of technologies to learn beyond the scope of the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XVIII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE PROFICIENT LEVEL (1) An eighth grade student at the proficient level in technology demonstrates solid academic performance. He/she:

(a) selects appropriate digital tools to synchronously and asynchronously communicate with other age-level students in and out of their classroom environment;

(b) selects appropriate digital tools to collaborate with peers on projects and assignments in and out of their classroom environment;

(c) consistently uses safe, legal, and responsible practices in using communication and collaboration technologies;

(d) effectively shares the results of research with peers using digital presentation tools both online and in person; and

(e) effectively uses technology to learn beyond the scope of the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XIX GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NEARING PROFICIENT LEVEL (1) An eighth

grade student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she, with guidance:

- (a) selects appropriate digital tools to synchronously and asynchronously communicate with other age-level students in and out of their classroom environment;
- (b) selects appropriate digital tools to collaborate with peers on projects and assignments in and out of their classroom environment;
- (c) consistently uses safe, legal, and responsible practices in using communication and collaboration technologies;
- (d) effectively shares the results of research with peers using digital presentation tools both online and in person; and
- (e) effectively uses technology to learn beyond the scope of the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XX GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NOVICE LEVEL (1) An eighth grade student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she, with assistance:

- (a) uses digital tools to synchronously and asynchronously communicate with other age-level students in their classroom environment;
- (b) uses digital tools to collaborate with peers on projects and assignments in their classroom environment;
- (c) identifies safe, legal, and responsible practices in using communication and collaboration technologies;
- (d) shares the results of research with peers using digital presentation tools either online or in person; and
- (e) identifies technologies to learn beyond the scope of the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XXI UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE ADVANCED LEVEL (1) A graduating student at the advanced level in technology demonstrates superior performance. He/she:

- (a) evaluates and independently selects digital tools to synchronously and asynchronously communicate with others outside of the formal classroom environment;
- (b) evaluates and independently selects digital tools to collaborate with others on projects and assignments outside of the formal classroom environment;
- (c) independently uses and advocates to others safe, legal, and responsible practices in using communication and collaboration technologies;

(d) independently and effectively synthesizes and communicates the results of research with others using digital presentation tools both online and in person outside of the formal classroom environment; and

(e) independently and effectively uses technology to learn and teach beyond the scope of the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XXII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE PROFICIENT LEVEL (1) A graduating student at the proficient level in technology demonstrates solid academic performance. He/she:

(a) evaluates and independently selects digital tools to synchronously and asynchronously communicate with others in and out of their classroom environment;

(b) evaluates and independently selects digital tools to collaborate with others on projects and assignments in and out of their classroom environment;

(c) consistently uses and advocates to others safe, legal, and responsible practices in using communication and collaboration technologies;

(d) effectively synthesizes and communicates the results of research with others using digital presentation tools both online and in person; and

(e) effectively uses technology to learn and teach beyond the scope of the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XXIII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NEARING PROFICIENT LEVEL (1) A graduating student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she:

(a) with guidance, evaluates and selects digital tools to synchronously and asynchronously communicate with others in and out of their classroom environment;

(b) with guidance, evaluates and selects digital tools to collaborate with others on projects and assignments in and out of their classroom environment;

(c) consistently uses and with direction, advocates to others safe, legal, and responsible practices in using communication and collaboration technologies;

(d) with guidance, communicates the results of research with others using digital presentation tools both online and in person; and

(e) with guidance, uses technology to learn and teach beyond the scope of the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XXIV UPON GRADUATION PERFORMANCE DESCRIPTORS

FOR CONTENT STANDARD 2 AT THE NOVICE LEVEL (1) A graduating student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she, with assistance:

- (a) selects digital tools to synchronously and asynchronously communicate with others in their classroom environment;
- (b) selects digital tools to collaborate with others on projects and assignments in their classroom environment;
- (c) uses safe, legal, and responsible practices in using communication and collaboration technologies;
- (d) communicates the results of research with others using digital presentation tools either online or in person; and
- (e) uses technology to learn beyond the scope of the traditional classroom.

AUTH: 20-2-114, MCA

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

NEW RULE XXV GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE ADVANCED LEVEL (1) A fourth grade student at the advanced level in technology demonstrates superior performance. He/she:

- (a) effectively applies digital tools and skills to create and share personal expressions in a variety of media;
- (b) independently uses digital tools creatively to produce original works uncommon for this grade level;
- (c) applies basic rules of ownership of digital media to their own personal use; and
- (d) uses digital tools to develop new understandings by discovering the connections between facts.

AUTH: 20-2-114, MCA

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

NEW RULE XXVI GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE PROFICIENT LEVEL (1) A fourth grade student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) applies digital tools and skills to create and share personal expressions in a variety of media;
- (b) understands basic rules of ownership of digital media; and
- (c) uses digital tools to discover connections between facts.

AUTH: 20-2-114, MCA

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

NEW RULE XXVII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE NEARING PROFICIENT LEVEL (1) A fourth grade student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in

technology. He/she, with guidance:

- (a) attempts to apply digital tools and skills to create and share personal expressions in a variety of media;
- (b) acknowledges basic rules of ownership of digital media; and
- (c) uses digital tools to discover connections between facts.

AUTH: 20-2-114, MCA

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

NEW RULE XXVIII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE NOVICE LEVEL (1) A fourth grade student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she, with assistance:

- (a) attempts to apply digital tools and skills to create and share personal expressions in a variety of media;
- (b) recognizes basic rules of ownership of digital media; and
- (c) attempts to use digital tools to discover connections between facts.

AUTH: 20-2-114, MCA

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

NEW RULE XXIX GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE ADVANCED LEVEL (1) An eighth grade student at the advanced level in technology demonstrates superior performance. He/she:

- (a) effectively applies a variety of digital tools to create a multimedia product for personal and group expression;
- (b) independently combines digital tools creatively to produce original works that exceed expectations;
- (c) effectively uses technology to predict reasonable trends and outcomes; and
- (d) independently applies basic rules of ownership of digital media to their own personal use.

AUTH: 20-2-114, MCA

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

NEW RULE XXX GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE PROFICIENT LEVEL (1) An eighth grade student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) applies a variety of digital tools to create a product for personal and group expression;
- (b) uses technology to predict reasonable trends and outcomes; and
- (c) understands the relationship of copyright to ownership of digital media.

AUTH: 20-2-114, MCA

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

NEW RULE XXXI GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE NEARING PROFICIENT LEVEL (1) An eighth grade student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she:

- (a) uses a digital tool to create a product for personal and group expression;
- (b) with guidance, uses technology to predict reasonable trends and outcomes; and
- (c) explores the relationship of copyright to ownership of digital media.

AUTH: 20-2-114, MCA

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

NEW RULE XXXII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE NOVICE LEVEL (1) An eighth grade student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she, with assistance:

- (a) uses a digital tool to create a product for personal and group expression;
- (b) uses technology to predict trends and outcomes; and
- (c) begins to understand the relationship of copyright to ownership of digital media.

AUTH: 20-2-114, MCA

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

NEW RULE XXXIII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE ADVANCED LEVEL (1) A graduating student at the advanced level in technology demonstrates superior performance. He/she:

- (a) initiates distinguished multimedia projects combining image, text, and sound to suit a variety of audiences and purposes;
- (b) adapts digital tools to create products of a professional quality;
- (c) independently evaluates and employs a variety of digital tools to effectively create innovative work;
- (d) creates models and simulations to identify trends, predict reasonable outcomes, and effectively investigate information; and
- (e) independently selects the appropriate legal protections for personally created digital media.

AUTH: 20-2-114, MCA

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

NEW RULE XXXIV UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE PROFICIENT LEVEL (1) A graduating student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) develops multimedia projects combining image, text, and sound to suit a variety of audiences and purposes;
- (b) evaluates and employs a variety of digital tools to effectively produce an original work;
- (c) uses models and simulations to accurately identify trends, predict reasonable outcomes, and effectively investigate information; and
- (d) selects, with support, the appropriate legal protections for personally created digital media.

AUTH: 20-2-114, MCA

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

NEW RULE XXXV UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE NEARING PROFICIENT LEVEL (1) A graduating student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she:

- (a) with guidance, develops multimedia projects combining image, text, and sound to suit a variety of audiences and purposes;
- (b) with guidance, evaluates and employs a variety of digital tools to produce an original work;
- (c) with guidance, uses models and simulations to identify trends, predict outcomes, and investigate information; and
- (d) explores the appropriate legal protections for personally created digital media.

AUTH: 20-2-114, MCA

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

NEW RULE XXXVI UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE NOVICE LEVEL (1) A graduating student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she, with assistance:

- (a) develops a multimedia project combining image, text, and sound to suit a specific audience and purpose;
- (b) evaluates and employs a variety of digital tools to produce an original work;
- (c) begins to use models and simulations to identify trends, predict outcomes, and investigate information; and
- (d) begins to understand appropriate legal protections for personally created digital media.

AUTH: 20-2-114, MCA

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

NEW RULE XXXVII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE ADVANCED LEVEL (1) A fourth grade student

at the advanced level in technology demonstrates superior performance. He/she independently:

- (a) demonstrates ability to input commands and data into digital devices;
- (b) identifies the appropriate digital tool to complete tasks;
- (c) uses proper terminology when communicating about technology; and
- (d) adapts current technology skills to additional and emerging technologies.

AUTH: 20-2-114, MCA

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

NEW RULE XXXVIII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE PROFICIENT LEVEL (1) A fourth grade student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) demonstrates ability to input commands and data into digital devices;
- (b) identifies the appropriate digital tool to complete tasks;
- (c) uses proper terminology when communicating about technology; and
- (d) adapts current technology skills to additional and emerging technologies.

AUTH: 20-2-114, MCA

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

NEW RULE XXXIX GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NEARING PROFICIENT LEVEL (1) A fourth grade student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she, with guidance:

- (a) demonstrates ability to input commands and data into digital devices;
- (b) identifies the appropriate digital tool to complete tasks;
- (c) uses proper terminology when communicating about technology; and
- (d) adapts current technology skills to additional and emerging technologies.

AUTH: 20-2-114, MCA

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

NEW RULE XL GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NOVICE LEVEL (1) A fourth grade student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she, with assistance:

- (a) demonstrates ability to input commands and data into digital devices;
- (b) identifies the appropriate digital tool to complete tasks; and
- (c) attempts the use of proper terminology when communicating about technology.

AUTH: 20-2-114, MCA

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

NEW RULE XLI GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE ADVANCED LEVEL (1) An eighth grade student at the advanced level in technology demonstrates superior performance. He/she:

- (a) independently demonstrates a consistent ability to input commands and data into digital devices;
- (b) independently identifies the best appropriate digital tool to complete tasks;
- (c) independently uses proper terminology when communicating about technology;
- (d) independently adapts current technology skills to additional and emerging technologies; and
- (e) teaches others proper usage and core technology skills.

AUTH: 20-2-114, MCA

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

NEW RULE XLII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE PROFICIENT LEVEL (1) An eighth grade student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) demonstrates a consistent ability to input commands and data into digital devices;
- (b) identifies the best digital tool to complete tasks;
- (c) uses proper terminology when communicating about technology; and
- (d) adapts current technology skills to additional and emerging technologies.

AUTH: 20-2-114, MCA

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

NEW RULE XLIII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NEARING PROFICIENT LEVEL (1) An eighth grade student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she, with guidance:

- (a) demonstrates a consistent ability to input commands and data into digital devices;
- (b) identifies the best digital tool to complete tasks;
- (c) uses proper terminology when communicating about technology; and
- (d) adapts current technology skills to additional and emerging technologies.

AUTH: 20-2-114, MCA

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

NEW RULE XLIV GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NOVICE LEVEL (1) An eighth grade student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she, with assistance:

- (a) demonstrates an ability to input commands and data into digital devices;
- (b) identifies the appropriate digital tool to complete tasks; and
- (c) attempts the use of proper terminology when communicating about technology.

AUTH: 20-2-114, MCA

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

NEW RULE XLV UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE ADVANCED LEVEL (1) A graduating student at the advanced level in technology demonstrates superior performance. He/she:

- (a) independently demonstrates a consistent ability to input commands and data into digital devices;
- (b) independently identifies the best appropriate digital tool to complete tasks;
- (c) independently uses proper terminology when communicating about technology;
- (d) independently adapts current technology skills to additional and emerging technologies;
- (e) teaches others advanced usage and core technology skills; and
- (f) adapts existing digital tools to create and process data in innovative ways.

AUTH: 20-2-114, MCA

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

NEW RULE XLVI UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE PROFICIENT LEVEL (1) A graduating student at the proficient level in technology demonstrates solid academic performance. He/she:

- (a) demonstrates a consistent ability to input commands and data into digital devices;
 - (b) identifies the best digital tool to complete tasks;
 - (c) uses proper terminology when communicating about technology;
 - (d) adapts current technology skills to additional and emerging technologies;
- and
- (e) teaches others proper usage and core technology skills.

AUTH: 20-2-114, MCA

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

NEW RULE XLVII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NEARING PROFICIENT LEVEL (1) A graduating student at the nearing proficient level in technology demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in technology. He/she, with guidance:

- (a) demonstrates a consistent ability to input commands and data into digital

devices;

- (b) identifies the best digital tool to complete tasks;
- (c) uses proper terminology when communicating about technology; and
- (d) adapts current technology skills to additional and emerging technologies.

AUTH: 20-2-114, MCA

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

NEW RULE XLVIII UPON GRADUATION PERFORMANCE DESCRIPTORS
FOR CONTENT STANDARD 4 AT THE NOVICE LEVEL

(1) A graduating student at the novice level in technology is beginning to attain prerequisite knowledge and skills that are fundamental in technology. He/she, with assistance:

- (a) demonstrates an ability to input commands and data into digital devices;
- (b) identifies the appropriate digital tool to complete tasks; and
- (c) attempts the use of proper terminology when communicating about technology.

AUTH: 20-2-114, MCA

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

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

10.54.7510 TECHNOLOGY CONTENT STANDARD 1 (1) To satisfy the requirements of technology content standard 1, a student must ~~demonstrate an understanding of the basic operations of technologies~~ use digital tools and resources for problem solving and decision making.

AUTH: 20-2-114, MCA

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

10.54.7511 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 1
FOR THE END OF GRADE 4 (1) The benchmark for technology content standard 1 for a student at the end of grade 4 is the ability to:

- (a) ~~develop basic skills and procedures needed to operate various technologies~~ identify and investigate a problem and generate possible solutions;
- (b) ~~communicate using appropriate terminology and demonstrate simple care and maintenance of various technology~~ collect data and information using digital tools; and
- (c) ~~identify and solve simple operating problems~~ organize collected data and information using a variety of digital tools;
- (d) identify the accuracy, diversity, and points of view, including those of Montana American Indians, of digital information; and
- (e) share information ethically and cite sources.

AUTH: 20-2-114, MCA

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

10.54.7512 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 1 FOR THE END OF GRADE 8 (1) The benchmark for technology content standard 1 for a student at the end of grade 8 is the ability to:

- (a) ~~use and refine skills and procedures needed to operate various technologies~~ multiple approaches to explore alternative solutions;
- (b) ~~develop competence with basic system and tool set-up, technical terminology, and basic care and maintenance; and~~ collect relevant data and information on a subject from a variety of digital resources;
- (c) ~~develop trouble shooting strategies to solve operations problems (e.g., lost files, equipment failures)~~ analyze and ethically use data and information from digital resources;
- (d) compare accuracy, diversity, relevance, and points of view, including those of Montana American Indians, of digital information; and
- (e) share data and information ethically and appropriately cite sources.

AUTH: 20-2-114, MCA

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

10.54.7513 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 1 UPON GRADUATION (1) The benchmark for technology content standard 1 for a student upon graduation is the ability to:

- (a) ~~use and enhance an established repertoire of skills and procedures as needed to operate various technologies~~ multiple approaches and diverse perspectives, including those of Montana American Indians, to explore alternative solutions;
- (b) ~~demonstrate competence with basic system and tool set-up, technical terminology, and basic care and maintenance; and~~ collect relevant data and information on a subject from a variety of digital resources;
- (c) ~~use and refine trouble shooting strategies to solve technical operations problems~~ select from an array of digital tools to organize and analyze data from a variety of resources;
- (d) evaluate and synthesize data and information; and
- (e) share data and information ethically and appropriately cite sources.

AUTH: 20-2-114, MCA

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

10.54.7520 TECHNOLOGY CONTENT STANDARD 2 (1) To satisfy the requirements of technology content standard 2, a student must ~~use a variety of technologies to enhance productivity~~ collaborate and communicate globally in a digital environment.

AUTH: 20-2-114, MCA

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

10.54.7521 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 2

FOR THE END OF GRADE 4 (1) The benchmark for technology content standard 2 for a student at the end of grade 4 is the ability to:

- (a) ~~develop skills to enhance performance and ease task completion (e.g., word processing, calculating, graphing, imaging)~~ identify and explore online collaboration and communication tools;
- (b) ~~develop and present a project using technology; and~~ identify and explore safe, legal, and responsible use of digital collaboration and communication tools;
- (c) ~~choose appropriate technology for a task~~ communicate the results of research and learning with others using digital tools; and
- (d) explore how technology has expanded the learning environment beyond the traditional classroom.

AUTH: 20-2-114, MCA

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

10.54.7522 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 2 FOR THE END OF GRADE 8 (1) The benchmark for technology content standard 2 for a student at the end of grade 8 is the ability to:

- (a) ~~refine skills to enhance performance and ease task completion (e.g., programming, authoring, editing)~~ select and use online collaboration and communication tools;
- (b) ~~apply technology in designing, developing, and presenting a project; and~~ use digital collaboration and communication tools in a safe, legal, and responsible manner;
- (c) ~~compare technologies and select the best one for a task~~ communicate the results of research and learning with others using digital tools; and
- (d) use technology in a global learning environment.

AUTH: 20-2-114, MCA

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

10.54.7523 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 2 UPON GRADUATION (1) The benchmark for technology content standard 2 for a student upon graduation is the ability to:

- (a) ~~evaluate and apply sophisticated skills and strategies to enhance performance and ease task completion~~ online collaboration and communication tools to exchange ideas and information and participate in projects;
- (b) ~~integrate technology in designing, developing, presenting, and managing projects; and~~ use digital collaboration and communication tools in a safe, legal, and responsible manner and advocate for such use by others;
- (c) ~~analyze and evaluate a variety of technologies and match the best technology to a task~~ synthesize and communicate the results of research and learning with others using various digital tools; and
- (d) apply technology that supports collaboration, learning, and productivity in a global environment.

AUTH: 20-2-114, MCA

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

10.54.7530 TECHNOLOGY CONTENT STANDARD 3 (1) To satisfy the requirements of technology content standard 3, a student must ~~use a variety of technologies for communication~~ apply digital tools and skills with creativity and innovation to express him/herself, construct knowledge, and develop products and processes.

AUTH: 20-2-114, MCA

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

10.54.7531 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 3 FOR THE END OF GRADE 4 (1) The benchmark for technology content standard 3 for a student at the end of grade 4 is the ability to:

(a) ~~use multiple communication technologies to fulfill a variety of purposes;~~ and digital tools for personal expression;

(b) ~~explore online telecommunications tools~~ use various digital media to share information and tell stories;

(c) use technology to discover connections between facts;

(d) understand ownership of digital media; and

(e) use digital tools and skills to construct new personal understandings.

AUTH: 20-2-114, MCA

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

10.54.7532 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 3 FOR THE END OF GRADE 8 (1) The benchmark for technology content standard 3 for a student at the end of grade 8 is the ability to:

(a) ~~identify and use telecommunications tools to exchange ideas and information with others (e.g., geographic information system map, web page); and~~ apply a variety of digital tools for personal and group expression;

(b) ~~identify and use telecommunications tools to participate in online projects~~ a variety of digital tools to create a product;

(c) use technology to recognize trends and possible outcomes; and

(d) examine the relationship of copyright to ownership of digital media.

AUTH: 20-2-114, MCA

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

10.54.7533 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 3 UPON GRADUATION (1) The benchmark for technology content standard 3 for a student upon graduation is the ability to:

(a) ~~select and apply telecommunications tools to exchange ideas and information (e.g., geographic information system map, multimedia presentation, web page); and~~ develop projects combining multiple digital tools to suit a variety of audiences and purposes;

(b) ~~use telecommunications tools to participate in collaborative online~~

projects evaluate and employ a variety of digital tools to effectively produce an original work;

(c) use models and simulations to identify trends, predict outcomes, and investigation information; and

(d) evaluate legal protections for intellectual property and apply that understanding to personally created digital media.

AUTH: 20-2-114, MCA

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

10.54.7540 TECHNOLOGY CONTENT STANDARD 4 (1) To satisfy the requirements of technology content standard 4, a student must use possess a functional understanding of technology responsibly and understand its impact on individuals and society concepts and operations.

AUTH: 20-2-114, MCA

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

10.54.7541 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 4 FOR THE END OF GRADE 4 (1) The benchmark for technology content standard 4 for a student at the end of grade 4 is the ability to:

(a) safely use various show skills needed to use communication, information, and processing technologies (e.g., internet, software, computers);

(b) demonstrate ethical technology use (e.g., fair use, ownership) use appropriate terminology when communicating about current technology; and

(c) identify some impacts of technology on people transfer current knowledge to learning new technology skills.

AUTH: 20-2-114, MCA

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

10.54.7542 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 4 FOR THE END OF GRADE 8 (1) The benchmark for technology content standard 4 for a student at the end of grade 8 is the ability to:

(a) safely use various apply and refine the skills needed to use communication, information, and processing technologies (e.g., e-mail, chat software, tools);

(b) develop a personal code of standards for ethical technology use (e.g., privacy, copyright, etiquette) use appropriate terminology when communicating about current technology; and

(c) compare the present and future impacts of technology on people and the environment transfer current knowledge to learning of new technology skills.

AUTH: 20-2-114, MCA

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

10.54.7543 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 4

UPON GRADUATION (1) The benchmark for technology content standard 4 for a student upon graduation is the ability to:

(a) ~~safely use various~~ apply and refine the skills needed to use communication, information, and processing technologies (e.g., robotics, work place tools);

(b) ~~model and exemplify a high standard of ethics for the uses of technology (e.g., privacy, intellectual property)~~ use appropriate terminology when communicating about current technology; and

(c) ~~evaluate the present and future impacts of technology on society, economy, and the environment~~ transfer current knowledge to learning new technology skills.

AUTH: 20-2-114, MCA

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

6. The rules proposed for repeal follow.

10.54.7550 TECHNOLOGY CONTENT STANDARD 5 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7551 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 5 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7552 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 5 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7553 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 5 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7560 TECHNOLOGY CONTENT STANDARD 6 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7561 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 6 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7562 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 6 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7563 BENCHMARK FOR TECHNOLOGY CONTENT STANDARD 6 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7587 ADVANCED TECHNOLOGY PERFORMANCE STANDARDS FOR THE END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7588 PROFICIENT TECHNOLOGY PERFORMANCE STANDARDS FOR THE END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7589 NEARING PROFICIENCY TECHNOLOGY PERFORMANCE STANDARDS FOR THE END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7590 NOVICE TECHNOLOGY PERFORMANCE STANDARDS FOR THE END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7591 ADVANCED TECHNOLOGY PERFORMANCE STANDARDS FOR THE END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7592 PROFICIENT TECHNOLOGY PERFORMANCE STANDARDS FOR THE END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7593 NEARING PROFICIENCY TECHNOLOGY PERFORMANCE STANDARDS FOR THE END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7594 NOVICE TECHNOLOGY PERFORMANCE STANDARDS FOR THE END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7595 ADVANCED TECHNOLOGY PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7596 PROFICIENT TECHNOLOGY PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7597 NEARING PROFICIENCY TECHNOLOGY PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.7598 NOVICE TECHNOLOGY PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

7. Pursuant to the agreement between the Board of Public Education and the Legislature, the board does not anticipate any implementation costs, but shall request and report in its adoption notice any cost estimates received from districts during the hearing.

8. 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 by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@montana.edu and must be received no later than 5:00 p.m. on July 24, 2008.

9. Steve Meloy has been designated to preside over and conduct the hearing.

10. The Board of Public Education 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 Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, by e-mail to smeloy@montana.edu, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

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

12. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Patty Myers

Patty Myers, Chairperson
Board of Public Education

/s/ Steve Meloy

Steve Meloy, Rule Reviewer
Board of Public Education

Certified to the Secretary of State, June 16, 2008.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of NEW RULE I through	)	ON PROPOSED ADOPTION,
NEW RULE LXIV, amendment of	)	AMENDMENT, AND REPEAL
ARM 10.54.6510 through 10.54.6513,)	
10.54.6520 through 10.54.6523,)	
10.54.6530 through 10.54.6533,)	
10.54.6540 through 10.54.6543 and)	
repeal of ARM 10.54.6587 through)	
10.54.6598, rules relating to information)	
literacy/library media content standards)	
and performance descriptors)	

TO: All Concerned Persons

1. On July 17, 2008 at 9:00 a.m., a public hearing will be held in the OCHE conference room at 46 North Last Chance Gulch, Helena, Montana, to consider the 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 public hearing 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 July 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@montana.edu.

3. Statement of Reasonable Necessity: The Board of Public Education has determined it is reasonable and necessary to adopt, amend, and repeal rules relating to information literacy/library media content standards and performance descriptors pursuant to ARM 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 Legislative Session it 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 of education is built and maintained. The board strives to conform to a five year review cycle for every chapter of accreditation. The standards review process shall use context information, criteria, processes, and procedures identified by the Office of Public Instruction with input from representatives of accredited schools.

4. The proposed new rules provide as follows:

NEW RULE I INFORMATION LITERACY/LIBRARY MEDIA CONTENT
STANDARD 5 (1) To satisfy the requirements of information literacy/library media

content standard 5, a student must pursue personal interests through literature and other creative expressions.

AUTH: 20-2-114, MCA

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

NEW RULE II BENCHMARK FOR INFORMATION LITERACY/LIBRARY
MEDIA CONTENT STANDARD 5 FOR THE END OF GRADE 4 (1) The

benchmark for information literacy/library media content standard 5 for a student at the end of grade 4 is the ability to:

- (a) use a variety of print and digital formats for pleasure and personal growth;
- (b) use a variety of genres for pleasure and personal growth;
- (c) access and understand multiple resources from diverse cultures, including those of Montana American Indians; and
- (d) access libraries to seek information for personal interest.

AUTH: 20-2-114, MCA

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

NEW RULE III BENCHMARK FOR INFORMATION LITERACY/LIBRARY
MEDIA CONTENT STANDARD 5 FOR THE END OF GRADE 8 (1) The

benchmark for information literacy/library media content standard 5 for a student at the end of grade 8 is the ability to:

- (a) use and respond to a variety of print and digital formats for pleasure and personal growth;
- (b) use and respond to a variety of genres for pleasure and personal growth;
- (c) analyze and respond to multiple resources and creative expressions from diverse cultures, including those of Montana American Indians; and
- (d) access and use libraries and other information environments to find information for personal use and to make connections to resources beyond the school library.

AUTH: 20-2-114, MCA

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

NEW RULE IV BENCHMARK FOR INFORMATION LITERACY/LIBRARY
MEDIA CONTENT STANDARD 5 UPON GRADUATION (1) The benchmark for

information literacy/library media content standard 5 for a student upon graduation is the ability to:

- (a) use and critique a variety of print and digital formats for pleasure and personal growth;
- (b) use and critique a variety of genres for pleasure and personal growth;
- (c) evaluate multiple resources and other creative expressions from diverse cultures, including those of Montana American Indians; and
- (d) access and use resources and information from all types of information environments to pursue personal and creative interests.

AUTH: 20-2-114, MCA

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

NEW RULE V GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE ADVANCED LEVEL (1) A fourth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) summarizes and restates the task or problem to be solved;
- (b) brainstorms search terms to guide problem solving;
- (c) narrows or broadens a topic;
- (d) identifies possible resources; and
- (e) selects an appropriate resource to meet information needs.

AUTH: 20-2-114, MCA

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

NEW RULE VI GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE PROFICIENT LEVEL (1) A fourth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) summarizes and restates the task or problem to be solved;
- (b) brainstorms several search terms to guide problem solving;
- (c) narrows or broadens a topic;
- (d) identifies possible resources; and
- (e) selects an appropriate resource to meet information needs.

AUTH: 20-2-114, MCA

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

NEW RULE VII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NEARING PROFICIENT LEVEL (1) A fourth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) summarizes and restates the task or problem to be solved;
- (b) brainstorms a few search terms to guide problem solving;
- (c) narrows or broadens a topic;
- (d) identifies possible resources; and
- (e) selects an appropriate resource to meet information needs.

AUTH: 20-2-114, MCA

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

NEW RULE VIII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NOVICE LEVEL (1) A fourth grade student at the novice level in information literacy/library media is beginning to attain

prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) restates the task or problem to be solved;
- (b) brainstorms a search term to guide problem solving;
- (c) narrows or broadens a topic;
- (d) identifies possible resources; and
- (e) selects an appropriate resource to meet information needs.

AUTH: 20-2-114, MCA

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

NEW RULE IX GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE ADVANCED LEVEL (1) An eighth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) summarizes and restates the task or problem to be solved;
- (b) breaks down the task into manageable parts;
- (c) brainstorms search terms to guide problem solving;
- (d) narrows or broadens the topic to manageable focus;
- (e) identifies possible sources of information;
- (f) compares resources needed; and
- (g) decides which resources will be the most appropriate for the problem to be solved.

AUTH: 20-2-114, MCA

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

NEW RULE X GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE PROFICIENT LEVEL (1) An eighth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) summarizes and restates the task or problem to be solved;
- (b) breaks down the task into manageable parts;
- (c) brainstorms several search terms to guide problem solving;
- (d) narrows or broadens the topic to manageable focus;
- (e) identifies possible sources of information;
- (f) compares resources needed; and
- (g) decides which resources will be the most appropriate for the problem to be solved.

AUTH: 20-2-114, MCA

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

NEW RULE XI GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NEARING PROFICIENT LEVEL (1) An eighth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental

for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) summarizes and restates the task or problem to be solved;
- (b) breaks down the task into manageable parts;
- (c) brainstorms a few search terms to guide problem solving;
- (d) narrows or broadens the topic to manageable focus;
- (e) identifies possible sources of information;
- (f) compares two or more resources needed; and
- (g) decides which resources will be the most appropriate for the problem to be solved.

AUTH: 20-2-114, MCA

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

NEW RULE XII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NOVICE LEVEL (1) An eighth grade student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) restates the task or problem to be solved;
- (b) breaks down the task into manageable parts;
- (c) brainstorms a search term to guide problem solving;
- (d) narrows or broadens the topic to a manageable focus;
- (e) identifies possible sources of information;
- (f) compares two resources needed; and
- (g) decides which resources will be the most appropriate for the problem to be solved.

AUTH: 20-2-114, MCA

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

NEW RULE XIII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE ADVANCED LEVEL (1) A graduating student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) determines the parameters of the problem;
- (b) formulates questions to guide problem solving;
- (c) brainstorms search terms to guide problem solving;
- (d) narrows or broadens the topic to a manageable focus;
- (e) decides the types and the amount of information needed to solve the problem;
- (f) identifies possible resources;
- (g) evaluates resources; and
- (h) selects resources to solve the problem.

AUTH: 20-2-114, MCA

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

NEW RULE XIV UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE PROFICIENT LEVEL (1) A graduating student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) determines the parameters of the problem;
- (b) formulates questions to guide problem solving;
- (c) brainstorms search terms to guide problem solving;
- (d) narrows or broadens the topic to a manageable focus;
- (e) decides the types and the amount of information needed to solve the problem;
- (f) identifies possible resources;
- (g) evaluates resources; and
- (h) selects resources to solve the problem.

AUTH: 20-2-114, MCA

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

NEW RULE XV UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NEARING PROFICIENT LEVEL (1) A graduating student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) determines the parameters of the problem;
- (b) formulates questions to guide problem solving;
- (c) brainstorms search terms to guide problem solving;
- (d) narrows or broadens the topic to a manageable focus;
- (e) decides the types and the amount of information needed to solve the problem;
- (f) identifies possible resources;
- (g) evaluates resources; and
- (h) selects resources to solve the problem.

AUTH: 20-2-114, MCA

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

NEW RULE XVI UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 1 AT THE NOVICE LEVEL (1) A graduating student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) determines the parameters of the problem;
- (b) formulates questions to guide problem solving;
- (c) brainstorms search terms to guide problem solving;
- (d) narrows or broadens the topic to a manageable focus;
- (e) decides the types and the amount of information needed to solve the

problem;

- (f) identifies possible resources;
- (g) evaluates resources; and
- (h) selects resources to solve the problem.

AUTH: 20-2-114, MCA

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

NEW RULE XVII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE ADVANCED LEVEL (1) A fourth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) locates resources to solve the problem;
- (b) locates information within resources;
- (c) identifies the point of view in information, including perspectives of Montana American Indians;
- (d) reads, views, and listens to extract information from resources;
- (e) organizes information for use; and
- (f) creates a product that presents findings.

AUTH: 20-2-114, MCA

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

NEW RULE XVIII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE PROFICIENT LEVEL (1) A fourth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) locates resources to solve the problem within a preselected range or collection of resources;
- (b) locates information within resources;
- (c) identifies the point of view in information, including perspectives of Montana American Indians;
- (d) reads, views, and listens to extract information from resources;
- (e) organizes information for use; and
- (f) creates a product that presents findings using established guidelines.

AUTH: 20-2-114, MCA

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

NEW RULE XIX GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NEARING PROFICIENT LEVEL (1) A fourth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) locates resources to solve the problem within a preselected range or collection of resources;

- (b) locates information within resources;
- (c) identifies the point of view in information, including perspectives of Montana American Indians;
- (d) reads, views, and listens to extract information from resources;
- (e) organizes information for use; and
- (f) creates a product that presents findings using established guidelines.

AUTH: 20-2-114, MCA

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

NEW RULE XX GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NOVICE LEVEL (1) A fourth grade student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) locates resources to solve the problem within a preselected range or collection of resources;
- (b) locates information within resources;
- (c) identifies the point of view in information, including perspectives of Montana American Indians;
- (d) reads, views, and listens to extract information from resources;
- (e) organizes information for use; and
- (f) creates a product that presents findings using established guidelines.

AUTH: 20-2-114, MCA

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

NEW RULE XXI GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE ADVANCED LEVEL (1) An eighth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) locates multiple resources using a variety of search tools;
- (b) evaluates authority, accuracy, and recency of resources;
- (c) locates information within resources;
- (d) reads, views, and listens to extract information from resources;
- (e) identifies the point of view or bias in information, including perspectives of Montana American Indians;
- (f) organizes information for use; and
- (g) creates a product that presents findings.

AUTH: 20-2-114, MCA

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

NEW RULE XXII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE PROFICIENT LEVEL (1) An eighth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) locates multiple resources using preselected search tools;
- (b) evaluates authority, accuracy, and recency of resources;
- (c) locates information within resources;
- (d) reads, views, and listens to extract information from resources;
- (e) identifies the point of view or bias in information, including perspectives of Montana American Indians;
- (f) organizes information for use; and
- (g) creates a product that presents findings.

AUTH: 20-2-114, MCA

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

NEW RULE XXIII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NEARING PROFICIENT LEVEL (1) An eighth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) locates multiple resources using preselected search tools;
- (b) evaluates authority, accuracy, and recency of resources;
- (c) locates information within resources;
- (d) reads, views, and listens to extract information from resources;
- (e) identifies the point of view or bias in information, including perspectives of Montana American Indians;
- (f) organizes information for use; and
- (g) creates a product that presents findings.

AUTH: 20-2-114, MCA

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

NEW RULE XXIV GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NOVICE LEVEL (1) An eighth grade student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) locates multiple resources using preselected search tools;
- (b) evaluates authority, accuracy, and recency of resources;
- (c) locates information within resources;
- (d) reads, views, and listens to extract information from resources;
- (e) identifies the point of view in information, including perspectives of Montana American Indians;
- (f) organizes information for use; and
- (g) creates a product that presents findings.

AUTH: 20-2-114, MCA

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

NEW RULE XXV UPON GRADUATION PERFORMANCE DESCRIPTORS
FOR CONTENT STANDARD 2 AT THE ADVANCED LEVEL

(1) A graduating student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) locates a wide range of resources using a variety of search tools;
- (b) evaluates authority, accuracy, relevancy, and recency of resources;
- (c) locates information within a variety of resources;
- (d) reads, views, and listens to extract information to solve the problem;
- (e) identifies the origin, point of view, or bias in information, including perspectives of Montana American Indians;
- (f) organizes and manages a wide range of sources to draw conclusions to solve problems; and
- (g) creates, presents, and defends a solution to the problem.

AUTH: 20-2-114, MCA

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

NEW RULE XXVI UPON GRADUATION PERFORMANCE DESCRIPTORS
FOR CONTENT STANDARD 2 AT THE PROFICIENT LEVEL

(1) A graduating student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) locates a wide range of resources using a variety of search tools;
- (b) evaluates authority, accuracy, relevancy, and recency of resources;
- (c) locates information within a variety of resources;
- (d) reads, views, and listens to extract information to solve the problem;
- (e) identifies the origin, point of view, or bias in information, including perspectives of Montana American Indians;
- (f) organizes and manages a wide range of sources to draw conclusions to solve problems; and
- (g) creates, presents, and defends a solution to the problem.

AUTH: 20-2-114, MCA

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

NEW RULE XXVII UPON GRADUATION PERFORMANCE DESCRIPTORS
FOR CONTENT STANDARD 2 AT THE NEARING PROFICIENT LEVEL

(1) A graduating student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) locates a wide range of resources using a variety of search tools;
- (b) evaluates authority, accuracy, relevancy, and recency of resources;
- (c) locates information within a variety of resources;
- (d) reads, views, and listens to extract information;
- (e) identifies the origin, point of view, or bias in information, including perspectives of Montana American Indians;
- (f) organizes and manages a wide range of sources to draw conclusions to

solve problems;

(g) creates, presents, and defends a solution to the problem.

AUTH: 20-2-114, MCA

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

NEW RULE XXVIII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NOVICE LEVEL (1) A graduating student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) locates a range of resources using search tools;
- (b) evaluates authority, accuracy, relevancy, and recency of resources;
- (c) locates information within a variety of resources;
- (d) reads, views, and listens to extract information to solve the problem;
- (e) identifies the origin, point of view, or bias in information, including perspectives of Montana American Indians;
- (f) organizes and manages a wide range of sources to draw conclusions to solve problems; and
- (g) creates, presents, and defends a solution to the problem.

AUTH: 20-2-114, MCA

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

NEW RULE XXIX GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE ADVANCED LEVEL (1) A fourth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) evaluates the finished product according to criteria; and
- (b) uses criteria to judge how well the steps of the problem solving process were followed.

AUTH: 20-2-114, MCA

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

NEW RULE XXX GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE PROFICIENT LEVEL (1) A fourth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) evaluates the finished product according to criteria; and
- (b) uses criteria to judge how well the steps of the problem solving process were followed.

AUTH: 20-2-114, MCA

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

NEW RULE XXXI GRADE 4 PERFORMANCE DESCRIPTORS FOR

CONTENT STANDARD 3 AT THE NEARING PROFICIENT LEVEL (1) A fourth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) evaluates the finished product according to criteria; and
- (b) uses criteria to judge how well the steps of the problem solving process were followed.

AUTH: 20-2-114, MCA

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

NEW RULE XXXII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE NOVICE LEVEL (1) A fourth grade student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) evaluates the finished product according to criteria; and
- (b) uses criteria to judge how well the steps of the problem solving process were followed.

AUTH: 20-2-114, MCA

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

NEW RULE XXXIII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE ADVANCED LEVEL (1) An eighth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) evaluates the finished product according to criteria;
- (b) uses criteria to judge how well the steps of the problem solving process were followed; and
- (c) identifies improvements to the problem solving process.

AUTH: 20-2-114, MCA

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

NEW RULE XXXIV GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE PROFICIENT LEVEL (1) An eighth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) evaluates the finished product according to criteria;
- (b) uses criteria to judge how well the steps of the problem solving process were followed; and
- (c) identifies improvements to the problem solving process.

AUTH: 20-2-114, MCA

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

NEW RULE XXXV GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE NEARING PROFICIENT LEVEL (1) An eighth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) evaluates the finished product according to criteria;
- (b) uses criteria to judge how well the steps of the problem solving process were followed; and
- (c) identifies improvements to the problem solving process.

AUTH: 20-2-114, MCA

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

NEW RULE XXXVI GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE NOVICE LEVEL (1) An eighth grade student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) evaluates the finished product according to criteria;
- (b) uses criteria to judge how well the steps of the problem solving process were followed; and
- (c) identifies improvements to the problem solving process.

AUTH: 20-2-114, MCA

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

NEW RULE XXXVII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE ADVANCED LEVEL (1) A graduating student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) evaluates the finished product according to criteria;
- (b) uses criteria to judge how well the steps of the problem solving process were followed;
- (c) identifies improvements to the problem solving process; and
- (d) justifies decisions based on project criteria.

AUTH: 20-2-114, MCA

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

NEW RULE XXXVIII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 3 AT THE PROFICIENT LEVEL

(1) A graduating student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) evaluates the finished product according to criteria;
- (b) uses criteria to judge how well the steps of the problem solving process

were followed;

- (c) identifies improvements to the problem solving process; and
- (d) justifies decisions based on project criteria.

AUTH: 20-2-114, MCA

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

NEW RULE XXXIX UPON GRADUATION PERFORMANCE DESCRIPTORS
FOR CONTENT STANDARD 3 AT THE NEARING PROFICIENT LEVEL (1) A

graduating student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) evaluates the finished product according to criteria;
- (b) uses criteria to judge how well the steps of the problem solving process

were followed;

- (c) identifies improvements to the problem solving process; and
- (d) justifies decisions based on project criteria.

AUTH: 20-2-114, MCA

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

NEW RULE XL UPON GRADUATION PERFORMANCE DESCRIPTORS
FOR CONTENT STANDARD 3 AT THE NOVICE LEVEL (1) A graduating student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) evaluates the finished product according to criteria;
- (b) uses criteria to judge how well the steps of the problem solving process

were followed;

- (c) identifies improvements to the problem solving process; and
- (d) justifies decisions based on project criteria.

AUTH: 20-2-114, MCA

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

NEW RULE XLI GRADE 4 PERFORMANCE DESCRIPTORS FOR
CONTENT STANDARD 4 AT THE ADVANCED LEVEL (1) A fourth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) follows copyright laws and fair use guidelines when using information;
- (b) credits ideas and works of others; and
- (c) practices safe, ethical, and legal behavior in supervised intellectual and

social networks.

AUTH: 20-2-114, MCA

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

NEW RULE XLII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE PROFICIENT LEVEL (1) A fourth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) follows copyright laws and fair use guidelines when using information;
- (b) credits ideas and works of others; and
- (c) practices safe, ethical, and legal behavior in supervised intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE XLIII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NEARING PROFICIENT LEVEL (1) A fourth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) follows copyright laws and fair use guidelines when using information;
- (b) credits ideas and works of others; and
- (c) practices safe, ethical, and legal behavior in supervised intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE XLIV GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NOVICE LEVEL (1) A fourth grade student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) follows copyright laws and fair use guidelines when using information;
- (b) credits ideas and works of others; and
- (c) practices safe, ethical, and legal behavior in supervised intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE XLV GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE ADVANCED LEVEL (1) An eighth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she:

- (a) independently follows copyright laws and fair use guidelines when obtaining, storing, and disseminating text, data, images, or sounds;
- (b) independently and appropriately credits ideas and works of others; and

(c) independently practices safe, ethical, and legal behavior in intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE XLVI GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE PROFICIENT LEVEL (1) An eighth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

(a) follows copyright laws and fair use guidelines when obtaining, storing, and disseminating text, data, images, or sounds;

(b) appropriately credits ideas and works of others; and

(c) practices safe, ethical, and legal behavior in intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE XLVII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NEARING PROFICIENT LEVEL (1) An eighth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

(a) follows copyright laws and fair use guidelines when obtaining, storing, and disseminating text, data, images, or sounds;

(b) appropriately credits ideas and works of others; and

(c) practices safe, ethical, and legal behavior in intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE XLVIII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NOVICE LEVEL (1) An eighth grade student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

(a) follows copyright laws and fair use guidelines when obtaining, storing, and disseminating text, data, images, or sounds;

(b) appropriately credits ideas and works of others; and

(c) practices safe, ethical, and legal behavior in intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE XLIX UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE ADVANCED LEVEL (1) A graduating student at the advanced level in information literacy/library media demonstrates superior performance. He/she:

- (a) independently follows copyright laws and fair use guidelines when obtaining, storing, and disseminating text, data, images, or sounds;
- (b) independently and appropriately credits ideas and works of others; and
- (c) independently practices safe, ethical, and legal behavior in intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE L UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE PROFICIENT LEVEL (1) A graduating student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) follows copyright laws and fair use guidelines when obtaining, storing, and disseminating text, data, images, or sounds;
- (b) appropriately credits ideas and works of others; and
- (c) practices safe, ethical, and legal behavior in intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE LI UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NEARING PROFICIENT LEVEL (1) A graduating student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) follows copyright laws and fair use guidelines when obtaining, storing, and disseminating text, data, images, or sounds;
- (b) appropriately credits ideas and works of others; and
- (c) practices safe, ethical, and legal behavior in intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE LII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 4 AT THE NOVICE LEVEL (1) A graduating student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) follows copyright laws and fair use guidelines when obtaining, storing, and disseminating text, data, images, or sounds;
- (b) appropriately credits ideas and works of others; and
- (c) practices safe, ethical, and legal behavior in intellectual and social networks.

AUTH: 20-2-114, MCA

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

NEW RULE LIII GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE ADVANCED LEVEL (1) A fourth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) chooses resources based on personal interests;
- (b) uses a variety of print and digital resources;
- (c) explores a variety of genres; and
- (d) explores multiple resources and other creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LIV GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE PROFICIENT LEVEL (1) A fourth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) chooses resources based on personal interests;
- (b) uses a variety of print and digital resources;
- (c) explores a variety of genres; and
- (d) explores multiple resources and other creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LV GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE NEARING PROFICIENT LEVEL (1) A fourth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) chooses resources based on personal interests;
- (b) uses some print and digital resources;
- (c) explores a variety of genres; and
- (d) explores multiple resources and other creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LVI GRADE 4 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE NOVICE LEVEL (1) A fourth grade student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) chooses resources based on personal interests;
- (b) uses a few print and digital resources;
- (c) explores a variety of genres; and
- (d) explores multiple resources and other creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LVII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE ADVANCED LEVEL (1) An eighth grade student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) chooses resources based on personal interests;
- (b) uses and responds to a variety of print and digital resources;
- (c) uses and responds to a variety of genres; and
- (d) analyzes and responds to multiple resources and creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LVIII GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE PROFICIENT LEVEL (1) An eighth grade student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) chooses resources based on personal interests;
- (b) uses and responds to a variety of print and digital resources;
- (c) uses and responds to a variety of genres; and
- (d) analyzes and responds to multiple resources and creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LIX GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE NEARING PROFICIENT LEVEL (1) An eighth grade student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental

for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) chooses resources based on personal interests;
- (b) uses and responds to some print and digital resources;
- (c) uses and responds to genres; and
- (d) analyzes and responds to multiple resources and creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LX GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE NOVICE LEVEL (1) An eighth grade student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) chooses resources based on personal interests;
- (b) uses and responds to a few print and digital resources;
- (c) uses and responds to genres; and
- (d) compares and contrasts multiple resources and creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LXI UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE ADVANCED LEVEL (1) A graduating student at the advanced level in information literacy/library media demonstrates superior performance. He/she independently:

- (a) chooses resources based on personal interests;
- (b) uses and critiques a variety of print and digital resources;
- (c) uses and critiques a variety of genres; and
- (d) evaluates multiple resources and other creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LXII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE PROFICIENT LEVEL (1) A graduating student at the proficient level in information literacy/library media demonstrates solid academic performance. He/she:

- (a) chooses resources based on personal interests;
- (b) uses and critiques a variety of print and digital resources;
- (c) uses and critiques a variety of genres; and
- (d) evaluates multiple resources and other creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LXIII UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE NEARING PROFICIENT LEVEL (1) A graduating student at the nearing proficient level in information literacy/library media demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency in information literacy/library media performance. He/she, with guidance:

- (a) chooses resources based on personal interests;
- (b) uses and critiques some print and digital resources;
- (c) uses and critiques genres; and
- (d) evaluates multiple resources and other creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

NEW RULE LXIV UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 5 AT THE NOVICE LEVEL (1) A graduating student at the novice level in information literacy/library media is beginning to attain prerequisite knowledge and skills that are fundamental in information literacy/library media performance. He/she, with assistance:

- (a) chooses resources based on personal interests;
- (b) uses and critiques a few print and digital resources;
- (c) compares and contrasts genres; and
- (d) compares and contrasts multiple resources and other creative expressions from diverse cultures, including those of Montana American Indians.

AUTH: 20-2-114, MCA

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

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

10.54.6510 INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 1 (1) To satisfy the requirements of information literacy/library media content standard 1, a student must ~~understand an inquiry process including how to access, evaluate, and use information~~ identify the task and determine the resources needed.

AUTH: 20-2-114, MCA

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

10.54.6511 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 1 FOR THE END OF GRADE 4 (1) The

benchmark for information literacy/library media content standard 1 for a student at the end of grade 4 is the ability to:

- (a) define the problem;
- (b) identify types of information needed; and
- (c) choose from a range of resources.

~~identify the steps of the inquiry process as it is used in research (i.e., identify question or problem, locate and evaluate potential resources, gather and synthesize information, create a new product, and evaluate product and process);~~

- ~~(b) state the question or need for information;~~
- ~~(c) identify and locate probable sources of information;~~
- ~~(d) judge information for accuracy, relevancy, and type (e.g., fact, fiction);~~
- ~~(e) identify and use information to create a product that satisfies the need or~~

~~solves the problem; and~~

~~(f) recognize that he/she has followed an inquiry process and describe how well his/her products satisfy the need or solve the problem.~~

AUTH: 20-2-114, MCA

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

10.54.6512 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 1 FOR THE END OF GRADE 8 (1) The benchmark for information literacy/library media content standard 1 for a student at the end of grade 8 is the ability to:

- (a) analyze the parts of the problem to be solved;
- (b) identify information resources needed; and
- (c) evaluate and select appropriate resources.

~~apply steps of the inquiry process to satisfy both academic and personal information needs (i.e., identify question or problem, locate and evaluate potential resources, gather and synthesize information, create a new product, and evaluate product and process);~~

~~(b) focus the information need as it relates to what he/she already knows to formulate specific questions;~~

~~(c) select multiple print and nonprint sources using various search strategies (e.g., human guidance, reflective thinking, Boolean operatives);~~

~~(d) recognize point of view or bias, use primary and secondary sources, and analyze and evaluate information for specific needs;~~

~~(e) interpret and use information in original products or presentations; and~~

~~(f) apply criteria to determine how well the research process, products, and conclusions meet the original need for information.~~

AUTH: 20-2-114, MCA

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

10.54.6513 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 1 UPON GRADUATION (1) The benchmark for information literacy/library media content standard 1 for a student upon graduation is the ability to:

- (a) evaluate the purpose and scope of the problem;
- (b) determine the nature and extent of information needed; and
- (c) evaluate and select appropriate resources.

~~analyze and adapt the inquiry process to satisfy individual and group information needs (i.e., identify question or problem, locate and evaluate potential resources, gather and synthesize information, create a new product, and evaluate product and process);~~

~~(b) refine and revise the information need to meet the specific format, purpose, and scope of the project;~~

~~(c) develop a plan to obtain needed information using a variety of research and investigative strategies (e.g., interviews, questionnaires, experiments, surveys);~~

~~(d) assess information sources using multiple criteria (e.g., coverage, misleading presentation, manipulated data);~~

~~(e) synthesize information to create a new product that meets a specific purpose or vision; and~~

~~(f) critique the process and the product of the inquiry.~~

AUTH: 20-2-114, MCA

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

10.54.6520 INFORMATION LITERACY/LIBRARY MEDIA CONTENT

STANDARD 2 (1) To satisfy the requirements of information literacy/library media content standard 2, a student must ~~demonstrate an understanding of ethical, legal, and social responsibility in accessing, evaluating, and using information, materials, and technology~~ locate sources, use information, and present findings.

AUTH: 20-2-114, MCA

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

10.54.6521 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 2 FOR THE END OF GRADE 4

(1) The benchmark for information literacy/library media content standard 2 for a student at the end of grade 4 is the ability to:

(a) locate a resource needed to solve the problem;

(b) evaluate resources;

(c) locate information within the resource;

(d) extract information from resources needed to solve the problem;

(e) organize information to solve the problem; and

(f) create a product that presents findings.

~~demonstrate individual responsibility for equitable access to information (e.g., share access to limited resources, return materials diligently);~~

~~(b) state the conclusion of the research finding in his/her own words and cite sources;~~

~~(c) follow school guidelines for responsible use of information resources (e.g., check out policies, library rules); and~~

~~(d) share knowledge and information with others.~~

AUTH: 20-2-114, MCA

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

10.54.6522 BENCHMARK FOR INFORMATION LITERACY/LIBRARY
MEDIA CONTENT STANDARD 2 FOR THE END OF GRADE 8 (1) The

benchmark for information literacy/library media content standard 2 for a student at the end of grade 8 is the ability to:

- (a) locate multiple resources using search tools;
- (b) evaluate resources;
- (c) locate information within multiple resources;
- (d) extract information from multiple resources needed to solve the problem;
- (e) organize and manage information to solve the problem; and
- (f) create a product that presents findings.

~~explain the importance of equitable access to a variety of information in a democratic society;~~

~~(b) recognize and apply concepts of intellectual property rights, avoid plagiarism, follow bibliographic form, and cite all information sources used;~~

~~(c) follow school guidelines for responsible use of information resources (e.g., circulation policies, acceptable use policies); and~~

~~(d) recognize the ideas and backgrounds of others and acknowledge their contributions.~~

AUTH: 20-2-114, MCA

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

10.54.6523 BENCHMARK FOR INFORMATION LITERACY/LIBRARY
MEDIA CONTENT STANDARD 2 UPON GRADUATION (1) The benchmark for

information literacy/library media content standard 2 for a student upon graduation is the ability to:

(a) locate multiple resources using a variety of search tools;

(b) evaluate resources;

(c) locate information within a wide variety of resources;

(d) extract information from a wide variety of resources needed to solve the problem;

(e) organize and manage information from a wide variety of sources to solve the problem; and

(f) create and defend a product that presents findings.

~~evaluate the impact of equitable access to information in a democratic society;~~

~~(b) use information in an ethical manner by adhering to copyright laws, requesting permission to use information, and properly citing sources;~~

~~(c) follow school guidelines for responsible use of information resources (e.g., circulation policies, acceptable use policies); and~~

~~(d) collaborate with others, both in person and through technologies, to identify information problems, seek solutions, and generate new information.~~

AUTH: 20-2-114, MCA

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

10.54.6530 INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 3 (1) To satisfy the requirements of information literacy/library media content standard 3, a student must ~~use a variety of materials for independent learning and personal enjoyment, including the appreciation of literature and other creative expressions~~ evaluate the product and learning process.

AUTH: 20-2-114, MCA

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

10.54.6531 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 3 FOR THE END OF GRADE 4 (1) The benchmark for information literacy/library media content standard 3 for a student at the end of grade 4 is the ability to:

- (a) assess the quality of the product; and
- (b) describe the process.

~~recognize that diverse cultures are represented in a variety of creative formats;~~

~~(b) experience a variety of literature and other creative expressions and relate them to his/her own life; and~~

- ~~(c) use libraries as places to seek information for personal interest.~~

AUTH: 20-2-114, MCA

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

10.54.6532 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 3 FOR THE END OF GRADE 8 (1) The benchmark for information literacy/library media content standard 3 for a student at the end of grade 8 is the ability to:

- (a) assess the quality and effectiveness of the product; and
- (b) evaluate how the process met the need for information.

~~use and respond to materials and creative expressions from diverse cultures;~~

~~(b) interpret a wide variety of literature and other creative expressions in various genres and formats; and~~

~~(c) use the library to find information for personal use and to make connections to resources beyond the school library.~~

AUTH: 20-2-114, MCA

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

10.54.6533 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 3 UPON GRADUATION (1) The benchmark for information literacy/library media content standard 3 for a student upon graduation is the ability to:

- (a) assess the quality and effectiveness of the product; and
- (b) evaluate the process in order to revise strategies.

~~compare and analyze literature and other creative expressions from diverse cultures;~~

- ~~(b) select, analyze, and evaluate literature and other creative expressions~~

from diverse origins and connect them to his/her own life and to the human experience; and

~~(c) apply his/her knowledge of the use of libraries to a variety of new information environments.~~

AUTH: 20-2-114, MCA

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

10.54.6540 INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 4 (1) To satisfy the requirements of information literacy/library media content standard 4, a student must distinguish among, evaluate, and appropriately use current and emerging media and technologies in the inquiry process use information safely, ethically, and legally.

AUTH: 20-2-114, MCA

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

10.54.6541 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 4 FOR THE END OF GRADE 4 (1) The benchmark for information literacy/library media content standard 4 for a student at the end of grade 4 is the ability to:

(a) legally obtain and use information;

(b) identify the owner of ideas and information; and

(c) participate and collaborate in intellectual and social networks following safe and accepted practices.

~~identify and use various media and technologies to meet information needs;~~

~~(b) identify and use search strategies to locate information in various media and technologies; and~~

~~(c) compare and contrast the quality and accuracy, relevancy, and type of information from a variety of media and technologies.~~

AUTH: 20-2-114, MCA

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

10.54.6542 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 4 FOR THE END OF GRADE 8 (1) The benchmark for information literacy/library media content standard 4 for a student at the end of grade 8 is the ability to:

(a) legally obtain, store, and disseminate text, data, images, or sounds;

(b) appropriately credit ideas and works of others; and

(c) participate and collaborate in intellectual and social networks following safe and accepted practices.

~~select and apply appropriate media and technologies to meet information needs;~~

~~(b) select and refine appropriate search strategies to locate information in various media and technologies; and~~

~~(c) apply criteria to evaluate the point of view and embedded values in information from a variety of media and technologies.~~

AUTH: 20-2-114, MCA

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

10.54.6543 BENCHMARK FOR INFORMATION LITERACY/LIBRARY MEDIA CONTENT STANDARD 4 UPON GRADUATION (1) The benchmark for information literacy/library media content standard 4 for a student upon graduation is the ability to:

(a) legally obtain, store, and disseminate text, data, images, or sounds;

(b) follow copyright laws and fair use guidelines when using the intellectual property of others; and

(c) participate and collaborate in intellectual and social networks following safe and accepted practices.

~~analyze and evaluate various media and technologies when applying information necessary to complete a specific task;~~

~~(b) develop and demonstrate research strategies to effectively locate information in various media and technologies; and~~

~~(c) generate and apply criteria to evaluate the origin, authority, accuracy, bias, and distortion of information from a variety of media and technologies.~~

AUTH: 20-2-114, MCA

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

6. The rules proposed for repeal follow.

10.54.6587 ADVANCED LIBRARY MEDIA PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6588 PROFICIENT LIBRARY MEDIA PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6589 NEARING PROFICIENCY LIBRARY MEDIA PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6590 NOVICE LIBRARY MEDIA PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6591 ADVANCED LIBRARY MEDIA PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6592 PROFICIENT LIBRARY MEDIA PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-

101, MCA

10.54.6593 NEARING PROFICIENCY LIBRARY MEDIA PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6594 NOVICE LIBRARY MEDIA PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6595 ADVANCED LIBRARY MEDIA PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6596 PROFICIENT LIBRARY MEDIA PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6597 NEARING PROFICIENCY LIBRARY MEDIA PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.6598 NOVICE LIBRARY MEDIA PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

7. Pursuant to the agreement between the Board of Public Education and the Legislature, the board does not anticipate any implementation costs, but shall request and report in its adoption notice any cost estimates received from districts during the hearing.

8. 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 by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@montana.edu and must be received no later than 5:00 p.m. on July 24, 2008.

9. Steve Meloy has been designated to preside over and conduct the hearing.

10. The Board of Public Education 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 Steve Meloy, P.O. Box 200601, Helena,

Montana 59620-0601, faxed to the office at (406) 444-0847, by e-mail to smeloy@montana.edu, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

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

12. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Patty Myers

Patty Myers, Chairperson
Board of Public Education

/s/ Steve Meloy

Steve Meloy, Rule Reviewer
Board of Public Education

Certified to the Secretary of State, June 16, 2008.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARINGS ON
ARM 12.2.501 and 12.5.201 and the	)	PROPOSED AMENDMENT AND
adoption of New Rules I through V	)	ADOPTION
regarding gray wolf management in)	
Montana)	

TO: All Concerned Persons

1. On July 16, 2008 at 6:00 p.m. the Department of Fish, Wildlife and Parks (department) and the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 3 offices located at 1400 South 19th Avenue, Bozeman, Montana to consider the amendment and adoption of the above-stated rules.

On July 17, 2008 at 6:00 p.m. the department and commission will hold a public hearing at the Fish, Wildlife and Parks Region 2 offices located at 3201 Spurgin Road, Missoula, Montana to consider the amendment and adoption of the above-stated rules.

On July 18, 2008 at 6:00 p.m. the department and the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarter offices located at 1420 East 6th Avenue, Helena, Montana to consider the amendment and adoption of the above-stated rules.

2. The department and 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 department and commission no later than July 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail jesnyder@mt.gov.

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

12.2.501 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1) The following nongame wildlife species are determined by the department to be nongame wildlife in need of management within the meaning of the Nongame and Endangered Species Conservation Act, 87-5-101, MCA, et seq.:

- (a) crayfish - *Pacifasticus* spp.;
Orconectes spp.;
- (b) freshwater mussels - all species of *Pelecypoda*;

- (c) yellow perch - *Perca flavescens*;
- (d) crappie - *Pomoxis*;
- (e) black-tailed prairie dogs - *Cynomys ludovicianus*;
- (i) under 87-5-102, MCA, department management of black-tailed prairie dogs applies to public lands only; and
- (f) white-tailed prairie dogs - *Cynomys leucurus*;
- (i) under 87-5-102, MCA, department management of white-tailed prairie dogs applies to public lands only; and
- (g) gray wolf - *Canis lupus*.
- (2) remains the same.

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

12.5.201 ENDANGERED SPECIES LIST (1) The following endangered species list is established in accordance with Title 87, chapter 5, MCA. Except as otherwise provided, it is unlawful for any person to take, possess, transport, export, sell or offer for sale, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on the following list:

- (a) whooping crane (*grus americana*); and
- ~~(b) Northern Rocky Mountain wolf (*canis lupus irremotus*); and~~
- ~~(c)~~(b) black-footed ferret (*mustela nigripes*).

AUTH: 87-5-107, 87-5-131, MCA

IMP: 87-5-107, 87-5-131, MCA

4. Wolf recovery in Montana began in the 1980s. The gray wolf increased in number and expanded its distribution in Montana because of natural emigration from Canada and a successful federal effort in 1995 that reintroduced wolves into Yellowstone National Park and central Idaho.

In 1987, the United States Fish and Wildlife Service (USFWS) adopted a Northern Rocky Mountain Wolf Recovery Plan. The recovery plan, prepared by the USFWS with the Northern Rocky Mountain Recovery Team, stated its recovery goal of "securing and maintaining a minimum of 10 breeding pairs of wolves in each of the three recovery areas for a minimum of three successive years." The recovery areas are the Greater Yellowstone recovery area, Northwestern Montana recovery area, and central Idaho recovery area. The 1994 USFWS Environmental Impact Statement on the Reintroduction of Gray Wolves to Yellowstone National Park and central Idaho revisited and revamped the Northern Rocky Mountain recovery goal to thirty or more breeding pairs and comprising some 300 or more wolves in a metapopulation. Genetic exchange between subpopulations in the recovery areas allows a high probability of long-term persistence.

In 2002, the Northern Rocky Mountain gray wolf population met the biological goals set out in the recovery plan and the 1994 Final EIS on the Reintroduction of

Gray Wolves to Yellowstone National Park and Central Idaho. 73 Fed. Reg. 10514, 10515. Gray wolves continue to thrive and expand in number and distribution in Montana.

Montana engaged in an extensive, public stakeholder process to develop its policy on the recovery, management, and conservation of wolves. In 2003, Montana adopted the Final EIS and Gray Wolf Conservation and Management Plan (plan) that would allow the state to manage wolves consistent with its state laws, policies, rules, and regulations. In the plan, Montana recognized gray wolves as a native species and committed to the long-term maintenance of a recovered population of wolves in Montana.

In 2005, Montana entered a memorandum of understanding (MOU) that allowed it to implement its USFWS-approved plan within the federal law and guidelines in place at the time. The MOU allowed Montana and the Indian Tribes to lead wolf conservation and management activities within their respective boundaries. In its 2007 Annual Report, Montana reported over 420 wolves in about 73 packs and 39 breeding pairs, with demonstrated distribution among Montana's portion of all three Northern Rocky Mountain subpopulations.

On March 28, 2008, the USFWS designated and removed from the Endangered Species Act the Northern Rocky Mountain gray wolf distinct population segment (DPS). Section 87-5-131, MCA, authorizes the department to remove the wolf from the state list of endangered species once the USFWS removed the Northern Rocky Mountain gray wolf from the federal list of endangered or threatened wildlife and upon a determination by the department that the gray wolf is no longer endangered.

With these rules, the department makes the determination that the gray wolf is no longer endangered in Montana because: wolves are thriving within the state well above the numerical recovery goals; the states of Montana, Idaho, and Wyoming and the USFWS documented distribution among the three subpopulations; and Montana's regulatory mechanisms protect a recovered wolf population. These rules mirror the guidelines that the commission adopted in April 2008 (which are essentially identical to the 10(j) experimental area regulations that were in place in southern Montana prior to the wolf's delisting), and are based on years of state management pursuant to an interagency agreement and federal requirements. The department has information relating to the wolf population, its distribution, its habitat needs, its limiting factors, and other biological and ecological data to determine management measures necessary for the wolf's continued ability to sustain itself successfully.

5. The proposed new rules provide as follows:

NEW RULE I COMMITMENT TO PRESERVATION OF THE GRAY WOLF AS RESIDENT WILDLIFE IN NEED OF MANAGEMENT (1) The department has management authority of the gray wolf, a resident wildlife species, and is dedicated

to the conservation of wolf populations within the state of Montana. Pursuant to the definition of management under the Nongame and Endangered Species Conservation Act, 87-5-102, MCA, the department will implement conservation and management strategies to make sure that wolves continue to thrive and are integrated as a valuable part of Montana's wildlife heritage. The department uses an adaptive management framework for the gray wolf, meaning that if the statewide number of wolves exceeds 15 breeding pair, the department may, as outlined in these rules, approve lethal control of wolves. If there are fewer than 15 breeding pair, the department will allow only conservative management of the wolf populations so that the number of breeding pair does not go below 10. These rules set out the comprehensive structure governing control of the gray wolf so that all control actions fall within the department's adaptive management considerations. The commission has authority to adopt a hunting season with quotas for wolves and will exercise that authority as part of the adaptive management framework for the gray wolf.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE II DEFINITIONS The following definitions apply to this subchapter:

(1) "Adaptive management" means a model for wolf conservation and management strategies; changes in the number of packs determined through a monitoring program directs selection of more conservative or liberal management strategies; model incorporates resource objectives, monitoring protocols, evaluation of predicted outcomes, and a decision process.

(2) "Agency" means the Department of Fish, Wildlife and Parks or another agency of the government authorized by the Department of Fish, Wildlife and Parks.

(3) "Attacking or killing" means the actual biting, wounding, grasping, or killing of livestock or domestic dogs.

(4) "Breeding pair" means an adult male and an adult female wolf that have produced at least two pups that survived until December 31 of the year of their birth, during the previous breeding season.

(5) "Confirm that a wolf killed the livestock" means an incident where USDA Wildlife Services conducts a field investigation of dead or injured livestock, at the request of the producer; depredation is confirmed in cases where there is reasonable physical evidence that an animal was actually attacked and/or killed by a wolf. The primary confirmation would ordinarily be the presence of bite marks and associated subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred while the victim was alive, as opposed to simply feeding on an already dead animal. Spacing between canine tooth punctures, feeding pattern on the carcass, fresh tracks, scat, hairs rubbed off on fences or brush, and/or eye witness accounts of the attack may help identify the specific species or individual

responsible for the depredation. Predation might also be confirmed in the absence of bite marks and associated hemorrhaging (i.e., if much of the carcass has already been consumed by the predator or scavengers) if there is other physical evidence to confirm predation on the live animal. This might include blood spilled or sprayed at a nearby attack site or other evidence of an attack or struggle. There may also be nearby remains of other victims for which there is still sufficient evidence to confirm predation, allowing reasonable inference of confirmed predation on the animal that has been largely consumed.

(6) "Habituated" means readily visible in close proximity to people or structures on a regular basis; not threatened by close proximity and may even be attracted to human presence or human food sources; extremely rare behavior in wild wolves, but typical behavior for released captive wolf or wolf-dog hybrid; for wolves, may or may not involve food conditioning.

(7) "Intentional harassment" means the deliberate and preplanned harassment of a wolf, including by less than lethal munitions, such as 12 gauge shot gun rubber bullets and bean bag shells, that are designed to cause physical discomfort and temporary physical injury but not death.

(8) "Livestock" means cattle, calf, hog, pig, horse, mule, sheep, lamb, llama, goat, herding/guarding animals, rhea, emu, and ostrich.

(9) "Opportunistic hazing in a noninjurious manner" means harassment without the conduct of prior purposeful actions such as yelling and radio activated noise makers.

(10) "Threatening to kill" means the actual chasing, testing, molesting, harassing of livestock or livestock herding/guarding animals that would indicate to a reasonable person that an attack was imminent.

(11) "USDA Wildlife Services" means the United States Department of Agriculture, Animal and Plant Health Inspection Service.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE III CONTROL METHODS OF THE GRAY WOLF INCLUDES NONLETHAL AND LETHAL MEANS (1) These rules address when and how the department may carry out nonlethal and lethal control of wolves.

(2) The department may take control actions; pursuant to an interagency agreement, may authorize USDA Wildlife Services to undertake control actions; or pursuant to a future agreement, may authorize the Department of Livestock to undertake control actions. The department is solely responsible for any lethal control decision and ultimately for the status of the gray wolf population.

(3) Control of the gray wolf by agency or by individual includes nonlethal and lethal actions. The department shall address wolf conflicts on a case-by-case basis, connecting response to the conflict in both time and location.

(4) The department shall take an incremental approach to lethal control.

(5) Killing or harassing a wolf not in conformance with these rules is subject to criminal penalties pursuant to 87-1-125, 87-5-106, and 87-5-111, MCA.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE IV ALLOWABLE NONLETHAL CONTROL OF THE GRAY WOLF (1) Control of the gray wolf includes a variety of nonlethal management activities intended to decrease risk of, prevent, or resolve a conflict without killing the wolf in question. Allowable nonlethal control activities include:

- (a) husbandry practices including but not limited to electric fencing, increased human presence, fladry, herding or guarding animals, night pens, shed lambing, carcass removal, alternative pastures, amended pasture rotations, or supplemental feed;
- (b) placement of a radio collar to facilitate increased monitoring of the pack;
- (c) opportunistic hazing in a noninjurious manner; and
- (d) intentional harassment.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

NEW RULE V ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF (1) On a case-by-case basis, the department allows only the following lethal control of the gray wolf:

- (a) agency control;
- (b) livestock owner, immediate family members, or employees with permit;
- (c) killing of a wolf that is attacking, killing, or threatening to kill a person or livestock; and
- (d) control to protect human safety.

(2) The department may authorize lethal control of problem wolves, after considering the number of breeding pair within the state.

(3) Before authorizing lethal control of a gray wolf for livestock conflict:

(a) the department or USDA Wildlife Services shall conduct the following investigation:

(i) A livestock owner may call the department or USDA Wildlife Services to conduct an investigation of injured or dead livestock.

(ii) The department or USDA Wildlife Services will conduct a field investigation to determine if the death of the livestock was due to natural causes or a predator.

(iii) If a predator killed the livestock, the department or USDA Wildlife Services examines the evidence at the scene to determine if a wolf was responsible.

(b) If the department or USDA Wildlife Services confirm that a wolf killed the livestock, the department seeks input from USDA Wildlife Services and the livestock owner to decide the best course of action. The department may authorize lethal control, assessing each conflict on a case-by-case basis and after considering the following factors:

- (i) pack size and pack history of conflict;
- (ii) livestock operation;
- (iii) age and class of livestock killed;
- (iv) location of conflict;
- (v) potential for future conflict;
- (vi) status and distribution of prey;
- (vii) season; and
- (viii) number of breeding pair within the state.

(4) The department has the discretion to lethally remove a gray wolf if the department determines that the wolf is bold, food conditioned, habituated to humans or livestock, demonstrates behavior patterns indicative of a wolf-dog hybrid or of captive origin, or if it poses an immediate or ongoing threat to human safety.

(5) Pursuant to 87-5-109, MCA, the director of the department may permit killing, possessing, transporting, or exporting of a wolf for scientific, zoological, or educational purposes.

(6) The department may remove a sick, injured, or diseased wolf.

(7) The department may authorize a livestock owner, immediate family members, or employees by permit to take a wolf under the following circumstances:

(a) when the department or USDA Wildlife Services confirms that a wolf killed the livestock; or when the department or USDA Wildlife Services confirms wolves are routinely present on the property or allotment and present a significant ongoing risk to livestock;

(b) the department has authorized USDA Wildlife Services to implement lethal control to resolve conflict;

(c) the department determines that the wolf was not purposefully or intentionally fed or baited to a site;

(d) the permit may last for a maximum of 45 days from the date the department or USDA Wildlife Services confirms the wolf caused damage or wolves are a significant risk to livestock;

(e) the permit expires when the total desired number of wolves are removed by the combined action of the department, USDA Wildlife Services, and individuals named on the permit, or at the end of the 45 days, whichever is first; and

(f) within 24 hours, a person must report to the department killing or injuring a wolf under a permit.

(8) As allowed by 87-3-130, MCA, a person may kill a wolf that is attacking, killing, or threatening to kill a person or livestock, or that is in the act of attacking or killing a domestic dog. This person shall notify the department within 72 hours, preserve the scene, and leave the carcass where it was killed until the department or USDA Wildlife Services investigate the scene, and surrender the carcass to the department.

AUTH: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

IMP: 87-1-201, 87-1-301, 87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA

6. While the gray wolf was federally protected under the Endangered Species Act, two sets of federal regulations governed control of the wolf to resolve wolf-livestock conflicts. Upon delisting, state plans and laws replaced the federal regulatory scheme. These rules codify the regulations and guidelines that Montana has used to control wolves since it gained management authority through an agreement with the USFWS and are consistent with Montana's plan. Codified rules require consistency in how the department and individuals may approach control of the gray wolf. The department will still take an incremental approach to lethal control of the wolf and will address conflicts on a case-by-case basis by closely matching the conflict to the response both in time and location.

The gray wolf is currently listed under Montana's Nongame and Endangered Species Conservation Act. These administrative rules change the wolf's classification to a nongame species in need of management. The department has the authority to manage the gray wolf as resident wildlife pursuant to its conservation and management plan and pursuant to statute and regulation. Montana's wolf conservation and management plan is based on the work of a diverse stakeholder group. The plan outlines an adaptive management approach that ensures the long-term success of wolf recovery in a landscape where people live, work, and recreate. The plan recognizes the gray wolf as a native species and part of Montana's wildlife heritage. It allows the wolf to find its place on the landscape, similar to other wildlife, and addresses and resolves conflicts. The plan outlines an incremental approach to lethal control.

In February, the commission adopted Interim Guidelines to Resolve Wolf-Livestock Conflicts and to Ensure Human Safety. The guidelines mirrored the federal 10(j) regulations that applied in southern Montana. These rules formally adopt the commission guidelines and federal 10(j) regulations into Montana administrative rule. These rules take the substance of the commission guidelines and the 10(j) regulations as they applied to southern Montana and put them into administrative rule format for the state.

7. Concerned persons may submit their data, views, or arguments concerning the proposed amendment and adoption in writing to Wildlife Division, Wolf ARM Public Comment, P.O. Box 200701, Helena, MT 59620-0701, or e-mail them to fwpwld@mt.gov. Any comments must be received no later than July 25, 2008.

8. Quentin Kujala or another hearings officer appointed by the department, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department or commission. Persons who wish to have their name added to the list shall make written request that 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 department.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on June 13, 2008 by phone and a copy of this notice was mailed on June 16, 2008.

/s/ Susan W. Daly

Susan W. Daly
Acting Director
Department of Fish, Wildlife and Parks
Acting Secretary
Fish, Wildlife and Parks Commission

/s/ Martha Williams

Martha Williams
Rule Reviewer
Department of Fish, Wildlife and Parks

Certified to the Secretary of State June 16, 2008

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed adoption) NOTICE OF PUBLIC HEARING
of NEW RULES I through XIII) ON PROPOSED ADOPTION
pertaining to parimutuel wagering)
on fantasy sports leagues)

TO: All Concerned Persons

1. On July 18, 2008, at 10:00 a.m., the Montana Board of Horse Racing (board) will hold a public hearing in the first floor conference room (room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, MT, to consider the proposed adoption of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on July 11, 2008, to advise us of the nature of the accommodation that you need. Please contact Sherry Rust, P.O. Box 200512, Helena, MT 59620-0512; phone: (406) 444-9321; TTD number: 1-800-253-4091; fax: (406) 444-4305; e-mail: srust@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Administrative week" means an upcoming identified weekly period of Wednesday through the following Tuesday.

(2) "Board" means the Montana Board of Horse Racing provided for in 2-15-3106, MCA.

(3) "Breakage" means the odd cents over a multiple of ten cents arising from the computation of odds and payoffs on parimutuel fantasy sports wagers.

(4) "Common parimutuel pool" means a parimutuel wagering pool consisting of the parimutuel fantasy sports wagers placed at two or more licensed parimutuel facilities in Montana.

(5) "Fantasy sports coordinator" means an official hired by the Department of Livestock (the department) to regulate, audit, approve network operating plans, approve league rules, receive point totals from network, designate point totals as "official," annually select the information service to be used by the network, and control and supervise overall conduct and operation of parimutuel fantasy sports wagering.

(6) "Fantasy sports league" has the meaning found at 23-5-801, MCA.

(7) "Fantasy sports parimutuel system" means a computerized system or component of a system that is used to receive wagering information from and transmit pool data to a parimutuel network.

(8) "Fantasy sports parimutuel wager" means a parimutuel wager at a licensed parimutuel facility in Montana, through a fantasy sports league, on professional sporting events offered as part of a common parimutuel pool.

(9) "Information service" means a person or entity chosen annually by the fantasy sports coordinator to sell or provide information to the licensed fantasy sports parimutuel network, from among those services providing statistics from the individual sport's sanctioning body, and gather statistics on professional team and individual performances, which information is used to create rosters or programs of available professional sports players and teams.

(10) "League member" means a person at least 18 years of age who participates in fantasy sports parimutuel wagering at a Montana-licensed fantasy sports parimutuel facility. The term does not include a corporation, partnership, limited liability company, trust, estate, or any other entity.

(11) "Official league rules" means a set of operating guidelines and requirements proposed by the fantasy sports parimutuel network and subsequently approved by the fantasy sports coordinator, to govern selection of individual sport, selection of players, method of point calculation or scoring, and other information within parameters set by board rule. The rules must be available to each league member and provided upon request. Each set of official league rules must be approved by the fantasy sports coordinator and made official before being used by the network or a parimutuel facility.

(12) "Parimutuel facility" has the meaning found in 23-4-101, MCA, as a facility licensed by the board at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted. In addition, the parimutuel facility must be licensed pursuant to the provision of Title 23, chapter 4, MCA, and [NEW RULE VI].

(13) "Parimutuel hub" means a system to which the parimutuel network will be connected, and which monitors all fantasy sports parimutuel wagering in Montana.

(14) "Parimutuel network" has the meaning found at 23-4-101, MCA, as an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues. In addition, the term includes a person engaged in providing the parimutuel fantasy sports system or service directly related to the reconciliation of a common fantasy sports parimutuel pool and transfer of funds between the participating fantasy sports parimutuel facilities. A parimutuel network must be physically located in Montana and operated in Montana.

(15) "Parimutuel network director" means a person or office licensed by the board to solicit facility sites for the network, provide equipment to connect to the parimutuel hub, verify all takeout amounts are collected from the facilities and distributed to the board, advertise, promote, select individual fantasy sports games in which the network may participate, and calculate point totals for professional players or teams based on previously-defined rules for award of points.

(16) "Pool data" means data regarding the results, payoffs, odds or payoff prices, and the aggregate amount of parimutuel fantasy sports wagers accepted on each professional sporting event by all parimutuel fantasy sports facilities.

(17) "Post time" means five minutes before the scheduled start of a professional sporting event or such other time as designated by league rule.

(18) "Roster" or "program" means a list of eligible professional sports participants for the appropriate period; eligible specific professional sports races, games, matches, or contests for the appropriate period; and types of combination wagers eligible to be placed for that sport in that period. The roster or program must be prepared by the Montana licensed parimutuel network for fantasy sports, and must be provided to each league member.

(19) "Sporting event" means an individual race, game, match, or contest, and any group, series, or part thereof from a given professional sport. The term does not include horse or dog races.

(20) "Takeout" means an amount retained and not returned to patrons by a licensed parimutuel fantasy sports facility from the aggregate amount of parimutuel fantasy sports wagers.

(21) "Team" means a fictitious team of not less than two players composed of athletes from a given professional sport.

(22) "Wagering information" means the amount of parimutuel fantasy sports wagers accepted for each sporting event by a single parimutuel fantasy sports facility.

(23) "Wagering period" means a period of time as defined by league rule for a single or multiple day event.

AUTH: 23-4-104, MCA

IMP: 23-4-101, 23-4-104, 23-4-201, 23-4-202, 23-4-301, 23-4-302, 23-4-304, 23-5-801, 23-5-802, 23-5-805, 23-5-806, MCA

NEW RULE II LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON FANTASY SPORTS -- FEES

(1) A person or entity shall not conduct, nor accept wagers for parimutuel fantasy sports in Montana unless the person or entity has applied for and been granted a license pursuant to Title 23, chapter 4, MCA, and this chapter in one or more of the following categories:

- (a) parimutuel network;
- (b) parimutuel network director; or
- (c) parimutuel facility.

(2) The annual licensing fee for fantasy sports parimutuel licenses shall be as follows, subject to amendments by the board that are applied equally across a single category:

- | | |
|---------------------------------|--------|
| (a) parimutuel network | \$1000 |
| (b) parimutuel network director | 250 |
| (c) parimutuel facility | 75 |

AUTH: 23-4-104, MCA

IMP: 23-4-101, 23-4-201, 23-4-202, MCA

NEW RULE III FANTASY SPORTS PARIMUTUEL NETWORK DUTIES -- LICENSE REQUIREMENTS

(1) The board may issue parimutuel network licenses

to qualified applicants. A licensed fantasy sports parimutuel network shall perform the following duties:

(a) provide the parimutuel fantasy sports system or service directly related to the reconciliation of a common fantasy sports parimutuel pool and transfer of funds among the participating fantasy sports parimutuel facilities and the board;

(b) contract with the parimutuel hub selected and licensed by the board and provide equipment to connect into the parimutuel hub, as per the hub requirements;

(c) ensure all takeout amounts are collected and distributed to the board as per the reports from the hub;

(d) utilize an information service approved by the fantasy sports coordinator to gather statistics on professional team and individual performances and calculate point totals for professional players or teams based on previously-defined rules for award of points;

(e) utilize an information service approved by the fantasy sports coordinator to create rosters or programs of available professional sports players and teams and distribute fantasy sports league rosters to parimutuel facilities;

(f) compile and distribute periodic point totals to parimutuel facilities;

(g) manage statewide parimutuel pools on fantasy sports leagues;

(h) solicit nonexclusive sites for the network, and contract with all parimutuel facilities which have been licensed by the board;

(i) advertise, promote, and select propositions or official league rules for fantasy sports wagering;

(j) ensure compliance with all board statutes and rules;

(k) create and keep the records and reports required by the board in such a manner and using such forms as the board may require. Records shall be preserved for at least five years after they are made. The board may at any time examine and copy the records; and

(l) other duties as required by the board or its designee.

(2) A network applicant must be physically located within the state of Montana. The network applicant's equipment must be located in Montana.

(3) An application to operate as a fantasy sports parimutuel network must be filed on a form provided by the board, and must include a proposed operating plan, a proposed board payment contract, and the appropriate application fee.

(4) The application must include the following information:

(a) the applicant's legal name;

(b) if the applicant is a corporation, the names, addresses, dates of birth of its shareholders, directors, managers, and officers;

(i) if a shareholder is a corporation, the date of incorporation, the place of incorporation, and the names, addresses, and dates of birth of its shareholders, directors, and officers must be provided.

(c) if the applicant is a partnership, the names, addresses, dates of birth of the partners;

(i) if a partner is a corporation, the date of incorporation, place of incorporation, and the names, addresses, and dates of birth of its shareholders must be provided.

(d) if the applicant is a corporation ultimately owned by a not-for-profit entity without any shareholders, or is a publicly traded corporation, the information

required in (4)(b) and (c) shall be required from the directors of the membership organization, or the directors and officers of the publicly traded corporation, in lieu of the shareholders;

(e) financial information from the applicant that demonstrates whether the applicant has the financial resources to install and operate or contract with a hub;

(f) a detailed budget showing anticipated revenue, expenditures, and cash flows by month, from the network's operation during the license period;

(g) the number of days the applicant is planning to operate the network during the calendar year in which the applicant seeks to be licensed;

(h) a list of all network personnel containing the name, position, job location, any gaming license number, and expiration date issued by any jurisdiction. All current gaming licenses should be listed, regardless of jurisdiction;

(i) a chart illustrating the organizational structure, including reporting lines;

(j) a list of states where the network is operating;

(k) documentation of proper filing that the network applicant is physically located in Montana, physically operating in Montana, and is registered to do business in the state of Montana; and

(l) sufficient identifying information to allow the board to conduct a criminal background check on all principals within the network applicant's organization.

(5) An applicant shall submit a detailed proposed operating plan in a format and containing such information as required by the board. The operating plan shall include:

(a) the manner in which the proposed fantasy sports parimutuel network will operate;

(b) the process for handling wagers when wagering pools cannot be merged with the wagering pools of other fantasy sports parimutuel facilities;

(c) the process for fulfilling all duties as required by this rule; and

(d) any other issues as required by the board.

(6) An applicant shall submit a detailed proposed board payment contract in a format and containing such information as required by the board.

(7) The board or its designee shall conduct investigations or inspections or request additional information from the applicant as it deems appropriate in determining whether to approve the license application.

(8) The correct initial license application fee must accompany an application. The fee is nonrefundable.

(9) A parimutuel network license shall be in effect from January 1 to December 31 of each year and shall be renewed annually unless otherwise rescinded by the board.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-201, MCA

NEW RULE IV PARIMUTUEL NETWORK DIRECTOR -- LICENSE REQUIREMENTS (1) A licensed parimutuel network shall name a parimutuel network director. It shall be the parimutuel network director's duty to:

(a) solicit facility sites for the network;

(b) provide equipment to connect to the parimutuel hub;

- (c) verify all takeout amounts are collected from the facilities and distributed to the board;
- (d) advertise, promote, and select individual fantasy sports games in which the network may participate from the official league rules previously approved by the fantasy sports coordinator; and
- (e) all other necessary duties.
- (2) The network director shall:
 - (a) act as a liaison among the parimutuel network, parimutuel hub, parimutuel facility licensees, and the board and its representatives;
 - (b) supervise the management of the statewide wagering pools; and
 - (c) assure the fantasy sports parimutuel statutes and rules are complied with; and
 - (d) assure that moneys are correctly deposited and paid.
- (3) An application to operate as a fantasy sports parimutuel network director must be filed on a form provided by the board and must include the appropriate application fee. The correct initial license application fee must accompany an application. The fee is nonrefundable.
- (4) The board may conduct investigations or inspections or request additional information from the applicant as it deems appropriate in determining whether to approve the license application.
- (5) A parimutuel network director license shall be in effect from January 1 to December 31 of each year and shall be renewed annually unless otherwise rescinded by the board.

AUTH: 23-4-104, 23-4-202, MCA
IMP: 23-4-201, MCA

- NEW RULE V FANTASY SPORTS PARIMUTUEL HUB (1) A licensed parimutuel network shall contract with the parimutuel hub selected and licensed by the board. There shall be only one fantasy sports parimutuel hub in Montana. The parimutuel hub shall perform the following duties:
- (a) monitor all wagers;
 - (b) maintain a computerized system capable of connection with all parimutuel facilities;
 - (c) enter all sports game propositions into the system;
 - (d) ensure information is available to the parimutuel network for electronic display or over the Internet;
 - (e) verify all wagering is halted at the prescribed time as determined by the board or the fantasy sports coordinator;
 - (f) distribute accounting for the network, as well as all accounting required by the board; and
 - (g) other duties as required by the board or its designee.
- (2) The parimutuel hub must be physically located within the state of Montana. The hub's equipment must be located in Montana.

AUTH: 23-4-104, 23-4-202, MCA
IMP: 23-4-201, MCA

NEW RULE VI PARIMUTUEL FACILITY -- LICENSE REQUIREMENTS

(1) The board or its designee may issue a license to a parimutuel facility at which fantasy sports leagues are to be conducted and wagering on the outcome under a parimutuel system shall be permitted.

(2) A license to operate a parimutuel facility conducting fantasy sports league wagering may not be issued to an applicant unless the applicant is also licensed under Title 23, chapter 5, MCA, as gambling operator.

(3) An application to operate as a fantasy sports parimutuel facility must be filed on a form provided by the board, and must include a copy of a valid, current, state-issued gambling establishment operator license in good standing, and the appropriate application fee.

(4) The board or its designee shall conduct investigations or inspections or request additional information from the applicant as it deems appropriate in determining whether to approve the license application. The correct initial license application fee must accompany an application. The fee is nonrefundable.

(5) A parimutuel facility license shall be in effect from January 1 to December 31 of each year and shall be renewed annually unless otherwise rescinded by the board.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-201, MCA

NEW RULE VII FANTASY SPORTS COORDINATOR

(1) The department shall hire a fantasy sports coordinator recommended to the department by the board to:

- (a) regulate, audit, and approve network operating plans;
- (b) approve league rules;
- (c) receive point totals from network;
- (d) designate point totals as "official";
- (e) annually select the information service to be used by the network from those services providing statistics from the individual sports sanctioning bodies; and
- (f) control and supervise overall conduct and operation of parimutuel fantasy sports wagering.

(2) Failure of the coordinator to enforce the fantasy sports parimutuel wagering rules or to meet the responsibility of the office shall be just cause for dismissal of the coordinator.

(3) The fantasy sports coordinator shall supervise the conduct of parimutuel wagering on fantasy sports, including supervision of the licensed parimutuel network, the licensed network director, the parimutuel hub, and all licensed parimutuel facilities. The coordinator shall have full authority to enforce the rules as adopted by the board or as provided by the laws of Montana and such additional duties as set forth in the rules or as ordered by the board.

(4) The coordinator shall not separately impose fines or any other license disciplinary measure, but shall report all statute or rule violations to the board for imposition of license discipline, when appropriate, under the provisions of the Montana Administrative Procedure Act.

- (5) The coordinator shall perform other duties as directed by the board.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-201, MCA

NEW RULE VIII GENERAL CONDUCT OF FANTASY SPORTS

PARIMUTUEL WAGERING (1) The network director shall prepare proposed league rules for each sporting event on which the network will offer parimutuel wagering during a designated wagering period. The proposed league rules shall include:

- (a) a description of the eligible specific professional sports races, games, matches, or contests on which parimutuel wagering will be allowed;
- (b) types of combination wagers eligible to be placed for a sport under league rules in any parimutuel wagering period; and
- (c) a list of eligible professional sports participants for the appropriate period.

(2) The parimutuel network director shall submit the proposed league rules to the board's fantasy sports coordinator for approval at least 30 days prior to the wagering period during which the sporting event will occur or during which parimutuel wagering will be allowed under those league rules. No league rules shall be provided by the network to the hub, facility, or wagering public before the league rules are approved by the fantasy sports coordinator and made official.

(3) The parimutuel network director shall select one or more sporting events, from among the sets of official league rules approved by the fantasy sports coordinator, on which parimutuel wagering will be conducted during an upcoming administrative week, identified as a weekly period of Wednesday through the following Tuesday. The network director shall notify the fantasy sports coordinator in writing at least one week prior to the appropriate wagering administrative week as to which sporting events under official league rules will be included in each particular wagering administrative week.

(4) The parimutuel network shall compile a roster or program for the appropriate period, including eligible specific professional sports races, games, matches, or contests for the appropriate period, types of combination wagers eligible to be placed for that sport in that period, and a list of eligible professional sports participants. The roster or program must be provided to each league member. The roster or program shall be placed into the parimutuel computer system for the appropriate periodic start date.

(5) Each periodic sporting event roster or program must be provided by the network to each licensed parimutuel facility. Each periodic sporting event roster or program must also be provided to the parimutuel wagering public. The roster or program must be provided in hard copy, but may also be available via an Internet site.

(6) Fantasy sports parimutuel wagering shall be conducted within the appropriate wagering period for each sporting event for which league rules have been made official by the coordinator, and which has been chosen and is being offered by the network under its periodic roster or program.

(7) Fantasy sports parimutuel wagering shall end promptly five minutes prior to post time for each sporting event, and the machines shall be locked at that time by the parimutuel network.

(8) While the sporting events are underway, a running total of points may be calculated by the information service and provided by the networks to the network facilities via Internet or other means.

(9) When each individual sporting event is concluded, the network, through its information service, shall calculate point totals. Based on the point totals, the official winners are declared, and made official by the fantasy sports coordinator. Any error in point calculations discovered after the point totals are made official by the coordinator shall be disregarded. The point totals shall be promptly provided to the parimutuel hub. Winning tickets may be cashed at any time after the sports event results are made official.

(10) At the conclusion of each periodic sporting event, the hub shall send reconciliation statements showing amounts handled on each individual sports event to the parimutuel facilities, parimutuel network, and the fantasy sports coordinator.

(11) The parimutuel network shall remit the correct takeout amount from all parimutuel facilities to the board within seven days after the conclusion of each administrative week. The remitted amount shall not include breakage or unclaimed ticket amount takeout.

(12) The board shall distribute the takeout amount as per 23-4-302, MCA.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-202, 23-4-302, 23-4-304, 23-5-801, 23-5-805, MCA

NEW RULE IX FANTASY SPORTS PARIMUTUEL OPERATIONS

(1) Wagering will only be permitted at a licensed fantasy sports parimutuel facility by means of a parimutuel system that has been approved by the board.

(2) No employee of the parimutuel network, parimutuel director, parimutuel facility, or hub operations may place a wager for the employee personally or any other person during the actual work period for which the employee is licensed as a parimutuel occupational employee.

(3) Any claim by a patron that a wrong ticket has been delivered must be made before leaving that parimutuel ticket window or parimutuel self service machine. No claim shall be considered after that time, and no claim shall be considered for tickets that are discarded, lost, changed, destroyed, or mutilated beyond identification. Payment will be made only upon presentation of appropriate parimutuel tickets.

(4) The parimutuel facility licensee shall not sell or cash parimutuel tickets to persons under 18 years of age. Signs indicating that persons under age 18 are not allowed to wager shall be conspicuously displayed near the selling and cashing windows.

(5) The parimutuel facility shall ensure that all parimutuel tickets sold on a sporting event during an administrative week are purchased or cashed from the regular ticket windows or parimutuel self service machine.

(6) All parimutuel facility employees working with parimutuel selling machines must be licensed by the board and given instructions by the facility manager, network director, or their designee prior to the start of their duties.

(7) The parimutuel facility shall make available to the public the actual winning amount to be paid for each winning ticket after results are made official.

(8) A parimutuel facility shall complete all forms summarizing each wagering administrative week's mutuel operations, and verification of the payoff computations, and completion of such other forms as may be required by the network director or fantasy sports coordinator.

(9) The parimutuel network shall ensure payouts, pool totals, and winning combinations for each fantasy sports event are available to the public at each licensed parimutuel facility after the official results have been posted.

(10) The parimutuel facility shall conspicuously display rules at its licensed premises which govern wagering transactions with patrons. The rules must specify takeout amounts, the amounts to be paid on winning wagers, and the redemption period for winning tickets.

(11) The parimutuel network and network director are responsible for the accuracy of all payoff prices.

(12) The parimutuel network director shall prepare or have prepared a parimutuel recapitulation form at the end of each administrative week. The recapitulation form shall be provided to the fantasy sports coordinator or the board.

(13) The parimutuel network licensee may be required to furnish a certified public accountant, licensed to practice in Montana, with the following duties:

- (a) completion of the forms summarizing each week's mutual operation;
- (b) verification of the payoff computations;
- (c) completion of such other forms as may be required by the board; and
- (d) submission of financial statements covering parimutuel operations for the fiscal year.

(14) The parimutuel network director must verify deposit of all receipts and submit statements showing parimutuel receipts, percentages retained, and such other information as may be required for the proper administration of the law to the fantasy sports coordinator and the board. The information shall be submitted within seven days after the close of the fantasy sports administrative week.

(15) The parimutuel network shall report to the fantasy sports coordinator and the board the total face value of all unclaimed winning tickets quarterly.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-202, 23-4-302, 23-4-304, 23-5-801, 23-5-805, MCA

NEW RULE X THE PARIMUTUEL SYSTEM (1) Betting shall not commence for the administrative week until the parimutuel hub has demonstrated to the satisfaction of the parimutuel facility, parimutuel network director, and the fantasy sports coordinator that the mutuel system is operating properly.

(2) The parimutuel facility shall not allow betting on any connected issuing machine:

- (a) which fails to issue legible tickets, properly record on the tote the issuance of a ticket, function in any way which would materially interfere with the

proper calculation of a pool, or the proper supervision of the operation of the mutuel system;

(b) on which any part of the machinery in the automated mutuel system malfunctions so as to materially interfere with the proper calculation of a pool or the proper supervision of the operation of the mutuel system;

(c) which bears a ticket code identical to any previous day of the administrative week, or has tickets that bear serial numbers inclusive of any used during a previous administrative week; or

(d) for which the parimutuel facility has failed to draw a test ticket prior to the first wager during an administrative week.

(3) If the parimutuel facility or parimutuel network director refuses to authorize the opening of wagering, the parimutuel facility shall explicitly explain to the fantasy sports coordinator the reason for the refusal. When the defects in the mutuel system are remedied and its adequacy demonstrated, the parimutuel facility or parimutuel network director shall authorize the opening of wagering.

(4) A random testing program shall be performed on a computerized system to verify that all functions of the system are working properly. This shall be done prior to the opening of each day of the administrative week by the parimutuel facility.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-202, 23-4-302, 23-4-304, 23-5-801, 23-5-805, MCA

NEW RULE XI IMPROPER OPERATION (1) If an error is made in posting the payoff figures to the public, the error shall be corrected promptly and only the correct amounts shall be used in the payoff, irrespective of the error posted to the public, but no change shall be made in the payoff after the cashing of winning tickets has commenced. If an error is discovered before the payoff is started, the correct payoff shall be posted.

(2) Illegible or mutilated tickets shall not be sold; further they shall be voided with ink or mutilation and accounted for by the parimutuel facility and parimutuel network in calculation of the gross pool, but not to be included as winning tickets.

(3) Illegible or mutilated tickets issued by a ticket issuing machine shall not be sold. These tickets are to be voided by ink or mutilation and are to be attached to the calculation sheet for their respective pool and sporting event.

(4) The parimutuel facility shall be responsible for all parimutuel employee's errors. Any customer complaint concerning a parimutuel employee's error shall be immediately called to the attention of the parimutuel network director, and the parimutuel network director's decision shall be final.

(5) A validly issued parimutuel ticket timely surrendered to the parimutuel facility by the legal holder shall be the only evidence of a person's participation in parimutuel wagering. The acceptance of a parimutuel ticket by taking an issued ticket away from the window or terminal from which it is purchased shall constitute an acknowledgment by the purchaser of the correctness of the ticket, and each purchaser of a parimutuel ticket agrees to be bound by the terms and provisions of this and all other applicable board rules and regulations, and by the laws of the state of Montana pertaining to parimutuel wagering. Neither the parimutuel hub, parimutuel network, parimutuel facility, the board, nor the state of Montana shall be

liable to any person for any ticket which is not a winning ticket in accordance with the provisions of these rules nor shall they, or any of them, be liable to any person for any parimutuel ticket not delivered for any reason, including but not limited to mechanical malfunction, electrical failure, machine locking, or other causes.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-202, 23-4-302, 23-4-304, 23-5-801, 23-5-805, MCA

NEW RULE XII REVIEW AND AUDIT OF RECORDS -- REPORTING REQUIREMENTS -- ENFORCEMENT

(1) The fantasy sports coordinator and the board and its staff will be given unrestricted access, for review and audit, to all records and financial information of the parimutuel network and the parimutuel hub. This information will be made available to the fantasy sports coordinator or the board, by the parimutuel network director at the network or hub location, upon notice from the fantasy sports coordinator or the board or board staff, at all reasonable times to the extent such disclosure is not expressly prohibited by law.

(2) The following reports shall be submitted to the fantasy sports coordinator or the board:

- (a) parimutuel recapitulation form for each accounting week;
- (b) a transmission failure report signed by the parimutuel network operator must be filed with the board within 48 hours whenever wagers are not transmitted to, received by, or otherwise accepted by the hub for any reason. The financial implication of such failure should be detailed in this report; and
- (c) all parimutuel network and parimutuel facility licensees shall report any known or suspected irregularities, wrongdoing, or rule violations by any person involving parimutuel fantasy sports wagering immediately to the fantasy sports coordinator or the board and shall cooperate in subsequent investigations.

(3) The following reports generated by the parimutuel network or parimutuel facility shall be available for inspection by the fantasy sports coordinator and the board upon request:

- (a) parimutuel facility wagering handle;
- (b) reports for taxation purposes;
- (c) customer complaints;
- (d) log of all system accesses and adjustments to the master file;
- (e) list of all wagers and winning payouts; and
- (f) wagering report forms for all wagers over \$10,000.

(4) The board may require the parimutuel network director and hub to annually submit audited financial statements.

(5) The parimutuel network shall create and keep the records and reports required by the board in such a manner and using such forms as the board may require. Records shall be preserved for at least five years after they are made. The board may at any time examine and copy the records.

(6) All proceedings against an applicant for licensure or a licensee shall be before the board.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-202, 23-4-302, 23-4-304, 23-5-801, 23-5-805, MCA

NEW RULE XIII UNLAWFUL ACTIVITY (1) As set forth in 23-4-301, MCA, it is unlawful to conduct pool selling or bookmaking or to wager on a fantasy sports league other than by the parimutuel system and by being physically present at a licensed parimutuel facility.

(2) As set forth in 23-4-301, MCA, it is unlawful to permit a minor to use the parimutuel system.

(3) As set forth in 23-4-301, MCA, it is unlawful to conduct internet or telephone parimutuel wagering on fantasy sports leagues.

(4) No wagers may be accepted or paid by a parimutuel facility on a collegiate sport or athletic event. A collegiate sport or athletic event is an event offered or sponsored by or played in connection with a public or private institution that offers educational services beyond the secondary level.

(5) No wager may be accepted or paid by a parimutuel facility on any amateur sport or athletic event.

(6) No wager may be accepted or paid by a parimutuel facility on any non sporting event.

(7) Parimutuel facilities shall not accept wagers unless made by an individual person, physically present at the parimutuel facility site with cash.

(8) Parimutuel facilities shall not accept wagers except at licensed premises, and only at betting stations approved by the fantasy sports coordinator or the board.

(9) Parimutuel facilities shall not knowingly accept money or its equivalent ostensibly as a wager upon a sporting event whose outcome has already been determined. A licensed parimutuel network shall not create a roster or program for, and a licensed parimutuel facility shall not accept a wager on a sporting event unless the date and time at which the outcome of the sporting event is determined can be confirmed from reliable sources satisfactory to the fantasy sports coordinator or the board, or from records created and maintained by the parimutuel network in such manner as the fantasy sport coordinator or the board may approve.

(10) Parimutuel facilities shall not accept wagers on a sporting event unless league rules for the event have previously been submitted by the parimutuel network to the fantasy sports coordinator and approved by the coordinator, and then made available to the parimutuel facility by the parimutuel network as an option to be used by the parimutuel facility for that wagering period.

(11) Parimutuel facilities shall not accept wagers on a sporting event unless the event has been chosen by the facility for inclusion in that wagering period, and the availability of the sporting event posted at the facility. Chosen sporting events for each wagering period must be posted on the roster or program provided to each patron, and may also be posted by electronic or manual means, including printed media. Posted sporting events must be chosen by a parimutuel facility for a wagering period prior to the start of the wagering period, and no changes to the chosen options shall occur during the wagering period.

(12) Parimutuel facilities shall not accept any wager in excess of \$10,000 unless the following steps have all been completed:

- (a) obtain the patron's name;
- (b) obtain the patron's permanent address and social security number;
- (c) obtain one of the following identification credentials from the patron:

- (i) driver's license;
 - (ii) passport;
 - (iii) nonresident alien identification card;
 - (iv) other reliable government-issued identification credentials; or
 - (v) other picture identification credential normally accepted as a means of identification when cashing checks; and
 - (d) examine the identification credential obtained to verify the patron's name, and to the extent possible, to verify the accuracy of the information obtained.
- (13) Subsequent to accepting a wager in excess of \$10,000, the parimutuel facility employee shall record or maintain records that include:
- (a) the patron's name, and if applicable, the agent's name;
 - (b) the patron's address, and if applicable, the agent's address;
 - (c) the patron's social security number, and if applicable, the agent's social security number;
 - (d) a description, including any document number of the identification credential examined, and if applicable, for the agent;
 - (e) the amount of the wager;
 - (f) window number or other identification of the location where the wager occurred;
 - (g) the time and date of the wager;
 - (h) the name and signature of the parimutuel employee accepting or approving the wager; and
 - (i) any other information as required by the fantasy sports coordinator or the board.
- (14) Each parimutuel facility shall report the wagers required to be recorded on a wagering report form provided by the board.
- (15) Parimutuel facilities and their employees shall not knowingly allow, and shall take steps to prevent, the circumvention of the \$10,000 wager identification and reporting rule by multiple wagers within its designated administrative week with a patron or by the use of a series of wagers that are designed to accomplish indirectly what could not be accomplished directly.
- (16) Parimutuel facilities and the parimutuel network and all parimutuel employees shall not encourage or instruct patrons to structure or attempt to structure wagers. This section does not prohibit a parimutuel facility or parimutuel employee from informing a patron of the regulatory requirements imposed upon the parimutuel facility.
- (17) Parimutuel facilities shall make payment on a winning wager to a person who presents the patron's copy of the betting ticket representing the wager at the parimutuel facility at which it was issued. A parimutuel facility or employee need not make payment to a person who the employee knows is not the person to whom the patron's betting ticket was issued. Parimutuel facilities and parimutuel employees shall not make payment on a winning wager to a person who the facility or employee knows or reasonably should know is collecting the payment on behalf of another for monetary consideration or in violation of state or federal law.
- (18) Parimutuel facilities shall honor winning betting tickets for 30 days after the conclusion of the administrative week. The parimutuel facility shall state the redemption period on each betting ticket, in league rules, and on notices

conspicuously placed about the licensed premises. Payment by mail may be made only after presentment of the betting ticket, and must be made not later than ten days after presentment.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-202, 23-4-301, 23-4-302, 23-4-304, 23-5-801, 23-5-802, 23-5-805, MCA

REASON: The proposed new rules are necessary to implement the provisions of House Bill 616, codified at Title 23, chapter 4, and Title 23, chapter 5, MCA, as passed by the 2007 Montana Legislature. HB 616 required the board to create and administer a program which allows parimutuel wagering on fantasy sports leagues conducted by a parimutuel facility that has been licensed by the board. The bill provided for the board to regulate parimutuel wagering on fantasy sports through a licensed parimutuel network and licensed parimutuel sites. The proposed new rules will set forth definitions, outline the licensing requirements, outline duties of licensees, set forth the procedures for parimutuel fantasy sports wagering, set forth the various types of bets which will be permitted on fantasy sports, and set forth unlawful activities which will not be allowed under parimutuel fantasy sports wagering.

New Rule I explains the definition of terms used throughout the rules and is necessary to inform the public of the meaning of various words and phrases to be used in parimutuel fantasy sports wagering.

New Rule II lists the types of licenses authorized by HB 616 which will be issued by the board. The rule is necessary to notify the public of the types of licenses which will be required to participate in the conduct of parimutuel fantasy sports wagering. The proposed rule also lists the fees which will be charged for these licenses. The proposed fees will generate \$22,500 based on the 300 licensees anticipated in the state.

New Rule III sets forth the licensed parimutuel network's duties, and is necessary to inform any license applicant or licensee of the duties that will be required by the board for a person or entity who wishes to conduct parimutuel fantasy sports wagering as a network licensee. The proposed rule also sets forth the licensing requirements that will be sought by the board in order to grant a parimutuel network license.

New Rule IV sets forth the network director license requirements and is necessary to inform both network applicants and network director applicants of the requirements that will be in place for the board to grant an application for this type of license.

New Rule V sets forth the duties of the parimutuel hub. The hub will be contracted with or a part of the parimutuel network, but the rule is necessary to inform the network licensee of the duties its hub will be required to perform in conducting parimutuel fantasy sports wagering.

New Rule VI sets forth the parimutuel facility licensure requirements and is necessary to inform parimutuel facility license applicants of the requirements that must be met for the board to grant an application for this type of license.

New Rule VII creates the position of a fantasy sports coordinator, as an employee of the board who will oversee parimutuel fantasy sports regulation. The

proposed rule is necessary to outline the duties of this board position and inform the public and any potential job applicants of the authority and activities this position will entail.

New Rule VIII on parimutuel operations sets forth the general conduct of parimutuel fantasy wagering and is necessary to outline for licensees, potential participants, and the general public the procedures that will be used to conduct parimutuel fantasy sports. The proposed rule gives the steps including board preapproval of each league rule and sporting event that will be offered to the general public, as well as defining the wagering period, the point total scores, the close of betting, and other necessary components of the process.

New Rule IX gives requirements for the parimutuel operation so that licensees and the public will be informed as to the requirements for posting of odds, payouts, auditing, and reporting.

New Rule X on the parimutuel system sets forth requirements for the parimutuel system and is necessary so the parimutuel network licensee and parimutuel facility licensees are aware the parimutuel system must be tested and maintained in good working order to ensure the wagering public that bets are being recorded accurately for payout.

New Rule XI on improper operations sets forth the procedures for errors and underpayments as well as some waiver of liability language for the parimutuel facility which is necessary for the betting public who do not always win their bets, so must be aware there is no recourse in this event.

New Rule XII on review and audit of records lists the various reports and records that must be created by the parimutuel facility and parimutuel network for review and audit by the fantasy sports coordinator and the board. The proposed rule is necessary to inform licensees and the public that the board will have oversight of the parimutuel fantasy sports wagering through financial audits and records to ensure the integrity of the wagering system.

New Rule XIII on unlawful activity sets forth the types of situations that are not allowed under parimutuel fantasy sports wagering including wagering by minors, wagering via Internet or telephone, wagering over \$10,000 without a record being kept, etc. This proposed rule is necessary to notify the betting public of the types of situations that will not be allowed under parimutuel fantasy sports wagering. The rule will also notify parimutuel licensees of situations that are not allowed or their license may be affected.

4. Concerned persons may submit their data, views, or arguments either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Montana Board of Horse Racing, Attn: Sherry Rust, P.O. Box 200512, Helena, MT 59620-0512, by faxing to (406) 444-4305, or by e-mailing to srust@mt.gov to be received no later than 5:00 p.m., July 25, 2008.

5. An electronic copy of this proposal notice is available through the department's site at www.mt.gov/liv/default.asp. The board strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the

Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

6. The Board of Horse Racing maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the board. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Montana Board of Horse Racing, Attn: Sherry Rust, P.O. Box 200512, Helena, MT 59620-0512, by faxing to (406) 444-4305, or by e-mailing to srust@mt.gov. Request forms may also be completed at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on August 14, 2007, by regular mail.

8. A representative for the Montana Board of Horse Racing will preside over and conduct the hearing.

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

BY: /s/ SHERRY K. MEADOR
Sherry K. Meador
Alternate Rule Reviewer

BY: /s/ CHRISTIAN MacKAY
Christian Mackay, Executive Director
DEPARTMENT OF LIVESTOCK

Certified to the Secretary of State June 16 , 2008.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.12.1704, Permit	)	ON PROPOSED AMENDMENT
Application - Existing Legal Demands)	
and 36.12.1706, Permit Application)	
Criteria - Adverse Effect)	

To: All Concerned Persons

1. On July 24, 2008, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (lower floor), at the Department of Natural Resources and Conservation, Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than July 11, 2008, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-6614, fax (406) 444-0533, e-mail kovercast@mt.gov.

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

36.12.1704 PERMIT APPLICATION - EXISTING LEGAL DEMANDS

(1) Legal demands usually exist on the source of supply or its downstream tributaries and may be affected by a proposed water right application, including prior appropriations and water reservations. These existing legal demands will be senior to a new application and the senior rights must not be adversely affected. :

(a) an applicant may use a plan for mitigation or aquifer recharge, as generally defined in 85-2-102, MCA, as a means of showing water is legally available.

(2) through (4) remain the same.

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

IMP: 85-2-302, MCA

36.12.1706 PERMIT APPLICATION CRITERIA - ADVERSE EFFECT

(1) remains the same.

(2) The applicant's plan may include the use of mitigation or aquifer recharge as defined in 85-2-102, MCA, as a means of offsetting any adverse effect.

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

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

~~(4)~~ (5) For groundwater applications, in addition to (1), ~~and (2), and (3)~~, the applicant shall describe how water levels in wells of prior water rights will be lowered and the rate, timing, and location of any depletions from hydraulically connected surface waters.

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

IMP: 85-2-302, MCA

REASONABLE NECESSITY: Current statutes pertaining to basin closure areas specifically allow for aquifer recharge and mitigation plans. Such plans are used to offset a new use of water that may create an adverse effect to a senior water right. The amendments help to clarify for the public that aquifer recharge or mitigation plans can be used in any area of the state, not only in basin closure areas. These amendments are needed to make that option known.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than July 24, 2008.

5. Kim Overcast, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in (4) above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by regular mail on June 9, 2008.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Anne Yates

ANNE YATES

Rule Reviewer

Certified to the Secretary of State on June 16, 2008.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING
Rule I, the amendment of ARM	)	ON PROPOSED ADOPTION,
37.86.2801, 37.86.2803, 37.86.2901,	)	AMENDMENT, AND REPEAL
37.86.2902, 37.86.2904, 37.86.2905,)	
37.86.2907, 37.86.2910, 37.86.2912,)	
37.86.2916, 37.86.2918, 37.86.2920,)	
37.86.2924, 37.86.2925, 37.86.2943,)	
and 37.86.2947, and the repeal of ARM)	
37.86.2914 pertaining to Medicaid)	
inpatient hospital reimbursement)	

TO: All Interested Persons

1. On July 16, 2008, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing at the AMDD Conference Room, 555 Fuller Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on July 7, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

RULE I. COST BASED HOSPITAL, GENERAL REIMBURSEMENT (1) Cost based reimbursement is applicable to exempt hospitals, preferred out-of-state hospitals with dates of admission from January 1, 2007 through September 30, 2008, and critical access hospitals (CAH).

(2) Exempt hospitals, preferred out-of-state hospitals, and CAH interim reimbursement is based on a hospital specific Medicaid inpatient cost to charge ratio (CCR), not to exceed 100%.

(3) CAH and exempt hospital final reimbursement is for reasonable costs of hospital services limited to 101% of allowable costs, as determined in accordance with ARM 37.86.2803(1).

(a) Preferred out-of-state hospital final reimbursement is for reasonable costs of hospital services limited to 100% of allowable costs, as determined in accordance with ARM 37.86.2803(1). Preferred hospitals are reimbursed on a cost basis for dates of admission from January 1, 2007 until September 30, 2008.

(4) Where applicable, the statewide CCR for cost based hospitals is determined in accordance with ARM 37.86.2905(6).

(5) Cost based hospital reimbursement for capital expenses is as determined in accordance with ARM 37.86.2912(3).

(6) Certified registered nurse anesthetist (CRNA) reimbursement for exempt and CAH hospitals is as determined in accordance with ARM 37.86.2924.

(7) All diagnostic services are included in the cost-based payment. Diagnostic services that are performed at a second hospital because the services are not available at the first hospital (e.g., a CT scan) are included in the first hospital's payment. This includes transportation to the second hospital and back to the first hospital. Arrangement for payment to the transportation provider and the second hospital where the services were actually performed must be between the first and second hospital and the transportation provider.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-113, MCA

4. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) Reimbursement for inpatient hospital services is set forth in ARM ~~37.86.2904~~, 37.86.2905, 37.86.2907, 37.86.2910, 37.86.2912, ~~37.86.2914~~, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, and 37.86.2928, 37.86.2943, 37.86.2947, and [RULE I]. Reimbursement for outpatient hospital services is set forth in ARM 37.86.3005, 37.86.3006, 37.86.3007, 37.86.3009, 37.86.3014, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3022, 37.86.3025, 37.86.3037, and 37.86.3109. ~~The reimbursement period will be the provider's fiscal year.~~ Cost of hospital services will be determined for inpatient and outpatient care separately. Administratively necessary days are not a benefit of the Montana Medicaid program.

(2) remains the same.

(3) Medicaid reimbursement shall not be made unless the provider has obtained authorization from the department or its designated review organization prior to providing any of the following services:

(a) and (b) remain the same.

(c) services related to organ transplantations covered under ARM 37.86.4701 and 37.86.4705; ~~or~~

(d) outpatient partial hospitalization, as required by ARM 37.88.101;

(e) any other services for specific diagnosis or procedures that require all Medicaid providers to obtain prior authorization; or

(f) facilities designated as a Center of Excellence.

(4) Upon the request of a preferred hospital ~~located more than 100 miles outside the borders of the state of Montana~~, the department may grant retroactive authorization for the provision of the hospital's services under the following

circumstances only:

(a) through (d) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

(1) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants. Such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15 Transmittal 17 last updated ~~February 2006 (Pub. 15)~~ May 2007, subject to the exceptions and limitations provided in the department's administrative rules. The department adopts and incorporates by reference Pub. 15, which is a manual published by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), which provides guidelines and policies to implement Medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(a) Hospitals located in the state of Montana providing inpatient and outpatient hospital services reimbursement under the retrospective cost based methodology for a hospital that is identified by the department as a distinct part rehabilitation unit are subject to the provisions regarding cost reimbursement and coverage limits and rate of increase ceilings specified in 42 CFR 413.30 through 413.40 (2002), except as otherwise provided in these rules. This provision applies to distinct part rehabilitation units only through January 31, 2003. The department adopts and incorporates by reference 42 CFR 413.30 through 413.40 (2002). A copy of 42 CFR 413.30 through 413.40 (2002) may be obtained through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(b)~~ (a) For cost report periods ending on or after July 1, 2003, for each hospital which is not a sole community hospital, critical access hospital, or exempt hospital as defined in ARM 37.86.2901, reimbursement for reasonable costs of outpatient hospital services, other than the capital-related costs of such services, shall be limited to allowable costs, as determined in accordance with (1).

~~(c)~~ (b) For cost report periods ending on or after July 1, 2003, for each hospital which is a sole community hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of outpatient hospital services, other than the capital-related costs of such services, shall be limited to allowable costs, as determined in accordance with (1).

~~(d)~~ (c) For cost report periods ending on or after January 1, 2006, for each hospital which is a critical access or exempt hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of hospital services shall be limited to 101% of allowable costs, as determined in accordance with (1).

~~(e)~~ (d) For cost report periods ending on or after January 1, 2007 through September 30, 2008, for each hospital which is a preferred out-of-state hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient hospital services shall be limited to 100% of allowable costs, as determined in accordance with (1).

(2) All hospitals reimbursed under ARM ~~37.86.2904~~, ~~37.86.2905~~, ~~37.86.2907~~, ~~37.86.2910~~, ~~37.86.2912~~, ~~37.86.2914~~, ~~37.86.2916~~, ~~37.86.2918~~, ~~37.86.2920~~, ~~37.86.2924~~, ~~37.86.2925~~, ~~37.86.2928~~, ~~37.86.2943~~, ~~37.86.2947~~, ~~or 37.86.3005~~, ~~37.86.3006~~, ~~37.86.3007~~, ~~37.86.3009~~, ~~37.86.3014~~, ~~37.86.3016~~, ~~37.86.3018~~, ~~37.86.3020~~, ~~37.86.3022~~, ~~37.86.3025~~, ~~37.86.3037~~, ~~37.86.3109~~, or [RULE I] must submit, as provided in (3), an annual Medicare cost report in which costs have been allocated to the Medicaid program as they relate to charges. The facility shall maintain appropriate accounting records which will enable the facility to fully complete the cost report.

(3) All hospitals reimbursed under ARM ~~37.86.2904~~, ~~37.86.2905~~, ~~37.86.2907~~, ~~37.86.2910~~, ~~37.86.2912~~, ~~37.86.2914~~, ~~37.86.2916~~, ~~37.86.2918~~, ~~37.86.2920~~, ~~37.86.2924~~, ~~37.86.2925~~, ~~37.86.2928~~, ~~37.86.2943~~, ~~37.86.2947~~, ~~or 37.86.3005~~, ~~37.86.3006~~, ~~37.86.3007~~, ~~37.86.3009~~, ~~37.86.3014~~, ~~37.86.3016~~, ~~37.86.3018~~, ~~37.86.3020~~, ~~37.86.3022~~, ~~37.86.3025~~, ~~37.86.3037~~, ~~37.86.3109~~, or [RULE I] must file the cost report with the Montana Medicare intermediary and the department on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period.

(a) through (4) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) remains the same.

(2) "All patient refined diagnosis related groups (APR-DRGs)" means DRGs that classify each inpatient case based on claim information such as diagnosis, procedures performed, patient age, patient sex, and discharge status.

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

(4) "Base price" means a dollar amount, including capital expenses, that is reviewed by the department each year to allow for appropriation neutrality.

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

(6) "Center of Excellence" means a hospital specifically designated by the department as being able to provide a higher level of comprehensive care that is not available elsewhere.

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

(8) "Cost based hospital" means a licensed acute care hospital that is reimbursed on the basis of allowable cost.

~~(5)~~ (9) "Cost outlier" means an additional payment for unusually high cost case that exceeds the cost outlier thresholds as set forth in ARM 37.86.2916.

(6) and (7) remain the same but are renumbered (10) and (11).

~~(8)~~ (12) "Discharging hospital" means a hospital, other than a transferring hospital, that formally discharges an inpatient. Release of a patient to another hospital, as described in ~~(24)~~ (31) or a leave of absence from the hospital will not be recognized as a discharge. A patient who dies in the hospital is considered a discharge.

(13) "Distinct part psychiatric unit" means a psychiatric unit of an acute care general hospital that meets the requirements of 42 CFR part 412 (2008).

~~(9)~~ (14) "Distinct part rehabilitation unit" means a rehabilitation unit of an acute care general hospital that meets the requirements in 42 CFR 412.25 and 412.29 (1992).

~~(40)~~ (24) "DRG Prospective payment system (PPS) hospital" means a hospital reimbursed pursuant to the diagnosis related group (DRG) system. DRG hospitals are classified as such by the Centers for Medicare and Medicaid Services (CMS) in accordance with 42 CFR part 412 (2008).

(11) through (14) remain the same but are renumbered (15) through (18).

~~(45)~~ (19) "Inpatient hospital services" means services that are ordinarily furnished in a an acute care hospital for the care and treatment of an inpatient under the direction of a physician, dentist, or other practitioner as permitted by federal law, and that are furnished in an institution that:

(a) is maintained primarily for the care and treatment of patients with disorders other than:

(i) tuberculosis; or

(ii) mental diseases, except as provided in ~~(45)~~ (19)(d);

(b) is licensed or formally approved as a an acute care hospital by the officially designated authority in the state where the institution is located;

(15)(c) and (d) remain the same but are renumbered (19)(c) and (d).

(20) "Long term care hospital (LTCH)" means an acute care hospital as defined in 42 CFR 412.

(16) and (17) remain the same but are renumbered (21) and (22).

~~(48)~~ (23) "Preferred out-of-state hospital" means a hospital located more than 100 miles outside the borders of Montana that has signed a contract with the department to provide specialized services prior approved by the department. The classification of preferred out-of-state hospital is eliminated effective September 30, 2008.

(19) remains the same but is renumbered (25).

(26) "Relative weight" means a weight assigned from a national database from 3M that reflects the typical resources consumed per APR-DRG.

(20) through (22) remain the same but are renumbered (27) through (29).

~~(23)~~ (30) "Supplemental disproportionate share hospital" means a hospital in Montana which meets the criteria in ARM 37.86.2925 and 37.86.2931.

(24) through (26) remain the same but are renumbered (31) through (33).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, 53-6-149, MCA

37.86.2902 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) through (3)(g) remain the same.

- (4) Alcohol and drug treatment detoxification services are limited to:
 - (a) detoxification services up to four days, except that more than four days may be covered if concurrently authorized by the department or the designated review organization and a hospital setting is required; or
 - (b) the department or the designated review organization determines that the patient has a concomitant condition that must be treated in the inpatient hospital setting, and the alcohol and drug treatment is a necessary adjunct to the treatment of the concomitant condition.
- (5) remains the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2904 INPATIENT HOSPITAL SERVICES, BILLING REQUIREMENTS

- (1) Inpatient hospital service providers shall be subject to the billing requirements set forth in ARM 37.85.406. At the time a claim is submitted, the hospital must have on file a signed and dated acknowledgment from the attending physician that the physician has received the following notice: "Notice to physicians: Medicaid payment to hospitals is based in part on all of each patient's ~~principal and secondary~~ diagnoses and the ~~major~~ procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies or conceals essential information required for payment of federal funds, may be subject to fine, imprisonment or civil penalty under applicable federal laws."
- (2) through (4) remain the same.
- (5) Except for hospital resident cases, a provider may not submit a claim until the recipient has been either:
 - (a) remains the same.
 - (b) a patient at least 30 days, in which case the hospital may bill every 31 days;
 - (b) (c) transferred to another hospital; or
 - (e) (d) designated by the department as a hospital resident as set forth in ~~ARM 37.86.2901.~~ 37.86.2921.
- (6) Cost based hospitals may split bill at their fiscal year end.
- (6) ~~The Medicaid statewide average cost to charge ratio excluding capital expenses is 50%.~~

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, GENERAL

REIMBURSEMENT (1) ~~Except as provided in (2), which is applicable to exempt hospitals, preferred out-of-state hospitals, critical access hospitals (CAH), and inpatient hospital service providers, including inpatient rehabilitation services and services in a setting that is identified by the department as a distinct rehabilitation unit,~~ Prospective payment system (PPS) hospitals including in-state PPS facilities, distinct part units, border facilities, all out of state facilities and Center of Excellence

facilities will be reimbursed under the All Patient Refined Diagnosis Related Groups (APR-DRG) prospective payment system described in ARM 37.86.2907, 37.86.2912, ~~37.86.2914~~, 37.86.2916, 37.86.2918, and 37.86.2920, and ~~37.86.2924~~.

~~(2) Exempt hospital, preferred out-of-state hospitals, and CAH interim~~ Interim reimbursement for cost based facilities, including exempt facilities and CAH facilities, is based on a hospital specific Medicaid inpatient cost to charge ratio, not to exceed 100%. ~~Exempt hospitals, preferred out-of-state hospitals, and CAHs~~ Cost based facilities will be reimbursed their allowable costs as determined according to ARM 37.86.2803.

~~(3) Preferred out-of-state hospitals must sign individual agreements with the department agreeing to reimbursement requirements under ARM 37.86.2947 and prior authorization requirements under ARM 37.86.2801.~~

~~(a) Preferred out-of-state hospitals must agree to all department rules applicable to inpatient hospital providers.~~

~~(4)~~ (3) Except as otherwise specified in these rules, facilities reimbursed under the APR-DRG prospective payment system may be reimbursed, in addition to the prospective APR-DRG rate, for the following:

~~(a) capital-related costs as set forth in ARM 37.86.2912;~~

~~(b) medical education costs as set forth in ARM 37.86.2914;~~

~~(c)~~ (a) cost outliers as set forth in ARM 37.86.2916;

~~(d)~~ (b) readmissions and transfers, as set forth in ARM 37.86.2918;

~~(e)~~ (c) hospital residents, as set forth in ARM 37.86.2920;

~~(f)~~ (d) disproportionate share hospital payments as provided in ARM 37.86.2925;

~~(g) certified registered nurse anesthetist costs as provided in ARM 37.86.2924;~~

~~(h)~~ (e) qualified rate adjustor payments, as set forth in ARM 37.86.2910; and

~~(i)~~ (f) hospital reimbursement adjustor payments as provided in ARM 37.86.2928.

(4) PPS facilities may interim bill for stays exceeding 30 days at the same hospital.

(a) The interim rate will be a flat per diem rate times the number of covered days for the claim.

(b) Upon discharge the interim claims will be voided or credited by the hospital and the hospital must bill a single admit through discharge claim which will be paid by APR-DRG.

(c) The hospital must obtain authorization to interim bill prior to submission of the first claim and must provide medical records upon request of the department or its designated review organization for continued stay reviews.

(5) The Medicaid statewide average PPS inpatient cost to charge ratio including capital expenses is 52%.

(6) The Medicaid statewide average cost based inpatient cost to charge ratio including capital expenses is 53%.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) ~~Prior to~~ Effective October 1st of each year, the department will assign a an APR-DRG to each Medicaid patient discharge in accordance with the current ~~Medicare~~ APR-grouper program version, as developed by 3M Health Information Systems. The assignment of each APR-DRG is based on:

- (i) the ICD-9-CM principal diagnoses;
- (ii) ~~the~~ all ICD-9-CM secondary diagnoses;
- (iii) ~~the~~ all ICD-9-CM medical procedures performed during the recipient's hospital stay;
- (iv) the recipient's age;
- (v) the recipient's sex; and
- (vi) the recipient's discharge status.

(b) For each APR-DRG, the department determines a relative weight using a national database from 3M that reflects the cost of hospital resources used to treat cases ~~in that DRG relative to the statewide average cost of all Medicaid hospital cases.~~ The relative weights have been recentered so that the average Montana Medicaid stay has a base weight of 1.00. Adjustments are applied to specific APR-DRG weights to reflect department policy. The relative weight for each APR-DRG is available upon request from Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) The department computes a Montana average base price per case. ~~This average base price per case is \$1980 excluding capital expenses, medical education, and disproportionate share hospital payments effective for services provided from August 1, 2003 through December 31, 2005. For services provided January 1, 2006 through June 30, 2006, the average base price per case is \$2037 excluding capital expenses, medical education, and disproportionate share hospital payments. For services provided between July 1, 2006 and September 30, 2007, the average base price is \$2118 excluding capital expenses, medical education, and disproportionate share hospital payments. For services provided on or after October 1, 2007, the average base price is \$2187 and for services on or after July 1, 2008, the average base price is \$2220 excluding capital expenses, medical education, and disproportionate share hospital payments.~~ Effective October 1, 2008 the average base price, including capital expenses, is \$3,960. Disproportionate share payments are not included in this price.

(i) The average base price for Center of Excellence hospitals, including capital expenses, is \$6,545. Disproportionate share payments are not included in this price.

(ii) The average base for distinct part rehabilitation units and long term care hospitals (LTCH), including capital expenses, is \$8,718. Disproportionate share payments are not included in this price.

(d) The relative weight for the assigned APR-DRG is multiplied by the average base price per case to compute the APR-DRG prospective payment rate for

that Medicaid patient discharge except where there is no weight assigned to a DRG. ~~Referred to as "exempt", the unweighted DRG will be paid at the statewide cost to charge ratio as defined in ARM 37.86.2904.~~

~~(2) For those Montana hospitals designated by the department after July 15, 2005 as having met the requirements for a specialty (level II) and subspecialty (level III) neonatal intensive care facility as provided in the Guidelines for Perinatal Care, Fifth Edition (2002), published by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, reimbursement for neonatal DRGs 385 through 389 will be actual allowable cost determined on a retrospective basis, with allowable costs determined according to ARM 37.86.2803. The guidelines are adopted and incorporated by reference and are available through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. In addition, such facilities:~~

~~(a) will be reimbursed on an interim basis during each facility's fiscal year. The interim rate will be a percentage of usual and customary charges, and the percentage will be the facility-specific cost to charge ratio, determined by the department in accordance with Medicare reimbursement principles.~~

~~(b) may split bill when total charges reach \$100,000. The first interim split bill must total at least \$100,000 in charges.~~

~~(c) will not receive any cost outlier payment with respect to such discharges or services.~~

~~(3) (2) The Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), and outlier thresholds are contained in the APR-DRG Table of Weights and Thresholds (effective October 1, 2007 2008) published by the department. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds (effective October 1, 2007 2008). Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2910 INPATIENT HOSPITAL REIMBURSEMENT, QUALIFIED RATE ADJUSTMENT PAYMENT (1) Subject to the availability of sufficient county and federal funding, restrictions imposed by federal law, and the approval of the state plan by the Centers for Medicare and Medicaid Services (CMS), the department will pay, in addition to the Medicaid payments provided for in ARM ~~37.86.2904~~, 37.86.2905, 37.86.2907, 37.86.2910, 37.86.2912, ~~37.86.2914~~, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, ~~and 37.86.2928~~, 37.86.2943, 37.86.2947, and [RULE I] a qualified rate adjustment payment to an eligible county owned, operated, or partially county funded rural hospital in Montana as provided in ARM 37.86.2810.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2912 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, CAPITAL-RELATED COSTS (1) The department will reimburse inpatient hospital service providers located in the state of Montana for capital-related costs that are allowable under Medicare cost reimbursement principles as set forth at 42 CFR 412.113(a), as amended through October 1, ~~2005~~ 2007. The department adopts and incorporates by reference 42 CFR 412.113(a) and (b), as amended through October 1, ~~2005~~ 2007, which set forth Medicare cost reimbursement principles. Copies of the cited regulation may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(2) Prior to settlement based on audited costs, the department will make interim payments for each facility's capital-related costs as follows:~~

~~(a) The department will identify the facility's total allowable Medicaid inpatient capital-related costs from the facility's most recent audited or desk reviewed cost report. These costs will be used as a base amount for interim payments. The base amount may be revised if the provider can demonstrate an increase in capital-related costs as a result of an approved certificate of need that is not reflected in the base amount.~~

~~(b) All border and out-of-state hospitals that are reimbursed under the DRG prospective payment system will be paid the statewide average capital cost per claim as a final capital-related cost payment. The statewide average capital cost per claim is \$336.~~

~~(c) The department will make interim capital add-on payments with each in-state DRG inpatient hospital claim paid.~~

(2) Capital expenses are included within the APR-DRG base payment and will not be paid separately to PPS facilities and will not be cost settled.

~~(d)~~ (3) The interim payment made to CAH and exempt facilities is based on the hospital specific cost to charge ratio and includes capital costs.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2916 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, COST OUTLIERS (1) In addition to the APR-DRG payment, providers reimbursed under the APR-DRG prospective payment system may receive payment as provided in this rule for cost outliers for APR-DRGs.

(2) To receive payment for a cost outlier, the combined cost of the medically necessary days and services of the inpatient hospital stay, as determined by the department, must exceed the cost outlier threshold established by the department for the APR-DRG.

(3) The department determines the outlier reimbursement for cost outliers for all hospitals and distinct part units, entitled to receive cost outlier reimbursement, as follows:

(a) computing an estimated cost for the inpatient hospital stay by multiplying the allowed charges for the stay by the statewide ~~Medicaid~~ average PPS cost to charge ratio set forth in ARM ~~37.86.2904~~ 37.86.2905;

(b) and (c) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2918 INPATIENT HOSPITAL, READMISSIONS, PARTIAL ELIGIBILITY, OUTPATIENT BUNDLING, AND TRANSFERS (1) This rule states the billing requirements applicable to inpatient hospital readmissions, partial eligibility, outpatient bundling, and transfers. Sections (2), and (3), and (4) apply to DRG hospitals only PPS facilities unless otherwise noted. Sections (4) and (5) apply to DRG, out-of-state and border hospitals. Subsection (2)(d) applies to PPS facilities.

(2) All readmissions occurring within 30 days will be subject to review to determine whether additional payment as a new APR-DRG or as an outlier is warranted. As a result of the readmission review, the following payment changes will be made:

(a) If it is determined that complications have arisen because of premature discharge and/or other treatment errors, then the APR-DRG payment for the first admission must be altered by combining the two admissions into one for payment purposes; or

(b) remains the same.

(c) A patient readmission occurring in an inpatient rehabilitation hospital within 72 hours or a rehabilitation distinct part unit three days prior to the date of discharge must be combined into one admission for payment purposes, with the exception of discharge to an acute care hospital for surgical APR-DRGs.

(d) All diagnostic services hospital inpatient and outpatient services except dialysis services are included in the APR-DRG payment. Diagnostic services Services that are performed at a second hospital because the services are not available at the first hospital (e.g., a CT scan) are included in the first hospital's DRG payment. This includes transportation to the second hospital and back to the first hospital. Arrangement for payment to the transportation provider and the second hospital where the services were actually performed must be between the first and second hospital and the transportation provider.

(3) A transfer, for the purpose of this rule, is limited to those instances in which a patient is transferred for continuation of medical treatment between two hospitals or distinct part units, one of which is paid under the Montana Medicaid prospective payment system.

(a) A transferring hospital or distinct part unit reimbursed under the APR-DRG prospective payment system is paid for the services and items provided to the transferred recipient, the lesser of:

(i) a per diem rate of two times the average per diem amount for the first inpatient day plus one per diem payment for each subsequent day of inpatient care, The per diem payment is determined by dividing the sum of the APR-DRG payment for the case as computed in ARM 37.86.2907 and the appropriate outlier, capital, medical education, and DSH add-ons as computed in ARM 37.86.2912, 37.86.2914, 37.86.2916, and 37.86.2925, if any, by the statewide by the national average length of stay for the DRG. Outlier and add-on payments are then added if applicable after the transfer payment is computed; or

(ii) the sum of the APR-DRG payment for the case as computed in ARM 37.86.2907 and the appropriate outlier, ~~capital, medical education, and DSH and add-ons, if applicable~~, as computed in ARM ~~37.86.2912, 37.86.2914, 37.86.2916, and 37.86.2925, if any.~~

(b) A discharging hospital or distinct part unit (i.e., the hospital to which the recipient is transferred) reimbursed under ARM 37.86.2907 is paid the full APR-DRG payment plus any appropriate outliers, ~~capital, medical education, and DSH and add-ons, if any applicable.~~

(4) Outpatient hospital services, including provider based entity hospital outpatient services, ~~other than diagnostic services~~ emergency room services, and diagnostics services (including clinical diagnostic laboratory tests) that are provided ~~within the 24 hours preceding the day of or the day before the inpatient hospital admission~~ are deemed to be inpatient services and must be bundled into the inpatient claim.

~~(5) Diagnostic services (including clinical diagnostic laboratory tests) provided in any outpatient hospital setting including provider based entities within 72 hours prior to the date of admission are deemed to be inpatient services and must be bundled into the inpatient claim.~~

(5) A hospital or distinct part unit reimbursed under the APR-DRG prospective payment system is paid for the services and items provided to a recipient who is eligible for only part of the inpatient stay, the lesser of:

(a) a rate of one per diem payment for each eligible day of inpatient care. The per diem payment is determined by dividing the sum of the APR-DRG payment for the case as computed in ARM 37.86.2907 plus outlier if applicable, by the national average length of stay for the DRG. Add-on payments are then added if applicable; or

(b) the sum of the APR-DRG payment for the case as computed in ARM 37.86.2907 and the appropriate outlier and add-ons, if applicable, as computed in ARM 37.86.2916 and 37.86.2925.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2920 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, HOSPITAL RESIDENTS (1) Payment for hospital residents will be made as follows:

(a) ~~upon prior to~~ obtaining hospital residency status, claims for that recipient may be billed on an interim basis as provided in ARM 37.86.2905(4);

(b) final payment for the first 180 days of inpatient care will be the APR-DRG payment for the case as computed in ARM 37.86.2907 ~~and plus~~ any appropriate outlier ~~and add-on~~ payment ~~as computed in ARM 37.86.2916; and~~

(c) final payment for all patient care subsequent to 180 days will be reimbursed ~~at a rate computed by multiplying the statewide average cost to charge ratio by the usual and customary billed charges. 80% of the hospital specific estimated cost to charge ratio as computed by the department without cost settlement; and~~

(d) the hospital must obtain authorization to bill prior to submission of the first claim and must provide medical records upon request of the department or its designated review organization for continued stay reviews.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2924 INPATIENT HOSPITAL PROSPECTIVE COST BASED REIMBURSEMENT, CERTIFIED REGISTERED NURSE ANESTHETISTS (1) If the Secretary of Health and Human Services has granted the facility authorization for continuation of cost pass-through under section 9320 of the Omnibus Budget Reconciliation Act of 1986, as amended by section 608(c) of the Family Support Act of 1988 (Public Law 100-485), the department shall reimburse cost based inpatient hospital service providers for certified registered nurse anesthetist costs on a reasonable cost basis as provided in ARM ~~37.86.2801(2)~~ 37.86.2803.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2925 INPATIENT HOSPITAL REIMBURSEMENT, DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS (1) Routine disproportionate share hospitals (RDSH) shall receive an additional payment amount equal to the product of the hospital's prospective base rate times the adjustment percentage of:

(a) remains the same.

(b) ~~5%~~ 10% for urban hospitals.

(2) through (4) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2943 BORDER HOSPITAL REIMBURSEMENT (1) Inpatient hospital services provided in border hospitals will be reimbursed under the APR-DRG prospective payment system described in ARM 37.86.2905, 37.86.2907, 37.86.2912, ~~37.86.2914~~, 37.86.2916, 37.86.2918, and 37.86.2920, ~~and 37.86.2924~~.

~~(2) In addition to the prospective rate, border hospitals will be reimbursed for cost outliers as set forth in ARM 37.86.2916, and for capital costs as set forth in ARM 37.86.2912, but shall not be reimbursed in addition to the DRG payment under ARM 37.86.2810, 37.86.2914, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2931, 37.86.2932, 37.86.2935, and 37.86.2940.~~

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2947 OUT-OF-STATE HOSPITAL AND CENTERS OF EXCELLENCE REIMBURSEMENT (1) Inpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana will be reimbursed

50% of usual and customary billed charges for medically necessary services as provided in ARM 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, and 37.86.2920.

(2) Medicaid reimbursement for inpatient services shall not be made to hospitals located more than 100 miles outside the borders of Montana or Centers of Excellence unless the provider has obtained authorization from the department or its designated review organization prior to providing services. All inpatient services provided in an emergent situation must be authorized within 48 hours as described in ARM 37.86.2801(4)(d).

(a) Should prior authorization not be obtained, reimbursement will be 50% of the amount as calculated in ARM 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, and 37.86.2920 for services determined to be medically necessary.

(3) A Center of Excellence is an out-of-state or border acute care medical hospital as defined in ARM 37.86.2901 that:

(a) provides through its main hospital or on-site affiliate all specialty and subspecialty medical care; and

(i) has a medical school affiliation; or

(b) provides a specialized medical service not available elsewhere; and

(i) has a medical school affiliation; and

(ii) conducts bench to bedside research.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

5. ARM 37.86.2914 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, MEDICAL EDUCATION COSTS, as proposed to be repealed is on page 37-20457 of the Administrative Rules of Montana.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

6. The Department of Public Health and Human Services (the department) is proposing these rules to amend the Medicaid reimbursement methodologies for inpatient hospital services. The proposed new reimbursement methodology for most hospitals would be based on All Patient Refined Diagnosis Related Groups (APR-DRGs). Only exempt hospitals, critical access hospitals, and preferred out-of-state hospitals would be reimbursed based on a hospital specific Medicaid inpatient cost to charge ratio. In addition, the department proposes to phase out the "Preferred Out-of-State" hospital services reimbursement category and the creation of a "Centers of Excellence" category. These rules are necessary to implement the new reimbursement methodologies.

In fiscal year 2006, the department paid \$77.2 million for 17,324 inpatient hospital stays. Of this amount 14% went to Critical Access Hospitals, 20% to out-of-state hospitals, and the balance was made up of payments to in-state Prospective Payment (PPS) hospitals, border hospitals, and hospital specialty units. Significant categories of payment included obstetrics, neonates, pediatrics, and mental health

services. This pattern is consistent with Medicaid programs nationwide.

Montana Medicaid's current payment method dates from 1993. Payment is made on a per-stay basis using the same Diagnostic Related Groups (DRG) case mix adjustment that Centers for Medicare and Medicaid Services (CMS) used for the Medicare program (CMS-DRG). Since the Medicare and Medicaid patient populations differ significantly, the department uses customized payment methodologies for specific out-of-state hospitals, neonate intensive care units, and distinct-part rehabilitation units. It applies an age adjustment methodology to all mental health services. The department follows CMS reimbursement policy for Critical Access Hospitals (CAH) and exempt hospitals. As a result of these customizations only 38% was made by DRG. The other 62% of payments were made based on hospital-specific costs or charges, thereby providing no incentive for hospitals to reduce their costs or control their charges.

In October of 2007, CMS changed from a CMS-DRG grouper to what they call an MS-DRG grouper. The MS-DRG grouper was customized for the Medicare population. In addition, CMS made several specific statements that the MS-DRGs were intended for Medicare use only. For example:

"We advise those non-Medicare systems that need a more up-to-date system to choose from other systems that are currently in use in this country or to develop their own modifications... Our mission in maintaining the MS-DRGs is to service the Medicare population." Federal Register, Volume 69, Number 96, page 28223.

Because CMS has been indicating for several years that its DRG payment method would no longer be maintained for other users (specifically those DRGs for births and newborns), the department contracted with Affiliated Computer Services (ACS, Inc.), a business process and information technology services company and the department's fiscal intermediary to conduct a feasibility study in December 2006 comparing the All Patient Refined Diagnosis Related Groups (APR-DRGs) to several other payment methodologies to determine the method best suited to the needs of the department. Based on tests conducted by ACS, Inc. applied to a full year of Montana Medicaid inpatient data, the department decided that APR-DRGs would be best suited for our needs. The reasons for this decision include:

1. There are 112 APR-DRGs for newborn care compared to 7 for CMS-DRGs.
2. APR-DRGs do a better job than the other DRG methods in capturing differences in hospital resource use among different kinds of Medicaid patients.
3. APR-DRGs also do a better job in capturing the complications and comorbidities of Medicaid patients.
4. APR-DRGs while simplifying Medicaid's payment methodology also allow the department greater flexibility.

The department formed a workgroup that met monthly with the Montana Hospital Association (MHA) and any affected parties who wish to participate.

As a result of these meetings the department made the following major decisions:

- a. The department will apply the APR-DRG payment methodology to in-state PPS hospitals, out-of-state-hospitals, newly designated Centers of Excellence hospitals, border hospitals, distinct part rehabilitation units, including Long Term Care Hospitals (LTCH), and distinct part psychiatric units.
- b. The only hospitals exempt from APR-DRG will be CAH, Indian Health Services hospitals, Montana State Hospital, and exempt hospitals.
- c. National lengths of stay will be utilized.
- d. Relative weights of APR-DRGs will be recentered so that the average Montana Medicaid stay has a base weight of 1.00 prior to applying policy or age adjusters.
- e. Adjustments will be applied to specific weights to reflect department policy (i.e., increase reimbursement for newborn stays, neonate stays, and children's mental health stays).
- f. There will be one overall base price and an enhanced base price for distinct part rehabilitation units (including LTCH) and for hospitals designated as Centers of Excellence.
- g. Centers of Excellence hospitals will be a new designation for hospitals that provide services at a higher level of comprehensive care and are essential to Montana Medicaid to provide access to care otherwise not available (i.e., heart transplants). The department will determine which hospitals meet this designation. All stays in these hospitals will require prior authorization.
- h. Capital expenses will now be included in the base DRG payment. The only add-on expense to APR-DRG will be for services rendered by Disproportionate Share Hospital (DSH) providers. CMS has determined under the Waxman bill that state Medicaid programs may not reimburse hospitals for medical education and the department will implement that determination.
- i. Any hospital may now interim bill for inpatient stays of at least 30 days. The hospital may bill every 31 days and will receive a flat per diem rate. At discharge, the hospital may adjust the interim bills and submit one bill for payment under APR-DRG.
- j. Based on recommendations from the MHA workgroup the department is moving away from CMS bundling rules and instead will simplify the rule by requiring that any service on the day before or the day of the inpatient stay be bundled, except dialysis services. This will not apply to cost based hospitals.
- k. All out-of-state hospital and Centers of Excellence stays will require

prior authorization. Those hospitals that do not obtain prior authorization but provide emergent or medically necessary services will be reimbursed at 50% of APR-DRG.

ARM 37.86.2801

The proposed changes reference the ARM sections that apply to the new payment methodology. Changes are also being proposed for the prior authorization requirements.

ARM 37.86.2803

The department is proposing changes to update CMS references and references to the ARM sections that apply to the new payment methodology.

ARM 37.86.2901

The changes include updates to old definitions and the addition of new definitions.

ARM 37.86.2902

The changes proposed for this rule are intended to clarify that alcohol and drug treatment services are for detoxification. In addition to the designated review organization the department would also be able to authorize or deny more than four days of services.

ARM 37.86.2904

The department is proposing to adjust the requirements of the physician notice to reflect the fact that APR-DRGs use all diagnosis and procedures in its grouping methodology. This rule would also be amended to specify when a hospital may submit a claim.

ARM 37.86.2905

The proposed changes delineate the general reimbursement differences between prospective payment services (PPS) and cost based hospitals. They would eliminate references to "preferred" hospitals, a designation which would end September 30, 2008 with the advent of Centers of Excellence hospitals. Language would be added to allow interim billing and statewide cost to charge ratios that are now separated by type of hospital.

ARM 37.86.2907

The proposed changes would define how relative weights are calculated for APR-DRG. They would update the new base rate payments and eliminate cost based

payments to neonate units.

ARM 37.86.2912

This rule would be changed so that capital-related expenses would be included in the base payment.

ARM 37.86.2914

The department proposes repeal of this rule to conform to the CMS decision that, based on the Waxman bill, state Medicaid agencies are not allowed to reimburse hospitals for medical education costs.

ARM 37.86.2910 and 37.86.2916

The proposed amendments would make changes to the language of these rules so that the DRGs now used would be APR-DRGs.

ARM 37.86.2918

The department proposes to add language to allow for partial eligibility reimbursement. The amended rule would reflect the change to an outpatient bundling reimbursement methodology. There are also changes proposed that would specify which types of hospitals or distinct part units the reimbursement methodologies would apply to.

ARM 37.86.2920

The department proposes this rule be changed to allow for interim billing of hospital resident claims and to change final payment methodologies to the proposed methods.

ARM 37.86.2924

This rule would also be changed to show that Certified Registered Nurse Anesthetist cost based reimbursement is limited to cost based hospitals.

ARM 37.86.2925

The only change to this rule would be to increase the DSH reimbursement factor for urban hospitals to 10%.

ARM 37.86.2943 and 37.86.2947

These rules would be changed to reflect the new reimbursement methodology for border and out-of-state hospitals. ARM 37.86.2947 would also be amended to add the requirement that all out-of-state hospitals must obtain authorization prior to

providing services. The requirements for a Center of Excellence hospital would be added to ARM 37.86.2947.

NEW RULE I

The proposed rule would be an independent section to summarize reimbursement methodologies for cost based hospitals which would be limited to CAH and exempt hospitals. Preferred out-of-state hospital reimbursement would terminate for dates of admission after September 30, 2008.

FISCAL IMPACT

The rule changes proposed in this notice would be neutral to the inpatient appropriation. Even though they are appropriation neutral, some hospitals will see increased revenues as a result of these proposals and some will see reduced revenues. The department anticipates that Medicaid payments to in-state hospitals overall will increase by 10%. Overall payments to border hospitals will increase by 12%. Overall payments to out-of-state hospitals will decrease by 19%. Montana Medicaid payments to Centers of Excellence will decrease 16% and those to distinct part rehabilitation units will increase by 6%.

PERSONS AFFECTED

The proposed rule changes would affect all inpatient hospital stays except at CAHs and exempt hospitals. There are 15 in-state hospitals, six specialty hospital inpatient units, two LTCHs, 15 border hospitals, ten newly designated Centers of Excellence hospitals, and 42 out-of-state hospitals expected to be affected by this rule.

7. The department intends for the proposed adoption, amendment, and repeal of rules to be effective October 1, 2008.

8. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on July 24, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text

will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State June 16, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of) NOTICE OF PUBLIC
ARM 42.20.620, 42.20.625, and 42.20.680) HEARING ON PROPOSED
relating to real property and agricultural land) AMENDMENT

TO: All Concerned Persons

1. On July 18, 2008 at 9:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., July 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.20.620 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING LESS THAN 20 ACRES (1) through (7) remain the same.

(8) If the land is used primarily to raise and market livestock, the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics ~~currently support 30 or more animal unit (AU) months of grazing carrying capacity,~~ with cattle as the base.

(a) Beef cows are owned to produce calves, usually one calf per year.

(b) The calf is the annual product produced from the grazing land via the beef cow.

(c) Calf prices have averaged approximately \$1.00 per pound. Weaning weights for calves are typically 500 pounds. The average revenue produced by one cow/calf pair is \$500. Three sold calves from three cow/calf pairs would generate \$1,500 in income.

(d) Based on a 10 month grazing season (typical), 30 AUM are required to generate \$1,500 (3 cow/calf pair X 10 months = 30 AUM).

(e) For the reappraisal cycle ending December 31, 2008, the Montana State

University-Bozeman's Department of Agricultural Economics and Economics determined the minimum number of animal unit months of carrying capacity to be 30 animal unit months. For subsequent reappraisal cycles, the minimum number of animal unit months of carrying capacity needed to equate to \$1,500 in annual gross income for each cycle will be determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics for the base year for each cycle. The base year for each cycle will be established by administrative rule.

(f) One animal unit (AU) is assumed to consume 915 pounds of dry herbage production per month from native grazing land. The carrying capacity may be based on information obtained from the United States Natural Resource and Conservation Service (NRCS) soil survey. If a soil survey does not exist, the carrying capacity may be based on an estimate by the NRCS, the local county agricultural extension agent, or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock and other causes, the per-acre per-year dry herbage production consumed is 25% of the NRCS estimate for an unfavorable precipitation year on nonirrigated grazing land. On nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50% (1.5). The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for nonirrigated native grazing land, which does not exhibit significant overgrazing or weed infestation:

~~(a)~~ (i) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;

~~(b)~~ (ii) per-acre per-year dry herbage production consumed by livestock divided by 915 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and

~~(c)~~ (iii) livestock acres grazed multiplied by AUMs/acre equals the total AUMs.

(9) and (10) remain the same.

(11) If the consumption was from livestock, or the livestock was consumed by humans, the land must ~~support 30 or more animal unit months of grazing carrying capacity~~ be capable of sustaining the minimum number of animal unit months of carrying capacity described in (8), with cattle as the base.

(12) Acceptable proof of production shall include:

(a) a statement from the United States Farm Services Agency (FSA) indicating estimated yield if crops are the basis for income;

(b) if livestock is the basis for income, information the taxpayer or their agent obtains from the NRCS web site, or a statement from the NRCS or the county agricultural extension agent indicating that the parcel(s) is/are capable of producing in its current state ~~a the minimum of 30 AU months of grazing capacity~~ number of animal unit months of carrying capacity described in (8); and

(c) a confirmation by the department.

(13) and (14) remain the same.

(15) Land qualifying in ~~(14)~~ (13) and ~~(15)~~ (14) will be graded and assessed as continuously cropped farm land, grade 1A4.

(16) remains the same.

(17) A parcel or parcels of land less than 20 acres that meet all of the following criteria will remain classified and valued as agricultural land or as nonqualified agricultural land as defined in 15-6-133 and 15-7-202, MCA. The criteria that must be met are:

(a) the parcels are contiguous or noncontiguous parcels of land under one ownership;

(b) the parcel or parcels previous to a reduction in acreage as defined in (17)(c) totaled 20 acres or more in size and qualified as agricultural land or as nonqualified agricultural land under 15-6-133 and 15-7-202, MCA;

(c) a portion of the parcel or parcels was taken by or given without compensation, or sold for a public use as described in 70-30-102, MCA, to the federal government, the state, a county, or a municipality, and that action reduced the number of acres in the parcel or parcels to less than 20 acres; and

(d) since the reduction in acreage occurred, the parcel or parcels have not been further divided or devoted to a residential, commercial, or industrial use, and there are no covenants or other restrictions that effectively prohibit agricultural use.

(18) A parcel or parcels of land that meet the criteria in (17)(a) through (17)(d) are eligible for the classification determination identified in (17) regardless of when the acreage reduction occurred. However, taxpayers must notify the department of their eligibility in writing by the first Monday in June or within 30 days after receiving an assessment notice from the Department of Revenue, whichever is later.

(19) No refunds of taxes resulting from a reclassification of parcels under this part will be allowed for any tax year prior to the tax year in which the taxpayer notifies the department of their eligibility in (18).

(17) (20) For contiguous and noncontiguous parcels of land under one ownership as defined in ARM 42.20.601 totaling less than 20 acres in size, any acreage in excess of that stated in the forest land classification in ARM 42.20.705 is classified as agricultural provided the acreage is actively devoted to qualifying agricultural use.

AUTH: 15-1-201, MCA

IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing the amended language in section (15) to correct the reference to the proper sections stated in the text. The department is also proposing the amended language added in 42.20.620(17) to comply with the provisions of SB 316 and the intent of the bill as supported in an August 24, 2007 letter to the bill's sponsor, Senator Jim Elliott, from Gregory J. Petesch, Director of Legal Services, Legislative Services Division. The bill provides that certain land parcels now totaling less than 20 acres in size will continue to be classified and valued as agricultural land or as nonqualified agricultural land as defined in 15-6-133 and 15-7-202, MCA. In order for land parcels to qualify under the provisions of this bill, the land parcels must have (a) qualified as agricultural land or as nonqualified agricultural land in a prior year, (b) were over 20 acres in size, but the acreage was reduced to less than 20 acres for a public use described in 70-30-

102, MCA, and (c) since that reduction in acres, have not been further divided or devoted to a residential, commercial, or industrial use, and there are no covenants or other restrictions that effectively prohibit agricultural use. Section (17) is renumbered as section (18) to accommodate the new language added as section (17), and the word "qualifying" is added before the words "agricultural use" to clarify when acreage meets the criteria to be classified as agricultural land.

Further, the department is proposing to amend ARM 42.20.620 because the 60th Legislature passed Senate Bill 549 which clarifies the criteria the department staff must use to determine eligibility for valuation of land as agricultural. The amendments to the rule clarify when grazing lands are considered eligible as agricultural land.

42.20.625 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING 20 TO 160 ACRES IN SIZE (1) through (10) remain the same.

(11) If the land is used primarily to raise and market livestock, the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the Montana State University-Bozeman's, Department of Agricultural Economics and Economics currently support 30 or more animal unit (AU) months of grazing carrying capacity, with cattle as the base.

(a) Beef cows are owned to produce calves, usually one calf per year.

(b) The calf is the annual product produced from the grazing land via the beef cow.

(c) Calf prices have averaged approximately \$1.00 per pound. Weaning weights for calves are typically 500 pounds. The average revenue produced by one cow/calf pair is \$500. Three sold calves from three cow/calf pairs would generate \$1,500 in income.

(d) Based on a 10 month grazing season (typical), 30 AUM are required to generate \$1,500 (3 cow/calf pair X 10 months = 30 AUM).

(e) For the reappraisal cycle ending December 31, 2008, the Montana State University-Bozeman's Department of Agricultural Economics and Economics determined the minimum number of animal unit months of carrying capacity to be 30 animal unit months. For subsequent reappraisal cycles, the minimum number of animal unit months of carrying capacity needed to equate to \$1,500 in annual gross income for each cycle will be determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics for the base year for each cycle. The base year for each cycle will be established by administrative rule.

(f) One animal unit (AU) is assumed to consume 915 pounds of dry herbage production per month from native grazing land. The carrying capacity may be based on the information obtained from the NRCS soil survey. If a soil survey does not exist, the carrying capacity may be based on an estimate by the NRCS, the county agricultural extension agent, or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock and other causes, the per-acre per-year dry herbage production consumed is 25% of the NRCS estimate for an unfavorable precipitation year on

nonirrigated grazing land. On nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50% (1.5). The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for nonirrigated native grazing land, which does not exhibit significant overgrazing or weed infestation:

(a) (i) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;

(b) (ii) per-acre per-year dry herbage production consumed by livestock divided by 915 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and

(c) (iii) livestock acres grazed multiplied by AUMs/acre equals the total AUMs.

(12) and (13) remain the same.

(14) If the consumption was from livestock, the land must ~~support 30 or more AU months of grazing carrying capacity~~ be capable of sustaining the minimum number of animal unit months of carrying capacity described in (11), with cattle as the base.

(15) Acceptable proof of production shall include:

(a) a statement from the United States Farm Services Agency (FSA) indicating estimated yield if crops are the basis for production; or

(b) if livestock is the basis for income, information the taxpayer or their agent obtains from the NRCS web site, or a statement from the NRCS or the county agricultural extension agent indicating that the parcel(s) is/are capable of producing in its current state, a the minimum of 30 AU months of grazing capacity number of animal unit months of carrying capacity described in (11) if livestock is the basis for production; and

(c) a confirmation by the department.

(16) through (21) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.625 for the same reasons described in the reasonable necessity to ARM 42.20.620.

42.20.680 GRAZING LAND (1) The following is the schedule for the grazing land productive values for each year of the reappraisal cycle beginning January 1, 2003:

(a) remains the same.

(b) The department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productive capacity values for grazing land for the reappraisal cycle beginning January 1, 2003.

GRAZING LAND

	<u>Acres Per</u> <u>Animal</u>	<u>2003</u> <u>Assessed</u>	<u>2004</u> <u>Assessed</u>	<u>2005</u> <u>Assessed</u>
<u>GRADE</u>	<u>Unit Month</u>	<u>Value/AC</u>	<u>Value/AC</u>	<u>Value/AC</u>

The table for 2003 through 2005 remains the same.

	<u>Acres Per</u> <u>Animal</u>	<u>2006</u> <u>Assessed</u>	<u>2007</u> <u>Assessed</u>	<u>2008</u> <u>Assessed</u>
<u>GRADE</u>	<u>Unit Month</u>	<u>Value/AC</u>	<u>Value/AC</u>	<u>Value/AC</u>

The table for 2006 through 2008 remains the same.

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.680 to add the word "month" to the second column in (1)(b) so it will read "acres per animal unit month", which is the correct representation for the information contained in this column. All other information contained in the table remains the same.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than July 25, 2008.

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

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of Senate Bill 549, Senator Robert Story, was notified on August 10, 2007 and June 2, 2008, by regular mail. Senator Jim Elliott, bill sponsor of Senate Bill 316 was notified on June 2, 2008.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State June 16, 2008

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to administration of)
Treasure State Endowment (TSEP))
grants awarded by the 2007)
Legislature)

TO: All Concerned Persons

1. On May 8, 2008, the Department of Commerce published MAR Notice No. 8-94-68 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 872 of the 2008 Montana Administrative Register, Issue Number 9.
2. The department has adopted New Rule I (8.94.3814) as proposed.
3. No comments or testimony were received.

/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 June 16, 2008.

BEFORE THE HARD-ROCK MINING IMPACT BOARD
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) CORRECTED NOTICE OF
ARM 8.104.101, 8.104.201,) AMENDMENT
8.104.202, 8.104.211, 8.104.214, and)
8.104.218 pertaining to the)
organization and procedural rules of)
the Hard-Rock Mining Impact Board)

TO: All Concerned Persons

1. On January 31, 2008, the Department of Commerce published MAR Notice No. 8-104-66 pertaining to the proposed amendment of the above-stated rules at page 81 of the 2008 Montana Administrative Register, Issue Number 2. On May 8, 2008, the Department of Commerce published the notice of amendment at page 945 of the 2008 Montana Administrative Register, Issue Number 9.

2. This corrected notice of amendment is being published to correct an error in ARM 8.104.218(1)(a)(i). The reference to Department of State Lands was changed in ARM 8.104.218(2) to Department of Environmental Quality to update the reference to the correct department, but the reference was not changed where it appeared in (1). The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

8.104.218 WAIVER OF IMPACT PLAN REQUIREMENT (1) The board will grant a waiver or a conditional waiver of the impact plan requirement to a large-scale mineral development permittee, as authorized by 90-6-307(14), MCA, if:

(a) The permittee and the governing bodies of all potentially affected local government units, as identified by the board and the affected county or counties, notify the board in writing that:

(i) they do not anticipate a need to increase local government services and facilities as a result of the increase in employment identified in the permittee's annual report to the Department of ~~State Lands~~ Environmental Quality; or

(ii) through (2) remain as amended.

/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 June 16, 2008.

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

In the matter of the adoption of New)
Rules I through VI regarding angling) NOTICE OF ADOPTION
restrictions and fishing closures)

TO: All Concerned Persons

1. On March 27, 2008, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-341 on the proposed adoption of the above-stated rules at page 516 of the 2008 Montana Administrative Register, Issue No. 6.

2. The commission has adopted New Rule II (ARM 12.5.502), New Rule III (ARM 12.5.503), and New Rule VI (ARM 12.5.509) as proposed.

3. The commission has adopted New Rule I (ARM 12.5.501), New Rule IV (ARM 12.5.507), and New Rule V (ARM 12.5.508) as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

NEW RULE I (12.5.501) ANGLING RESTRICTIONS AND FISHING
CLOSURE DEFINITIONS (1) remains as proposed.

(2) ~~"95% exceedence level" is the daily average stream flow that is equaled or exceeded in 95% of the past years of record on that date. Flows that are of 95% exceedence or higher represent an extreme low flow condition.~~ "5th percentile of daily mean values for this day" is the daily stream flow value that, based on a scale of one hundred, indicates the percent of a distribution equal to or below it. For example, a display of daily stream flow conditions at the 5th percentile is equal to or greater than only 5 percent of the discharge values recorded on this day of the year during all years that measurements have been made. Flows that are 5th percentile or lower represent an extreme low flow condition.

NEW RULE IV (12.5.507) ANGLING RESTRICTION AND FISHING
CLOSURE CRITERIA (1) and (1)(a) remain as proposed.

(b) one or more of the following environmental conditions has been determined by the department to exist:

(i) on streams managed for salmonids daily maximum water temperatures reach or exceed 73 degrees Fahrenheit at any time during the day for three consecutive days;

(ii) stream or river flows fall to or below the ~~95% daily exceedence~~ 5th percentile of daily mean values for this day flow level based upon hydrologic records for that water body;

(iii) in bull trout streams designated by the department, a daily maximum water temperature equal to or exceeding 60 degrees Fahrenheit at any time during the day for three consecutive days; or

(iv) water conditions meet the criteria for angling restrictions as stated in a Drought Management Plan.

(2) A fishing closure may be implemented when:

(a) conditions of (1) develop;

(b) dissolved oxygen is equal to or less than 4 ppm when measured in the early morning before sunrise;

(c) water conditions meet the criteria for fishing closures as stated in a Drought Management Plan; or

(d) other biological or environmental conditions such as, but not limited to, water body pollution, disease, and shifts in angling pressure exist that the department determines have the potential to adversely affect the fishery.

NEW RULE V (12.5.508) REOPENING WATERS (1) remains as proposed.

(2) The department may reopen streams managed for salmonids when the department determines in its discretion that daily maximum water temperature does not exceed 70 degrees Fahrenheit for three consecutive days;

~~(a) daily maximum water temperature does not exceed 70 degrees Fahrenheit for three consecutive days; and~~

~~(b) eight to fourteen day climate forecast indicates improved and cooler climatic conditions.~~

(3) Streams designated by the department to have bull trout shall remain closed until the following conditions occur:

(a) daily maximum water temperature equals or does not exceed 60 degrees Fahrenheit for three consecutive days;

~~(b) eight to fourteen day climate forecast indicates improved and cooler climatic conditions; and~~

~~(c)~~(b) when flow regimes provide adequate security habitat.

4. Two hearings were conducted and comments were received via letter and e-mail. Eleven written responses were received and only two people testified at the hearings. Those providing oral comment also provided corresponding written comment. Nine respondents spoke in favor of the rule package but had one or more suggestions related to a specific rule or rule subsection. One respondent spoke in general disfavor of the rule package. Another respondent provided both positive and negative responses with more emphasis on concerns of amendments as they related to their geographic area of interest. The following comments were received and appear with the commission's responses:

Comment 1: One comment recommended that New Rule I(2) express and define low flows in terms of United States Geologic Survey (USGS) 20th percentile rather than 95% exceedence. The percentile flow data is easier for the public to find.

Response 1: The recommendation for the use of percentile values rather than exceedance values is an excellent recommendation. The accessibility of the USGS that expresses stream flow statistics in terms of percentile flows aids to the transparency of the angling rules and closure process. Percentile flows and exceedance flows are both common hydrologic values to statistically compare period

of record discharges. A 95% exceedance (a stream flow that is met or exceeded 95% of the time) is equivalent to a 5th percentile daily mean for that day based upon the period of record. A percentile is a value on a scale of one hundred that indicates the percent of a distribution that is equal to or below it. For example a daily stream flow discharge of 5% is equal to or greater than only 5 percent of the discharge values recorded on that day of the year during all years that measurements have been made. The USGS considers any stream flow percentile of 25 percent or lower a below normal flow. Percentile flows are available for long term gaging sites and is available via their web site, <http://waterdata.usgs.gov/mt/nwis/sw> . (See also response #7.)

Comment 2: The commission received comments from three entities that oppose the local commissioner approval criterion implied in New Rule II(1) because the social and political conditions would influence decision-making more than environmental conditions. All recommend that the Director of Fish, Wildlife and Parks (director) be delegated the authority to make the immediate time-sensitive decisions. Director's decisions can then be revisited at special or regular commission meetings.

Response 2: The commission declines the recommendation to delegate solely to the director. By statute the commission is given the authority to set and modify angling and hunting regulations. While operating under the Drought Fishing Closure Policy, prior to the development of these rules, the department would bring a quorum of the commission membership together to rule on the modified angling regulations. Assembling this quorum in a timely fashion proved difficult. The primary purpose of New Rules I through VI is to streamline the response time by delegating the authority to a smaller decision making group. By engaging the department and at least one commissioner the process is one that can more efficiently respond to rapidly changing conditions while still recognizing the statutory requirement to keep the commission involved.

Comment 3: The commission received one comment suggesting that the commission delete references to angling pressure found in New Rule IV(1)(a) because the agency had the resources to evaluate angling pressure during or immediately prior to implementing angling restrictions or closure. It was also stated that many people believe there is too much angling pressure every year.

Response 3: Angling pressure, under these rules, is not specifically measured prior to the establishment of a special angling regulation. The department, via user surveys, evaluates angling pressure every other year. This measure of past levels of angling pressure aids in identifying water bodies where it may be necessary to more actively monitor temperature, flows, or other environmental issues that are the criteria included in New Rule IV. Temperature and flow are the real time environmental values assessed to determine if additional angling regulations are needed.

Comment 4: The commission received one comment recommending that two or more criteria found in New Rule IV must be met before the angling restrictions or closures are implemented. For example, both the threshold for high temperature and low flow must be met before modifying any angling regulation.

Response 4: Water temperatures have been the significant stimulus for restricting angling on a water body according to the policy, which these rules mirror. It is possible for temperatures to rise above 73 degrees well before flow levels reach a level of 95% exceedance (5th percentile daily mean values) for a given date and this has the potential to be detrimental to the fishery. Evaluating temperature and flow as a required combined condition would not provide adequate protection for the fishery resource. The commission is adopting New Rule IV without making the threshold criteria additive when evaluating the need to restrict angling or closing a water body.

Comment 5: One respondent stated that the 73-degree threshold defined in New Rule IV(1)(a)(i) and used to determine the need to implement the angling closure rule probably happens every year on the Yellowstone River.

Response 5: The Yellowstone River is a long and dynamic river flowing through multiple microclimates. The proposed rules focus upon the salmonid fishery found in the upper river. The USGS Gage 06192500, Yellowstone River near Livingston, has an approved period of record for mean daily temperatures from November 11, 1999 to September 30, 2007. During this six-year period of record, which corresponds to a period of drought, there were only eleven days where the maximum daily temperature was greater than 73 degrees Fahrenheit. Ten of the eleven days occurred during the period of July 18, 2007 to August 3, 2007. Under the past policy, reflected in these rules, angling in the upper Yellowstone has been restricted once during this six year period. Therefore, based upon this scientific data and experience with fishery management the commission has used 73-degree threshold successfully in the past and will continue this practice.

Comment 6: The commission received one comment recommending that the temperature thresholds expressed in New Rule IV(1)(a)(i) should be higher for the Yellowstone River. It was recommended that the temperature threshold for closure be increased from 73 degrees Fahrenheit to 75 degrees Fahrenheit.

Response 6: Optimal temperatures for rainbow and brown trout range from 61-64 degrees Fahrenheit. At 66 degrees Fahrenheit, angler catch declines and fish begin movement to cold-water refuges. At 73 degrees excessive metabolic rates threaten growth and survival. At 77 degrees Fahrenheit, high mortality occurs. At 75 degrees Fahrenheit, threshold provides less of a buffer between environmental conditions causing stress and conditions that are likely affected increased mortality.

Comment 7: The commission received one comment supporting the criteria found in New Rule IV used to trigger an evaluation of and need to implement angling restrictions or closure. However, they also thought that the 95% exceedance flow is

a bit too low. The commission was urged to revisit this criterion and consider adoption of the 75% exceedance flow. As noted in comment 1 another review suggested that we use the 20th percentile or 80% exceedance.

Response 7: The 95% exceedance, or 5% percentile daily mean flow, is admittedly a very low stream flow condition. This value reflects the department's current policy and management actions over the past six years of drought. The commission will retain the flow level in New Rule IV.

Comment 8: The commission received one comment to amend New Rule IV(2)(a) and current policy as it applies to the Thompson River. It was recommended that Thompson River should be subject to the full closure when the lower Thompson River temperatures reach 70 degrees Fahrenheit for three consecutive days.

Response 8: A statewide standard for angling restrictions and closures for stream and rivers supporting salmonids lessens confusion with angling public and maintains transparency of process. In those watersheds where a detailed drought plan is desired the proposed rules allow for the adoption of a local Drought Management Plan that have more specific management criteria. Under these plans anglers, water users, and other community members develop a multifaceted drought plan that incorporates more detailed and basin specific management criteria and also actively aid the implementation of these plans.

Comment 9: In reference to Rule IV(2)(b) support for the closure criteria was expressed, although questions were raised relative to the dissolved oxygen standard. Commenter noted that the four parts per million (ppm) dissolved oxygen trigger is vague as to where and exactly when in the early morning dissolved oxygen will be measured. It was suggested that this subsection could be fleshed out a little.

Response 9: Dissolved oxygen levels are lowest during nonsunlight hours, typically in response to aquatic plant respiration cycles. In most instances dissolved oxygen conditions are at their lowest level at dawn. New Rule IV(2)(b) requires measurement of dissolved oxygen in the early morning before sunrise. Where dissolved oxygen levels are measured will depend upon both the water body and its existing instrumentation. Some USGS gage sites currently collect dissolved oxygen data. However, the collection of dissolved oxygen data is more likely to occur in specific river reaches where there is an active water quality-monitoring project or in reaches known to have water quality issues during low water. In those instances placement of instrumentation will be in response to standard operating procedures for data collection.

Comment 10: One respondent noted that the "other environmental conditions" criteria, New Rule IV(2)(d), are too vague and FWP might consider specifying what some of these criteria could be.

Response 10: In response to public comment asking that environmental conditions be clarified the wording, "such as but not limited too, water pollution, disease and

shifts in angling pressure" have been added to New Rule IV(2)(d) after the phrase, "other biological or environmental conditions".

Comment 11: Support was given to the re-opening provisions and criteria of New Rule V(2)(a) related to water temperatures not exceeding 70 degrees Fahrenheit. However one respondent suggested that the reference to weather forecast criteria be deleted (see comment 12) and that the time period for maintaining the 70 degrees Fahrenheit at any time of day be extended from 3 to 4 consecutive days.

Response 11: New Rule IV Reopening Waters (2)(a) lists as a criteria for lifting angling restrictions or closures a cooling of waters to 70 degrees Fahrenheit for three consecutive days. FWP examined USGS maximum daily temperature data for several salmonid streams in the Yellowstone, Missouri, and Clark Fork drainages. These data showed that after temperatures fell below 70 degrees Fahrenheit for three consecutive days stream temperatures could again rise to higher levels. The daily maximum temperatures did rise above 70 but no instance was found where the maximum daily stream temperature rose to or above the 73 degree threshold. Therefore, it appears unlikely that once stream temperatures fall to 70 degrees Fahrenheit for three consecutive days that environmental conditions would trigger additional closure or restriction.

Comment 12: After reviewing New Rule V(2)(b) and (3)(b) four respondents suggested the commission eliminate reference to and reliance on weather forecast data. One comment noted that if this forecast criterion is used, a reliable and standardized data source, such as National Oceanic and Atmospheric Administration, should be noted.

Response 12: Based upon public response and the agency's examination of temperature criteria on several salmonid rivers it appears that the existing maximum daily stream flow conditions, in the preponderance of situations, are likely to provide adequate evidence of improved conditions and lifting of angling restrictions or closure. The inclusion of weather forecast data criteria in this rule is unnecessary.

Comment 13: The commission received one comment suggesting the commission consider establishing a phone number that would provide up-to-date information on stream closures and reopening and add this notification method to New Rule VI(1).

Response 13: Angling restrictions and closures are announced through press releases, posted at fishing access sites, and posted on the department's website. During office hours, agency staff is available to assist cliental. Automated telephone technology has been replaced with cell phones many of which can access internet data sources including the department's web site. Based upon past agency utilization of this automated telephone technology the expense to both the provider and user are greater. Additionally adding this notice methodology is less efficient than the currently available internet access.

Comment 14: The commission received one comment stating that they were uncomfortable with automatic reopening on Sept. 15 found in New Rule V(1). They noted that data, water temperatures, and flow should guide reopening of waters to angling not fixed calendar dates.

Response 14: Evaluation of stream temperature conditions indicated that by September 15 the length of daylight hours has shortened considerably making it difficult for seasonal climatic conditions to raise water body temperatures above the temperature thresholds that would suggest the need for continued implementation of angling restriction or closure. Considering these fall climatic conditions these criteria allow streams to be opened to angling without doing special notices, postings, or press releases.

Comment 15: During a public informational meeting held in Livingston, Montana, prior to the notice period but after New Rules I through VI were sent, meeting participants expressed concern that the temperature threshold listed in New Rule IV(1)(i) would apply to cool and warm water fisheries of the Yellowstone and lower Missouri Rivers.

Response 15: While not expressed via written comment or during either of the two hearings, the commission and department wish to avoid any future confusion related to the applicability of this standard and criteria. The 73 degree Fahrenheit criteria are targeted at salmonids and the streams management for those species. Therefore, language has been added to New Rule IV(1)(i) to reflect this concern.

/s/ Steve Doherty
Steve Doherty, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State June 16, 2008.

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

In the matter of the adoption of New)
Rules I through III delegating)
commission authority to close public) NOTICE OF ADOPTION
waters to the department in the event)
of a fire emergency)

TO: All Concerned Persons

1. On March 27, 2008, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-342 on the proposed adoption of the above-stated rules at page 520 of the 2008 Montana Administrative Register, Issue No. 6.

2. The commission has adopted New Rules I through III as proposed but with following changes from the original proposal, matter to be stricken interlined, new matter underlined:

NEW RULE I (12.11.6601) DEPARTMENT'S AUTHORITY TO CLOSE PUBLIC WATERS DUE TO FIRE EMERGENCY (1) through (3) remain as proposed.

AUTH: ~~87-1-304~~ 87-1-303, MCA
IMP: 2-4-303, ~~87-1-304~~ 87-1-303, MCA

NEW RULE II (12.11.6603) FIRE CLOSURE CRITERIA (1) through (2) remain as proposed.

AUTH: ~~87-1-304~~ 87-1-303, MCA
IMP: 2-4-303, ~~87-1-304~~ 87-1-303, MCA

NEW RULE III (12.11.6605) NOTIFICATION OF FIRE CLOSURE AREAS (1) remains as proposed.

AUTH: ~~87-1-304~~ 87-1-303, MCA
IMP: 2-4-303, ~~87-1-304~~ 87-1-303, MCA

3. The commission received comments from four individuals regarding the proposed adoption.

Comment 1: The commission received two comments in support of the new rules for safety reasons and the prevention of delay to respond to fires.

Response 1: The commission appreciates the comments and support.

Comment 2: One person was concerned that the rules would affect private ponds and reservoirs.

Response 2: These rules would only apply to public waters and not private ponds or reservoirs.

Comment 3: One person stated that the areas that rely on water for business such as guides, raft companies, and tours should not have the additional burden of closed bodies of water.

Response 3: The commission acknowledges the burden placed on businesses and individuals when a body of water is closed for recreation and attempts to minimize that burden while responding to very serious safety concerns. The commission has historically closed a body of water to recreational use because of safety concerns and at the request of the incident commander of the specific fire. The commission has amended emergency closures to allow for more public use when possible and has repealed the emergency rules as soon as the safety concerns are eliminated.

Comment 4: One person stated concerns about agricultural interests not having access to the water.

Response 4: These rules will only apply to recreational use of waters and will not restrict any permitted agricultural use.

Comment 5: One person stated these rules were being established to limit public access rights.

Response 5: Montana Code Annotated 87-1-303 states the commission has the authority to adopt and enforce rules governing recreational uses of all public reservoirs, lakes, and streams that are legally accessible to the public and may be adopted in the interest of public health, safety, and welfare. New Rules I through III are delegating this statutory authority to the department assuring that the public safety will be provided for and firefighting efforts will be expedited when a fire emergency occurs. The department and commission are very protective of public access and will only affect public access when the balance of public safety outweighs the interest in public access.

/s/ M. Jeff Hagener

M. Jeff Hagener

Secretary

Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter

Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State June 16, 2008

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
36.25.301, 36.25.303, 36.25.304,)
36.25.310, 36.25.315, and 36.25.321)
regarding coal leasing rules)

NOTICE OF AMENDMENT

To: All Concerned Persons

1. On May 8, 2008, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-127 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 900 of the 2008 Montana Administrative Register, Issue No. 9.
2. The department has amended ARM 36.25.301, 36.25.303, 36.25.304, 36.25.310, 36.25.315, and 36.25.321 as proposed.
3. No comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State June 16, 2008.

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

In the matter of the adoption of New)
Rule I and the amendment of ARM)
37.40.302, 37.40.307, 37.40.311, and)
37.40.347 pertaining to Medicaid)
nursing facility reimbursement)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 24, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-438 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 783 of the 2008 Montana Administrative Register, issue number 8.

2. The department is not adopting New Rule I at this time.

3. The department is not amending ARM 37.40.302, 37.40.311, and 37.40.347 at this time.

4. The department has amended the following rule as proposed with the following changes from the original proposal. New matter to be added is underlined. Matter to be deleted is interlined.

37.40.307 NURSING FACILITY REIMBURSEMENT (1) through (3) remain as proposed.

~~(4) For unit of government facilities as defined in ARM 37.40.302, the provider's interim and final payment rates shall be as provided in [RULE I].~~

(5) (4) For ICF/MR services provided by nursing facilities located within the state of Montana, the Montana Medicaid program will pay a provider as provided in ARM 37.40.336.

~~(6) (5)~~ In addition to the per diem rate provided under (2) or the reimbursement allowed to an ICF/MR provider under ~~(5) (4)~~, the Montana Medicaid program will pay providers located within the state of Montana for separately billable items, in accordance with ARM 37.40.330.

(7) through (13) remain as proposed but are renumbered (6) through (12).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

5. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: This proposed rule set implements federal regulations which may become effective May 29, 2008, unless congressional action is taken to further delay

them. Because under the federal regulations, the reimbursement for providers who are units of government cannot exceed actual costs, the department proposed that an interim rate be established based on the provider's most recently filed annual cost report indexed to the midpoint of the rate year or the rate established under ARM 37.40.307, whichever is less.

We recommend that the "interim" rate effective July 1, 2008, be the price-based rate established under ARM 37.40.307, even though that rate may be higher than the rate established using the cost report indexed forward. Our rationale is that under the price-based system, the state has determined what the reasonable cost of a day of nursing home care is, consistent with economy and efficiency. Each facility should receive that rate and be allowed to have access to those funds to spend during the course of the rate year. If a unit of government facility fails to report costs on its cost report for the period involved that are equal to the rate that was paid, the state has the opportunity to recover the overpayment. If a facility receives an interim rate that is lower than the price based rate, they are at a disadvantage because they will have to spend money they are not receiving in order to receive the rate that all other facilities are receiving and that the state itself has determined is an appropriate, cost effective rate. We believe this is still in keeping with the federal requirement that units of government not be paid more than their costs since your proposed rule provides for a final rate determination after the rate year is complete and also provides for recovery of overpayments. This simply allows every facility to have equal access to the price-based rate and to have the opportunity to spend it on Medicaid services to residents during the rate year.

RESPONSE: The House and Senate have recently proposed an extended moratorium on the provider cost limit for units of government and the U.S. Department of Health and Human Services (HHS) is voluntarily delaying implementation until August 1, 2008. The department has decided to delay implementation of the unit of government provisions as outlined in the proposed notice of the rule at this time. The department will set payment rates for 2009 in accordance with the current rate methodology without the cost limits. If the final units of government rules are adopted by the Centers for Medicare and Medicaid Services (CMS), or if the moratorium is not extended beyond August 1, 2008 to comply with federal requirements, the department will renote the unit of government rule provisions at a later date. Therefore, the language related to the units of government rule that were in the proposed rule notice is not being adopted at this time.

COMMENT #2: It is unclear under this and other provisions dealing with unit of government facilities whether they will be eligible to participate in the rate adjustment for county funded rural nursing facilities. This proposal should be clarified to assure that unit of government facilities may receive funding from this program (1) up to the Medicare UPL, as long as that does not result in payments in excess of their actual costs, or (2) up to their costs (if higher than the UPL).

RESPONSE: The department intends that facilities will still be allowed to participate

in the at risk payment program to the extent federal law allows. Limits for units of government would be subject to cost and limits for nonunits of government will be subject to the Medicare upper payment limit (UPL). However, as noted in the response to comment #1, the unit of government provisions are not being adopted at this time.

COMMENT #3: The department's justification of the proposed rules states that the rule changes and limitations related to unit of government facilities will not be implemented if CMS is prevented by Congress from implementing the regulations. We recommend the content of the regulations themselves include appropriate language that states that Rule I, and the changes to ARM 37.40.302 (definitions), 37.40.307, 37.40.311, and 37.40.347 (as those changes relate to unit of government facilities) will not be implemented (or will be repealed) if Congress takes action to again delay the federal rules that are the basis of these regulatory changes. Such language must be clear that if Congress acts before July 1, 2008, the rules will not be implemented, and also, if Congress passes retroactive legislation after July 1, that the state will retroactively repeal the unit of government provisions of this proposal.

RESPONSE: The House and Senate have recently proposed an extended moratorium on this provider cost limit as units of government and HHS is voluntarily delaying implementation until August 1, 2008. The department has decided to delay implementation of the unit of government provisions at this time. The department will set payment rates for 2009 in accordance with the current rate methodology without the cost limits. If the final units of government UPL rules are adopted, or the moratorium is not extended beyond August 1, 2008 to comply with federal requirements, the department will renote the unit of government rule provisions at a later date. They are not being adopted at this time.

COMMENT #4: The department's justification of the proposed rules and the spreadsheets provided by the department anticipate 1,165,000 days of care paid by Medicaid for state fiscal year 2009. Actual days for the current year are estimated at 1,107,582. Days have been declining each year since the late 1990s. The Medicaid days used by the department reflect a 5% increase at a time of declining occupancy. We urge the department to reduce the patient days to the current year's estimate of 1,107,582. Since days are likely to continue to decline, this should not create an inappropriate risk on the part of the department. The result of taking this action will be to more properly allocate the legislative appropriation. This will help to achieve a rate that is closer to the actual cost of providing care to Medicaid recipients and will help to assure facilities are able to continue to provide high quality care.

RESPONSE: The department cannot adjust the rate sheet to reflect the 1,107,582 days for rate calculation purposes as these days are lower than the expected utilization for the rate period. These days are not complete and are not an accurate reflection of the actual utilization that will occur during the rate year. These days are used to prorate the expected utilization of Medicaid days by each provider during the coming rate year based on past utilization history. The department will look to make

adjustments in the days used in the rate sheet to more accurately reflect current utilization patterns.

COMMENT #5: We are concerned about the unit of government implementation impact on our facility. While the "lesser of" principle for paying the per diem does protect the individual facility from a potential future overpayment situation, this could also be done by using the cost based rate or price based rate whichever is higher. This would achieve the 100% of cost limit to the individual facilities. An alternative would be to use the "lesser of" for the interim payment and then base the future final cost on the actual cost report for the year involved not to exceed the defined 100% of cost. This approach does not penalize the government entity and reinforces CMS' intent for the rule.

The proposed rule creates two payment systems in Montana, one for government entities and one for nongovernment entities. We recommend recognition that the result of this rule will be creation of two Medicaid payment systems over time, one for government entities and one for the remaining nursing facilities. Continue the price based system for all nursing facilities. Modify the rule to make the government entity Medicaid payment system as follows: (1) the interim rate as in the rule using the lesser of price base versus most recent indexed cost report per diem. (2) Set final rate at the 100% of cost report per diem as identified in the final cost report. This approach simplifies the amount of data a government entity needs to track each year.

RESPONSE: The changes to the administrative rules related to Nursing Facility Reimbursement and Rate Adjustment for County Funded Rural Nursing Facilities are the result of incorporating federal law changes at 42 CFR Parts 433, 447, and 457. The federal regulations provide that only units of government are able to participate in the financing of the nonfederal share of Medicaid expenditures and limiting health care providers operated by units of government to Medicaid reimbursement levels that do not exceed the cost of providing covered services to eligible Medicaid recipients. This cost limitation for units of government applies to the rate adjustments made through the "at risk" payment methodology as well as to the total calculated Medicaid rate set through the nursing facility reimbursement methodology.

The House and Senate have recently proposed an extended moratorium on the unit of government provider cost and HHS is voluntarily delaying implementation until August 1, 2008. The department has decided to delay implementation of the unit of government provisions as outlined in the first notice of the rule at this time. The department will set payment rates for 2009 in accordance with the current rate methodology without the cost limits. If the final units of government UPL rules are adopted, or the moratorium is not extended beyond August 1, 2008 to comply with federal requirements, the department will renounce the unit of government rule provisions at a later date. The language is not being adopted at this time.

6. The rule changes are effective July 1, 2008.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State June 16, 2008.

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

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rules I through IV and the amendment	)	AMENDMENT
of ARM 37.82.101 pertaining to)	
Medicaid eligibility)	

TO: All Interested Persons

1. On May 8, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-442 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 915 of the 2008 Montana Administrative Register, issue number 9.
2. The department has adopted New Rule I (ARM 37.82.710), Rule II (ARM 37.82.910), Rule III (ARM 37.82.1116), and Rule IV (ARM 37.82.1320) as proposed.
3. The department has amended ARM 37.82.101 as proposed.
4. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The proposed policy that no exclusions will be applied to property an assistance unit does not own, including property that is owned by any kind of trust, corporation, partnership, limited liability company, or other legal entity, is unconstitutional. The Montana Supreme Court indicated in Timm v. Montana Department of Public Health and Human Services that the department's rules regarding exclusions violate the right to equal protection. The Supreme Court's rulings in Timm and in Hofer et al. v. Montana Department of Public Health and Human Services were very clear in terms of what the department can or cannot do in terms of making distinctions between different people in regard to granting or denying them Medicaid benefits.

The department's proposed rules changes, including the proposed adoption of Rules I, II, III, and IV, and the amendment of ARM 37.82.101 to incorporate revised sections of the Medicaid manuals setting forth the proposed policy regarding exclusions, are nothing more than a calculated attempt by the department to circumvent prior administrative and judicial decisions, such as decisions in the Timm and Hofer cases. To go forward with the proposed rule changes in light of the clear directives from the Supreme Court in relation to what the department can and cannot do in rule changes would be an act of bad faith on the department's part.

RESPONSE: As the department stated on the Notice of Public Hearing on Proposed Adoption and Amendment, the impetus for adopting Rules I, II, III, and IV and making changes in the Medicaid manuals was litigation in which the department

was recently involved, namely Timm v. DPHHS, 2008 MT 126, 343 Mont. 11, 2008 Mont. LEXIS 185. The purpose of the proposed changes was not to circumvent the Supreme Court's ruling in that case, however, but to correct ambiguities in Medicaid policy which the Court's decision called to the department's attention.

In Timm the Montana Supreme Court addressed the constitutionality of the department's "no corporations, no trust" policy. This policy provides that certain property owned by a Medicaid applicant or the applicant's spouse, such as property necessary for employment, is excluded in determining Medicaid eligibility, but further provides that the same property will be counted instead of excluded if the property is owned by a trust or corporation rather than by the applicant or spouse. Mr. Timm asserted that the "no corporations, no trust" policy violates his right to equal protection.

The department argued that there is a rational basis for denying an exclusion for property necessary for employment if it is owned by a corporation or trust but excluding the same property if it is personally owned, because the purpose of permitting an exclusion for property necessary for employment is to ensure that an applicant or applicant's spouse is not forced to sell property needed for employment in order to reduce their resources to a level needed to become eligible for Medicaid. Because applicants who have an interest in a corporation or trust do not legally own the property in question, the harm sought to be minimized by excluding property necessary for employment, namely that the applicant would be forced to sell the property in order to be eligible for Medicaid, does not exist when the property is owned by a corporation, trust, or other legal entity.

The court rejected the department's contention that there is a rational basis for not allowing owners of corporate or trust property to exclude property necessary for employment and thus held that the department's "no corporations, no trust" policy, as the court understood it, violates the guarantee of equal protection. In reaching this conclusion the court relied on a provision in Section MA 402-1 of the department's Aged Blind and Disabled Medicaid Manual which the court interpreted as allowing an exclusion for property necessary for employment if the property was owned by a limited liability company (LLC). The court said that there was no rational basis for not allowing a resource exclusion for property held in trust or owned by a corporation when, as the court interpreted Section MA 402-1, an exclusion was allowed for property owned by an LLC. The court therefore found the "no corporation, no trust" policy to be a violation of equal protection.

The department never intended to provide an exclusion for property owned by an LLC and does not believe that MA 402-1 allows a resource exclusion for property necessary for employment if it is owned by an LLC. To the extent that MA 402-1 may be susceptible of such an interpretation, however, the department has undertaken this rulemaking to clarify the department's policy that resource exclusions may not be applied to property an applicant or spouse does not personally own, as well as to cure the equal protection problem identified by the court in Timm.

The department is not, as the commentor asserts, adopting a policy that the Supreme Court found to be unconstitutional. On the contrary, by clarifying that no resource exclusions apply to property that is not personally owned by an applicant or spouse, including property owned by an LLC, the department seeks to cure the alleged defect which the court in Timm found rendered the "no corporation, no trust" policy unconstitutional. The court specifically stated in Timm that "the state may adopt rules aimed at allowing exclusions for some property, and denying such exclusions for others. *Hofer*, ¶ 31 (noting that Congress has passed legislation specifically aimed at 'restrict[ing] the ability of applicants to use trusts to shelter assets and gain Medicaid eligibility.')" Timm at ¶ 40. The court stated that cost containment is a valid basis for adopting rules that deny exclusions to some classes of Medicaid applicants while allowing the exclusions to other classes of applicants provided there is a rational basis for the classification; the court observed that "[b]ecause the funds available under Medicaid are limited, the administration of Medicaid is at its essence based on controlling costs." Timm at ¶ 40.

There is a rational basis for limiting exclusions, including the exclusion for property necessary for employment, to property an applicant or spouse personally owns and denying exclusions for property they do not personally own but that is owned by or held in another legal entity, such as a corporation, trust, or LLC. The rationale for the employment exclusion is to ensure that applicants who own property necessary for employment, such as plumbers who own plumbing tools, are not put in the position of having to sell that property in order to fall within the resource limit. When an applicant or spouse does not personally own the property, he or she has no legal right to sell it in the first place, and so the harm sought to be mitigated by the exclusion is not present.

Generally speaking, if an applicant or spouse does not own the property the value of the property would not be considered a resource, and so there would be no need for the exclusion. However, the federal Medicaid statute, 42 USC 1396p(d), requires that the assets of a trust established with the applicant or spouse's resources for the applicant's benefit must be counted as a resource for Medicaid purposes notwithstanding the fact that the applicant has no legal title to the property. Again, in that circumstance there is no danger that the beneficiary will sell the trust property to become eligible for Medicaid because the applicant would have no legal right to do so, and the trust will remain to fulfill its purpose of providing for the beneficiary, as Congress intended when it enacted the trust provisions of the Medicaid statute.

Moreover, it must be emphasized that Medicaid is a program to provide federal financial assistance to states that reimburse medical costs incurred by the poor who cannot afford to pay their own medical costs. Arkansas HHS v. Ahlborn, 126 S.Ct. 1752, 1758 (2006); Blum v. Yaretsky, 457 U.S. 991, 993-994 (1982). Medicaid funds are limited, and when the number of people who qualify for those funds exceeds the amount of the funds, the department must reduce the level of benefits. Allowing limited Medicaid resources to be used for individuals who have the financial and legal means to shelter ownership of their resources in legal entities such as

corporations and LLCs could defeat the purpose of Medicaid and reduce benefits to people without such resources or so poor as never to be able to consider using LLCs or corporations. The standard requiring personal ownership of property before allowing a resource exclusion for that property is a blunt but necessary standard for the department to determine who is truly the poorest of the poor and hence entitled to extremely limited Medicaid funds.

Therefore, the department is adopting Rules I, II, III, and IV and amending ARM 37.82.101 to incorporate the revised sections of the Medicaid manuals as proposed.

5. The rule changes are effective July 1, 2008.

/s/ Barbara Hoffmann
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State June 16, 2008.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rules I and II, and amendment of ARM	)	AMENDMENT
44.3.102, 44.3.103, 44.3.104, 44.3.105,)	
44.3.106, 44.3.107, 44.3.108, 44.3.109,)	
44.3.110, 44.3.113, 44.3.1303,)	
44.3.1712, 44.3.2005, 44.3.2010,)	
44.3.2015, 44.3.2114, 44.3.2203,)	
44.3.2401, 44.3.2405, 44.3.2511,)	
44.9.305, and 44.9.402 pertaining to)	
elections)	

TO: All Concerned Persons

1. On May 8, 2008, the office of the Secretary of State published MAR Notice No. 44-2-144 pertaining to the proposed adoption and amendment of the above-stated rules at page 930 of the 2008 Montana Administrative Register, Issue Number 9.

2. The department has adopted New Rule I (ARM 44.9.314) and New Rule II (ARM 44.9.315) as proposed. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

4. The new rules and amendments will be applied retroactively to June 2, 2008.

SECRETARY OF STATE

/s/ Brad Johnson

Brad Johnson
Secretary of State

/s/ Janice Doggett

Janice Doggett
Rule Reviewer

Certified June 16, 2008.

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.
2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2008. This table includes those rules adopted during the period April 1, 2008, through June 30, 2008, 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 March 31, 2008, 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 2007 and 2008 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

- | | |
|---------|---|
| 1.3.101 | and other rules - Secretary of State's Model Rules, p. 1003 |
| 1.3.211 | and other rules - Attorney General's Model Rules, p. 988 |

ADMINISTRATION, Department of, Title 2

- | | |
|-----------|--|
| I-IV | Mortgage Lender Surety Bond - Branch Office Licensing - Supervision of Branch Offices and Loan Officers - Responsibility for Acts of Agents, p. 862 |
| 2.4.202 | and other rule - Minimum Refunds - State's Volume Cap Allocation, p. 1351, 35 |
| 2.5.120 | and other rules - Procurement of Supplies and Services - Surplus Property, p. 1116, 1657, 36 |
| 2.6.101 | Insurance Requirements, p. 1130, 37 |
| 2.6.205 | and other rule - State Vehicle Use, p. 355, 614 |
| 2.13.202 | and other rules - Implementing HB 27: Defining Eligibility and Distribution of HB 27 Surcharge Funds for Wireless 911 Emergency Systems, p. 210, 558 |
| 2.59.1401 | and other rules - Regulation of Title Lenders - Title Loan Designation - Notification to the Department - Rescinded Loans - Failure to Correct Deficiencies - Department's Cost of Administrative Action - Examination Fees - Required Record Keeping - Sale of Repossessed Property - Unfair Practice, p. 846 |

- 2.59.1701 and other rules - Licensing and Regulation of Mortgage Brokers and Loan Originators - Continuing Education - Prelicensing Examination - Designated Managers - Examinations - Failure to Correct Deficiencies - Grounds for the Denial of an Application - Costs in Bringing the Administrative Action - Scheme to Defraud or Mislead, p. 666

(Public Employees' Retirement Board)

- 2.43.304 Actuarial Rates and Assumptions, p. 430, 1018
2.43.441 Purchase of Service Credit Through Trustee-to-Trustee Fund Transfers, p. 1841, 117

(Teachers' Retirement Board)

- 2.44.301A and other rules - Definitions - Optional Retirement Program - Calculating Service Credits - Corrections of Errors, Family Law Orders - Withholding of Insurance Premium from Retirement Benefit, p. 1132, 2120
2.44.308 and other rules - Independent Contractors - Calculating Service Credits - Termination Pay - Earned Compensation - Benefit Adjustments, p. 1558, 2121, 38

(State Compensation Insurance Fund)

- 2.55.320 Classifications of Employments, p. 1566, 2123

(State Lottery Commission)

- 2.63.1201 and other rule - State Lottery's Procedures Pertaining to Prizes and Sales Incentives, p. 1569, 2009

AGRICULTURE, Department of, Title 4

- I-VII (Departments of Agriculture and Livestock) Montana Certified Natural Beef Cattle Marketing Program, p. 1, 564
4.2.101 and other rules - Model Procedural Rules - Wheat and Barley Procedural Rule - Public Participation Rule in the Mint Program - Hail Insurance Program Public Participation, p. 433, 942
4.4.303 Insured Crops, p. 215, 562
4.5.201 and other rules - Noxious Weed List Categories, p. 217, 563
4.6.302 Cherry Assessment, p. 1074

STATE AUDITOR, Title 6

- I-IV Debt Collections, p. 509, 943
I-VI Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities, p. 1844, 136
I-XII Funeral Insurance Rules, p. 1718, 118
6.6.3101 and other rules - Long-Term Care, p. 222, 615
6.6.4201 Continuing Education Program for Insurance Producers, Adjusters, and Consultants, p. 868

- 6.6.5221 Small Business Health Insurance Purchasing Pool and Tax Credits, p. 436, 944
- 6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 513, 1135

COMMERCE, Department of, Title 8

- I Administration of Treasure State Endowment (TSEP) Grants Awarded by the 2007 Legislature, p. 872
- I Administration of the 2008-2009 Federal Community Development Block Grant (CDBG) Program, p. 1850, 802
- I Submission and Review of Applications to the Treasure State Endowment Program (TSEP), p. 1853, 315
- 8.99.401 and other rules - Microbusinesses, p. 1730, 486, 624
- 8.99.901 and other rules - Award of Grants and Loans Under the Big Sky Economic Development Program, p. 1981, 324

(Montana Coal Board)

- I Internal Management Procedures of the Montana Coal Board, p. 603

(Hard-Rock Mining Impact Board)

- 8.104.101 and other rules - Organizational and Procedural Rules of the Hard-Rock Mining Impact Board, p. 81, 945

(Board of Housing)

- 8.111.305 and other rule - Homeownership Program, p. 267, 1137
- 8.111.501 and other rules - Housing Loans, p. 1855, 40

(Montana Heritage Preservation and Development Commission)

- 10.125.101 and other rules - Transfer from the Department of Education - Sale of Real and Personal Property by the Montana Heritage Preservation and Development Commission, p. 2026, 492

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

- I Notice of Adoption of a Temporary Emergency Rule - Closing the Smith River From Camp Baker to Eden Bridge, p. 626, 805
- I No Wake Zone on Echo Lake, p. 85, 1019
- I No Wake Zone on Swan Lake, p. 87, 1024
- I-III Delegating Commission Authority to the Department to Close Public Waters in the Event of a Fire Emergency, p. 520
- I-VI Angling Restrictions and Fishing Closures, p. 516

ENVIRONMENTAL QUALITY, Department of, Title 17

- I-III Definitions - Certification of Energy Production, Transportation, and Research Facilities for Tax Abatement and Classification, p. 2046, 1027
- 17.50.501 and other rules - Licensing and Operation of Solid Waste Landfill Facilities, p. 688, 985
- 17.56.502 and other rules - Underground Storage Tanks - Reporting and Numbering Petroleum Releases, p. 1743, 2124
- (Board of Environmental Review)
- 17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular DEQ-7, p. 2035, 946
- 17.30.610 Water Quality - Surface Water Quality, p. 2043, 948
- 17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438

TRANSPORTATION, Department of, Title 18

- 18.6.202 and other rule - Transportation Commission - Electronic Billboards, p. 523

CORRECTIONS, Department of, Title 20

- 20.7.801 Eastmont Chemical Dependency Treatment Program, p. 605, 1142
- 20.7.1101 and other rule - Conditions on Probation or Parole, p. 1984, 273, 1145

JUSTICE, Department of, Title 23

- I-XXV Establishment of Peace Officers Standards and Training (POST), p. 732
- 1.3.211 and other rules - Model Rules, p. 988
- 23.15.102 Definitions, p. 1092
- (Public Safety Officer Standards and Training Council)
- I-XXV Establishment of Peace Officers Standards and Training (POST) Council, p. 1076
- (Board of Crime Control)
- 23.14.401 and other rules - Transfer of POST Duties to a New Division - Decision-making Authority - Payments of Claims - Establishing Appeal Procedures From POST Decisions - Changes in Statute, p. 748
- (Gambling Control Division)
- I Procedure for Providing Notice to Multi-Game Machine Owners and Lessees to Connect to an Approved Accounting and Reporting System, p. 440, 806

- 23.16.102 and other rules - Effective Date of Forms - Removal of Form 1 from the Rules - Application Time Limit for Utilizing an Approved Automated Accounting and Reporting System as Part of a Vending Agreement, p. 1572, 1859, 2010, 2126
- 23.16.1805 Refund of Permit Fee, p. 762, 1150

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- 8.11.101 and other rules - Transfer from the Department of Commerce - Licensed Addiction Counselors, p. 380
- 24.7.302 and other rules - Board of Labor Appeals Procedural Rules, p. 8, 628
- 24.17.127 Prevailing Wage Rates for Public Works Projects Using Building Construction Services, Heavy Construction Services, and Highway Construction Services, p. 765
- 24.29.1402 and other rules - Workers' Compensation Medical Fee Schedule for Facilities, p. 768
- 24.29.1529 Allowable Charges for Prescription Drugs Under a Workers' Compensation Claim, p. 1581, 2011
- 24.101.413 and other rule - Licensed Addiction Counselors - Renewals - Fees, p. 444, 949

(Alternative Health Care Board)

- 24.111.407 and other rules - Nonroutine Applications - Licensing by Examination - Licensing by Endorsement - Natural Substance Formulary - Apprenticeship Requirements, p. 358, 1033

(Board of Architects and Landscape Architects)

- 24.114.401 and other rule - Fee Schedule - Examination, p. 11

(Board of Athletic Trainers)

- 24.101.413 and other rule - Renewal Dates and Requirements - Fees, p. 1094

(Board of Barbers and Cosmetologists)

- 24.121.301 and other rules - Definitions - Premises and General Requirements - Applications for Licensure - School-Facility and Operation - Teacher-Training Curriculum - Salons/Booth Rental - Sanitary Standards - Unprofessional Conduct - Anonymous Complaints - Disinfecting Agents - Blood Spills, p. 1502, 382

(Board of Chiropractors)

- 24.126.406 and other rules - Record of Minutes and Hearings - Applications - Exam Requirements - Temporary Permit - Endorsement - Inactive Status and Conversion to Active Status - Interns and Preceptors -

Impairment Evaluators - Renewals and Continuing Education -
Unprofessional Conduct - Continuing Education, p. 1097

(Board of Clinical Laboratory Science Practitioners)

24.129.401 and other rules - Fees - Supervision - Standards for Licensure -
Unprofessional Conduct - Inspections - Notification, p. 1584, 629

(Board of Dentistry)

24.138.407 and other rules - Functions for Dental Hygienists - Specialty
Advertising - Hygiene Diagnosis and Treatment Planning, p. 14, 566

24.138.502 and other rules - Licensure, p. 527

(Board of Medical Examiners)

24.156.1306 Professional Conduct - Standards of Professional Practice, p. 1751,
807

(Board of Nursing)

24.159.301 and other rules - Definitions - Foreign Educated Applicants for RN
Licensure Requirements - APRNs, p. 875

24.159.301 and other rules - Definitions - Standards Related to the Practical Nurse
- Prohibited IV Therapies, p. 279, 532

(Board of Occupational Therapy Practice)

24.165.404 and other rule - Licensure - Approved Instruction, p. 997

(Board of Optometry)

24.168.401 and other rules, Fees - Licensure - General Practice Requirements -
Unprofessional Conduct, p. 1111

(Board of Outfitters)

24.171.401 and other rules, Fees - Emergency Guide License - Unprofessional
Conduct, p. 1116

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Fee Schedule - Ambulatory Surgical
Facilities - Continuing Education, p. 447, 1151

24.174.401 Fee Schedule, p. 2051, 631

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

24.101.413 and other rules - Renewals - Registration Fee Schedule - Fee
Abatement - Licensing Fee Schedule, p. 451, 1031

(Board of Private Security)

24.182.401 and other rule - Experience Requirements, p. 89, 951

(Board of Radiologic Technologists)

24.204.401 and other rules - Fees - Permit Fees - Applications - Examinations,
p. 1754, 325

(Board of Realty Regulation)

24.210.641 Unprofessional Conduct, p. 366, 808

(Board of Speech-Language Pathologists and Audiologists)

24.222.301 and other rules - Definitions - Licensure - Temporary Practice Permits
- Supervision - Functions of Aides or Assistants - Continuing
Education, p. 2054, 385

(Board of Veterinary Medicine)

24.225.401 and other rules - Fees - Infectious Waste - Licensing - Embryo
Transfer - Euthanasia Technicians and Agencies - Complaints -
Screening Panel - Nonroutine Applications, p. 2062, 633

LIVESTOCK, Department of, Title 32

32.6.712 Food Safety and Inspection Service (Meat, Poultry), p. 1120

(Board of Horse Racing)

I-VIII Advance Deposit Account Wagering on Horse Racing and Greyhound
Racing, p. 18, 494

32.28.709 and other rules - Horse Racing, p. 1861, 41

32.28.1402 Horse Racing, p. 1123

MILITARY AFFAIRS, Department of, Title 34

I-VIII Montana Military Family Relief Fund, p. 1870, 43

34.7.101 and other rules - Reimbursement for Life Insurance Premiums Paid by
Montana Reserve Component Service Members Serving Outside
Montana in a Contingency Operation, p. 1864, 42

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 and other rules - Definitions - Filing Fee Refunds - Objection to
Application, p. 1527, 567

36.12.101 and other rule - Definitions - Basin Closure Area Exceptions and
Compliance, p. 1164, 140

36.12.102 and other rule - Forms - Form and Special Fees, p. 2075, 326

(Board of Land Commissioners)

36.25.301 and other rules - Coal Leasing Rules, p. 900

36.25.801 and other rules - Land Banking Program, p. 289, 1153

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I & II	General Medicaid Services - Physician Administered Drugs, p. 376, 956
I-VIII	Newborn Hearing Screening, p. 2082, 171
I-IX	Awarding Grants to Carry Out the Purposes of the Montana Community Health Center Support Act, p. 1990, 959
I-X	72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services, p. 307, 641
I-XVI	Home and Community Services for Seriously Emotionally Disturbed Youth, p. 2100, 335
37.8.102	and other rules - Vital Statistics, p. 1768, 2127, 169
37.12.401	Laboratory Testing Fees, p. 1000
37.12.401	Laboratory Testing Fees, p. 780
37.30.405	Vocational Rehabilitation Program Payment for Services, p. 369, 953
37.30.730	Vocational Rehabilitation Program Provider Fees, p. 1588, 2012
37.40.302	and other rules - Medicaid Nursing Facility Reimbursement, p. 783
37.57.301	and other rules - Newborn Screening Tests and Eye Treatment, p. 1790, 44
37.70.601	Low Income Energy Assistance Program (LIEAP), p. 372, 810
37.71.401	and other rule - Low Income Weatherization Assistance Program (LIWAP), p. 1125
37.78.102	and other rules - Temporary Assistance for Needy Families (TANF), p. 534, 1154
37.78.102	and other rules - Temporary Assistance for Needy Families (TANF), p. 1296, 1818, 172
37.79.102	and other rules - Children's Health Insurance Program (CHIP), p. 1591, 49
37.80.101	and other rules - Child Care Assistance Program, p. 1758, 174
37.81.104	and other rules - Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx), p. 457, 954
37.82.101	and other rules - Medicaid Eligibility, p. 915
37.82.101	Medicaid Eligibility, p. 1619, 2131
37.82.435	Medicaid Real Property Liens, p. 1608, 2132
37.85.212	Resource Based Relative Value Scale (RBRVS), p. 607, 1155
37.86.805	and other rules - Hearing Aid Services - Dental - Home Infusion Therapy - Durable Medical Equipment - Ambulance Services, p. 797, 1156
37.86.1101	and other rules - Medicaid Requirements and Reimbursement for Outpatient Drugs, p. 792, 1157
37.86.1101	and other rule - Medicaid Reimbursement for Dispensing Fees and Outpatient Compound Prescriptions, p. 1611, 53
37.86.1801	and other rules - Durable Medical Equipment - Medical Supplies, p. 1633, 2134
37.86.2207	Medicaid Reimbursement for the Therapeutic Portion of Therapeutic Youth Group Home Treatment Services, p. 31, 634

- 37.88.1111 Direct Care Wage Add-on for Certain Mental Health Care Providers, p. 612, 1160
- 37.104.601 and other rules - Automated External Defibrillators, p. 2094, 337
- 37.106.1946 and other rules - Crisis Stabilization Facilities, p. 905
- 37.108.507 Components of Quality Assessment Activities, p. 301, 958

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.2.5001 and other rules - Protective Orders - Protection of Confidential Information, p. 833, 2135
- 38.5.1902 Cogeneration and Small Power Production, p. 1020, 2140
- 38.5.2202 and other rule - Pipeline Safety, p. 1642, 2145
- 38.5.6001 and other rules - Public Utilities - Electricity Suppliers - Natural Gas Suppliers, p. 93, 575
- 38.5.8301 and other rule - Renewable Energy Standards for Public Utilities and Electricity Suppliers, p. 1798, 2146

REVENUE, Department of, Title 42

- I Property Tax Refund Hardship Request, p. 1804, 2156
- I & II Tax Year 2007 Property Tax Credit, p. 1807, 58
- I-III Property Tax Incentives for New Investment, Development Research, and Technology Related to Renewable Energy, p. 1878, 811
- I-IV Biodiesel and Biolubricant Tax Credit, p. 1892, 61
- I-XII Local Government Tax Increment Financing Districts (TIFD), p. 548
- 42.2.304 and other rules - General Department Rules, p. 2000, 340
- 42.4.118 and other rules - Alternative Energy Tax Credits, p. 1913, 387
- 42.4.502 Capital Gain Credit, p. 1896, 57
- 42.4.1603 and other rule - New and Expanded Industry Credits, p. 1889, 60
- 42.4.2701 and other rule - Qualified Endowment, p. 1885, 62
- 42.4.3102 and other rule - Contractor's Gross Receipts Taxes, p. 1883, 63
- 42.4.3301 and other rules - Movie, Television, and Related Media Tax Credits, p. 1919, 64
- 42.15.108 and other rules - Individual Income Taxes, p. 1905, 178
- 42.17.101 and other rules - Mineral Royalty Backup Withholding, p. 1647, 2151
- 42.17.105 and other rules - Estimated Tax Payments, p. 1900, 65
- 42.18.128 and other rule - Property Taxes - Appraisal Plan Definitions and Disabled Veterans, p. 1645, 2155
- 42.31.501 Telecommunications License and Telecommunications Excise Tax, p. 1655, 642

SECRETARY OF STATE, Office of, Title 44

- 1.3.101 and other rules - Model Rules, p. 1003
- 44.2.101 and other rules - Commissioning of Notaries Public, p. 1923, 66
- 44.3.102 and other rules - Elections, p. 930

(Commissioner of Political Practices)

I Limitations on Individual and Political Party Contributions, p. 471, 1034
44.10.335 and other rules - Constituent Services Accounts, p. 474, 1130

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 May 2008 appear. Vacancies scheduled to appear from July 1, 2008, through September 30, 2008, 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 June 1, 2008.

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 MAY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration)			
Ms. Janet Boisvert Harlem	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Montana Emergency Medical Services Association			
Ms. Kim Burdick Fort Benton	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Association of Public Safety Communications Officials			
Mr. Joe Calnan Montana City	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Montana State Volunteer Fire Fighters Association			
Ms. Debbie Gomke Chinook	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Public Safety Answering Point			
Ms. Joanna Hamilton Hamilton	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Public Safety Answering Point			
Ms. Peggy Hartwell (city not listed)	Governor	Gomke	5/8/2008 0/0/0
Qualifications (if required): Public Safety Answering Point representative			

BOARD AND COUNCIL APPOINTEES FROM MAY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration) cont.			
Mr. Chuck Lee Baker	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Association of Disaster and Emergency Services Coordinators			
Mr. Fred Leistiko Kalispell	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Montana League of Cities and Towns			
Sheriff Cheryl Liedle Helena	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Montana Sheriffs' and Peace Officers' Association			
Mr. Gary MacDonald Wolf Point	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Montana Association of Counties			
Mr. Kevin Myhre Lewistown	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Montana Association of Chiefs of Police			
Mr. Chuck Winn Bozeman	Director	not listed	5/1/2008 0/0/0
Qualifications (if required): representative of the Montana State Fire Chiefs Association			

BOARD AND COUNCIL APPOINTEES FROM MAY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Air Pollution Control Advisory Council (Environmental Quality)			
Dr. Don Potts Missoula Qualifications (if required): meteorologist	Governor	Machler	5/8/2008 0/0/0
Mr. Bovard Tiberi Bozeman Qualifications (if required): conservationist	Governor	Millenbach	5/8/2008 0/0/0
Board of Architects and Landscape Architects (Labor and Industry)			
Mr. Bayliss Ward Bozeman Qualifications (if required): registered architect with three years continuous practice	Governor	reappointed	5/19/2008 3/27/2011
Board of Dentistry (Labor and Industry)			
Dr. Aimee R. Ameline Great Falls Qualifications (if required): dentist	Governor	Olsen	5/19/2008 3/29/2013
Board of Hail Insurance (Agriculture)			
Mr. Gary Gollehon Brady Qualifications (if required): public member	Governor	reappointed	5/19/2008 4/18/2011
Board of Public Accountants (Labor and Industry)			
Mr. Jack Meyer Missoula Qualifications (if required): Certified Public Accountant	Governor	Kasper	5/8/2008 7/1/2012

BOARD AND COUNCIL APPOINTEES FROM MAY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Public Accountants (Labor and Industry) cont.			
Ms. Beatrice Rosenleaf Anaconda	Governor	Burch	5/8/2008 7/1/2012
Qualifications (if required): public representative			
Board of Social Work Examiners and Professional Counselors (Labor and Industry)			
Ms. Ann Gilkey Helena	Governor	Meador	5/19/2008 1/1/2011
Qualifications (if required): attorney			
Montana Arts Council (Arts Council)			
Mr. Corwin "Corky" Clairmont Ronan	Governor	reappointed	5/8/2008 2/1/2013
Qualifications (if required): public representative			
Ms. Jane Deschner Billings	Governor	reappointed	5/8/2008 2/1/2012
Qualifications (if required): public representative			
Ms. Tracy Linder Molt	Governor	reappointed	5/8/2008 2/1/2013
Qualifications (if required): public representative			
Ms. Arlene Parisot Helena	Governor	reappointed	5/8/2008 2/1/2013
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM MAY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Arts Council (Arts Council) cont.			
Ms. Jackie Parsons Browning	Governor	reappointed	5/8/2008 2/1/2013
Qualifications (if required): public representative			
Ms. Kathleen Schlepp Miles City	Governor	reappointed	5/8/2008 2/1/2013
Qualifications (if required): public representative			
Montana Council on Homelessness (Public Health and Human Services)			
Mr. Nicholas Peterson Vrooman Helena	Governor	Mason	5/8/2008 12/21/2008
Qualifications (if required): public representative			
State Workforce Investment Board (Labor and Industry)			
Mr. Tyler Trevor Helena	Governor	Parisot	5/19/2008 7/1/2009
Qualifications (if required): public sector representative (Higher Education)			
State-Tribal Economic Development Commission (Commerce)			
Mr. Walter White Tail Feather Poplar	Governor	not listed	5/19/2008 6/30/2010
Qualifications (if required): alternate representative of the Fort Peck Assiniboine and Sioux Tribes			

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Aging Advisory Council (Public Health and Human Services) Rep. Antoinette R. Hagener, Havre Qualifications (if required): public representative	Governor	7/18/2008
Rep. Beverly Barnhart, Bozeman Qualifications (if required): public representative	Governor	7/18/2008
Aging Advisory Council Ms. Jessie James-Hawley, Harlem Qualifications (if required): public representative	Governor	7/18/2008
Ms. Lauren Lynch, Butte Qualifications (if required): public representative	Governor	7/18/2008
Agriculture Development Council (Agriculture) Mr. Bill Koenig, Kalispell Qualifications (if required): agriculture producer	Governor	7/1/2008
Ms. Patricia Quisno, Harlem Qualifications (if required): actively engaged in agriculture	Governor	7/1/2008
Mr. Verges Aageson, Guildford Qualifications (if required): actively engaged in agriculture	Governor	7/1/2008
Mr. David Tyler, Belgrade Qualifications (if required): actively engaged in agriculture	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Banking (Administration) Mr. John King, Kalispell Qualifications (if required): state bank officer of a small size bank	Governor	7/1/2008
Ms. Carolyn Colman, West Yellowstone Qualifications (if required): public representative	Governor	7/1/2008
Board of Funeral Service (Labor and Industry) Mr. Douglas D. Lowry, Big Timber Qualifications (if required): mortician	Governor	7/1/2008
Board of Hearing Aid Dispensers (Labor and Industry) Ms. Lee Frantz Oines, Missoula Qualifications (if required): Dispenser with a Masters Degree and National Certification	Governor	7/1/2008
Mr. Herbert Winsor, Helena Qualifications (if required): Public Representative with Hearing Aid	Governor	7/1/2008
Board of Medical Examiners (Labor and Industry) Dr. Dean Center, Bozeman Qualifications (if required): doctor of medicine	Governor	9/1/2008
Board of Pharmacy (Labor and Industry) Ms. Colette Bernica, Great Falls Qualifications (if required): public member	Governor	7/1/2008
Mr. Jim Cloud, Stevensville Qualifications (if required): registered pharmacy technician	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Physical Therapy Examiners (Labor and Industry) Mr. Richard Smith, Missoula Qualifications (if required): physical therapist	Governor	7/1/2008
Board of Psychologists (Labor and Industry) Dr. Edward Trontel, Kalispell Qualifications (if required): psychologist	Governor	9/1/2008
Board of Public Accountants (Labor and Industry) Mr. Thomas Shea, Bozeman Qualifications (if required): certified public accountant	Governor	7/1/2008
Board of Radiologic Technologists (Labor and Industry) Ms. Anna L. Hazen, Fort Benton Qualifications (if required): permit holder	Governor	7/1/2008
Ms. Charlotte M. Kelley, Helena Qualifications (if required): public representative	Governor	7/1/2008
Mr. Charles McCubbins, Columbia Falls Qualifications (if required): radiologic technician	Governor	7/1/2008
Mr. Ronald Darby, Billings Qualifications (if required): doctor of medicine who employs radiologic technicians	Governor	7/1/2008
Dr. Hugh B. Cecil, Kalispell Qualifications (if required): radiologist	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Sanitarians (Labor and Industry)		
Ms. Kathleen Driscoll, Hamilton	Governor	7/1/2008
Qualifications (if required): public representative		
Mayor Gene Townsend, Three Forks	Governor	7/1/2008
Qualifications (if required): public representative		
Mr. Gerald Cormier, Billings	Governor	7/1/2008
Qualifications (if required): sanitarian		
Board of Veterans' Affairs (Military Affairs)		
Mr. Mike Waite, Helena	Governor	8/1/2008
Qualifications (if required): nonvoting member and a representative of Congressman Dennis Rehberg		
Mr. Don Slavens, Billings	Governor	8/1/2008
Qualifications (if required): nonvoting member and a representative of Senator Max Baucus		
Mr. Bill Lombardi, Helena	Governor	8/1/2008
Qualifications (if required): nonvoting member and a representative of Senator Jon Tester		
Board of Veterinary Medicine (Labor and Industry)		
Dr. Jean Lindley, Miles City	Governor	7/31/2008
Qualifications (if required): veterinarian		
Burial Preservation Board (Administration)		
Mr. Mickey Nelson, Helena	Governor	8/22/2008
Qualifications (if required): representative of the coroners' association		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Burial Preservation Board (Administration) cont.		
Mr. Loren Stiffarm, Harlem Qualifications (if required): representative of the Fort Belknap Indian Community	Governor	8/22/2008
Mr. George Reed Sr., Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	8/22/2008
Ms. Sherri Deaver, Billings Qualifications (if required): representative of the archaeological association	Governor	8/22/2008
Ms. Katherine Rink, East Glacier Qualifications (if required): representative of the Blackfeet Tribe	Governor	8/22/2008
Mr. Ed Lavenger, Havre Qualifications (if required): representative of the Little Shell Tribe	Governor	8/22/2008
Mr. Rufus Spear, Lame Deer Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	8/22/2008
Community Service Commission (Labor and Industry)		
Rep. Sheila Rice, Great Falls Qualifications (if required): representative of volunteer agencies	Governor	7/1/2008
Mr. Bob Maffit, Helena Qualifications (if required): representative of the disabilities community	Governor	7/1/2008
Mr. Robert E. Harris, Great Falls Qualifications (if required): public member	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community Service Commission (Governor) Ms. Pat Murphy, Hamilton Qualifications (if required): representative of youth services	Governor	7/1/2008
Mr. James B. Corson, Billings Qualifications (if required): public representative	Governor	7/1/2008
Economic Development Advisory Council (Commerce) Ms. Sheila Hogan, Butte Qualifications (if required): public representative	Governor	7/23/2008
Ms. Kathie Bailey, Lewistown Qualifications (if required): public representative	Governor	7/23/2008
Ms. Linda Twitchell, Wolf Point Qualifications (if required): public representative	Governor	7/23/2008
Ms. Estelle Tafoya, Red Lodge Qualifications (if required): public representative	Governor	7/23/2008
Family Education Savings Program Oversight Committee (Commissioner of Higher Education) Mr. Ed Jasmin, Bigfork Qualifications (if required): public member	Governor	7/1/2008
Information Technology Managers Advisory Council (Administration) Mr. Barney Benkelman, Helena Qualifications (if required): none specified	Director	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Information Technology Managers Advisory Council (Administration) cont.		
Mr. Art Pembroke, Helena Qualifications (if required): none specified	Director	7/1/2008
Ms. Tammy Peterson, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. Mike Jacobson, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. Dick Clark, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. John Daugherty, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. Rick Bush, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. Mike Bousliman, Helena Qualifications (if required): none specified	Director	7/1/2008
Kindergarten to College Work Group (Governor)		
Director Keith Kelly, Helena Qualifications (if required): Commissioner of Labor and Industry	Governor	7/13/2008
Rep. David Ewer, Helena Qualifications (if required): Budget Director	Governor	7/13/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Kindergarten to College Work Group (Governor) cont. Superintendent Linda McCulloch, Helena Qualifications (if required): Superintendent of Public Instruction	Governor	7/13/2008
Director Joan Miles, Helena Qualifications (if required): Director of the Department of Public Health and Human Services	Governor	7/13/2008
Rep. Jonathan Windy Boy, Box Elder Qualifications (if required): Governor's representative	Governor	7/13/2008
Mr. Evan Barrett, Butte Qualifications (if required): Chief Business Development Officer	Governor	7/13/2008
Ms. Sheila Stearns, Helena Qualifications (if required): Commissioner of Higher Education	Governor	7/13/2008
Mr. Dick Clark, Helena Qualifications (if required): Chief Information Officer	Governor	7/13/2008
Director Tony Preite, Helena Qualifications (if required): Director of the Department of Commerce	Governor	7/13/2008
Ms. Janine Pease, Billings Qualifications (if required): Board of Regents representative	Governor	7/13/2008
Ms. Erin Williams, Missoula Qualifications (if required): parent representative	Governor	7/13/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Kindergarten to College Work Group (Governor) cont. Mr. Steve Meloy, Helena Qualifications (if required): Board of Public Education representative	Governor	7/13/2008
Mr. James Stipcich, Helena Qualifications (if required): Student Assistance Foundation representative	Governor	7/13/2008
Mr. Steve Gettel, Great Falls Qualifications (if required): School for Deaf and Blind representative	Governor	7/13/2008
Ms. Rachel Grosvold, Butte Qualifications (if required): student representative	Governor	7/13/2008
Mental Disabilities Board of Visitors (Governor) Ms. Joan Nell Macfadden, Great Falls Qualifications (if required): experience with emotionally disturbed children	Governor	7/1/2008
Mr. Graydon Davies Moll, Polson Qualifications (if required): experience with developmentally disabled adults	Governor	7/1/2008
Ms. Sandra Mihelish, Helena Qualifications (if required): experience with welfare of mentally ill individuals	Governor	7/1/2008
Montana Historical Society Board of Trustees (Historical Society) Dr. Thomas A. Foor, Missoula Qualifications (if required): archeologist	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Historical Society Board of Trustees (Historical Society) cont. Ms. Sharon Lincoln, Billings Qualifications (if required): public member	Governor	7/1/2008
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. Don Walker, Glendive Qualifications (if required): forage producer	Director	9/17/2008
Ms. Sharon Scognamiglio, Anaconda Qualifications (if required): representative of weed districts	Director	9/17/2008
Mr. Paul Helland, Miles City Qualifications (if required): representative of weed districts	Director	9/17/2008
Montana Organic Commodity Council (Agriculture) Mr. Andy Sponseller, Missoula Qualifications (if required): organic producer	Director	8/19/2008
Mr. Robert Forstenzer, Livingston Qualifications (if required): organic producer	Director	8/19/2008
Ms. Jill Owen, Choteau Qualifications (if required): consumer from the public at large	Director	8/19/2008
Mr. Jonathon Mysse, Ingomar Qualifications (if required): organic producer	Director	8/19/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Wheat and Barley Committee (Agriculture)		
Ms. DeAnna Burgmaier, Power	Governor	8/20/2008
Qualifications (if required): producer residing in District 4		
Mr. Frank Schoonover, Dutton	Governor	8/20/2008
Qualifications (if required): resident of District 4		
Mr. Don H. Chaffee, Wibaux	Governor	8/20/2008
Qualifications (if required): resident of District 7		
Private Security Patrol Officers and Investigators (Labor and Industry)		
Mr. Raymond Murray, Missoula	Governor	8/1/2008
Qualifications (if required): Post Representative		
Ms. Holly Dershem-Bruce, Glendive	Governor	8/1/2008
Qualifications (if required): Public Representative		
Public Defender Commission (Administration)		
Mr. Daniel Donovan, Great Falls	Governor	7/1/2008
Qualifications (if required): attorney nominated by the Montana Supreme Court		
Mr. James Park Taylor, Pablo	Governor	7/1/2008
Qualifications (if required): attorney nominated by the Montana State Bar		
Ms. Caroline Fleming, Miles City	Governor	7/1/2008
Qualifications (if required): public representative nominated by the House Speaker		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Defender Commission (Administration) cont. Ms. Jennifer L. Hensley, Butte Qualifications (if required): member of an organization advocating on behalf of people with mental illness	Governor	7/1/2008
Research and Commercialization Technology Board (Commerce) Mr. Michael Dolson, Hot Springs Qualifications (if required): Native American	Governor	7/1/2008
Statewide Interoperability Executive Advisory Council (Administration) Attorney Mike McGrath, Helena Qualifications (if required): Attorney General	Governor	9/7/2008
General Randall Mosley, Fort Harrison Qualifications (if required): Adjutant General of the Department of Military Affairs	Governor	9/7/2008
Ms. Elizabeth Horsman-Witala, Helena Qualifications (if required): federal representative	Governor	9/7/2008
Director Mike Ferriter, Helena Qualifications (if required): Director of the Department of Corrections	Governor	9/7/2008
Director Janet Kelly, Helena Qualifications (if required): director of the Department of Administration	Governor	9/7/2008
Director Joan Miles, Helena Qualifications (if required): Director of the Department of Public Health and Human Services	Governor	9/7/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Statewide Interoperability Executive Advisory Council (Administration) cont.		
Director Jeff Hagener, Helena Qualifications (if required): Director of Fish, Wildlife and Parks	Governor	9/7/2008
Director Mary Sexton, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	9/7/2008
Mr. Chuck Winn, Bozeman Qualifications (if required): paid fire department representative	Governor	9/7/2008
Sheriff Cheryl Liedle, Helena Qualifications (if required): county law enforcement representative	Governor	9/7/2008
Director Jim Lynch, Helena Qualifications (if required): Director of the Department of Transportation	Governor	9/7/2008
Mr. William Hedstrom, Kalispell Qualifications (if required): Chair of the Board of Livestock	Governor	9/7/2008
Commissioner Kathy Bessette, Havre Qualifications (if required): county government representative	Governor	9/7/2008
Mr. Chuck Lee, Baker Qualifications (if required): 9-1-1 community representative	Governor	9/7/2008
Mayor Ron Tussing, Billings Qualifications (if required): municipal government representative	Governor	9/7/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Statewide Interoperability Executive Advisory Council (Administration) cont.		
Ms. Jodi O'Sullivan, Polson Qualifications (if required): volunteer fire department representative	Governor	9/7/2008
Ms. Mary Failing, Poplar Qualifications (if required): emergency medical community representative	Governor	9/7/2008
Mr. Bruce Nelson, Helena Qualifications (if required): Governor's Chief of Staff	Governor	9/7/2008
Captain Dick Lewis, Missoula Qualifications (if required): municipal law enforcement representative	Governor	9/7/2008
Teachers' Retirement Board (Administration)		
Mr. Scott A. Dubbs, Lewistown Qualifications (if required): teaching profession and a member of the retirement system	Governor	7/1/2008
Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services)		
Ms. Char Harasymczuk, Billings Qualifications (if required): hearing disabled	Governor	7/1/2008
Ms. Colette Custer, Plentywood Qualifications (if required): independent local exchange company representative	Governor	7/1/2008
Ms. Kristen Bruner-Kober, Billings Qualifications (if required): audiologist	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2008 through SEPTEMBER 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services) cont.		
Mr. Charles Charette, Lame Deer Qualifications (if required): hearing disabled	Governor	7/1/2008
Tourism Advisory Council (Commerce)		
Ms. Ramona Holt, Lolo Qualifications (if required): public member from Glacier Country	Governor	7/1/2008
Mr. Michael Scholz, Big Sky Qualifications (if required): public member from Yellowstone Country	Governor	7/1/2008
Mr. Ed DesRosier, East Glacier Park Qualifications (if required): public member from Glacier Country	Governor	7/1/2008
Commissioner Dolores Plumage, Chinook Qualifications (if required): public member from Russell Country	Governor	7/1/2008
Mr. Jonathan Stoltz, Pendroy Qualifications (if required): public member from Russell Country	Governor	7/1/2008
Ms. Sandra Cahill, Livingston Qualifications (if required): resident of Yellowstone Country	Governor	7/1/2008