ISSUE NO. 1

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.11.501, 12.11.610, 12.11.630, 12.11.640, 12.11.645, 12.11.2206, 12.11.4101 and the adoption of NEW RULES I through X pertaining to recreational use on rivers in Montana	)))))))	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 25, 2016, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-465 pertaining to the public hearings on the proposed amendment and adoption of the above-stated rules at page 2094 of the 2016 Montana Administrative Register, Issue Number 22.

2. The commission held public hearings on January 3, 2017, January 4, 2017, and January 5, 2017.

On January 9, 2017, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Region 5 Office, 2300 Lake Elmo Drive, Billings, Montana, to consider the proposed amendment and adoption of the above-stated rules.

On January 11, 2017, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana, to consider the proposed amendment and adoption of the above-stated rules.

On January 11, 2017, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

3. The commission is extending the comment period due to the complexity of the rules and requests received for more time to comment.

4. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than January 20, 2017, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Fish, Wildlife and Parks, Attn: Quiet Waters Petition, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail QuietWaters@mt.gov, and must be received no later than February 12, 2017.

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion
Chairman
Fish and Wildlife Commission

Certified to the Secretary of State December 27, 2016.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.403 and 17.50.502, pertaining to definitions of solid waste management, and the adoption of a new subchapter codifying New Rules I through XIV for landfarm facility standards and the adoption of a new subchapter codifying New Rules XV through XXVI for compost standards and definitions	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (SOLID WASTE MANAGEMENT)

TO: All Concerned Persons

1. On January 27, 2017, at 1:30 p.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Denise Hartman, Administrative Rules Coordinator, no later than 5:00 p.m., January 19, 2017, to advise us of the nature of the accommodation that you need. Please contact Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

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

17.50.403 DEFINITIONS Unless the context requires otherwise, in this subchapter the following definitions apply:

(1) "Aerobic" means occurring in the presence of oxygen.

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

~~(3) "Co-composting" means the simultaneous composting of two or more diverse waste streams.~~

(4) through (6) remain the same.

(7) "Custom exempt butcher operation" means a processor that only processes meat that is not sold and is only consumed by:

(a) the owner of the animal;

(b) the owner's immediate family; or

(c) non-paying guests.

(7) through (10) remain the same, but are renumbered (8) through (11).

(12) "Feedstock" means any decomposable material used in the manufacture of compost.

(13) "Floodplain" means the lowland and relatively flat areas adjoining inland waters, including flood-prone areas that are inundated by the 100-year flood, including an area designated as a "floodplain," "flood zone," or "special flood hazard area" by a state or federal agency.

(11) and (12) remain the same, but are renumbered (14) and (15).

(16) "Infectious waste" has the meaning specified in 75-10-1003, MCA.

(13) through (15) remain the same, but are renumbered (17) through (19).

~~(16)~~ (20) "Intermediate landfarm facility" means a landfarm facility that has more than ~~1,600~~ 2,400 cubic yards but less than 8,000 cubic yards of contaminated soil, from single or multiple events, undergoing treatment and accepted for treatment at the facility at any time during a calendar year.

(17) remains the same, but is renumbered (21).

(19) through (21) remain the same, but are renumbered (22) through (24).

~~(18)~~ (25) "~~Large~~ Major composter ~~operation~~ facility" means a composting ~~operation~~ facility that ~~does not meet the definition of small composter operation. Co-composters and facilities that accept sewage sludge for composting are large composter operations.~~:

(a) meets any of the following criteria:

(i) has greater than two acres of active working area;

(ii) accepts 5,000 cubic yards or more of composting feedstock annually; or

(iii) produces 2,500 cubic yards or more of finished compost annually; or

(b) accepts:

(i) sewage sludge, biosolid, or septage for composting; or

(ii) 200 tons or more of offal from custom exempt butcher operations.

(22) through (26) remain the same, but are renumbered (26) through (30).

~~(44)~~ (31) "~~Small~~ Minor composter ~~operation~~ facility" means a composting ~~operation~~ facility that does not meet the definition of a major compost facility and that:

(a) meets all of the following criteria:

(i) has ~~less than~~ two acres or less of active working area;

~~(b)~~ (ii) accepts less than ~~10,000~~ 5,000 cubic yards of compost feedstock annually; and

~~(c)~~ (iii) produces less than ~~1,000 tons~~ 2,500 cubic yards of finished compost annually; ~~and either:~~

~~(i) accepts primarily yard waste, with a maximum of 25% barn or farm waste, by weight; or~~

~~(ii) accepts primarily farm or barn waste generated on-site.~~

(b) does not accept sewage sludge, biosolids, or septage; or

(c) accepts less than 200 tons of offal from custom exempt butcher operations.

(27) remains the same, but is renumbered (32).

~~(28)~~ (33) "Minor landfarm facility" means a landfarm facility that has up to ~~1,600~~ 2,400 cubic yards of contaminated soil from single or multiple events either undergoing treatment or accepted for treatment at the facility.

(29) through (31) remain the same, but are renumbered (34) through (36).

~~(32)~~ (37) "One-time landfarm" means a landfarm facility for the remediation of less than ~~1,600~~ 2,400 cubic yards of non-hazardous contaminated soil generated

from a single ~~event, regardless of the~~ source that will not be used to treat contaminated soil from multiple sources on an on-going basis.

(33) through (43) remain the same, but are renumbered (38) through (48).

(49) "Sewage sludge" or "septage" has the meaning specified in ARM 17.50.802.

(45) and (46) remain the same, but are renumbered (50) and (51).

(52) "Source" means the facility or origin of release that created contaminated soil.

(47) through (53) remain the same, but are renumbered (53) through (59).

(60) "Waste generation" means the act or process of producing waste materials.

(54) remains the same, but is renumbered (61).

AUTH: 75-10-106, 75-10-115, 75-10-204, 75-10-221, MCA
IMP: 75-10-115, 75-10-221, MCA

REASON: The department is proposing to: delete ARM 17.50.403(3); amend ARM 17.50.403(16) renumbered as (20), (18) renumbered as (25), (28) renumbered as (33), (32) renumbered as (37), and (44) renumbered as (50); and add definitions (1), (7),(12), (13),(16), (49), (52), and (61) to coordinate and clarify the definitions necessary for licensure and regulation of composting facilities throughout the administrative rules regulating solid waste management facilities. ARM 17.50.403(7) is proposed because the livestock and custom butcher industries need a convenient, socially and environmentally acceptable, bio-secure way to dispose of carcasses and butcher residuals. In Montana, the lack of local rendering plants and declines in the prices of useful commodities produced from animal carcasses have resulted in the loss of an affordable option for the disposal of butcher wastes. In most cases, the cost of transportation and tipping fees makes landfill disposal cost prohibitive. Composting is an acceptable way of managing these materials and provides an inexpensive alternative for managing dead animals, butcher waste, and other biological residuals. The temperatures achieved during composting will kill most pathogens, reducing the spread of disease. Properly composted material is environmentally safe and a valuable soil amendment for growing certain crops. The limit of 200 tons was mathematically derived working with figures provided by the Montana Department of Livestock. Tonnage is the standard unit for carcasses and butcher residuals.

The department is also proposing to amend the definitions ARM 17.50.403(16) renumbered as (20), (28) renumbered as (33), and (32) renumbered as (37) to reflect a need to increase the size of facilities used primarily to treat contaminated soils from underground storage tank remediation or other small volume cleanup activities. A recent department analysis examined 39 sources of releases where excavation occurred from the years 2003 through 2015 and found that 61 percent of cleanup activities fell below 2,400 cubic yards of material. The proposed increase will allow larger cleanups to take place at one facility under consistent operational and management requirements for minor, intermediate, major, and one-time landfarm facilities.

ARM 17.50.403(44) is renumbered to (25). Subsection (b) is changed from 10,000 cubic yards to 5,000 cubic yards of compost feedstock because the lower amount is a more accurate representation of the amount of compost feedstock accepted in Montana facilities. At this time, there are no facilities in Montana that accept more than 5,000 cubic yards annually. Subsection (c) is proposed to be changed from 1,000 to 2,500 cubic yards since this measurement more accurately depicts 50 percent of the number represented in (b), which is what would be expected to be finished compost on an annual basis.

The department is proposing to add the definition in ARM 17.50.403(52), clarifying the term "source" to ensure one-time landfarms accept only non-hazardous contaminated soil generated from a single source and to ensure soil from multiple sources will not be treated collectively on an on-going basis.

The new definitions proposed under ARM 17.50.403 represent the department's review and consideration of regulations adopted in other states and federal definitions. The proposed new definitions also reflect the general guidelines and model rule template proposed by the U.S. Composting Council. Composting involves complex biological processes and the proposed definitions are necessary to clarify the scope of the rules and to ensure the rules are protective of human health and the environment. Measurements of tonnage are based upon bulk density, which varies depending on moisture content and compost material. Different compost loads require varying amounts of space if the loads have different densities even if the tonnage is identical. Cubic yards more accurately depict the actual quantity of material compared to tonnage measurements.

17.50.502 DEFINITIONS In addition to the definitions in 75-10-203, MCA, the following definitions apply to this subchapter:

(1) through (11) remain the same.

(12) "Floodplain" ~~means the lowland and relatively flat areas adjoining inland waters, including flood-prone areas, that are inundated by the 100-year flood~~ has the meaning specified in ARM 17.50.403.

(13) through (42) remain the same.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing to coordinate definitions throughout the solid waste rules. The department is proposing to also include an area designated as a floodplain, flood zone, or special flood hazard area by a state or federal agency to more accurately capture areas that are floodplains.

4. The proposed new rules for a new landfarm subchapter provide as follows:

NEW RULE I LANDFARM FACILITY APPLICABILITY AND SCOPE

(1) This subchapter applies to:

(a) landfarm facilities as defined under ARM 17.50.403.

(2) Landfarm facilities located within the property boundary of a licensed Class II landfill facility do not require a separate landfarm license, but must be noted in the department-approved Operation and Maintenance Plan and be operated according to the requirements of this subchapter.

(3) Existing licensed landfarm facilities must comply with the provisions of the landfarm rules within six months of [the effective date of these rules].

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Section 75-10-204, MCA, authorizes the department to adopt rules implementing the Montana Solid Waste Management Act (MSWMA). Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of wastes disposed of in Class II landfills. The department is proposing NEW RULE I to identify facilities that are subject to protective regulatory requirements. For landfarm facility applicability and scope, there is no comparable federal regulation or guideline addressing the same circumstances; therefore, the requirements of 75-10-107, MCA, do not apply.

NEW RULE II DEFINITIONS In this subchapter, the following terms shall have the meanings, interpretations, or acronyms provided below:

(1) "1,2 DCA" means 1,2-dichloroethane.

(2) "1,2 EDB" means 1,2-dibromoethane.

(3) "Below treatment zone" or "BTZ" means the undisturbed natural soil within the treatment cell of a landfarm facility that directly underlies the treatment zone to a depth of 3 feet.

(4) "Bioremediation" is the treatment of pollutants or waste (as in an oil spill, contaminated ground water, or an industrial process) by the use of microorganisms (as bacteria) to break down undesirable substances.

(5) "BTEX" means benzene, toluene, ethylbenzene, and xylene.

(6) "C:N:P" means carbon to nitrogen to phosphorus ratio.

(7) "Contaminated soil" has the meaning specified in ARM 17.50.502.

(8) "EPH" means extractable petroleum hydrocarbon.

(9) "Intermediate landfarm facility" has the meaning specified in ARM 17.50.403.

(10) "Landfarm facility" has the meaning specified in ARM 17.50.403.

(11) "Major landfarm facility" has the meaning specified in ARM 17.50.403.

(12) "Minor landfarm facility" has the meaning specified in ARM 17.50.403.

(13) "MTBE" means methyl tert-butyl ether.

(14) "One-time landfarm" has the meaning specified in ARM 17.50.403.

(15) "Remediation" means the act of reducing contamination to a level that is protective of human health and the environment.

(16) "TCLP" means toxicity characteristic leaching procedure.

(17) "TPH" means total petroleum hydrocarbon.

(18) "Treatment cell" means the prepared area of a landfarm facility where

contaminated soil is undergoing remediation.

(19) "Treatment season" means April through October unless otherwise specified by the department.

(20) "Treatment zone" or "TZ" means the total space within a treatment cell that contains the contaminated soils that are being remediated. The treatment zone includes the contaminated soils applied to the treatment cell and any material incorporated into them.

(21) "Unstable area" has the meaning specified in ARM 17.50.1002.

(22) "Uppermost aquifer" has the meaning specified in ARM 17.50.1102.

(23) "VPH" means volatile petroleum hydrocarbon.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing NEW RULE II to further define specific terms used in the licensing and regulation of soil treatment facilities to help the regulated community better understand requirements and stay in compliance with the proposed rules regarding landfarms.

NEW RULE III LANDFARM FACILITY LICENSE APPLICATION (1) A person may not construct, expand, or operate a landfarm facility after [the effective date of these rules] without a landfarm license from the department, except as provided in [NEW RULE I](2).

(2) An applicant for a landfarm facility license shall submit an application to the department on a form provided by the department.

(3) An applicant for a landfarm facility license shall submit the following application materials:

(a) name and mailing address of the proposed facility owner/operator;

(b) name and mailing address of the landowner where the facility will be located;

(c) documentation of the applicant's ownership of the property or documentation demonstrating that the applicant has the right to operate a solid waste management system on the property;

(d) applicant must provide signed documentation granting access to the property by the department, private contractors, and the facility owner/operator to perform activities associated with approved facility operations of the landfarm;

(e) proposed facility name, mailing address, legal location, and property geocode;

(f) total acreage of the proposed facility and acreage to be used for treatment cells;

(g) location of any lakes, rivers, streams, springs, or bogs, on-site or within one mile of the facility boundary;

(h) hydrogeological, and soils characterization information required in ARM 17.50.1311(2);

(i) present uses of property within one mile of the proposed facility boundary and the property owners' names and current addresses;

(j) certification that there are no local government zoning restrictions or ordinances that prohibit the proposed activity at the proposed site;

(k) regional map(s), with a minimum scale of 1:62,500 and a minimum size of 8 1/2 inches by 11 inches, that delineate(s) the following:

(i) the location of the closest population centers; and

(ii) the local transportation systems, including highways, airports, bridges, and railways;

(l) vicinity map(s), with a minimum scale of 1:24,000 and a minimum size of 8 1/2 inches by 11 inches, that delineate(s) the following within one mile of the facility boundaries:

(i) zoning, existing, and allowed land use;

(ii) property boundaries and residences within one mile of the proposed site;

(iii) surface waters;

(iv) floodplain map;

(v) historic sites; and

(vi) other existing and proposed artificial or natural features relating to the project;

(m) site plan(s), with a minimum scale of 1:24,000 with five-foot contour intervals and a recommended minimum size of 8 1/2 inches by 11 inches, that delineate(s) the following within, or associated with, the facility:

(i) proposed waste management areas and license boundaries;

(ii) the location of existing and proposed:

(A) soil borings;

(B) monitoring wells;

(C) buildings and appurtenances;

(D) fences;

(E) gates;

(F) roads;

(G) parking areas;

(H) drainages;

(I) culverts;

(J) storage facilities or areas;

(K) loading areas;

(L) existing and proposed elevation contours;

(M) the location, within one mile of the proposed licensed boundary, of potable wells, surface water bodies, and drainage swales;

(N) direction of prevailing winds;

(O) other maps and drawings related to the design or environmental impact of the proposed facility if requested by the department;

(P) name and address of individual operator;

(Q) proposed operation and maintenance plan;

(R) closure and post-closure care plans;

(S) other information necessary for the department to comply with the Montana Environmental Policy Act or "MEPA," Title 75, chapter 1, parts 1 through 3, MCA;

(4) An applicant shall submit with the application a copy of a proposed policy of general liability insurance to cover bodily injury or property damage to third

persons caused by sudden accidental occurrences at the facility that meet the requirements of ARM 17.50.1114.

(5) In addition to the materials required in (2) through (4), an applicant for a minor, intermediate, or major landfarm facility license shall also submit:

(a) technical design specifications;

(b) construction plans; and

(c) a detailed site plan that includes:

(i) information concerning any material that will be used to construct a liner or berm, including but not limited to:

(A) type, quantity, and source;

(B) compaction density;

(C) moisture content;

(D) design permeability; and

(E) liner construction quality assurance and quality control (QA/QC) plans;

(ii) design and location of any proposed storage or treatment areas;

(iii) design and location of any liquid containment or storage structures; and

(iv) design, location, and grades of any surface water diversion and drainage structures.

(6) In addition to the materials required in (2) through (4), an applicant for a one-time landfarm facility license shall submit the following application materials:

(a) name and address of the proposed facility owner/operator;

(b) name and address of the landowner where the facility will be located;

(c) documentation of the applicant's ownership of the property or documentation demonstrating that the applicant has the right to operate a solid waste management system on the property;

(d) total acreage of the proposed facility and dimensions of the treatment cell;

(e) location of any surface water bodies, including intermittent drainages and floodplains, on-site or within one mile of the facility boundary;

(f) legal description of the site to the nearest quarter-quarter section;

(g) depth to ground water, source of ground water information, and copies of logs from ground water wells within one-mile of the proposed facility;

(h) location of public water supplies within five miles of the proposed facility;

(i) results of background soil sampling;

(j) estimated volume and characterization of soils to be landfarmed at the proposed facility including:

(i) cause of soil contamination;

(ii) analytical results;

(iii) proposed date soils will be applied to landfarm site;

(iv) current use of proposed landfarm site; and

(v) proposed use of site after treatment is completed;

(k) summary of the proposed facility operations and maintenance plan that includes the following:

(i) soil tilling schedule;

(ii) number and frequency of soil sampling activities;

(iii) proposed fertilizer, moisture, or other remediation-enhancing product additions; and

(iv) propose site reclamation and closure activities;

(l) vicinity map(s), with a minimum scale of 1:24,000 and a minimum size of 8 1/2 inches by 11 inches, that delineate(s) the following within one mile of the facility boundaries:

(i) zoning, existing, and allowed land uses;

(ii) residences;

(iii) surface waters;

(iv) access roads;

(v) bridges;

(vi) railroads;

(vii) airports;

(viii) historic sites; and

(ix) other existing and proposed artificial or natural features relating to the project;

(m) site plan(s), with a minimum scale of 1:24,000 with five-foot contour intervals and a minimum size of 8 1/2 inches by 11 inches, that delineate(s) the following within, or associated with, the facility:

(i) proposed waste and licensed boundaries;

(ii) the location of existing and proposed buildings and appurtenances, including:

(A) fences;

(B) gates;

(C) roads;

(D) parking areas;

(E) drainages;

(F) culverts;

(G) storage facilities or areas; and

(H) loading areas; and

(n) closure and post-closure care plan.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed NEW RULE III sets requirements for landfarm facility licensing to ensure facilities are licensed properly and follow the pertinent requirements according to their facility type. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of wastes disposed of in class II landfills.

The department is proposing timelines for implementing new landfarm rules to let the regulated community know when they need to be in compliance with the proposed rules. The department is proposing new rules to reflect the changes in solid waste management practices since solid waste rules were first initiated and to better protect human health and the environment. The department believes that regulation of landfarming activities in a single program will provide consistent regulatory framework and oversight for the regulated community.

Proposed NEW RULE III is necessary to codify landfarm facility licensing that

has been implemented as policy since 1997. The proposed rule codifies these policies and was developed following a review of the department's actions in coordination with the Montana DEQ's Solid Waste Advisory Committee. For landfarm facility licensing, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE IV SITING STANDARDS FOR LANDFARM FACILITIES

(1) The owner or operator of a landfarm facility that is not a one-time landfarm facility shall meet the following siting requirements. Treatment cells must be located:

(a) more than 1,000 feet from domestic water wells;

(b) more than 500 feet from any residential property boundary;

(c) at least 150 feet from the high water mark of surface water, including an intermittent drainage and floodplain;

(d) with at least 25 feet of vertical separation between the base of the treatment zone and the seasonally high water level of the uppermost aquifer beneath the facility; and

(e) at least 200 feet (60 meters) from an unstable area, unless the owner or operator of a landfarm facility makes a written demonstration to the department that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the treatment unit and will be protective of human health and the environment.

(2) The owner or operator of a landfarm facility that is not a one-time landfarm facility may not, without written approval by the department, construct a facility at a site where the depth to the uppermost aquifer's seasonally high water level is less than or equal to 25 feet.

(3) If the owner or operator is proposing to construct a landfarm facility that is not a one-time landfarm facility at a site where the depth to the uppermost aquifer's seasonally high water level is greater than 25 feet, but less than 50 feet, the owner or operator shall submit a ground water sampling and analysis plan that includes:

(a) design and location of the monitoring wells;

(b) sampling procedures;

(c) potential contaminants to be analyzed in the ground water samples; and

(d) any other information determined by the department to be necessary to protect human health or the environment.

AUTH: 17-50-204, MCA
IMP: 17-50-204, MCA

REASON: Proposed NEW RULE IV sets requirements for siting standards for landfarm facilities to ensure protection of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills.

Proposed NEW RULE IV is necessary to codify landfarm facility siting standards that have been implemented as policy since 1997. The proposed rule codifies these policies and was developed following a review of the department's actions in coordination with the Montana DEQ's Solid Waste Advisory Committee. For siting standards for landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE V SITING STANDARDS FOR ONE-TIME LANDFARMS

(1) The owner or operator of a one-time landfarm facility shall meet the following siting requirements. Treatment cells must be located:

(a) more than 1,000 feet from domestic water wells;

(b) more than 500 feet from any residential property boundary; and

(c) at least 150 feet from the high water mark of surface water, including an intermittent drainage and floodplain; and

(d) with at least 25 feet of vertical separation between the base of the treatment zone and the seasonally high water level of the uppermost aquifer beneath the facility.

(2) A one-time landfarm facility may not be constructed at a site where the depth to the uppermost aquifer's seasonally high water level is less than or equal to 25 feet without prior written approval by the department.

AUTH: 17-50-204, MCA
IMP: 17-50-204, MCA

REASON: Proposed NEW RULE V sets requirements siting standards for one-time landfarm facilities to ensure protection of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills.

Proposed NEW RULE V is necessary to codify one-time landfarm facility siting standards that have been implemented as policy since 1997. The proposed rule codifies these policies and was developed following a review of the department's actions in coordination with the Montana DEQ's Solid Waste Advisory Committee. For siting standards for one-time landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE VI DESIGN CRITERIA FOR LANDFARM FACILITIES (1) An owner or operator may not use a soil treatment cell at a landfarm facility unless it meets the standards provided in [NEW RULE IX].

(2) The owner or operator of a landfarm facility shall ensure that:

(a) the basal slope for any treatment cell does not exceed two percent; and

(b) storm water run-on and run-off controls are provided for flow volume up to the 24-hour, 25-year storm event.

(3) The owner or operator of a minor, intermediate, or major landfarm facility may accept wastes that fail the paint filter liquids test, as described in [NEW RULE VIII], if:

(a) the owner or operator has obtained department approval;

(b) the liquid wastes are immediately placed in a lined treatment cell designed and constructed pursuant to (1)(b); and

(c) the liner has a hydraulic conductivity less than or equal to 1×10^{-5} cm/sec.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed NEW RULE VI sets requirements for design criteria for landfarm facilities to ensure protection of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills.

Proposed NEW RULE VI is necessary to codify landfarm facility siting standards that have been implemented as policy since 1997. The proposed rule codifies these policies and was developed following a review of the department's actions in coordination with the Montana DEQ's Solid Waste Advisory Committee. For design criteria for landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE VII OPERATION AND MAINTENANCE PLAN FOR LANDFARM FACILITIES (1) Prior to accepting contaminated soils, the owner or operator of a soil treatment facility shall submit to the department for approval an operation and maintenance plan that includes the following information:

(a) background soil sampling results for the BTZ soils;

(b) for the TZ and BTZ soil:

(i) sample collection procedures;

(ii) sample collection frequency;

(iii) analytical parameters and procedures;

(iv) chain-of-custody control; and

(v) quality assurance and quality control plan;

(2) Prior to application of any stockpiled or stored contaminated soils in a treatment cell, the owner or operator of a landfarm facility shall submit to the department for approval the contaminated soil analytical data collected and analyzed for TPH, EPH, VPH, TCLP metals, BTEX, MTBE, and any other contaminants determined by the department to be necessary to protect human health and the environment.

(3) The owner or operator of a landfarm facility shall place contaminated soils that do not have the required documentation in (2) in a bermed treatment cell or in

an approved designated stockpile or storage area for sampling and analysis to determine the characteristics of the soil contamination and physical soil properties.

(4) A designated stockpile or storage area for contaminated soils located outside of a treatment cell must:

(a) be approved by the department prior to the stockpiling or storage of any contaminated soils;

(b) meet the requirements of [NEW RULE VI]; and

(c) provide for surface water run-on and run-off controls to collect and control at least the water volume resulting from a 24-hour, 25-year storm event.

(5) The owner or operator of a landfarm facility using a stockpiling or storage area that is unlined shall, upon removal of the stockpiled or stored soil, sample the BTZ of the area for contaminant infiltration.

(6) Pursuant to the sampling required in (5), the owner or operator shall:

(a) collect and analyze, for the contaminants listed in [NEW RULE IX], one composite sample per 1/2 acre of the stockpile or storage area; and

(b) produce each composite sample by combining five subsamples.

(7) For contaminated soils that are newly applied on a treatment cell, the owner or operator shall:

(a) collect at least one composite sample consisting of five subsamples per composite for each 200 cubic yards of contaminated soil from the same contaminant source; and

(b) analyze the composite samples for contaminants suspected to be in the soil and the contaminants listed in [NEW RULE IX].

(8) After departmental approval has been granted, the owner or operator of a landfarm facility may place newly accepted contaminated soils in a treatment cell with similar types of contaminants (i.e., gasoline, diesel), if:

(a) newly accepted contaminated soils are segregated from the existing contaminated soils; and

(b) each distinct treatment zone in the treatment cell can be easily identified.

(9) The owner or operator of a landfarm facility shall manage each treatment zone, as follows:

(a) contaminated soil must be applied in lifts less than or equal to one foot depending on the capability of the tilling equipment;

(b) contaminated soil must be tilled (when soils are not frozen) twice during the first month on the treatment cell, and at least monthly thereafter;

(c) tillage must occur at the full depth of the treatment zone; and

(d) cobbles, boulders, rocks, debris, or other consolidated materials that impede soil mixing and passage of air or water through the soil or damage tillage equipment must be removed.

(10) The owner or operator of a landfarm facility shall monitor the remediation of contaminated soil by:

(a) collecting representative soil samples from the TZ during April, July, and October, or according to an alternative schedule approved by the department, in the following manner:

(i) one composite sample must be collected per one-half acre from the TZ of each treatment cell;

(ii) each composite sample must be composed of five subsamples;

(iii) all subsamples must be from the same treatment cell;

(iv) at least one composite sample must be collected from each treatment cell; and

(v) sampling activities must protect the liner of the treatment cell, and must not open a contaminant migration pathway;

(b) analyzing the soil samples for TPH, EPH, VPH, TCLP metals, BTEX, MTBE, naphthalene and for gasoline releases before 1996 sample for lead scavengers 1,2 DCA & 1,2 EDB and any other contaminants determined by the department to be necessary to protect human health and the environment;

(c) in addition to the sampling required in (10)(a), analyzing the representative soil samples collected from the TZ during April and making adjustments to maintain optimum bioremediation conditions for all types of contaminated soils under treatment for the following parameters:

(i) organic carbon to available nitrogen to phosphorous ratio (C:N:P);

(ii) moisture content;

(iii) soil pH;

(iv) temperature; and

(d) while sampling, protecting the liner of the treatment cell and preventing the creation of a contaminant migration pathway;

(e) analyzing the soil samples using the analytical methods in [NEW RULE VIII] or other methods approved by the department; and

(f) conducting sampling at a greater frequency or conducting treatability studies if the department determines it is necessary to protect human health or the environment.

(11) At the end of each treatment season, the owner or operator of a minor, intermediate, or major landfarm facility shall collect and analyze BTZ soil samples for the contaminants listed in (10)(b). BTZ sampling must be conducted in the following manner:

(a) one composite sample must be collected per 1/2 acre from the BTZ of each treatment cell;

(b) each composite sample must be composed of five subsamples;

(c) all subsamples must be from the same treatment cell;

(d) at least one composite sample must be taken for each treatment cell; and

(e) sampling must protect the liner of the treatment cell and not create a contaminant migration pathway.

(12) If the results of the BTZ sampling indicate the migration of contaminants from the TZ into the BTZ, the owner or operator shall:

(a) notify the department within seven calendar days of receipt of the analytical results;

(b) consult with the department to determine appropriate corrective measures;

(c) collect BTZ soil samples at a rate of five samples per acre and analyze the samples for the contaminants listed in (10)(b);

(d) within 90 calendar days of receipt of the analytical results required in (13), submit to the department an assessment of corrective measures, and the results of the analysis conducted pursuant to (13);

(e) implement the corrective measures within 30 calendar days of

department approval, or another time period approved by the department; and

(f) cease the acceptance of additional contaminated soils at the facility until the department approves the resumption of the receipt of contaminated soils.

(13) If ground water monitoring is required for the facility, the owner or operator of a landfarm facility shall:

(a) analyze ground water samples collected pursuant to [NEW RULE IV]; and

(b) submit to the department the contaminated soil analytical data collected and analyzed for TPH, EPH, VPH, TCLP metals, BTEX, MTBE, and any other contaminants determined by the department to be necessary to protect human health and the environment. Based upon the soil analytical results, the department will determine the analytical requirements necessary for ground water monitoring.

(14) Whenever ground water monitoring indicates the presence of contaminants listed in (13), the owner or operator of the landfarm facility shall notify the department in writing within 14 calendar days of receipt of the analytical results. The notification must include the concentration of the contaminant(s) and the location of the well.

(15) Whenever ground water monitoring indicates contaminants listed in (13) in the ground water in two consecutive sampling events, the owner or operator of the landfarm facility shall consult with the department in the manner provided in ARM 17.50.1308. The assessment of corrective measures must be submitted within 90 calendar days from the date of the receipt of the analytical results from second sampling event.

(16) If the owner or operator of a landfarm facility cannot remedy contaminant migration, the department may require the owner or operator of the landfarm facility to close the treatment cell and remediate any contamination.

(17) The owner or operator of a landfarm facility may apply liquid waste on the treatment cells only if:

(a) the soils undergoing treatment will not be saturated above the field capacity of the soil;

(b) the liquid wastes meet the requirements of [NEW RULE VIII]; and

(c) liquid wastes will be applied only to soils containing similar contaminants.

(18) The owner or operator of a landfarm facility may not use bioremediation agents unless approved by the department prior to application to the treatment zone.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed NEW RULE VII sets operation and maintenance plan criteria requirements for landfarm facilities to ensure protection of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills.

Proposed NEW RULE VII is necessary to codify landfarm operation and maintenance plan criteria that have been implemented as policy since 1997. The proposed rule codifies these policies and was developed following a review of the

department's actions in coordination with the Montana DEQ's Solid Waste Advisory Committee. For operation and maintenance plan criteria for landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE VIII ANALYTICAL METHODS (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA publication SW-846, Third Edition, Final Updates I (1993), II (1995), IIA (1994), IIB (1995), III (1997), IIIA (1999), IIIB (2005), IV (2008), and V (2015), which may be obtained at https://www.epa.gov/hw-sw846/sw-846-compendium or by contacting the National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312 or 1 (800) 553-687;

(b) Montana Risk-based Corrective Action Guidance for Petroleum Releases, (September 2016) as the analytical methodology landfarms must utilize and Table 1 of the Montana Risk-based Corrective Action Guidance for Petroleum Release as the standards for compliance with remediation requirements outlined in [NEW RULE XI]. A copy of the Montana Risk-based Corrective Action Guidance for Petroleum Releases, (September 2016) may be obtained at http://deq.mt.gov/Land/lust or by contacting MDEQ at P.O. Box 200901, Helena, MT 59620-0901 or 1 (406) 444-6435.

(2) For purposes of this subchapter, the following analytical methods, which are contained in the document referenced in (1) must be used:

(a) arsenic concentrations "Method 7061, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(b) barium concentrations "Method 6010, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(c) benzene, toluene, ethylbenzene, and xylene (BTEX), naphthalene, MTBE, and Lead Scavengers 1, 2 DCA and EDB concentrations "Method 8021 or 8260, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(d) cadmium concentrations "Method 6010, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(e) chromium concentrations "Method 6010, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(f) extractable petroleum hydrocarbon (EPH) concentrations Montana modified "Method for Determination of Extractable Petroleum Hydrocarbons, Massachusetts Department of Environmental Protection";

(g) lead concentrations "Method 7421, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(h) mercury concentrations "Method 7421, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(i) paint filter liquids test "Method 9095B, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(j) selenium concentrations "Method 7741, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(k) silver concentrations "Method 7761, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(l) total petroleum hydrocarbon (TPH) concentrations "Method 8015, Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)";

(m) volatile petroleum hydrocarbon (VPH) concentrations Montana modified "Method for Determination of Volatile Petroleum Hydrocarbons, Massachusetts Department of Environmental Protection"; and

(n) any other analytical method approved by the department.

AUTH: 17-50-204, MCA
IMP: 17-50-204, MCA

REASON: The department is proposing to include the most up-to-date analytical methods to reflect changes that have occurred since the initiation of the department's solid waste rules to ensure landfarms are protective of human health and the environment. The analytical methods (2)(a) through (n) are standard industry practices and procedures developed and published by EPA.

Landfarm facilities are operations that treat petroleum contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of wastes disposed of in class II landfills. Therefore, the department is proposing to adopt and incorporate by reference Montana Risk-based Corrective Action (RBCA) Guidance for Petroleum Release, Table 1, to protect human health and the environment and to provide consistency for the regulated community. RBCA risk-based screening levels are already used for all petroleum release addressed by the department's Federal Facilities and Brownfields Section, Petroleum Tank Release Section, State Superfund Unit, Enforcement Division, and those petroleum releases addressed by the department's Remediation Division under the Water Quality Act.

The U.S. Environmental Protection Agency (EPA) compiles and updates its Regional Screening Levels tables that represent a consensus throughout the EPA regions regarding toxicity data and methods for calculating screening levels based upon protection of human health. The most current update of these tables is dated November 2015. In September 2009, the EPA released Provisional Peer-Reviewed Toxicity Values for Complex Mixtures of Aliphatic and Aromatic Hydrocarbons. In February 2014, EPA issued the Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors. DEQ has determined that it is appropriate to change its risk-based screening levels to more closely follow the most current EPA values. Therefore, the department revised the Montana Risk Based Corrective Action Guidance for Petroleum Release in September 2016 to reflect the current EPA methods.

The goal of RBCA is to identify risks to public health, safety and welfare, and to the environment so they can be reduced. RBCA uses environmental risk analysis, which incorporates elements of toxicology, hydrogeology, chemistry, and engineering to assess the existing and potential risks from a petroleum release. This information is used to develop contaminant concentration levels determined to be acceptable in the State of Montana. Montana has modeled its RBCA screening levels to closely follow EPA's approach.

Table 1 in Montana's RBCA guidance provides specific standards dependent on proximity to ground water (<10 feet, 10-20 feet, or >20 feet) to be more protective of shallower ground water sources. Furthermore, the screening levels are specific for the desired end use whether for residential or commercial to provide a more protective standard for residential uses. Also, the screening levels are specific to as whether the soil contains gasoline and light hydrocarbons or diesel, lead scavengers, and heavy hydrocarbons since movement and leaching vary between these three contaminants. These three categories are further broken down to specifically measure the different chemicals to ensure a thorough examination of the soil.

NEW RULE IX LANDFARM FACILITY STANDARDS (1) The owner or operator of a landfarm facility:

(a) may not place in a treatment cell contaminated soils when the BTZ soils have a hydraulic conductivity less than 1×10^{-5} cm/sec. The owner or operator shall determine hydraulic conductivity by a department-approved method;

(b) may not place in a treatment cell contaminated soils that contain over five percent petroleum hydrocarbons by weight or with concentrations of TPH or VPH and EPH greater than 50,000 ppm without prior approval from the department.

(2) The following table from Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA publication SW-846, Third Edition, Final Updates I (1993), II (1995), IIA (1994), IIB (1995), III (1997), IIIA (1999), IIIB (2005), IV (2008), and V (2015) lists the maximum allowable Toxicity Characteristic Leaching Procedure (TCLP) metals concentration allowed in the treatment zone and BTZ of the treatment cell. The analytical methods listed in Table 4 are defined in [NEW RULE VIII].

TABLE 4

ELEMENT	MAXIMUM TCLP METALS CONCENTRATION (ppm)	ANALYTICAL METHOD
Arsenic	<5.0	7061
Barium	<100	6010
Cadmium	<1.0	6010
Chromium	<5.0	6010
Lead	<5.0	7421
Mercury	<0.2	7421
Selenium	<1.0	7741
Silver	<5.0	7761

(3) Whenever ground water monitoring is required at a landfarm facility, the owner or operator shall construct monitoring wells in accordance with ARM 17.50.1304.

AUTH: 17-50-204, MCA
IMP: 17-50-204, MCA

REASON: Proposed NEW RULE IX sets requirements for facility standards for landfarm facilities to ensure protection of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills.

Proposed NEW RULE IX is necessary to codify landfarm facility standards that have been implemented as policy. The proposed rule codifies these policies and was developed following a review of the department's actions in coordination with the Montana DEQ's Solid Waste Advisory Committee. For facility standards for landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE X RECORDKEEPING AND REPORTING REQUIREMENTS

(1) The owner or operator of a landfarm facility shall:

(a) maintain an operating record at the facility or at an alternate location approved by the department;

(b) make the operating record available for department inspection during normal business hours. The operating record must contain the following information as it becomes available:

(i) BTZ and ground water sample collection details and analytical results, if required;

(ii) the source, volume, type, and concentration of contaminants for incoming contaminated soils;

(iii) treatment zone information, as follows:

(A) application dates and contaminated soil volume applied;

(B) dates of tillage activities;

(C) quantities and dates applied of carbon to nitrogen to phosphorous (C:N:P) ratio and nutrient addition;

(D) moisture content and irrigation;

(E) soil pH and pH adjustments, if necessary;

(F) quantities and dates of bulking agents added;

(G) addition of bioremediation enhancers or amendments;

(H) information concerning treatment zone maintenance;

(iv) date and volume of treated soils removed from treatment cell; and

(v) any other information determined by the department to be necessary to protect human health or the environment; and

(c) record the following information in the operating record as it becomes available and submit it to the department as part of the annual report required under ARM 17.50.412:

(i) dates and results of all remediation sampling events for each separate volume of contaminated soil under treatment including generator tracking code, type

of contaminant, test methodology, baseline concentration, volume being treated, and months under treatment;

(ii) dates, types, and results of all treatment maintenance activities such as BTZ sampling, C:N:P monitoring, tilling, irrigation, nutrient or bulking supplementation; and

(iii) changes to the site map and operational plan.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed NEW RULE X sets recordkeeping and reporting requirements for landfarm facilities for the department to help ensure facilities are in compliance with operation, maintenance and sampling necessary to protect human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills.

Proposed NEW RULE X is necessary to codify landfarm recordkeeping and reporting requirements that have been implemented as policy. The proposed rule codifies these policies and was developed following a review of the department's actions in coordination with the Montana DEQ's Solid Waste Advisory Committee. For recordkeeping and reporting requirements for landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE XI LANDFARM FACILITY REMEDIATION STANDARDS

(1) Contaminated soils are considered remediated when:

(a) contaminant concentrations listed in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 (September 2016) are permanently reduced to the residential RSBL concentrations.

(2) When contaminated soil remediation in a treatment zone is complete, the owner or operator of a landfarm facility may:

(a) remove the remediated material and replace it with additional contaminated soils for treatment;

(b) apply an additional lift to the treatment zone for treatment if:

(i) the maximum depth of remediated soil within the treatment cell, including the additional lift, does not exceed a depth of five feet; and

(ii) BTZ sampling is conducted pursuant to [NEW RULE IX]; or

(c) close and reclaim the treatment cell.

(3) If the contaminant concentration standards in (1) cannot be attained, the department may approve post-remediation uses for these contaminated soils if the owner or operator of a landfarm facility submits a request to the department that:

(a) demonstrates through analytical results that contaminant degradation has reached a maximum using the analytical methods and standards outlined in [NEW

RULE VIII and IX]; and

(b) verifies the treatment cell and treatment zone are in compliance with this subchapter.

(4) The owner or operator of a landfarm facility may not supply or use soils for any purpose exceeding the contaminant concentrations specified in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 (September 2016).

(5) The owner or operator of a landfarm facility may not supply, and a person may not use, remediated soils in any location that threaten human health and the environment, for residential topsoil, or for any purpose in school playgrounds or daycare centers.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed NEW RULE XI sets requirements for landfarm remediation standards to ensure facilities are cleaned to a level that is protective of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills. For remediation standards pertaining to landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

Landfarm facilities are operations that treat petroleum contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of wastes disposed of in class II landfills. Therefore, the department is proposing to adopt and incorporate by reference Montana Risk-based Corrective Action (RBCA) Guidance for Petroleum Release, Table 1 to protect human health and the environment and to provide consistency for the regulated community. RBCA risk-based screening levels are already used for all petroleum release addressed by the department's Federal Facilities and Brownfields Section, Petroleum Tank Release Section, State Superfund Unit, and Enforcement Division and those petroleum releases addressed by the department's Remediation Division under the Water Quality Act.

The U.S. Environmental Protection Agency (EPA) compiles and updates its Regional Screening Levels tables that represent a consensus throughout the EPA regions regarding toxicity data and methods for calculating screening levels based upon protection of human health. The most current update of these tables is dated November 2015. In September 2009, the EPA released Provisional Peer-Reviewed Toxicity Values for Complex Mixtures of Aliphatic and Aromatic Hydrocarbons. In February 2014, EPA issued the Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors. DEQ has determined that it is appropriate to change its risk-based screening levels to more closely follow the most current EPA values. Therefore, the department revised the Montana Risk-Based Corrective Action Guidance for Petroleum Release in September 2016 to reflect the current EPA methods.

The goal of RBCA is to identify risks to public health, safety, welfare, and to the environment so they can be reduced. RBCA uses environmental risk analysis, which incorporates elements of toxicology, hydrogeology, chemistry, and engineering to assess the existing and potential risks from a petroleum release. This information is used to develop contaminant concentration levels determined to be acceptable in the State of Montana. Montana has modeled its RBCA risk-based screening levels to closely follow EPA's approach.

Table 1 in Montana's RBCA guidance provides specific risk-based screening levels dependent on proximity to ground water (<10 feet, 10-20 feet, or >20 feet) to be more protective of shallower ground water sources. Furthermore, the risk-based screening levels are specific for the desired end use whether for residential or commercial to provide a more protective standard for residential uses. Also, the risk-based screening levels are specific to as whether the soil contains gasoline and light hydrocarbons or diesel, lead scavengers and heavy hydrocarbons since movement and leaching vary between these three contaminants. These three categories are further broken down to specifically measure the different chemicals to ensure a thorough examination of the soil.

NEW RULE XII CLOSURE PLAN (1) For purposes of closure of a landfarm facility, the owner or operator of a landfarm facility shall submit a closure plan that documents the following:

(a) all contaminated soils were remediated pursuant to [NEW RULE XI] standards;

(b) concentrations of TCLP metals in all remediated soils remaining at the facility are below the limits specified in [NEW RULE IX], Table 4 and concentrations of nitrates or phosphorous are below the annual agronomic uptake rate for the established vegetation;

(c) one of the following requirements was satisfied:

(i) all contaminated soils were remediated and removed in accordance with [NEW RULE XI] standards;

(ii) all contaminated soils were remediated to [NEW Rule XI] standards and were subsequently spread and contoured in place; or

(iii) all contaminated soils were remediated to Table 1 residential RSBL concentrations in the Montana Risk-based Corrective Action Guidance for Petroleum Releases, (September 2016) and are capable of supporting native vegetation;

(d) all facility structures, such as cell, berms, and ditches, were reclaimed to pre-operation conditions;

(e) disturbed areas were revegetated with native plant growth or other department-approved species;

(f) final surface grades prevent ponding and erosion; and

(g) any ground water wells not intended for post-closure use were abandoned pursuant to ARM 17.50.1305.

(2) The owner or operator of a landfarm facility shall complete all closure activities within 180 days after commencing closure. Extension of the closure period may be granted by the department if the owner or operator demonstrates that closure will take longer than 180 days and that measures necessary to protect

human health and the environment are maintained.

(3) Upon completion of all activities in the closure plan, the owner or operator of the landfarm facility shall provide written notification to the department that the facility has closed. Final closure is not complete until the department has completed final site inspection verifying the provisions of (1).

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed NEW RULE XII sets closure plans requirements for landfarm facilities to ensure protection of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills.

Proposed NEW RULE XII is necessary to codify landfarm facility closure plan requirements that have been implemented as policy. The proposed rule codifies these policies and was developed following a review of the department's actions under the Montana Environmental Policy Act. For closure plans for landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE XIII POST-CLOSURE CARE REQUIREMENTS (1) The owner or operator of a landfarm facility shall:

(a) monitor the reclaimed site for vegetative growth for a minimum of two years after closure. If the revegetation is unsuccessful as determined by the department, the owner or operator shall re-seed and monitor the reclaimed site until the department determines the revegetation is successful;

(b) for a landfarm facility required to monitor ground water, ground water monitoring must be conducted at least semi-annually for a minimum of two years after closure as pursuant to [NEW RULE VII](13);

(c) place documentation of the monitoring in the operating record requirements of ARM 17.50.1106.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed NEW RULE XIII sets post-closure plan requirements for landfarm facilities to ensure protection of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills.

Proposed NEW RULE XIII is necessary to codify landfarm facility post-closure plan requirements that have been implemented as policy. The proposed rule

codifies these policies and was developed following a review of the department's actions in coordination with the Montana DEQ's Solid Waste Advisory Committee. For post-closure plans for landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE XIV FINANCIAL ASSURANCE (1) The owner or operator of a landfarm facility required to conduct ground water monitoring during active life and post-closure care period pursuant to [NEW RULE IV, NEW RULE VII, and NEW RULE XIII], shall obtain financial assurance to ensure adequate financial resources are available for closure and post-closure monitoring.

(2) The financial assurance mechanism must comply with the requirements of ARM 17.50.540.

AUTH: 17-50-204, MCA
IMP: 17-50-204, MCA

REASON: Proposed NEW RULE XIV sets necessary financial assurance requirements for landfarm facilities to ensure protection of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Landfarm facilities are operations that treat contaminated soil from tank clean-ups, releases, etc., to a standard whereby the treated soil may be used for beneficial purposes and not contribute to the volume of class II landfills.

For financial assurance for landfarm facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply. Furthermore, proposed NEW RULE XIV provides sound mechanisms for ensuring landfarm facilities have the financial means for proper operating and closure procedures to protect human health and the environment.

5. The proposed new rules for a new compost subchapter provide as follows:

NEW RULE XV APPLICABILITY AND SCOPE (1) Except as provided in (2), this subchapter applies to all facilities that compost, or use in a composting process, any organic solid waste that can be biologically decomposed, including yard and garden waste, manure, animal processing by-products, animal mortalities, food waste, biosolids, septage, agricultural waste, and clean wood waste.

(2) This subchapter does not apply to:

(a) on-site household composting;

(b) community garden compost operations;

(c) a business that accepts finished compost for bagging or handling; and

(d) composting when:

(i) compost materials include only barn and farm wastes that are derived from on-site agricultural operations; and

(ii) composting occurs at the site of generation or at contiguous property owned or leased by the generator.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Section 75-10-204, MCA, authorizes the department to adopt rules implementing the Montana Solid Waste Management Act (MSWMA). Composting facilities are operations that involve treatment of solid waste in the form of yard waste, landscape waste, biosolids, septage, or food waste residuals to produce a marketable or usable product. Improper operation of a composting facility poses a threat to the environment and human health through release of pathogens or discharge of pollutants to surface and ground water. This proposed rule exempts from licensure, community garden composting and agricultural composting. The department believes that based on size, volume, and the materials being composted, small community garden composting operations pose very little risk to human health or the environment. Section 75-10-214, MCA, excludes legitimate agricultural operations from solid waste management laws and rules. As a result, agricultural composting operations and community garden composting operations are excluded from licensure in this proposal. The department is proposing new rules to protect the human health and environment from the possible adverse impacts from operation of composting facilities. In addition, the department is proposing new rules that reflect technology advancements and changes that have occurred during the last decade.

NEW RULE XVI DEFINITIONS In this subchapter, the following terms apply:

(1) "Active compost" means organic material that is undergoing rapid decomposition in a controlled process.

(2) "Aerated static pile" means a forced aeration method of composting in which a free-standing compost pile is aerated by a blower moving air through perforated pipes located beneath the pile.

(3) "Aerobic" has the meaning provided in ARM 17.50.403.

(4) "Agricultural operations" means the production of plant and animal commodities, including livestock, poultry, or other animals.

(5) "Animal mortality composting" means the composting of wild animals, livestock, or poultry carcasses, including but not limited to: cattle (Bovinae); chicken and turkeys (Phasianidae); goats, sheep, and bison (Bovidae); moose, elk, and deer (Cervidae); and horses (Equidae).

(6) "Barn waste" has the meaning provided in ARM 17.50.403.

(7) "Biogas" is a mixture of carbon dioxide and methane produced during the composting process.

(8) "Biosolids" are nutrient-rich organic materials resulting from the treatment of domestic sewage in a treatment facility.

(9) "Community garden compost operation" means a compost operation located at a community garden or in a neighborhood setting that: has less than one-half acre of working area; accepts less than 40 cubic yards annually; and accepts

only yard and landscape compostable materials, clean and untreated wood chips, or vegetable food wastes.

(10) "Composting" has the meaning provided in ARM 17.50.403.

(11) "Composting amendment" means an ingredient added to raw materials included to improve the overall characteristics of the compost.

(12) "Composting process" means:

(a) static pile composting process;

(b) aerated static pile windrow composting process;

(c) turned windrow composting process;

(d) vermicomposting;

(e) in-vessel compost process; or

(f) other processes approved by the department on a case-by-case basis for the controlled biologic decomposition of organic solid waste.

(13) "Curing" means the final stage of composting in which stabilization of the compost continues, but the rate of decomposition has slowed sufficiently to a point where turning or forced aeration is no longer necessary.

(14) "Facility" has the meaning specified in ARM 17.50.502.

(15) "Farm waste" has the meaning specified in ARM 17.50.403.

(16) "Feedstock" has the meaning provided in ARM 17.50.403.

(17) "Finished compost" is organic material produced by composting to the extent that the material will not reheat due to action of microorganisms when subject to optimum oxygen, moisture, nutrients, and temperature.

(18) "Floodplain" has the meaning provided in ARM 17.50.403.

(19) "Food waste" means food intended for human consumption that is discarded or uneaten.

(20) "Food waste residuals" means waste derived from households, commercial, or industrial facilities, including raw or cooked fruits and vegetables, grain, dairy products, meats, and compostable food service packaging that may be commingled. The term does not include offal from butchering and animal processing facilities.

(21) "Forced aeration" means supplying air to a compost pile or vessel by using blowers to move air through the material being composted.

(22) "Infectious waste" has the meaning specified in 75-10-1003, MCA.

(23) "In-vessel composting process" means a process in which compostable material is enclosed in a drum, silo, bin, or similar container under controlled conditions.

(24) "Leachate" has the meaning specified in ARM 17.50.502.

(25) "Major compost facility" has the meaning specified in ARM 17.50.403.

(26) "Minor compost facility" has the meaning specified in ARM 17.50.403.

(27) "On-site household composting" means the process of converting a family's yard, landscape, or residential food waste into compost within the family's private property.

(28) "Pathogen" means any organism capable of producing disease or infection, including, but not limited to, bacterium, protozoan cyst, parasite, virus, fungus, nematode, or helminth ovum.

(29) "Sewage sludge" or "septage" has the meaning specified in ARM 17.50.802.

(30) "Solid waste management system" has the meaning specified in ARM 17.50.403.

(31) "Vermicomposting" means the process by which worms convert organic waste into a nutrient-rich soil amendment.

(32) "Windrow composting process" means the process in which compostable material is placed in long, narrow, low piles, and aerated mechanically or by a forced aeration system.

(33) "Yard waste" has the meaning specified in ARM 17.50.403.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing new definitions that reflect technology advancements and changes that have occurred during the last decade. The definitions proposed in New Rule XVI represent the department's review and consideration of regulations adopted in other states and reflects the general guidelines and model rule template proposed by the U.S. Composting Council and the EPA. Composting involves complex biological processes and the proposed definitions are necessary to clarify the scope of the rules and ensure that the rules are protective of human health and the environment.

NEW RULE XVII GENERAL LICENSE REQUIREMENTS FOR COMPOST FACILITIES (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) 40 CFR part 503, Appendix B – Pathogen Treatment Process (58 FR 9387, Feb. 19, 1993, as amended at 64 FR 42573, Aug. 4, 1999), which is available at http://www.ecfr.gov/ or by contacting U.S. Government Publishing Office 701 North Capitol Street N.W., Washington, DC or 1 (866) 512-1800.

(2) A person may not construct, expand, or operate a new minor compost facility, animal mortality compost facility, or major compost facility without the applicable license from the department after [the effective date of these rules]. A person operating an existing compost facility must comply with the applicable provisions of the [NEW RULES XV through XXVII] within twelve months after [the effective date of these rules].

(3) A compost facility regulated under this subchapter must employ a low permeability work pad designed and constructed to:

(a) prevent ponding of storm water or leachate below compost to ensure ground water protection;

(b) prevent release or discharge of water that has come into contact with compost to surface water or ground water;

(c) direct storm water or leachate to the appropriate collection system; and

(d) accommodate equipment used by the facility without damage or failure.

(4) A licensed compost facility:

(a) shall comply with all local zoning and land-use laws of the terms of a conditional use permit;

(b) may not be located in wetlands or a floodplain;

(c) may only accept appropriate feedstock necessary for the approved license;

(d) shall ensure finished compost contains no more than two percent sharp or angular inorganic objects;

(e) composting biosolids, septage, sewage sludge, or meeting the definition of a major compost facility provided for in ARM 17.50.403, shall comply with the ground water monitoring provisions in ARM Title 17, chapter 50, subchapter 13 and meet the requirements in 40 CFR part 503, Appendix B – Pathogen Treatment Process (58 FR 9387, Feb. 19, 1993, as amended at 64 FR 42573, Aug. 4, 1999); and

(f) shall locate feedstock receiving or storage areas, composting piles or windrows, or curing or finished compost in accordance with Table 1.

Table 1

Minimum Horizontal Separation Requirements
for Compost Facilities

Item	Separation (feet)
1. Property line	100
2. Property line (animal carcass facility)	300
3. Residence or place of business	500
4. Potable water well or supply	200
5. Surface water body	200
6. Drainage swale	150

(5) The owner or operator of a compost facility shall obtain a Montana pollutant discharge elimination system (MPDES) permit from the department before the facility discharges storm water to state surface waters, or disturbs more than one acre of ground during construction or operation.

(6) The owner or operator of a compost facility located at a licensed solid waste management system (SWMS) shall operate according to the department-approved facility and maintenance plan for the SWMS.

(7) Specific analytical methods described in "Test Methods for Evaluating Solid Waste Physical/Chemical Methods" (SW-846) may be required by the department to characterize incoming feedstock if deemed necessary by the department.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Compost facilities merit regulatory control to ensure that best management practices are used to avoid release of pathogens, noxious odors, nutrients, and release of compost leachate to surface and ground water. New Rule XVII notifies applicants of applicable regulatory requirements and sets forth the

minimum license requirements to ensure that composting facilities are planned and located to avoid adverse effects. These general requirements represent a review of other state regulations governing compost facilities and operations and the model rules proposed by the U.S. Composting Council. New Rule XVII seeks to coordinate the requirements of environmentally protective composting regulations with the existing regulatory framework for other solid waste management systems to ensure fairness and consistency.

NEW RULE XVIII MAJOR COMPOST FACILITY FINANCIAL ASSURANCE

(1) The owner or operator of a major compost facility that is required to conduct ground water monitoring during the active life and post-closure care period, pursuant to ARM Title 17, chapter 50, subchapter 13 shall obtain financial assurance prior to commencing composting operations to ensure adequate financial resources are available for closure and post-closure monitoring.

(2) The financial assurance mechanism must comply with the requirements of ARM 17.50.540.

(3) Compost facilities licensed under the provisions of ARM Title 17, chapter 50 prior to [the effective date of these rules] and that are required to conduct ground water monitoring must meet the requirements of (1) and (2) within 12 months of [the effective date of these rules].

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The potential long term environmental impacts from the operation of major compost facilities merit financial assurance to ensure adequate financial resources are available to cover the costs of closure, post-closure, and ground water monitoring. It is critical to ensure these operations are implemented in a proper manner to protect human health and the environment.

NEW RULE XIX APPLICATION FOR MINOR COMPOST FACILITY LICENSE (1) An applicant for a minor compost facility license shall submit to the department an application for a license. On a form provided by the department, the applicant shall provide at least the following information:

(a) the name, address, and telephone number of each owner or operator, and of one or more persons having the authority to take action in the event of an emergency;

(b) the name of the compost facility, and its physical address, legal description, location with respect to the nearest inhabited area, and the mailing address if different from physical address;

(c) documentation of ownership of the property or documentation demonstrating the applicant has the property owner's approval to operate a minor compost facility on the property;

(d) latitude and longitude of the proposed location;

(e) site map and vicinity map, including facility layout and any drainages;

(f) total acreage of the proposed facility and the total acreage to be used for the composting process;

(g) maximum operational capacity and a description of the types and estimated quantities of feedstock to be composted; seed material or compost starter, if used; in-process compost; and finished compost on-site;

(h) an operation and maintenance plan as required by [NEW RULE XXII];

(i) a closure plan as required by [NEW RULE XXVI]; and

(j) the type of composting process used and the final use of the finished compost.

(2) After review of the application, the department may request any other information necessary to protect human health and the environment.

(3) An applicant shall submit with the application a copy of a proposed policy of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility that meets the requirements of ARM 17.50.1114.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The technical and environmental considerations for minor compost facilities mean that licensing decisions must be based on critical information provided to the department by the applicant. The scope of information required encompasses the practical experience of the department. Specifically, minor compost facilities are more easily managed, have a smaller footprint in a community, and as a result have less of an environmental impact than larger facilities and other regulated solid waste management facilities.

NEW RULE XX APPLICATION FOR ANIMAL MORTALITY COMPOST FACILITY LICENSE (1) An applicant for an animal mortality compost facility license shall submit to the department an application for a license on a form provided by the department and provide at least the following information:

(a) the names, addresses, and telephone numbers of each owner or operator, and the name(s) of one or more persons having the authority to take action in the event of an emergency;

(b) name of the compost facility, physical address, legal description, location with respect to the nearest inhabited area, and the mailing address if different from physical address;

(c) documentation of ownership of the property or documentation demonstrating the applicant has the property owner's approval to operate an animal mortality on the property;

(d) latitude and longitude of the proposed location;

(e) site map and vicinity map, including facility layout and any drainages;

(f) total acreage of the proposed facility and the total acreage to be used for the composting process;

(g) maximum operational capacity and a description of the types and estimated quantities of feedstock to be composted, seed material or compost starter,

if used, in-process compost, and finished compost on-site;

(h) operation and maintenance plan as required by [NEW RULE XXII];

(i) closure plan as required by [NEW RULE XXVI];

(j) type of composting process used and the final use of the finished compost; and

(2) After an application review, the department may request any other information necessary to protect human health and the environment.

(3) An applicant shall submit with the application a copy of a proposed policy of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility that meets the requirements of ARM 17.50.1114.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing NEW RULE XX for the same reasons as proposed in NEW RULE XIX.

NEW RULE XXI APPLICATION FOR MAJOR COMPOST FACILITY LICENSE (1) An applicant for a major compost facility license shall submit to the department for approval an application for a license on a form provided by the department and provide at least the following information:

(a) names, addresses, and telephone numbers of each owner or operator, and one or more persons having the authority to take action in the event of an emergency;

(b) legal description and ownership status of the proposed location, including the land owner's name and address and documentation demonstrating that the applicant has approval to operate a major composting facility on the property;

(c) names, addresses, and contact information of abutting property owners;

(d) total acreage of the proposed facility and total acreage to be used for the composting process;

(e) a ground water monitoring plan or a demonstration meeting the requirements of ARM 17.50.1303;

(f) a 1:24,000 site map that delineates within one mile of the proposed facility boundaries basic information including:

(i) surface water, potable and monitoring wells, wetlands, and floodplains;

(ii) residences, fences, buildings, roads, bridges, railroads, airports, and historic sites;

(iii) proposed buildings, fences, roads, and parking areas;

(iv) drainages and culverts;

(v) storage and loading facilities or areas; and

(vi) direction of prevailing winds;

(g) closure and post-closure care plans;

(h) an operation and maintenance plan that meets the requirements of [NEW RULE XXII].

(2) An applicant shall submit with the application a copy of a proposed policy

of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility that meets the requirements of ARM 17.50.1114.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The technical and environmental considerations for major compost facilities mean that licensing decisions must be based on critical information provided to the department by the applicant. Major compost facilities require a site characterization to evaluate the need and timing for ground water monitoring and additional site-specific controls to ensure that the facility is designed, constructed, and operated in a way that is protective of human health and the environment.

NEW RULE XXII OPERATION AND MAINTENANCE PLAN FOR COMPOST FACILITIES (1) The owner or operator of a compost facility regulated under this subchapter shall submit an operation and maintenance plan that includes the following information:

(a) description of measures to:

(i) prevent storm water flow or run-off onto the operation during peak discharge from a 25-year, 24-hour storm event;

(ii) contain and manage leachate generated when precipitation comes in contact with composting materials or feedstock;

(iii) control on-site and prevent offsite nuisance conditions such as noise, dust, odors, vectors, and windblown debris;

(iv) prevent water pollution at and beyond the site boundaries;

(v) control access to prevent unauthorized site access and illegal dumping; and

(vi) minimize nuisance odors and to reduce the likelihood such odors will impact receptors;

(b) description of the composting procedures specifically defining all activities, and periods of non-activity; including:

(i) description of personnel required and their responsibilities;

(ii) estimated traffic volume, plan for entrance and egress, and procedures for unloading trucks;

(iii) procedures for operation during wind, heavy rain, snow, or freezing conditions;

(iv) description of the method(s) for maintaining compost piles at 45 percent to 60 percent moisture content;

(v) a plan for frequency and temperature regime as required by [NEW RULE XXIV] Table 3;

(vi) a plan for testing finished compost for weed seed and pathogen destruction, trace metals, compost stabilization, herbicide residuals, and applicable compost sampling and analysis requirements as required by [NEW RULE XXIV];

(vii) a list of equipment available for use;

(viii) a detailed description of the windrow construction, if used; and

(ix) a process flow diagram of the entire process for in-vessel systems, if used; and

(x) location of compost facility records outlined in [NEW RULE X];

(c) maximum operational capacity and a description of the types of feedstocks to be composted including estimated quantities of:

(i) feedstocks;

(ii) in-process compost;

(iii) finished compost on-site; and

(iv) seed material or compost starter if used;

(d) a description of the scales or other means used to document the quantity of output of finished product;

(e) a description of the finished product use;

(f) the method of aeration;

(g) plan for the removal and disposal of solid waste and finished compost that cannot be used in the expected manner;

(h) contingency plans that describe the corrective or remedial procedures to be taken in the event of:

(i) the delivery of unapproved feedstock;

(ii) contamination of surface water or ground water; and

(iii) the occurrence of nuisance conditions;

(i) a description of monitoring that will occur involving the composting process of the site;

(j) a site map with contours, delineating boundaries of:

(i) the composting area, feedstock, and other stockpiles in relation to property boundary;

(ii) on-site drainage flow paths for leachate or storm water;

(iii) direction of prevailing winds by season;

(iv) access roads and on-site roads;

(v) location of water supply wells, buildings, residences, surface water bodies, and drainage swales within 1,000-feet of the site; and

(vi) identification of all current and proposed facility buildings.

(2) The owner or operator of a composting facility shall review the operation and maintenance plan every five years after the date of the issuance of the license to determine if significant changes in the operation have occurred. If the review indicates that significant changes have occurred, the owner or operator shall update the operation and maintenance plan to reflect the changes and submit the update to the department for approval. If the review does not indicate significant changes have occurred, the owner or operator shall inform the department in writing that the operation and maintenance plan has been reviewed and an update is not necessary.

(3) If the department determines that changes to the operation and maintenance plan are necessary to protect human health or the environment, the department shall notify owners and operators in writing of the new requirements. An owner or operator must update the operation and maintenance plan to reflect changed conditions and requirements and submit the changes to the department for approval within 45 days of receiving the written notice from the department.

(4) An owner or operator of an animal mortality composting facility shall also

submit the following information as part of the operation and maintenance plan required in (1):

(a) the source location of the animal mortalities to be accepted by the facility;

(b) a description of the hormones, antibiotics, diseases, or euthanasia drug compounds that may be present in the animal mortality or by-products that the facility will accept;

(c) the intended distribution and use of the final compost; and

(d) methods and controls to prevent animal scavenging at the facility.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing New Rule XXII to ensure that licensees operate and maintain compost facilities in a manner that avoids the negative effects of pathogens, noxious odors, or contamination of surface and ground water. Proposed NEW RULE XXII sets operation and maintenance plan criteria requirements for compost facilities to ensure protection of human health and the environment. Section 75-10-204, MCA, authorizes the department to adopt rules implementing the MSWMA. Proposed NEW RULE XXII is necessary to codify compost operation and maintenance plan criteria that is currently being implemented as policy. The proposed rule codifies these policies and was developed following a review of the department's actions and coordination with the Petroleum Release Board and Petroleum Consultants. For operation and maintenance plan criteria for compost facilities, there is no comparable federal regulation or guideline addressing the same circumstances, so the requirements of 75-10-107, MCA, do not apply.

NEW RULE XXIII RECORDKEEPING AND ANNUAL REPORTING REQUIREMENTS (1) The owner or operator of a compost facility subject to the provisions of this subchapter shall submit to the department an annual report on a form provided by the department by April 1 of each year.

(2) The owner or operator of a compost facility shall maintain the following records on site or in a location provided in the application, and these records must be made available to the department for inspection during normal business hours:

(a) type and amount of feedstock(s) and bulking material(s) received, processed, and remaining on-site;

(b) amount of finished compost sold or distributed offsite;

(c) any ground or surface water quality monitoring data;

(d) compost analytical data;

(e) operational monitoring data, including composting time and temperature measurements according to the parameters outlined in the operations and maintenance plan;

(f) windrow or pile aeration data;

(g) financial assurance documentation, if required;

(h) operations and maintenance plan;

(i) closure plan; and

(j) any other information determined by the department to be necessary to

protect human health and the environment.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The possible environmental effects associated with operation of a compost facility means that it is prudent to require compost facilities to keep records of their operations. The record keeping requirement promotes operation of the facility according to license conditions and best management practices, as well as provides critical information that aids the department in regulating facilities and ensuring facilities are not having negative impacts on human health and the environment.

NEW RULE XXIV SAMPLING AND ANALYSIS REQUIREMENTS FOR COMPOST FACILITIES (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) The United States Department of Agriculture Natural Resources Conservation Service Montana Operation and Maintenance Guide for Composting Facility (MT EFH, 4/14) available at https://www.nrcs.usda.gov/wps/portal/nrcs/site/mt/home/ or by contacting NRCS Montana USDA Natural Resources Conservation Service, 10 East Babcock Street, Room 443, Bozeman, MT 59715-4704 or 1 (406) 587-6811; and

(b) US EPA Class A standard, 40 CFR 503.13, Table 2 which may be obtained at https://www.gpo.gov/fdsys/granule/CFR-2010-title40-vol29/CFR-2010-title40-vol29-sec503-13 or by contacting the National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312 or 1 (800) 553-6847.

(2) The owner or operator of a licensed compost facility must sample and analyze compost material based on the size and frequency requirements in Table 3, and verify that the finished compost meets the minimum standards established in Table 4:A through 4:E based on the type of licensed compost facility.

(3) Sampling procedures must be described in the facility's operation and maintenance plan and produce valid and representative analytical results.

(4) The following requirements apply to finished compost:

(a) minor compost facilities – Table 4:D;

(b) animal mortality compost facilities – Table 4:C through 4:E;

(c) major compost facilities – Table 4:A through 4:E; and

(d) facilities composting biosolids – Table 4:A through 4:E.

(5) The department may require sampling and analysis of additional constituents as determined to be necessary to protect human health and the environment.

(6) When finished compost exceeds the applicable minimum standards identified in Table 4:A through 4:E based on the facility type, the owner or operator shall:

(a) reintroduce the material back into the active composting process;

(b) dispose of the material at a licensed Class II solid waste management facility; or

(c) otherwise use the material in a manner approved by the department.

Table 3:

TESTING FREQUENCY FOR COMPOST FACILITIES

Finished Compost	Frequency
Less than 5,000 cubic yards	annually
5,000 – 10,000 cubic yards	semiannually
10,000 + cubic yards	quarterly

Table 4:A

TEMPERATURE

- High temperatures (133°F for 3 days minimum) are required to destroy pathogenic microbes;
- High temperatures (>145°F) are required to destroy weed seeds/plants; and
- Temperatures that are too high (>160°F) shall require turning or other incorporation of air. If the pile gets too hot it will shut down (if moist and hot) and or combust.

Table 4:B

MAXIMUM CONSTITUENT CONCENTRATION FOR COMPOST SOLD OR DISTRIBUTED FOR OFFSITE USE
HEAVY METALS

Parameter	Unit	Limit	Test Method found in EPA's SW-846
Arsenic	mg/kg	41	EPA dry wt. 6010A or 7061A; or EPA 3050 and 6010A or 7061A
Cadmium	mg/kg	39	AOAC 975.03B(b) and EPA dry wt. 6010A or 7130; or EPA 3050 and 6010A or 7130
Chromium	mg/kg	1200	EPA dry wt. 6010A or 7190; or EPA 3050 and 6010A or 7190
Copper	mg/kg dry wt	1500	EPA 6010A or 7210; or EPA 3050 and 6010A or 7210
Lead	mg/kg dry wt	300	EPA 6010A or 7420 or 7421; or EPA 3050 and 6010A or 7420 or 7421
Mercury	mg/kg dry wt	17	EPA 7471A

Molybdenum	mg/kg dry wt	54	EPA 6010A or 7480 or 7481; or EPA 6010A or 7480 or 7481; or EPA 3050 and 6010A or 7480 or 7481.
Nickel	mg/kg dry wt	420	EPA 6010A or 7520; or EPA 3050 and 6010A or 7520
Selenium	mg/kg dry wt	100	EPA 7740 or 7741A; or EPA 3050 and 7740 or 7741A
Zinc	mg/kg dry wt	2800	EPA 6010A or 7950; or EPA 3050 and EPA 6010A or 7950

Table 4:C

PATHOGENS

- The owner or operator of a compost operation shall ensure that:
- the density of the fecal coliform present in the compost is less than 1,000 most probable number (mpn) per gram of total solids (dry weight basis); or
- the density of *Salmonella* species bacteria in the compost is less than three mpn per four grams of total solids (dry weight basis) at the time the compost is to be sold or otherwise distributed for use.
- Upon request of the department the licensee shall test any other disease agents determined by the source of animal mortality.

Table 4:D

COMPOST PROPERTIES

Parameter	**Units**	**Potting Grade[1/]**	**Mulch/Top Dressing[2/]**	**Soil Amendment[3/]**
pH	pH units	6-8.5	5.5-9.0	6-8.5
Moisture content	%, wet weight basis	30-60	30-60	30-60
Organic Matter Content	%, dry weight basis	30-65	>than 30	30-65
Soluble Salt Concentration	dS/m (mmhos/cm)	<6	<10	<10

Particle Size	% passing a selected mesh size, dry weight basis	99%<1/2"	99% <3" 25%+| <3/8"	99% <3/4"
Physical Contaminants (inert material)	%, dry weight basis	<1	<1	<1
Stability Indicator CO_2 Evolution Rate	mg CO_2 -C per g OM per day	<8	<8	<8
Nutrient content (total N, P2O5, K2O, Ca, Mg)	%, dry weight	No limit, just informational.	No limit, just informational.	No limit, just informational.

[1/] Potting Grade: Compost used within a blend of materials to formulate a potting mix or seed bed. Compost should not exceed 20-30% of the mix. Soluble Salt content of the mix should not exceed 2.5 dS/cm to 4 dS/cm depending on the plants to be grown.
[2/] Mulch/Top Dressing: Compost is applied to the soil surface to help inhibit weed growth, conserve soil moisture, and reduce soil erosion. Compost is typically applied at a 1-2 inch thickness. Contact with tree trunks or plant stems should be avoided.
[3/] Soil Amendment: Compost is incorporated into the soil to improve soil quality (organic matter, water-holding capacity, aeration, drainage, and cation exchange capacity). Typical blends for soil amendment use is one part compost to two parts soil.

Table 4:E

RESIDUAL HERBICIDES

Parameter	**Units**	**Potting Grade[1/]**	**Mulch/Top Dressing[2/]**	**Soil Amendment[3/]**
Maturity Indicator (bioassay) Seed Emergence Seedling Vigor	%, relative to positive control %, relative to positive control	Minimum 80 Minimum 80	Minimum 80 Minimum 80	Minimum 80 Minimum 80

(7) Compost that contains sewage sludge or septage must meet the requirements in 40 CFR part 503 Appendix B – Pathogen Treatment Process (58 FR 9387, Feb. 19, 1993, as amended at 64 FR 42573, Aug. 4, 1999).

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Standards for compost processing are necessary to minimize the negative impacts associated with pathogens and other constituents of concern and to ensure human health and the environment are adequately protected.

The department is proposing rules to ensure compost facility operations periodically analyze its finished compost and must notify the department that the minimum standards set forth in the tables are met. This action will inform the facility and the department whether mitigation measures are needed in the event the composts exhibit levels of pathogens and metals that may be dangerous to human health and the environment.

Table 4:A are U.S. EPA Class A standard, 40 CFR 503.13, Tables 2 and 4 levels (Arsenic 41 ppm, Cadmium 39 ppm, Copper 1500 ppm, Lead 300 ppm, Mercury 17 ppm, Molybdenum 75 ppm, Nickel 420 ppm, Selenium 100 ppm, Zinc 2,800 ppm).

Standards for Table 4:B through 4:E are based on the standards from the United States Department of Agriculture and Montana's Natural Resources Conservation Service "Operation and Maintenance Guide for Your Composting Facility." These standards were developed using the following references: "On-Farm Composting Handbook, NRAES-54", June 1992 E&A Environmental Consultants. Landscape Architect Specifications for Compost Utilization, Dec. 1997 and Prepared for Clean Washington Center (CWC) and the U.S. Composting Council.

NEW RULE XXV TEMPORARY SUSPENSION OF OPERATIONS (1) The owner or operator of a compost facility may temporarily suspend acceptance of compostable materials up to 180 days without having to implement a closure plan.

(2) An owner or operator who exceeds the 180-day limit provided in (1) shall:

(a) comply with the provisions in [NEW RULE XXVI]; and

(b) notify the department that operations have been temporarily suspended if:

(i) no compostable materials will be received for 180 days; or

(ii) seasonal or weather conditions keep the effective operation of a compost facility from functioning according to [this subchapter].

(3) During suspension, the facility may not create a public nuisance or a health hazard.

(4) The owner or operator of a compost facility shall notify the department of the intention to resume operations at a temporarily suspended facility 30 days prior to accepting or managing compostable materials.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The department is proposing NEW RULE XXV to allow an owner or operator of a compost facility to temporarily suspend operations with the intention of re-opening within a 180-day period. Weather conditions, availability of compostable materials, and the effectiveness of compost activities all affect the successful operation of a facility licensed under these proposed rules. The option to have a seasonal facility provides greater flexibility and lessens the burden on the regulated community. Additionally, the department is proposing operation and maintenance regulations for seasonal facilities to protect human health and the environment. Facilities that temporarily suspend operations must notify the department when they are preparing to re-open and continue operations to aid the department in regulating and tracking seasonal facilities.

NEW RULE XXVI CLOSURE PLAN (1) A closure plan must contain a description of all steps necessary to achieve closure of the compost facility including, but not limited to the removal, abandonment, or restoration of all:

(a) stored material;

(b) other wastes generated by the closure of the composting facility;

(c) work pad or lined areas;

(d) storm water control and leachate collection structures;

(e) ground water monitoring wells, if necessary, pursuant to ARM Title 17, chapter 50, subchapter 13;

(f) other structures and equipment;

(g) vegetation and grade that existed prior to operation; and

(h) any other steps determined by the department to be necessary to protect human health or the environment.

(2) The owner or operator of a compost facility that has not received, processed, or otherwise is not accepting composting materials at a compost facility, for more than 180 days, shall:

(a) notify the department in writing of the intent to close the facility; and

(b) begin implementation of the facility's closure plan.

(3) The owner or operator of a compost facility shall complete closure within 180 days after commencing closure. Extension of the closure period may be granted by the department if the owner or operator demonstrates that closure will take longer than 180 days, and that measures necessary to protect human health and the environment shall be maintained.

(4) Upon completion of all activities in the closure plan, the owner or operator of the composting facility shall provide written notification to the department that the facility has closed. Closure is not complete until the department has completed a final site inspection verifying the provisions of (2).

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Identifying the requirements and procedures for determining when a compost facility is no longer operating and how a facility is closed are necessary to protect human health and the environment. In addition, because the rules require financial assurance for major compost facilities and ground water monitoring, it is necessary to set forth the requirements for facility closure to facilitate release of the financial assurance mechanism.

NEW RULE XXVII POST-CLOSURE CARE AND MAINTENANCE (1) The owner or operator of a compost facility subject to the provisions of ARM Title 17, chapter 50, subchapter 13, shall conduct post-closure care and maintenance for two years, or a longer period as the department determines necessary to protect human health or the environment. During the post-closure care period, the owner or operator shall:

(a) continue to monitor and sample ground water or surface water, if applicable; and

(b) inspect and maintain any cover material or vegetation.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Identifying the requirements and procedures for post-closure care of a composting facility are necessary to protect public health and the environment. In addition, because the rules require financial assurance for the monitoring of ground water at certain composting facilities, it is necessary to set forth the requirements for post-closure care to facilitate planning for an appropriate amount of money and the release of the mechanism for financial assurance.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to dhartman2@mt.gov, no later than 5:00 p.m., February 3, 2017. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general

procedural rules other than MEPA. 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 Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Denise Hartman at dhartman2@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. Brad Jones, attorney for the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

BY: */s/ Tom Livers*
TOM LIVERS, Director

Certified to the Secretary of State, December 27, 2016.

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

In the matter of the amendment of ARM 24.138.3227 pertaining to onsite inspection of facilities	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 27, 2017, at 3:00 p.m., a public hearing will be held in Room 496, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Dentistry (board) no later than 5:00 p.m., on January 20, 2017, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdden@mt.gov (board's e-mail).

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

24.138.3227 ONSITE INSPECTION OF FACILITIES (1) Each facility where moderate sedation or deep sedation/general anesthesia is to be provided shall be inspected initially, and at intervals not to exceed five years, ~~inspected~~ by a ~~team~~ qualified inspector appointed by the board~~, prior to the initial issuance of the appropriate permit to administer anesthesia on the premises, and at intervals not to exceed five years~~. ~~Adequacy of the facility and competency of the anesthesia team will be evaluated by the inspection team. The inspection team shall consist of at least two individuals. One member must hold a deep sedation/general anesthesia permit.~~ Any dentist whose facility is to be inspected shall be notified at least 30 days prior to the inspection, or sooner if mutually agreed. ~~and the names~~ The name of the ~~inspection team~~ inspector shall be provided to the dentist.

(2) The onsite inspection shall include a test of the applicant and the applicant's staff on their abilities to recognize and manage complications likely to occur, considering the techniques being used. Early recognition of complications will be emphasized. The facility must be inspected for the presence of drugs and equipment appropriate for the level of sedation or anesthesia to be provided. Monitoring assistants shall be examined for their knowledge of their respective roles in normal operating procedures and in various emergency situations. The ~~inspection team~~ inspector shall evaluate office staff in proficiency in handling emergency

procedures~~. The inspection team shall~~ and evaluate the accuracy of anesthesia record-keeping.

(3) If the ~~onsite inspection team~~ inspector finds deficiencies present in the inspected office, the facility shall be given 30 days to address the deficiencies. If, at the completion of this 30-day period, the deficiencies have not adequately been rectified, the board will limit the practitioner's permit to apply moderate sedation or deep sedation/general anesthesia only in qualifying facilities.

(4) If serious life-threatening deficiencies are found by the ~~onsite inspection team~~ inspector, the board will immediately limit the practitioner's permit by refusing to permit the administration of moderate sedation or deep sedation/general anesthesia on the premises.

(5) and (6) remain the same.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: Section 37-4-511, MCA, requires the facility in which deep sedation or general sedation is administered to be equipped with proper drugs and equipment to safely administer anesthetic agents. To implement the law, the board adopted ARM 24.138.3209 through ARM 24.138.3233. This rule requires the board to perform inspections as a prerequisite to initial licensure, and then every five years following. ARM 24.138.3219 authorizes temporary licenses for "120 days or until the inspectors are able to make the inspection." The issue created through these rules is that this rule requires inspectors to be licensed and permitted providers, but the board only pays them $150 per inspection. Given that providers are spread out across Montana, inspections sometimes require significant time and travel. Too often, inspectors simply do not have the time and/or money to close their private practice but incur the same overhead costs. The result is inspectors having good intentions to give back to the profession by performing inspections when time allows, but very few ever with enough time. Although inspectors report that money is somewhat of a concern, the bigger barrier is simply time. It is very difficult for two high-level dental inspectors and an actively practicing dentist to coordinate schedules, sometimes hundreds of miles apart, particularly when they involve patient emergencies and other circumstances beyond their control.

Although the board has prioritized initial inspections, currently there exists a backlog in which 21 out of 79 permits require initial inspection. Therefore, the board determined it is reasonably necessary to amend this rule to allow a single qualified inspector to perform the moderate sedation or deep sedation/general anesthesia facility inspections and address the backlog of initial inspections. The board's anesthesia committee will meet within the next year to evaluate the use of single inspectors and consider additional long-term solutions to further streamline the inspections process while continuing to protect the public.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513,

Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., February 3, 2017.

5. An electronic copy of this notice of public hearing is available at www.dentistry.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdden@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.3227 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or e-mail dlibsdden@mt.gov.

9. Dennis Clark, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
DR. DAVID JOHNSON, D.D.S., PRESIDENT

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

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

Certified to the Secretary of State December 27, 2016

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF MEDICAL EXAMINERS
STATE OF MONTANA

In the matter of the amendment of ARM 24.101.413 renewal dates and requirements, 24.156.501 definitions, 24.156.503 medical student's supervision and permitted activities, 24.156.504 internship, 24.156.601 fee schedule, 24.156.625, 24.156.626 revocation or suspension proceedings, 24.156.1005, 24.156.1307, 24.156.1412, and 24.156.1625 unprofessional conduct, 24.156.1304 and 24.156.1404 application for licensure, 24.156.1306 professional conduct and standards of professional practice, 24.156.1617 application for physician assistant license, 24.156.1622 supervision of physician assistant, 24.156.1623 chart review, 24.156.2718 continuing education and refresher requirements, and 24.156.2732 medical direction; the adoption of NEW RULE I application for temporary non-disciplinary physician license, NEW RULE II application for physician licensure in another state via interstate compact, NEW RULE III application for licensure, and NEW RULE IV post-graduates—supervision and permitted activities; and the repeal of ARM 24.156.203 board meetings, 24.156.502 medical schools, 24.156.505 intern's scope of practice, 24.156.506 residency, 24.156.507 resident's scope of practice, 24.156.605 temporary license, 24.156.627 reinstatement, 24.156.803 license requirement, 24.156.804 application for a telemedicine license, 24.156.805 fees, 24.156.806 failure to submit fees, 24.156.807 issuance of a telemedicine license, 24.156.808, 24.156.1004, 24.156.1305, 24.156.1411, and 24.156.1619 renewals, 24.156.809	) NOTICE OF PUBLIC HEARING ON) PROPOSED AMENDMENT,) ADOPTION, AND REPEAL

effect of determination that application)
for telemedicine license does not meet)
requirements, 24.156.811 sanctions,)
24.156.812 obligation to report to board,)
24.156.1602 board policy, and)
24.156.1616 maintaining NCPPA)
certification)

TO: All Concerned Persons

1. On February 3, 2017, at 1:00 p.m., a public hearing will be held in room B-07, basement conference room, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on January 27, 2017, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdmed@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY: In 2015, the Montana Legislature enacted Chapter 154, Laws of 2015 (Senate Bill 77), an act revising licensure and other regulations for physicians and physician assistants, creating a resident physician license, repealing specialized, telemedicine, and temporary physician licenses, and providing the board with rulemaking authority for telemedicine guidelines and short-term licenses. The bill was signed by the Governor on March 30, 2015, and became effective July 1, 2015.

Additionally, the 2015 Montana Legislature enacted Chapter 203, Laws of 2015 (House Bill 429), an act enacting the interstate medical licensure compact and providing for interstate licensure of physicians. The bill was signed by the Governor on April 8, 2015, became effective October 1, 2015, and is codified at 37-3-356 and 37-3-357, MCA.

Following passage of the legislation, board counsel and the Laws and Rules Committee thoroughly reviewed the rules and made numerous recommendations to the board. The board determined it is reasonably necessary to amend several existing rules to align board processes and terminology with the statutory changes and further implement the legislation. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The department proposes to amend the following rule. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(r) remain the same.

(s)	Medical Examiners	Acupuncturist	Biennially	October 31
		~~Emergency Medical Technician~~ Emergency Care Provider: AEMT, EMR, EMT, Paramedic	Biennially	March 31
		Nutritionist	Biennially	October 31
		Physician	Biennially	March 31
		Physician Assistant	Biennially	October 31
		Podiatrist	Biennially	October 31
		~~Telemedicine Practitioners~~ Resident Physician	~~Biennially~~ Annually	~~March 31~~ June 30

(t) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: Because Senate Bill 77 removed the telemedicine practitioner license and added the resident physician license type to the same statute, the department is amending this rule to reflect those changes. The department is also amending this rule to align with 37-3-307, MCA, that resident licenses are limited to one year, but may be renewed. Finally, it is reasonably necessary to amend the designations for emergency care provider licenses in this rule to coincide with the changes previously made in board rule.

5. The board proposes to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.156.501 DEFINITIONS For the purpose of these rules, the following definitions shall apply:

~~(1) Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender may be applied to females.~~

(1) "ABMS" means American Board of Medical Specialties.

(2) "ACGME" means the Accreditation Council for Graduate Medical Education.

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

(4) "AOA" means American Osteopathic Association.

(3) and (4) remain the same but are renumbered (5) and (6).

(7) "Direct supervision" means the supervising physician is:

(a) physically present in the same building as the person under supervision; or

(b) in sufficiently close proximity to the person under supervision to be quickly available to the person under supervision.

(8) "ECFMG" means the Educational Commission for Foreign Medical Graduates.

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

~~(6)~~ (10) "Intern" means a person who ~~has graduated from an approved medical school, and is enrolled in a program of training approved for first year post-graduates. The intern~~ may also be referred to as "in post-graduate year 1" or ~~("~~PGY-1~~"), or "first year resident."~~ who:

(a) ~~An intern~~ has graduated from an approved medical school;

(b) is enrolled in a training program approved for first year post-graduates;

(c) has passed USMLE Steps 1 and 2~~,~~ or the AOA equivalent; and

(d) is preparing for, or awaiting the results of, USMLE Step 3, or the ~~American osteopathic~~ AOA equivalent~~;~~.

~~(b) An intern is not:~~

~~(i) yet eligible for licensure;~~

~~(ii) required to obtain a license for medical practice performed while in Montana; and~~

~~(iii) monitored by the board.~~

~~(c) The board may extend the time of internship beyond one year for good cause shown.~~

~~(7)~~ (11) "Medical student" means a person currently enrolled in or who has graduated from ~~a school of allopathic or osteopathic medicine approved by the Council on Medical Education of the American Medical Association, the Bureau of Professional Education of the American Osteopathic Association, or the board~~ an approved medical school who has not yet entered PGY-1.

~~(a) A medical student is not:~~

~~(i) yet eligible for licensure;~~

~~(ii) required to obtain a license for medical practice performed while in Montana; and~~

~~(iii) monitored by the board.~~

~~(b) A person is not a medical student if the person:~~

~~(i) has been awarded a doctorate degree and successfully completed the United States Medical Licensing Examination (USMLE) Steps 1 and 2, or the equivalent level of testing by the American Osteopathic Association; or~~

~~(ii) has passed USMLE Step 3, or the equivalent level of testing by the American Osteopathic Association.~~

~~(8)~~ (12) "Proceeding" shall include:

(a) a formal complaint alleging violation of any provision of the act or any regulation ~~or requirement~~ made pursuant to a power granted by such act; or

(b) a hearing before the board pursuant to the provisions of 37-3-321 through 37-3-324, MCA.

~~(9)~~ (13) "Resident" means a person who ~~is educationally eligible for licensure as a physician, that is~~:

(a) has the degree of medical doctor~~,~~ or doctor of osteopathy ~~or an equivalent degree~~ from an approved medical school;

~~(b) for purposes of licensure only:~~

~~(i) prior to October 1, 2001, has completed post-graduate year 1; or~~
~~(ii) on or after October 1, 2001, has completed post-graduate year 2;~~
(b) is in "post-graduate year 2" or "PGY-2" or above;
(c) has completed the USMLE Steps 1 and 2 or the AOA equivalent; or
~~(c)~~ (d) holds a certificate from the ~~Educational Commission for Foreign Medical Graduates (~~ECFMG~~) where applicable~~; and
~~(d)~~ (e) is enrolled in ~~a residency training program approved by the Accreditation Council for Graduate Medical Education (ACGME) or the equivalent American Osteopathic Association credentialing body;~~ an approved residency program.
~~(e) a resident may apply for licensure:~~
~~(i) if the resident is enrolled in an ACGME-approved residency or a residency approved by the American Osteopathic Association, the resident need not have an existing, active license to practice as a physician in a state or territory of the United States;~~
~~(ii) if the resident is not enrolled in an ACGME-approved residency, the resident must have an existing, active license to practice as a physician in a state or territory of the United States in order to obtain resident registration.~~
~~(10) "Secretary" means the executive secretary of the Montana state Board of Medical Examiners.~~
(11) remains the same but is renumbered (14).
(15) "USMLE" means United States Medical Licensing Examination or its successor.

AUTH: 37-3-203, MCA
IMP: 37-3-102, 37-3-201, 37-3-305, ~~37-3-306,~~ 37-3-307, 37-3-325, 37-3-326, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with statutory changes in Senate Bill 77, define names and terms used frequently in rule, relocate definitions from other rules, and simplify or clarify existing definitions. Implementation citations are being amended to delete reference to a repealed statute.

24.156.503 MEDICAL STUDENT'S SUPERVISION AND PERMITTED ACTIVITIES (1) All medical student practice ~~must~~ shall be under the direct supervision of a Montana-licensed physician~~, who must be aware of the limitations on the medical student's scope of practice. Either the medical student's medical school or the supervising physician must carry malpractice insurance covering the medical student's practice during the training process~~ except patient care in an emergency room shall occur only in the physical presence of the supervising physician.
~~(2) As used herein, "direct supervision" means that the supervising physician is physically present in the same building as the medical student, or is within 20 minutes of the physical presence of the patient being cared for by the medical student.~~
~~(3) The~~

(2) A medical student may:

(a) assist the licensed physician in medical procedures ~~(for example, suturing wounds)~~ in an office or hospital;

(b) ~~scrub and~~ assist the licensed physician in surgery;

(c) participate in ~~educational and~~ patient conferences; ~~and~~

(d) participate in medical research~~.~~;

~~(4) The medical student may not practice independently; for example, among other things, the medical student may not:~~

~~(a) perform surgery;~~

~~(b) care for a patient in an emergency room without the physical presence of the supervising physician;~~

~~(c)~~ (e) prescribe medications ~~without~~ with the supervising physician's co-signature ~~of the medical student's supervising physician~~;

~~(d)~~ (f) write or issue orders ~~without~~ with the supervising physician's co-signature ~~of the medical student's supervising physician~~; ~~or~~ and

~~(e)~~ (g) sign hospital records or patient charts ~~without~~ with the supervising physician's co-signature ~~of the medical student's supervising physician~~.

(3) Either the medical school or the supervising physician shall carry malpractice insurance covering the medical student's practice during training.

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-102, 37-3-203, MCA

REASON: The board is amending this rule for better organization, ease of use, and to clarify the extent to which medical students may be directly involved in patient care. Additionally, the board is amending the catchphrase to align with the title of NEW RULE IV. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.504 INTERNSHIP (1) An internship which is not an "approved internship" as defined ~~not approved as required~~ by 37-3-102~~(1)~~, MCA, may be approved upon investigation by the board ~~through its executive secretary or some other regularly licensed physician or any other representative which the board may choose,~~ at the expense of the applicant ~~requesting approval of the internship~~.

(2) The board may extend the time of internship beyond one year.

AUTH: 37-3-203, MCA
IMP: 37-3-102, MCA

REASON: The board is relocating ARM 24.156.501(6)(c) to (2) in this rule.

24.156.601 FEE SCHEDULE (1) The following fees will be charged:

(a) remains the same.

(b) ~~Temporary~~ Resident license fee 100

(c) and (d) remain the same.

~~(e) Physician renewal fee (inactive-retired) 65~~

~~Until March 31, 2016. After that date, physicians no longer may renew as inactive-retired under the provisions of ARM 24.156.615 and ARM 24.156.617.~~

~~(f)~~ (e) Resident ~~physician~~ renewal 100

(f) Application for licensure in another state via interstate compact 100

(g) Initial license fee for physician granted a Montana license via interstate compact 500

(2) and (3) remain the same.

AUTH: 37-1-134, 37-1-319, 37-3-203, 37-3-356, MCA
IMP: 37-1-134, 37-1-141, ~~37-3-304,~~ 37-3-305, 37-3-308, 37-3-309, ~~37-3-311,~~ 37-3-313, 37-3-356, MCA

REASON: Senate Bill 77 eliminated temporary licenses and clarified the provisions for resident licensure. The board is amending this rule to utilize correct terminology.

The board is striking (1)(e) as March 31, 2016 has passed and the "inactive-retired" physician license status is no longer renewable. The board is adding (1)(f) and (g) to establish licensure fees associated with the passage of House Bill 429 and Montana's 2015 entry into the Interstate Medical Licensure Compact. The board concluded that a physician obtaining a Montana license via the compact should pay the same fee as one who is licensed under the traditional "by application" method. The board estimates that the proposed fee changes will affect approximately 74 persons and increase annual revenue by $14,740.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete references to repealed statutes.

24.156.625 UNPROFESSIONAL CONDUCT (1) through (1)(n) remain the same.

(o) commission of an act of sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or not related to the licensee's practice of medicine~~. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of medicine~~;

(p) through (ab) remain the same.

(ac) failing to make appropriate arrangements to transfer and place patient medical records in a secure location preceding, during, or following a change in a practice location; sale of practice; or termination of a patient relationship or a medical practice; or knowingly breaching the confidentiality of patient medical records with an individual unauthorized to receive medical records; ~~or~~

(ad) prescribing medication to a patient based solely on a questionnaire; or

(ad) remains the same but is renumbered (ae).

AUTH: 37-1-319, 37-3-203, MCA
IMP: 37-1-131, 37-1-316, 37-3-202, 37-3-305, 37-3-309, 37-3-323, MCA

REASON: The board is amending (1)(o) to remove the language regarding chaperones and accommodate a request from department counsel. Department

counsel advised that the language sets a standard of conduct that is not appropriate for this rule. The board is also amending (1)(o) to clarify the intent that the provisions apply only to conduct by licensees.

The board determined it is reasonably necessary to add (1)(ad) following preliminary discussions about opioid prescribing as well as prescribing via telemedicine. Ultimately, the board decided that the provision should apply to all physicians and all medications and is adding it to those acts the board considers as unprofessional conduct.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.626 REVOCATION OR SUSPENSION PROCEEDINGS (1) In those cases brought pursuant to the provisions of 37-3-323, MCA, such proceedings may be initiated by any person or a member of the board by the filing of a written, signed complaint in which the charge or charges against the licensee are stated separately and with particularity. Such a complaint may be delivered to and filed with the board by any person of legal age or may be delivered to and filed with the board by the executive ~~secretary~~ officer of the board or by the attorney for the board.

AUTH: 37-3-203, MCA
IMP: 37-3-323, MCA

REASON: The board is amending this rule to align with a terminology change in Senate Bill 77.

24.156.1005 UNPROFESSIONAL CONDUCT (1) through (1)(n) remain the same.

(o) commission of an act of sexual abuse, misconduct, or exploitation by the licensee, whether or not related to the licensee's practice of podiatric medicine~~. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of podiatric medicine~~;

(p) through (x) remain the same.

AUTH: 37-1-319, 37-6-106, MCA
IMP: 37-1-316, 37-6-311, MCA

REASON: The board is amending (1)(o) to remove the language regarding chaperones and accommodate a request from department counsel. Department counsel advised that the language sets a standard of conduct that is not appropriate for this rule. The board is also amending (1)(o) to clarify the intent that the provisions apply only to conduct by licensees, whether or not the misconduct is related to the practice of podiatry.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1304 ~~INITIAL LICENSE~~ APPLICATION FOR LICENSURE (1) Each application for an initial license as a nutritionist under the act must be accompanied by:

(a) remains the same.

(b) the initial license fee; ~~and~~

(c) a copy of the registration by the commission; and

(d) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report.

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-1-131, 37-25-302, MCA

REASON: In 2015, a joint review of licensure applications by the executive officer and the Licensing Bureau found that, while the nutritionist application requested an unopened National Practitioner Data Bank self-query report, no rule included the requirement. The board is amending the rule accordingly, and is also amending the catchphrase to better reflect the purpose of the rule.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1306 PROFESSIONAL CONDUCT AND STANDARDS OF PROFESSIONAL PRACTICE (1) A licensee shall conform to generally accepted principles and the standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the ~~association~~ Academy or commission, and other professional or governmental bodies.

(2) and (3) remain the same.

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-1-131, 37-25-201, 37-25-301, MCA

REASON: In a previous rules project, the board changed other references to "association" (as in American Dietetic Association) to "Academy" to reflect the organization's current name (Academy of Nutrition and Dietetics). The reference in this rule was inadvertently missed and is being amended now. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1307 UNPROFESSIONAL CONDUCT (1) through (1)(n) remain the same.

(o) commission of an act of sexual abuse, misconduct, or exploitation by the licensee, whether or not related to the licensee's practice of dietetics-nutrition~~. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of dietetics-nutrition~~;

(p) through (x) remain the same.

AUTH: 37-1-319, 37-25-201, MCA
IMP: 37-1-316, 37-25-308, MCA

REASON: The board is amending (1)(o) to remove the language regarding chaperones and accommodate a request from department counsel. Department counsel advised that the language sets a standard of conduct that is not appropriate for this rule. The board is also amending (1)(o) to clarify the intent that the provisions apply only to conduct by licensees, whether or not the misconduct is related to the practice of dietetics-nutrition.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1404 APPLICATION FOR LICENSURE (1) through (1)(b) remain the same.

~~(c) three written character references, two of which are licensed acupuncturists;~~

~~(d)~~ (c) applicant's clean needle exam results from the Council of Colleges of Acupuncture and Oriental Medicine or its successor;

(d) acupuncture certification ~~and~~ examination results provided by the National Commission for the Certification of Acupuncture and Oriental Medicine; and

~~(e) recent photograph of the applicant which has been signed by the applicant and dated as to when taken;~~

~~(f)~~ (e) copy of birth certificate or driver's license~~; and~~

~~(g) copy of DD214 military discharge, if applicable~~.

(2) through (6) remain the same.

AUTH: 37-13-201, MCA
IMP: 37-13-201, 37-13-302, MCA

REASON: In 2015, a review of board licensure applications by the executive officer and the licensing bureau revealed discrepancies between what is requested on the acupuncturist application and that required in administrative rule. The board is amending this rule to align the application requirements with the rules.

The board is striking (1)(c) to reflect a 2012 board decision to no longer require character references for any applicant. The board is amending (1)(c) and (d) to separate the requirements for CCAOM clean needle exam and NCCAOM certification exam to avoid confusion about which organization provides which exam. Because standardized department record keeping procedures have replaced paper documents with electronic records, the board is striking the photograph requirement from (1)(e) as outdated and unnecessary. Lastly, the board is eliminating the DD214 requirement as it is neither requested, nor required, for licensing. The board will only request military documentation if an applicant reports a discharge other than "honorable."

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1412 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 13, MCA:

(a) commission of an act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not related to the licensee's practice of acupuncture ~~failure to maintain professional boundaries in relationships with patients, or in any way exploiting the practitioner/patient trust~~;

~~(b) engaging in sexual contact with a current patient if the contact commences after the practitioner/patient relationship is established;~~

~~(c) engaging in sexual contact with a former patient, unless a reasonable period of time has elapsed since the professional relationship ended and unless the sexual contact does not exploit the trust established during the professional relationship;~~

(d) through (w) remain the same but are renumbered (b) through (u).

AUTH: ~~37-1-134,~~ 37-1-136, 37-1-319, 37-13-201, MCA
IMP: 37-1-308, 37-1-309, 37-1-310, 37-1-311, 37-1-312, 37-1-316, 37-1-319, 37-13-201, MCA

REASON: Following a request from department counsel to review the sexual misconduct provisions in all the unprofessional conduct rules, the board is amending this rule to consolidate three sections into one and mirror similar provisions for other license types. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.156.1617 APPLICATION FOR PHYSICIAN ASSISTANT LICENSE

(1) An applicant for a physician assistant license shall submit an application on a form prescribed by the department. The application must be complete and accompanied by the appropriate fees and the following information and/or documentation:

~~(a) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report;~~

~~(b)~~ (a) applicant's professional education and work experience since completing physician assistant training; ~~and~~

~~(c) two written character references.~~

(b) verification of education as required by 37-20-402, MCA; and

(c) verification of passage of an exam as required by 37-20-402, MCA.

(2) through (6) remain the same.

AUTH: 37-1-131, 37-20-202, MCA
IMP: 37-1-131, ~~37-20-202,~~ 37-20-203, 37-20-302, 37-20-402, MCA

REASON: In 2015, a review of board licensure applications by the executive officer and the licensing bureau revealed discrepancies between what is requested on the acupuncturist application and that required in administrative rule. The board is adding (1)(b) and (c) to align the application requirements with the rules.

It is reasonably necessary to delete (1)(a) and remove the requirement for a NPDB self-query. In 2014, the board decided to seek NPDB information on physician assistants directly instead of requiring that applicants request a self-query. The board is striking (1)(c) to reflect a 2012 board decision to no longer require character references for any applicant.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT (1) and (2) remain the same.

(3) The supervising physician shall meet face-to-face with each physician assistant supervised a minimum of once a month for the purposes of discussion, education, and training, to include but not be limited to practice issues~~,~~ and patient care~~, and chart reviews in accordance with ARM 24.156.1623~~.

(4) remains the same.

(5) The supervision agreement and duties and delegation agreement for nonroutine applicants must assure the safety and quality of physician assistant services, considering the location, nature, and setting of the practice and the experience of the physician assistant, and shall provide for:

(a) remains the same.

(b) an appropriate scope of delegation of practice authority and appropriate limitations upon the practice authority of the physician assistant; and

(c) appropriate frequency and duration of face-to-face meetings~~; and~~

~~(d) an appropriate percentage of physician assistant charts that must be reviewed by the supervising physician in accordance with ARM 24.156.1623~~.

(6) and (7) remain the same.

AUTH: 37-1-131, 37-20-202, MCA
IMP: 37-1-131, 37-20-101, 37-20-301, 37-20-403, MCA

REASON: In 2014, the Montana Academy of Physician Assistants approached the board with suggestions to remove, or significantly amend the requirements for physician review of PA charts. The board is amending this rule now to align with substantive amendments to PA chart review in ARM 24.156.1623. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1623 CHART REVIEW ~~(1) The supervising physician shall review a minimum of 10 percent of the physician assistant charts on at least a monthly basis.~~

~~(2)~~ (1) Chart review for a physician assistant having less than one year of full-time practice experience from the date of initial licensure must be ~~100~~ 20 percent for the first ~~three~~ six months of practice, and then may be reduced to ~~not less than 25~~ 10 percent for the next ~~three~~ six months, on a monthly basis, for each supervision agreement.

(2) After twelve months, further chart review shall occur. The amount of chart review shall be at the discretion of the physician assistant and the supervising physician to determine in a duties and delegation agreement.

~~(3) Chart review for a physician assistant who has been issued a probationary license must be 100 percent on a monthly basis, unless the board terminates the probationary period.~~

~~(4) The supervising physician shall countersign and date all written entries that have been chart reviewed and shall document any amendments, modifications, or guidance provided.~~

~~(5) A supervising physician shall not be deemed out of compliance with the chart review percentage requirements of this section if the supervising physician demonstrates review of at least 95 percent of the required number of chart reviews.~~

AUTH: 37-1-131, 37-20-202, MCA
IMP: 37-1-131, 37-20-101, 37-20-301, MCA

REASON: In 2014, the Montana Academy of Physician Assistants approached the board with suggestions to remove, or significantly amend the requirements for physician review of PA charts. Following discussion, the board is amending this rule to reduce the amount of chart review for new PAs and set no minimum for a PA with more than 12 months' experience. The board determined that a "one size fits all" percentage requirement does not make sense in all situations and that it is better left to the PA and the supervising physician to determine the amount of necessary chart review relative to the actual practice setting. It remains the supervising physician's duty to answer to the board related to problems with a PA's practice.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1625 UNPROFESSIONAL CONDUCT (1) through (1)(j) remain the same.

(k) commission of an act of sexual abuse, misconduct, or exploitation by the licensee, whether or not related to the licensee's practice of medicine~~. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of medicine~~;

(l) through (z) remain the same.

~~(aa) commission of any act of sexual abuse, misconduct, or exploitation by the licensee, whether or not related to the practice;~~

(ab) through (ag) remain the same but are renumbered (aa) through (af).

AUTH: 37-1-319, 37-20-202, MCA
IMP: 37-1-316, 37-1-319, 37-3-202, 37-20-403, MCA

REASON: The board is amending (1)(k) to remove the language regarding chaperones and accommodate a request from department counsel. Department counsel advised that the language sets a standard of conduct that is not appropriate for this rule. The board is further amending the rule to clarify the intent that the provisions apply only to conduct by licensees, whether or not the misconduct is related to the practice of medicine by a physician assistant. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.2718 CONTINUING EDUCATION AND REFRESHER REQUIREMENTS (1) All levels of licensed ECPs are required to complete ~~board-specified~~ continuing education and refresher requirements prior to their expiration date.

(a) EMRs must complete ~~a board-specific~~ an EMR refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(b) EMTs must complete 48 hours of continuing education topics contained within the original EMT course and ~~a board-specific~~ an EMT refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(c) AEMTs must complete 36 hours of continuing education topics contained within the original EMT course and ~~a board-specific~~ an AEMT refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(d) Paramedics must complete 24 hours of continuing education topics contained within the original EMT course and a ~~board-specific~~ paramedic refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(2) ECPs must complete a ~~formal~~ refresher course in which a lead instructor or medical director validates knowledge and skills.

(a) The refresher course must assure the licensee's competency to function at the level of the ECP license in accordance with the scope of education and practice.

(b) The refresher may be a course of instruction or a combination of quality improvement and quality assurance activities coordinated by an active local medical director.

(i) The content must be structured to assure ongoing competency of the core knowledge and skills for the level of the ECP license.

(ii) The refresher need not be structured in a setting of traditional classroom sessions, but may be extended throughout the biennial renewal cycle. ~~An ECP cannot build his or her refresher course by combining continuing education topics or offerings.~~

(3) ~~All continuing educational requirements can be met by being currently registered and in good standing by the NREMT at a level equal to or greater than the level of Montana licensure.~~ An ECP cannot build a refresher course by combining continuing education topics or offerings.

(4) The lead instructor is responsible for the refresher training at the EMR and EMT levels.

(5) The medical director is responsible for the refresher training at the endorsed EMT level and above.

(a) The medical director may assign duties as appropriate, but retains the overall responsibility for the refresher.

(6) The lead instructor conducting a refresher course must be able to provide an agenda and detailed student performances that document the licensee's ability to

function in accordance with knowledge and skills within the original scope of education.

(a) If audited by the board, the lead instructor must justify the content of the EMR and EMT refresher.

(b) The local medical director must justify the AEMT and paramedic refresher content to the board, if audited.

(4) through (6) remain the same but are renumbered (7) through (9).

AUTH: 50-6-203, MCA
IMP: 50-6-203, MCA

REASON: Since the board last amended this rule in 2015, board staff who work closely with emergency care providers have received comments that the current rule is confusing and that more clarification is necessary to be effective. The board is amending this rule to address staff suggestions and provide more detail on what constitutes a refresher course, when a course can be offered, and who is responsible for the content of such courses at the various levels of ECP licensure.

24.156.2732 MEDICAL DIRECTION (1) through (9) remain the same.

(10) The medical director shall be responsible for and approve the system to assure the inventory, storage, and security of all the medications utilized by the ECPs to whom the medical director provides medical oversight. The medical director may delegate the day-to-day duties where appropriate, but retains the overall responsibility.

(10) remains the same but is renumbered (11).

AUTH: 50-6-203, MCA
IMP: 50-6-203, MCA

REASON: The board's Statewide Medical Director for Emergency Care Providers has become aware of circumstances in which it was unclear who was ultimately responsible for medications stored in EMS facilities. The board is adding (10) to clarify that the medical director, and no other EMS employee of the service, is responsible. The board determined that this amendment will also assist in the board's consideration of complaints about the storage or security of medical inventories within an EMS program.

6. The board proposes to adopt the following new rules:

NEW RULE I APPLICATION FOR TEMPORARY NON-DISCIPLINARY PHYSICIAN LICENSE (1) A medical resident within six months of completing an approved residency program may apply for a physician license and must:

(a) submit a completed application on a form approved by the board;

(b) provide verification from an approved residency program that the applicant is in good standing and expected to complete the residency program within six months of the date of application;

(c) pay the physician license application fee as prescribed in ARM 24.156.601; and

(d) provide to the board any additional information the board or the board's designee deems necessary to evaluate the applicant's eligibility for licensure.

AUTH: 37-3-203, 37-3-301, 37-3-305, MCA
IMP: 37-3-301, 37-3-305, MCA

REASON: In the summer of 2015, hospitals complained to the board about the requirement for residency completion (i.e., date of graduation) before issuance of a physician license. The hospitals stated that that this requirement makes it difficult for hospitals to credential new physicians coming out of residency and creates unnecessary delays in bringing new physicians into the workforce. Because Senate Bill 77 allows the board to issue licenses for time periods less than a full license term for reasons other than discipline, the board is adopting this new rule to allow residents in the final year of residency to apply for licensure prior to graduation.

NEW RULE II APPLICATION FOR PHYSICIAN LICENSURE IN ANOTHER STATE VIA INTERSTATE COMPACT (1) A Montana-licensed physician who wishes to apply for expedited licensure in another state that is a member of the Interstate Medical Licensure Compact shall:

(a) submit a completed application on a form approved by the board;

(b) pay an application fee for licensure in another state via interstate compact per ARM 24.156.601; and

(c) designate Montana as the state of principal license in compliance with 37-3-356, MCA.

(2) Upon receiving an application for expedited licensure via the Interstate Medical Licensure Compact, the department shall:

(a) conduct a review of qualifications and a criminal background check as required by 37-3-356, MCA; and

(b) inform the Interstate Medical Licensure Compact Commission whether or not the applicant meets the qualifications of 37-3-356, MCA.

AUTH: 37-3-203, MCA
IMP: 37-3-356, MCA

REASON: Following passage of House Bill 429 and the subsequent formation of the Interstate Medical Licensure Compact Commission in 2015, the board assessed the need for rules regarding physicians who seek licensure in another state via the compact. The board is adopting NEW RULE II to create a simple licensure process that complies with the language of the compact as codified in 37-3-356, MCA.

NEW RULE III APPLICATION FOR LICENSURE (1) An applicant for a podiatrist license shall submit an application on a form prescribed by the board. The application must be complete and accompanied by the appropriate fees and the following information and/or documentation:

(a) verification of the applicant's podiatric medical education, including graduate medical education;

(b) verification of passage of an examination as required by 37-6-302, MCA;

(c) a history of applicant's podiatry practice, including dates and locations and noting any periods of inactivity; and

(d) a Federation of Podiatric Medical Boards disciplinary report, submitted directly to the board by the FPMB.

AUTH: 37-3-203, 37-6-106, MCA
IMP: 37-6-302, MCA

REASON: Following a 2015 review of board licensure laws, rules, and policies, the board discovered that no rule exists regarding applications for podiatrist licenses. The board is adopting NEW RULE III to set forth the process and align with current requirements in both statute and the actual application.

NEW RULE IV POST-GRADUATES—SUPERVISION AND PERMITTED ACTIVITIES (1) Physician supervision requirements and limitations on patient care by interns and residents shall adhere to the requirements set by the internship or residency program in which the post-graduate is enrolled.

(2) A resident who holds a Montana physician or resident license may practice outside of the residency program without the supervision of a Montana-licensed physician (i.e., "moonlight") with the permission of the residency program director.

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-102, 37-3-103, MCA

REASON: To align with the changes to the statutory definition of "practice of medicine" in Senate Bill 77, board counsel recommended revising both ARM 24.156.505 (Intern's Scope of Practice) and ARM 24.156.507 (Resident's Scope of Practice). Following discussion, the board decided to repeal the two rules and replace them with this unified and simplified rule that places the responsibility for overseeing interns and residents (i.e., graduates from medical school enrolled in post-graduate education programs) in the hands of the post-graduate program.

Additionally, at the request of Montana-based residency programs in 2016, the board is including a provision to allow "moonlighting" (the practice of medicine outside the boundaries and supervision of the residency program) by residents who hold Montana licenses as physicians or resident physicians. The board placed the responsibility for approving moonlighting with the residency program director.

7. The board proposes to repeal the following rules:

24.156.203 BOARD MEETINGS

AUTH: 37-3-203, MCA
IMP: 37-3-204, MCA

REASON: The board is repealing this rule as unnecessary, noting that the boards can follow parliamentary meeting procedures without specifying them in rule.

24.156.502 MEDICAL SCHOOLS

AUTH: 37-3-203, MCA
IMP: 37-3-102, MCA

REASON: The board is repealing this rule upon board counsel's recommendation following passage of Senate Bill 77.

24.156.505 INTERN'S SCOPE OF PRACTICE

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-3-102, 37-3-203, MCA

REASON: See REASON for NEW RULE IV.

24.156.506 RESIDENCY

AUTH: 37-3-203, MCA
IMP: 37-3-102, MCA

REASON: The board determined it is reasonably necessary to repeal this rule following passage of Senate Bill 77 as board counsel advised there is no longer statutory authority supporting it.

24.156.507 RESIDENT'S SCOPE OF PRACTICE

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-3-102, 37-3-203, MCA

REASON: See REASON for NEW RULE IV.

24.156.605 TEMPORARY LICENSE

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-3-301, 37-3-304, 37-3-307, MCA

REASON: The board is repealing this rule because Senate Bill 77 eliminated the temporary license type.

24.156.627 REINSTATEMENT

AUTH: 37-3-203, MCA
IMP: 37-3-324, MCA

REASON: The board is repealing this rule as unnecessary and outdated, as all reinstatement petitions are reviewed individually.

24.156.803 LICENSE REQUIREMENT

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-343, MCA

REASON: The board is repealing the telemedicine rules (ARM 24.156.803, 24.156.804, 24.156.805, 24.156.806, 24.156.807, 24.156.808, 24.156.809, 24.156.811, and 24.156.812) as Senate Bill 77 eliminated the telemedicine license.

24.156.804 APPLICATION FOR A TELEMEDICINE LICENSE

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-344, 37-3-345, MCA

24.156.805 FEES

AUTH: 37-1-134, 37-3-203, MCA
IMP: 37-1-134, 37-1-141, 37-3-344, 37-3-345, 37-3-347, MCA

24.156.806 FAILURE TO SUBMIT FEES

AUTH: 37-3-203, MCA
IMP: 37-3-347, MCA

24.156.807 ISSUANCE OF A TELEMEDICINE LICENSE

AUTH: 37-3-203, MCA
IMP: 37-3-343, MCA

24.156.808 RENEWALS

AUTH: 37-1-141, 37-3-203, MCA
IMP: 37-1-141, MCA

24.156.809 EFFECT OF DETERMINATION THAT APPLICATION FOR TELEMEDICINE LICENSE DOES NOT MEET REQUIREMENTS

AUTH: 37-3-203, MCA
IMP: 37-3-347, MCA

24.156.811 SANCTIONS

AUTH: 37-3-203, MCA

IMP: 37-3-348, MCA

24.156.812 OBLIGATION TO REPORT TO BOARD

AUTH: 37-1-131, 37-1-319, 37-3-202, MCA
IMP: 37-1-131, 37-1-319, 37-3-323, 37-3-401, 37-3-405, MCA

24.156.1004 RENEWALS

AUTH: 37-1-131, 37-1-134, 37-1-141, 37-6-106, MCA
IMP: 37-1-134, 37-1-141, 37-6-304, MCA

REASON: The board is repealing ARM 24.156.1004, 24.156.1305, and 24.156.1411 as unnecessary since the department administers a standardized renewal process for all professional and occupational licensure boards, and these rules merely reference department rules on renewals.

24.156.1305 RENEWALS

AUTH: 37-1-131, 37-1-134, 37-25-201, MCA
IMP: 37-1-134, 37-1-141, MCA

24.156.1411 RENEWALS

AUTH: 37-1-131, 37-1-134, 37-1-141, 37-13-201, MCA
IMP: 37-1-134, 37-1-141, MCA

24.156.1602 BOARD POLICY

AUTH: 37-20-201, MCA
IMP: 37-20-202, MCA

REASON: The board is repealing this unnecessary rule because the board's purpose is adequately addressed in statute at 37-3-101, MCA, and should not be unnecessarily repeated in rule per the Montana Administrative Procedure Act.

24.156.1616 MAINTAINING NCCPA CERTIFICATION

AUTH: 37-20-201, 37-20-202, MCA
IMP: 37-20-202, 37-20-301, 37-20-302, 37-20-402, MCA

REASON: The board has eliminated all other requirements for NCCPA certification in statute and rule. This is the last rule that references certification and its repeal was inadvertently omitted from a previous rules project.

24.156.1619 RENEWALS

AUTH: 37-1-131, 37-1-134, 37-20-202, MCA
IMP: 37-1-134, 37-1-141, 37-20-302, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

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 to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdmed@mt.gov, and must be received no later than 5:00 p.m., February 10, 2017.

9. An electronic copy of this notice of public hearing is available at www.medicalboard.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

10. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdmed@mt.gov; or made by completing a request form at any rules hearing held by the agency.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Debby Barrett, primary bill sponsor for Senate Bill 77, was contacted on May 27, 2015, January 13, 2016, and October 12, 2016, by e-mail. Representative Ellie Hill, primary bill sponsor for House Bill 429, was contacted on September 20, 2016, by e-mail.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.101.413 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.501, 24.156.503, 24.156.504, 24.156.601, 24.156.625, 24.156.626, 24.156.1005, 24.156.1304, 24.156.1306, 24.156.1307, 24.156.1404, 24.156.1412, 24.156.1617, 24.156.1622, 24.156.1623, 24.156.1625, 24.156.2718, and 24.156.2732 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I through IV will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.156.203, 24.156.502, 24.156.505, 24.156.506, 24.156.507, 24.156.605, 24.156.627, 24.156.803, 24.156.804, 24.156.805, 24.156.806, 24.156.807, 24.156.808, 24.156.809, 24.156.811, 24.156.812, 24.156.1004, 24.156.1305, 24.156.1411, 24.156.1602, 24.156.1616, and 24.156.1619 will not significantly and directly impact small businesses.

Documentation of the department and board's above-stated determinations is available upon request to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-3205; facsimile (406) 841-2305; or to dlibsdmed@mt.gov.

13. Ian Marquand, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
NATHAN THOMAS, D.P.M.
PRESIDENT

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

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

Certified to the Secretary of State December 27, 2016

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

In the matter of the adoption of New Rules I through VIII pertaining to Surveillance and Utilization Review Section (SURS) program-integrity activities to prevent, identify, and recover erroneous Medicaid payments as outlined under federal or state law	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On March 9, 2017, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on March 1, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I PROGRAM INTEGRITY: PURPOSE AND SCOPE (1) The department conducts program-integrity activities to prevent, identify, and recover erroneous payments. The department may conduct program-integrity activities, or designate agents to do so, for all health care expenditures funded through Titles XIX and XXI of the Social Security Act or appropriations by the Montana Legislature.

(2) The rules in this subchapter apply to Surveillance and Utilization Review Section (SURS) program-integrity activities to recover improper payments when fraud is not suspected. Fraud and suspected fraud program-integrity activities are not within the scope of these rules. Recovery Auditor Contractor (RAC) program audit and other audits required by federal and state law are also not within the scope of these rules.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-206, 53-2-207, 53-6-101, 53-6-111, 53-6-160, MCA

NEW RULE II PROGRAM INTEGRITY: DEFINITIONS (1) "Algorithm" means the set of rules applied to claim or encounter data to identify overpayments.

(2) "Audit" means an examination of a provider's claims data or records, or both, to determine whether the provider has complied with applicable rules, regulations, policies, and agreements.

(3) "Credible allegation of fraud" means an allegation, which has been verified by the department, from any source. Allegations are considered credible when they have indicia of reliability and the state Medicaid agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis. Allegations may include the following:

(a) fraud hotline complaints;

(b) claims data mining; or

(c) patterns identified through provider audits, civil false claims cases, and law enforcement investigations.

(4) "Data mining" means using software to detect patterns or aberrancies in a data set.

(5) "Department" means the Montana Department of Public Health and Human Services.

(6) "Extrapolation" means a method of estimating an unknown value by projecting the results of a sample to the universe from which the sample was drawn.

(7) "Elevated-risk providers" means a provider who within the previous six years and three months:

(a) has either admitted to fraud or abuse in a written agreement with a governmental agency or has been determined by a final order of judgment of a governmental agency or court to have committed fraud or abuse; or

(b) has a documented history of a significant error rate that has been sustained over a period of at least six years and three months and that documented educational interventions have failed to correct.

(8) "Follow-up audit" means a follow-up examination of the same type of claims data reviewed in an initial audit.

(9) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to oneself or some other person. Fraud includes any act that constitutes fraud under applicable federal or state law.

(10) "Improper payment" means any payment by the department that was more than or less than the sum to which the payee was legally entitled.

(11) "Initial audit" means an initial examination of claims data, provider records, or both to determine whether the provider has complied with applicable Medicaid rules, regulations, policies, and agreements performed in accordance with [New Rule IV].

(12) "Investigations" means a formal inquiry or systematic examination or research of someone or something.

(13) "Prepay review" means department analysis of provider claims prior to payment.

(14) "Provider with significant error rate" means a provider who fails to comply with applicable rules, regulations, policies, education or agreements and has one of the following circumstance in a previous review:

(a) billing errors greater than 5% of the total lines reviewed;

(b) total overpayment amount of $1,000 or greater; or

(c) extenuating circumstances that would have evidence of Medicaid waste or abuse.

(15) "Record" means any written or electronic document or record required to be maintained by a provider under ARM 37.85.414.

(16) "Review" means an examination of claims data, a provider's records, or both, to determine whether the provider has complied with applicable rules, regulations, policies, and agreements. The terms "audit" and "review" are used interchangeably in these rules.

(17) "Self-audit" means an audit conducted by the provider and reviewed by the department.

(18) "Universe" is a statistical term that means the entire aggregation of items from which samples can be drawn. In the context of this subchapter "universe" refers to a defined population of claims, encounters, or both.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-206, 53-2-207, 53-6-101, 53-6-111, 53-6-160, MCA

NEW RULE III PROGRAM INTEGRITY: ACTIVITIES AND SCOPE

(1) Surveillance and Utilization Review Section (SURS) is part of the department's Quality Assurance Division. Its program-integrity activities include:

(a) conducting pre-payment reviews;

(b) conducting initial audits or reviews;

(c) conducting follow-up audits or reviews on providers with significant error rates;

(d) conducting investigations;

(e) initiating and reviewing self-audits;

(f) applying algorithms to claim or encounter data; and

(g) verifying provider compliance with applicable laws, rules, regulations, and agreements.

(2) Except for fraud investigations, the department must provide written notice at least ten calendar days before conducting program-integrity activities at a provider's premises. Program-integrity activities may occur:

(a) on the department's premises;

(b) on the premises of a designated agent; or

(c) on the premises of the provider.

(3) As described in ARM 37.85.414, a provider must maintain records to support the claims it bills to Medicaid. The department has the authority to review provider records in support of claims. The department may select claims and records to evaluate by:

(a) applying algorithms;

(b) data mining;

(c) claim review;

(d) encounter review;

(e) sampling;

(f) referral; or

(g) applying any other method, or combination of methods, consistent with applicable law and rules designed to identify relevant information.

(4) Only records selected by the methods in (3) will be requested. The provider does not have to supply all records in the universe when sampling is used.

(5) An initial audit or review will typically request records for claims paid within the prior three years and examine claims data generated up to a six-month period except:

(a) when requested by state or federal Medicaid authorities;

(b) when instructed by the Medicaid fraud control unit;

(c) when investigating a credible allegation of fraud; or

(d) when conducting a follow-up audit.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-206, 53-2-207, 53-6-101, 53-6-111, 53-6-160, MCA

NEW RULE IV PROGRAM INTEGRITY: PROVIDER SELF-AUDITS

(1) The department may require a provider to self-audit.

(a) The department will give written notice to the provider of the instruction to self-audit.

(b) The provider must return acknowledgement of the receipt of the notice within 30 calendar days of the mailing date of the notice. If the department does not receive acknowledgment within 30 days, it may open an audit.

(c) The provider must comply with all terms included in the notice within the time specified in the notice, unless the department has granted the provider a written extension. Failure to comply with the notice within the time specified in the notice or any written extension constitutes failure to comply with a program-integrity activity.

(d) The department will not require a provider to self-audit any services or encounters that are included in an active state or federal program-integrity activity, rate adjustment, cost settlement, or other payment adjustment.

(e) Within 90 days of receipt of the provider's self-audit, the department will review the self-audit and notify the provider in writing whether it accepts or rejects the results of the self-audit. If the department rejects the results, it may:

(i) instruct the provider to repeat the self-audit; or

(ii) audit the provider.

(2) The department will not accept any identified overpayment as full or final repayment before its review of the provider's self-audit findings is completed.

(3) The provider's notice, dispute, and appeal rights under this section are identical to its rights during or regarding an overpayment determination or other adverse action resulting from an audit conducted by the SURS. The provider has the right to appeal any adverse action that is based on the outcome of a self-audit.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-206, 53-2-207, 53-6-101, 53-6-111, 53-6-160, MCA

NEW RULE V PROGRAM INTEGRITY: RECORDS REQUEST (1) A department request for a provider's records to substantiate a claim for payment must

be in writing and dated. The request must include information to allow the provider to identify the particular records sought.

(2) A provider must submit all requested records within 30 days of the date of the request for records, per ARM 37.85.414. A provider may submit records electronically. The department has the discretion to grant the provider additional time to comply with the request for records. Any extension granted by the department must be in writing.

(3) If a provider fails or refuses to comply with a request for records, the department will take one of the following actions:

(a) deny the provider's claim in a prepay review;

(b) issue a draft audit report or preliminary review notice;

(c) issue a final audit report or notice of improper payment; or

(d) as described in ARM 37.85.414.

(4) A provider must retain all records and supportive materials until the program-integrity activity is completed and all issues resolved.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-206, 53-2-207, 53-6-101, 53-6-111, 53-6-160, MCA

NEW RULE VI PROGRAM INTEGRITY: EXTRAPOLATION (1) The Surveillance Utilization Review Section (SURS) will not use extrapolation in an initial audit. For elevated-risk providers, the SURS unit may determine the amount of an overpayment by extrapolation based upon statistically valid sampling methods, rather than by audit of the entire universe of claims under review.

(2) Extrapolation may be incorporated in follow-up audits when statistically valid sampling methods have been used. The calculation of overpayments may be based on extrapolation.

(a) To determine an improper payment from a statistical sample, the department may extrapolate to the universe from which the statistical sample was drawn.

(b) If during the course of the audit, the provider adjusts or rebills a claim or encounter that is part of the audit sample or universe, the original claim or encounter amount remains in the audit sample or universe.

(3) Under ARM 37.85.416, statistical sampling and extrapolation on hospital services may not be used.

(4) If the department chooses to use statistical sampling and extrapolation to determine an overpayment, it will use a statistical method to draw a random sample of claims for the review period and will audit these claims.

(a) For an initial audit with no extrapolation, the errors found within the sampled records requested and reviewed will be all that is used to determine an overpayment.

(b) For a follow-up audit with no extrapolation, the errors found within the sampled records requested and reviewed will be all that is used to determine an overpayment.

(c) For a follow-up audit with extrapolation, the errors found within the sampled records requested and reviewed will be factored back into the universe of claims under ARM 37.85.416.

(5) When the department uses the results of an audit sample to extrapolate the amount to be recovered, it will notify the provider pursuant to ARM 37.85.416.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-206, 53-2-207, 53-6-101, 53-6-111, 53-6-160, MCA

NEW RULE VII PROGRAM INTEGRITY ACTIVITY: OUTCOMES (1) After reviewing a provider's records, claims, encounter data, or payments, the department will issue a program-integrity review final report that will include any notice of adverse action.

(2) Based upon a program-integrity review final report, the department may take one or more of the following actions:

(a) provide education and guidance;

(b) require the provider to submit additional documentation;

(c) require the provider to submit a claim adjustment;

(d) require the provider to submit a new claim;

(e) deny a claim;

(f) adjust or recover an improperly paid claim;

(g) request a refund by check of an improper payment;

(h) refer an overpayment for collection, with interest and penalties if applicable;

(i) issue a notice of overpayment determination;

(j) impose sanctions under ARM 37.85.501; or

(k) determine it has sufficient evidence to make a credible allegation of fraud.

(3) The provider must submit a claim adjustment or a new claim within 60 calendar days of the date of the department's written notice of an overpayment determination or less if the claim's timely filing, 365 days from the date of service, is less than 60 days.

(4) A department overpayment determination must be dated and include a written description of the overpayment, the dollar amount of the overpayment, the department's reason for determining an overpayment, and the provider's appeal rights.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-206, 53-2-207, 53-6-101, 53-6-111, 53-6-160, MCA

NEW RULE VIII PROGRAM INTEGRITY ACTIVITY: DUE DATES FOR PROGRAM-INTEGRITY REVIEW FINAL REPORTS (1) The department will attempt to complete program-integrity review final reports within 90 days of the date the department receives all requested records. If the department's program-integrity activity requires more than 90 days, it will notify the provider in writing of the delay.

(2) The following program-integrity activities and outcomes will be reported via the department's web site:

(a) the number of audits opened in the month;

(b) the number of audits closed in the month;

(c) list of provider types under review;

(d) average number of days for a review; and

(e) the top five review findings.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-206, 53-2-207, 53-6-101, 53-6-111, 53-6-160, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department), or its predecessors, has paid claims and recovered overpayments through Surveillance and Utilization Review Section (SURS) program-integrity activities since the creation of the Medicaid program. The department is proposing to adopt administrative rules now to inform the public of its SURS program-integrity activities and give an opportunity for public comment.

Montana Medicaid and CHIP/Healthy Montana Kids (HMK) are jointly funded federal and state programs administered in Montana by the department. State and federal taxpayers' money is used to pay health care providers' claims for services. Program-integrity activities review claims for compliance with Medicaid and CHIP/HMK program requirements and recover overpayments.

The majority of the CHIP/HMK program is administered through a third-party administrator. These rules apply to the program areas administered by the department. Health care providers who choose to enroll as Medicaid providers agree to bill claims and receive payment according to the Medicaid program requirements and state and federal law. Like other health care plans, Medicaid has restrictions and requirements on providing services and coding claims. Federal law requires the department to implement a SURS unit that safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments.

New Rule I

The department is proposing this rule as introductory text to state the purpose of SURS' program-integrity activity. The department is also proposing this rule to explain that the new rules, which will be numbered as a new subchapter to Title 37, chapter 85, apply to SURS audits only. The department has several provider claims payment audit or review programs and participates in federal audit programs.

New Rule II

The department is proposing this rule to provide the definition of terms that may not have a commonly understood meaning.

New Rule III

The department is proposing this rule to describe the program-integrity activities SURS performs and state how these activities are conducted. This is necessary to provide transparency.

As described in the rule, SURS has several processes to review paid provider claims for accuracy. These methods are commonly used throughout the industry to review paid medical claims. SURS only performs follow-up audits of a provider if the initial audit established significant errors resulting in overpayment. SURS uses a broader scope of review in follow up audits.

SURS may use statistical sampling during any activity. This is necessary to perform accurate reviews. It is also an advantage to providers because the entity being audited is only required to provide records supporting the sample size, not the universe of records.

This rule states that a provider must maintain records to support the claims it bills to Medicaid. This is not a change in practice. The department is including this language to clarify that the SURS program does not establish a minimum or maximum time period during which a provider must maintain records.

Section (5) of this proposed rule states the time limits SURS typically applies when reviewing claims and selecting records. This section is necessary to inform providers and the public of SURS practices. Typically, an initial SURS audit is a review of up to six months of claims that have been paid within the prior three years. If the initial audit or review establishes the provider has billing errors in those claims, SURS may expand its review. The rule also lists the exceptions when the time limits do not apply to an initial audit.

New Rule IV

The department is proposing this rule to explain what is required when a self-audit request has been received by the provider. As one of its SURS program-integrity activities, New Rule III(1)(e), SURS may require a provider to re-exam a series of claims it submitted and received payment for. Self-audits are not a new practice but this rule is necessary to explain the process to providers and the public. This increases transparency into the process utilized when a provider is informed a self-audit is required.

This rule also states the timelines that apply to the department and states the provider's appeal rights. This is not a change in current practice but is stated in rule to inform the provider of what can be expected during a self-audit of paid claims.

New Rule V

The department is proposing this rule to state what providers are required to do when SURS requests records. The proposed rule is necessary to reduce provider

confusion and to state in rule that a provider may submit records electronically, which is the department's preferred method of receiving records.

This rule should be considered with New Rule III. SURS will determine a statistical significant sample size before requesting records. This assists providers by reducing the number of records that must be provided.

New Rule VI

The department is proposing this rule to inform providers how SURS uses extrapolation. Extrapolation will only be utilized during a follow-up audit, and follow-up audits only occur if the initial audit demonstrates a significant error rate. Extrapolation is a commonly used audit or review procedure that is necessary when there are a substantial number of claims to review.

New Rule VII

The department is proposing this rule to inform providers of the actions the department may take as a result of an audit. The rule also establishes 60 days from the date of the department's written instruction as the maximum time allowed for a provider to submit a claim adjustment or a new claim, except that no claim adjustment or new claim may be filed more than 365 days from the date of service.

New Rule VIII

The department is proposing this rule to establish 90 days from the date the department receives all requested records as the typical time it will be allowed to complete final reports. The rule is also necessary to state the situations when 90 days does not apply and allow the department to inform providers in the event additional time is needed. The rule also informs providers what information is posted on a public web site. The public notification of the audits that were performed and the corresponding results will enhance transparency in the expenditure of taxpayer funds.

FISCAL IMPACT

These rules do not add any requirements, do not impose a fee, or set a rate. No fiscal impact is anticipated.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., March 31, 2017.

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

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

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

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Geralyn Driscoll
Geralyn Driscoll, Attorney
Rule Reviewer

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

Certified to the Secretary of State December 27, 2016.

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

In the matter of the amendment of ARM 37.40.830 pertaining to hospice reimbursement	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 26, 2017, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 11, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.830 HOSPICE, REIMBURSEMENT (1) and (2) remain the same.

(3) The department adopts and incorporates by reference 42 CFR 418.302, as amended August 6, 2015 and effective October 1, 2015 and 42 CFR 418.306, as amended August 6, 2015 and effective October 1, 2015, which sets forth the Medicare payment procedures. Copies of 42 CFR 418.302 and 42 CFR 418.306 are available at the federal web site: http://cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.

(4) through (11) remain the same.

(12) The hospice fee schedules are effective ~~January 1, 2016~~ October 1, 2016. Copies of the department's current fee schedules are posted at http://medicaidprovider.mt.gov and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59602-2951.

AUTH: 53-6-113, MCA
IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.830 to update its Medicaid hospice reimbursement fee schedule referenced in (12), effective October 1, 2016, in accordance with changes in federal hospice reimbursement rates set by the Centers for Medicare and Medicaid Services (CMS) in the Federal Register effective October 1, 2016. Also being updated is the Code of Federal Regulations (CFR) references for 42 CFR 418.302 and 42 CFR 418.306 in (3), which are adopted and incorporated by reference. Medicaid hospice incorporates the Medicare reimbursement methodology and the reimbursement updates as specified in the Federal Register, by incorporating wage indexes and geographic factors specific for Montana counties.

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of 2.1 percent, as computed and published by CMS, which will apply to providers in all 56 counties. A 2.1 percent increase in the hospice reimbursement rate equals approximately $113,400 of the Montana Medicaid Hospice program budget of $5.4 million. Montana hospice rates are affected by a wage index applied geographically by county. The 2017 wage index has increased for Carbon, Yellowstone, and Golden Valley Counties by approximately 1.9 percent. Cascade County wage index increased by approximately 7.2 percent, and Missoula County wage index increased by approximately 5.9 percent. All other Montana counties are subject to the Montana rural wage index rate which increased by approximately 1.9 percent.

Additionally, four hospice providers will see a hospice reimbursement rate decrease of two percent for failure to comply with the federal quality data submission requirements during the prior fiscal year. Two of the four hospices found to be noncompliant with the quality data submission requirements are no longer active Medicaid hospice providers. A copy of the proposed hospice fee schedule can be found at http://medicaidprovider.mt.gov.

The increase in hospice rates will be retroactive to October 1, 2016. Any decreases in hospice rates will not be applied retroactively and will be effective upon adoption of the rule.

Fiscal Impact

The ARM update will have a fiscal impact on the hospice program. Funds impacted will be from federal Medicaid fund source (03585) and general fund source (01100). In FY 2016, approximately 370 Medicaid recipients received the hospice benefit.

A majority of the Medicaid hospice program's approximately $5.4 million budget provides reimbursement for hospice services provided in nursing facilities in the form of room and board for inpatient nursing facility hospice.

Montana counties will see an increase from the 2016 funding levels. CMS has provided a 2.1 percent increase to the Hospice Medicaid rates across the country. Montana hospice rates are affected by a wage index applied geographically by

county. The 2017 wage index has increased for Carbon, Yellowstone, and Golden Valley Counties by approximately 1.9 percent. Cascade County wage index increased by approximately 7.2 percent, and Missoula County wage index increased by approximately 5.9 percent. All other Montana counties are subject to the Montana rural wage index rate which increased by approximately 1.9 percent.

CMS provided verification that four Montana hospices failed to comply with quality data reporting requirements in FY2016. Two of the four hospices listed are no longer active Montana Medicaid hospice providers. The remaining two hospices will see a rate reduction of 2 percentage points for failure to comply with the quality data submission requirements during this fiscal year.

5. The department proposes to apply increases in the hospice reimbursement rates retroactively to October 1, 2016. The implementation date of the rate increase is consistent with the federal approval of the hospice reimbursement rate fee increase and the effective dates of the promulgated federal regulations. Decreases in hospice rates would not be applied retroactively, but would be effective upon adoption of the proposed rule amendment.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., February 3, 2017.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Caroline Warne
Caroline Warne, Attorney
Rule Reviewer

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

Certified to the Secretary of State December 27, 2016.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.4902, 6.6.4906, 6.6.4907, 6.6.4908, and 6.6.4909 pertaining to Patient-Centered Medical Homes	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 28, 2016, the Commissioner of Securities and Insurance, Montana State Auditor (CSI), published MAR Notice No. 6-228 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1895 of the 2016 Montana Administrative Register, Issue Number 20.

2. A hearing was held on November 17, 2016. No testimony was received, but the CSI has thoroughly considered written comments received, and the comments and responses are as follows:

COMMENT NO. 1: Health Care Service Corporation, DBA, BlueCross BlueShield of Montana (BCBSMT) commented that after the word "program," it would like to add "upon mutual agreement of the health plan or payor," to avoid uncertainty around the reporting requirements. This allows the parties to review, discuss, and agree on any additional reporting requests that are not defined in the rule.

RESPONSE NO. 1: This addition to the rule was requested by the majority of the stakeholder council to mirror for the language that is currently in the rule with regard to reporting by health care providers. It is important to keep the requirements the same for both payors and healthcare providers whenever possible. The language that BCBSMT requests is not necessary because 33-40-104, MCA, already requires the commissioner to consult with stakeholders when carrying out the duties of this related to this program and creates a stakeholder council. The council discusses the contents of these reports in detail and makes recommendations to the commissioner. The commissioner uses the recommendation to finalize the reporting requirements and the council reviews and approves the final requirements.

COMMENT NO. 2: BCBSMT requests that a great deal of additional language, including citations to existing statutes be added to ARM 6.6.4908 to further describe the legal process of determining whether certain insurer information can be treated as a trade secret.

RESPONSE NO. 2: The current rule already acknowledges that parts of the letter of intent to act as a PCMH payor may contain trade secrets. It allows the insurer to make a claim of trade secret and the commissioner to make a determination of the legitimacy of the claim according to applicable statutes and case law. It is not necessary to outline the law concerning trade secret determinations in this rule.

COMMENT NO. 3: PacificSource Health Plans commented that the changes to the rules should not be made because the Act itself is set to sunset at the end of 2017. There are bills proposed to the legislature that would remove the sunset, but no one knows the outcome of that legislation yet. PacificSource goes on to suggest other changes that would have to be made in statute, not rule.

RESPONSE NO. 3: The majority of stakeholders specifically requested these rule changes and the council is fully aware of the sunset on the Act. In these rules, the commissioner is making minor changes in the timeline for reporting and a small change to a quality metric that was specifically requested by the majority of the stakeholder council.

COMMENT NO. 4: PacificSource requests substantive changes to ARM 6.6.4902 that were not part of the proposed rule change notice and not discussed by the stakeholder council.

RESPONSE NO. 4: Because this comment requests substantive changes in the rule that were never exposed for public comment, these changes cannot be considered in this adoption notice.

COMMENT NO. 5: PacificSource objects to the "overly broad scope" of the change to ARM 6.6.4906(2) and states that it would require them to "collect and keep data" not yet established on a timeline not yet established.

RESPONSE NO. 5: This addition to the rule was requested by the majority of the stakeholder council to mirror for the language that is currently in the rule with regard to reporting by healthcare providers. It is important to keep the requirements the same for both payors and healthcare providers whenever possible.

Section 33-40-104, MCA, requires the commissioner to consult with stakeholders when carrying out the duties of this related to this program and creates a stakeholder council. The council discusses the contents of these reports in detail and makes recommendations to the commissioner before reporting is required. The commissioner uses the recommendations for the council to finalize the reporting requirements.

The timeline and content for the payor report was established in 2014 and the payors, including PacificSource submitted these reports in 2015 and 2016. There is no change to content for 2017. The proposed rule change was made to formalize a process that was already established.

3. The CSI has amended the above-stated rules as proposed.

/s/ Michael A. Kakuk	/s/ Christina L. Goe
Michael A. Kakuk	Christina L. Goe
Rule Reviewer	General Counsel

Certified to the Secretary of State December 27, 2016.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I concerning social card games played for prizes of minimal value, New Rule II concerning location managers, and the amendment of ARM 23.16.101, 23.16.116, 23.16.117, 23.16.502, 23.16.508, 23.16.1101, 23.16.1102, and 23.16.1903 concerning definitions, transfer of interest among licensees, transfer of interest to new owners, application for operator license, change in managers, officers, and directors, card game tournaments, large-stakes card game tournaments, and video gambling machine ticket vouchers	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 28, 2016, the Department of Justice published MAR Notice No. 23-16-244 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules starting at page 1914 of the 2016 Montana Administrative Register, Issue Number 20.

2. The department has adopted and amended the following rules as proposed: New Rule II (23.16.510), ARM 23.16.101, 23.16.116, 23.16.502, 23.16.508, 23.16.1101, and 23.16.1102.

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

NEW RULE I (23.16.1203) SOCIAL CARD GAMES PLAYED SOLELY FOR PRIZES OF MINIMAL VALUE (1) remains the same.

(2) For purposes of this rule, prizes of minimal value means:

(a) an award to an individual card game winner of cash and/or merchandise which does not exceed ~~$5~~ $10 in total value; or

(b) an award to the winner or winners of a social card game tournament in cash and/or merchandise ~~which does not exceed $50 in total value per individual tournament prize~~ in an amount which does not exceed a total value that is the equivalent of $10 times the number of participants. For example, if there are 25 participants in a tournament, the total value of a prize awarded cannot exceed $250.

(3) For purposes of this rule, a tournament means a prize structure which is determined by the play of more than a single game.

~~(3)~~ (4) Every poker or panguingue game or tournament, and every other authorized card game or card game tournament which is played for an award or prize greater than minimal value, is a gambling activity which must comply with the requirements of Title 23, chapter 5, MCA, and the rules of the department.

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) through (7)(a) remain the same.

(b) transfer that results in less than 5% ownership interest in a publicly traded corporation. Transfers that result in an ownership interest of 5% or greater in a publicly traded corporation are subject to the provisions in (10)~~, except that the transfer may occur without prior department approval whenever the transfer does not occur as the result of a corporate merger or reorganization~~. The department reserves the right to act under 23-5-136, MCA, in this situation if it determines that the transfer violates Montana gambling law or the rules in this chapter.

(8) through (10)(a) remain the same.

(b) Whenever a change in ownership results in an ownership interest by an active investor that is 5% or greater, but less than 10%, the licensee shall, within ~~30~~ 60 days from the date of change in ownership interest, file with the department a complete Form 43 notification form, including all required documents.

(c) Whenever a change in ownership results in ~~a~~ an ownership interest by a passive investor that is 5% or greater, but less than 20%, the licensee shall, within 60 days from the date of change in ownership interest, file with the department a complete Form 43 notification form, including all required documents.

~~(11) Department approval is required prior to any change in ownership in a licensed gambling operation held by a publicly traded corporation which occurs as the result of a corporate merger or reorganization.~~

23.16.1903 VIDEO GAMBLING MACHINE TICKET VOUCHERS – EXPIRATION DATE – PAYMENT IN FULL UPON DEMAND – EXCEPTIONS

(1) through (4)(a) remain the same.

(b) If the department determines that a machine malfunction occurred, the ticket voucher is invalid, and the ~~VGM must be removed from play~~ department will prescribe appropriate remedial action to the machine owner.

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

COMMENTS: Numerous people spoke, and one person wrote, in opposition to the prize value limitations proposed in New Rule I. Most stated that the limit should be higher to accommodate prizes suitable for larger social card game tournaments. Some suggested the minimal prize value be tied either to the number of games played in a tournament, or tied to the number of participants in a tournament. One person suggested there should be a definition of a tournament.

Another commenter thought it was not the department's role to set a minimal prize value.

The department received several written comments from attorney Michael Lawlor regarding the proposed requirement for licensees to submit a Form 30A for approval of location managers. Mr. Lawlor noted that some gambling businesses have written employment agreements with their location managers and, in those instances, submission of information on the form may require duplication of efforts. He suggested the department change the rule to allow a licensee to submit either a Form 30A, or a written employment agreement.

Mr. Lawlor also offered comments regarding publicly traded corporations. First, he stated the rules should cover all publicly traded entities, not just corporations. He commented that publicly traded corporations do not always have sufficient prior control over ownership resulting from a merger or reorganization, and therefore those ownership changes should only be required to report changes within a certain period of time following the merger or reorganization. Mr. Lawlor suggested that a publicly traded entity may not have the ability to obtain the required information from a shareholder who has acquired an ownership interest, and therefore, the department should require only such basic ownership information as would appear on a stock ledger.

RESPONSE: The department appreciates the time and comments from all who expressed an interest in this rulemaking. Regarding social card games, the comments helped inform the department about the prize range historically seen in the play of the social card game of cribbage in the state, and the department believes the limits as adopted in this new rule will be sufficient to accommodate those social card games and social card game tournaments, particularly where the top 25% of tournament players are awarded a prize. The department believes a prize limitation which ties the maximum prize value to the number of participants in a social card game tournament is reasonable and a workable solution to the legislative directive in HB38 to define social card game prizes of minimal value. The department also agrees that a definition of a tournament would be helpful to avoid confusion for some players. The department notes further that when card games or card tournament prizes are proposed to exceed these limits, they can be permitted and operated pursuant to the card game tournament provisions in 23-5-317, MCA.

The department appreciates Mr. Lawlor's comments regarding management agreements in lieu of a department form. However, the department believes the proposed change would mean an increased workload for department staff and delay in application approvals. Location managers are required to be identified on every application, and when a change in location managers is reported, a single form would streamline the reporting process. If the process allowed changes to be reported on either a form that has been narrowly tailored to request the necessary information, or on various employment agreements which likely contain superfluous information, then department staff would be required to sort through those submissions and attempt to weed out the pertinent information. The department chooses to avoid having to undertake those tasks, and does not see the reporting requirement as sufficiently burdensome to licensees to warrant adoption of his suggestion.

With respect to Mr. Lawlor's comment regarding publicly traded entities generally, the department recognizes the existence of other publicly traded entities, but the controlling statute, 23-5-118(3), MCA, refers only to transfers of shares in publicly traded corporations. The department agrees with Mr. Lawlor's comment that mergers and reorganizations of publicly traded corporations should not be required to seek prior approval. Publicly traded companies are treated differently under the law because their ownership is traded on public exchanges where prior approval of ownership transfers cannot be obtained. Public companies can face a similar lack of control when undergoing a merger or reorganization, particularly with respect to timing of shareholder approvals. For this reason, the department believes the transfers of publicly traded shares resulting from corporate mergers or reorganizations can be treated in the same manner as other ownership transfers for publicly traded corporations. Consequently, the department omits the clauses relating to mergers and reorganizations of publicly traded corporations; the result will be that those ownership transfers will be treated the same as other ownership interest transfers in publicly traded corporations.

Mr. Lawlor's comments raised the possibility that publicly traded corporations may not be able to obtain required shareholder information, particularly when those interests are small. The department does not perceive this concern as warranting an additional change to the proposed rules. Ownership interests of less than 5% of a publicly traded corporation do not require department approval, but that is the only distinction under law for gambling license applicants. Ownership interests of 5% or greater in those corporations are subject to the same rigors of licensure as any other applicant.

The department is correcting two minor errors in the proposed amendments to ARM 23.16.117. The first is the notification period under ARM 23.16.117(10)(b); the department adopts a 60-day notification period from the date of transfer, which is consistent with the period of notification for other ownership transfers of interest in publicly traded corporations under this rule. The other minor edit is deletion of a typographical error in the proposed amendment to ARM 23.16.117(10)(c).

Finally, the department amends ARM 23.16.1903 to remove the requirement for a machine owner to always remove a machine from play whenever the department determines a machine malfunction has occurred. In the event such determination is made, the department will provide direction to the machine owner regarding the required measures to resolve the malfunction, which may or may not include removing the machine from play.

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Timothy C. Fox
TIMOTHY C. FOX
Attorney General
Department of Justice

Certified to the Secretary of State December 27, 2016.

BEFORE THE HUMAN RIGHTS COMMISSION
AND THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.8.201, 24.8.203, 24.8.205, 24.8.214, 24.9.111, 24.9.119, 24.9.121, 24.9.123, 24.9.125, 24.9.603, and 24.9.606 and the adoption of New Rules I and II pertaining to Human Rights matters	))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On September 2, 2016, the Department of Labor and Industry (department) and the Human Rights Commission (commission) published MAR Notice No. 24-9-317 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1504 of the 2016 Montana Administrative Register, Issue Number 17.

2. The department has amended the following rules as proposed: ARM 24.8.201, 24.8.203, 24.8.205, and 24.8.214.

3. The commission has amended the following rules as proposed: ARM 24.9.111, 24.9.119, 24.9.121, 24.9.123, 24.9.124, 24.9.603, and 24.9.606. The commission has adopted New Rule I (24.9.613) and New Rule II (24.9.112) as proposed.

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

COMMENT #1: The department received a comment regarding ARM 24.8.205, opposing the departmental practice of providing consultation and assistance with potential complainants in the drafting of human rights complaints. The comment argued that such assistance raises questions and doubts about impartiality in the investigative process.

RESPONSE #1: First, the department notes that the proposed amendments to ARM 24.8.205 were not intended to be substantive in nature, but instead to provide clarification to the public as to departmental practice. As such, while the rule is currently being amended, the rule reflects many years of past practice. Second, the department notes that assisting in the complaint drafting process provides an important service to the public—both for complainants and respondents. By assisting in the drafting process, an early determination of departmental jurisdiction can be made, and clarity and concision in the complaint can more likely be achieved, allowing both response and investigation to proceed more smoothly.

COMMENT #2: The department received a comment regarding ARM 24.8.205, arguing that, should the department be unwilling to strike the provisions within that rule permitting assistance in the complaint filing process, it should create a new rule requiring that different individuals assist in the drafting of the complaint than investigate the complaint.

RESPONSE #2: The department does not agree with this proposal. The investigatory process is an informal one designed to make a determination as to whether discrimination is likely to have occurred. The investigation considers all pertinent comments from both the complainant and the respondent. As such, no conflict is created if the same individual assists in drafting a complaint and then proceeds to investigate that complaint.

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

COMMENT #1: The commission received a comment regarding ARM 24.9.603, arguing that the disputable presumption of retaliation stated in (3) of that rule is outside the scope of the implemented statutes and should therefore be repealed.

RESPONSE #1: The commission thanks the commenter for expressing views on the administrative rule. However, ARM 24.9.603(3) was not proposed for amendment or other modification. As such, the comment and its proposal to repeal the subsection is outside the scope of the current rulemaking.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Dennis Taylor
Dennis Taylor
Chair
Human Rights Commission

/s/ Pam Bucy
Pam Bucy
Commissioner
Department of Labor & Industry

Certified to the Secretary of State December 27, 2016.

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

In the matter of the amendment of ARM 24.17.127 and 24.17.501, pertaining to prevailing wage rates for public works projects	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 10, 2016, the Department of Labor and Industry published MAR Notice No. 24-17-320 regarding the public hearing on the amendment of the above-stated rules on page 2035 of the 2016 Montana Administrative Register, Issue No. 21.

2. On December 2, 2016, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

Comment 1: A commenter opposed the current zone pay structure in highway construction. The commenter stated he believes the system is "broken" in the respect that he brings his own crew from Great Falls and pays them zone pay, to travel to other large cities that are dispatch points where no zone pay is required.

Response 1: Zone pay was instituted to help contractors and workers defray the cost of working outside of major metropolitan areas in Montana. Contractors who work inside those areas, of course, do not realize the benefits of zone pay. Generally, though, any projects located beyond 30 and 60 miles from any metropolitan area require the payment of zone pay. The department recognizes that it may be difficult for a contractor from Great Falls to bring a crew in to work in Billings without the benefit of zone pay. But, the reverse is also true, it may be difficult for a contractor from Billings to bring a crew in to work in Great Falls. However, both contractors and workers would receive the benefit of zone pay for any project outside of either of those cities.

Comment 2: Various individuals and entities submitted additional data or documents for inclusion in the rate-setting process during the comment period.

Response 2: The department has reviewed the information submitted. The department has incorporated the data as appropriate and has revised certain rates in line with the rate-setting standards. Revised rates are identified below in paragraphs 4 and 5.

4. The following rates in the "Montana Prevailing Wage Rates for Building Construction Services 2017" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Boilermakers
Duties Include:
Construct, assemble, maintain, and repair stationary steam boilers, ~~and~~ boiler house auxiliaries, process vessels, pressure vessels and penstocks.

Electricians: Including Building Automation Control
Districts 2 & 3
No mileage due when traveling in employer's vehicle.
The following travel allowance is applicable when traveling in employee's vehicle:
0-08 mi. free zone
>08-50 mi. federal mileage rate/mi. in excess of the free zone.
>50 mi. ~~$64.00/day~~ $66.00/day

Heating and Air Conditioning

	Wage	Benefit
District 1	~~$25.00~~ 25.97	~~$12.25~~ 12.53
District 4	~~$29.33~~ 28.04	

Construction Laborers Group 1/Flag Person For Traffic Control

Wage	Benefit
~~$20.08~~ 21.58	$ ~~7.92~~ 8.69

Construction Laborers Group 2

Wage	Benefit
~~$23.47~~ 24.40	$ ~~7.92~~ 8.69

Construction Laborers Group 3

Wage	Benefit
~~$24.34~~ 24.54	$ ~~7.92~~ 8.69

Construction Laborers Group 4

Wage	Benefit
~~$25.00~~ 25.26	$ ~~7.92~~ 8.69

Sheet Metal Workers

	Wage	Benefit
District 1	~~$32.32~~ 28.04	
District 2	~~$28.29~~ 28.04	

5. The following rates in the "Montana Prevailing Wage Rates for Heavy Construction Services 2017" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Boilermakers

Wage	Benefit
~~$33.50~~	30.25

Duties Include:
Construct, assemble, maintain, and repair stationary steam boilers, ~~and~~ boiler house auxiliaries, process vessels, pressure vessels and penstocks. Bulk storage tanks and bolted steel tanks.

Construction Equipment Operators Group 6

Wage	Benefit
~~$30.35~~	30.95

Construction Equipment Operators Group 7

Wage	Benefit
~~$31.35~~	31.95

Line Construction – Equipment Operators

Zone	Pay
~~0-25 mi. free zone~~	No Free Zone
~~>25 mi.~~	$60.00/day

Line Construction – Groundman

Zone	Pay
~~0-25 mi. free zone~~	No Free Zone
~~>25 mi.~~	$60.00/day

Line Construction - Lineman

Zone	Pay
~~0-25 mi. free zone~~	No Free Zone
~~>25 mi.~~	$60.00/day

Plumbers, Pipefitters, and Steamfitters

District 4
0-70 free zone
>70 mi.

- On jobs when employees do not work consecutive days: $0.55/mi. if employer doesn't provide transportation. Not to exceed two trips.

- On jobs when employees work any number of consecutive days: ~~$95.00/day~~ $100.00/day if employer doesn't provide transportation.

6. The rates in the "Montana Prevailing Wage Rates for Building Construction Services 2017" publication and the "Montana Prevailing Wage Rates for Nonconstruction Services 2017" publication, incorporated by reference in the rule, have been amended as proposed.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State December 27, 2016.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to notification of application for permit to drill	)))	NOTICE OF ADOPTION

To: All Concerned Persons

1. On September 2, 2016, the Board of Oil and Gas Conservation (board) and the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-193 regarding the public hearing on the proposed adoption of the above-stated rule at page 1531 of the 2016 Montana Administrative Register, Issue Number 17.

2. The board has adopted New Rule I (36.22.620) as proposed.

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

COMMENT 1: Commenters submitted comments that support the rule. Multiple comments stated, "[the rule] is an important improvement to the board's administrative rules that will foster robust public participation by better enabling Montanans living near well proposals to take full advantage of the board's broad definition of interested persons and to meaningfully participate in the permit process."

RESPONSE: The board appreciates the comments and support.

COMMENT 2: A commenter submitted a comment that oil and gas operators be required to post a bond on their drilling operations.

RESPONSE: The board appreciates the comment. The rules currently require operators to post plugging and restoration bonds under ARM 36.22.1308.

COMMENT 3: Some commenters requested a numeric setback requirement ranging from 1,320 feet to at least one mile from any structure.

RESPONSE: The board appreciates the comments. The board established a committee to look at the benefits and concerns associated with establishing a numeric setback in Montana. The committee concluded a numeric setback distance would be challenging to establish due to the varied oil and gas operations across the state. The committee felt increased notification would allow better communication between owners of occupied structures and operators, and allow the board to look at disagreements on a case-by-case basis.

COMMENT 4: Some commenters requested that written notice be given to owners of occupied dwellings and owners of ground water wells within one mile of the proposed drilling site.

RESPONSE: The board appreciates the comments. Based upon review of historical activity and of existing notice requirements, the committee recommended notification to owners of occupied structures within a distance of 1,320 feet of a proposed well. The board approved the recommendation.

COMMENT 5: Commenters expressed concern regarding water and soil quality, the risk of groundwater pollution from drilling, and earthquakes.

RESPONSE: The board appreciates the comments. The board believes the time to establish protections for water and soil quality, the risk of groundwater pollution from drilling, and earthquakes is during the permitting process. The new notification rule would notify owners of occupied structures within 1,320 feet of the well site prior to a permit being issued and allow concerns to be brought to the board during the permitting process.

COMMENT 6: A commenter requested "reasonable notification" to be more clearly defined.

RESPONSE: The board appreciates the comment. The board believes that for the purpose of this rule, a specific definition for "reasonable notice" is unnecessary and could hinder the permit applicant's ability to directly communicate with an owner of an occupied structure.

COMMENT 7: A commenter requested the board adopt the drilling notice and not defer the decision to the legislature. Another commenter disagreed that the board has the authority to adopt the drilling notification and that the upcoming legislative session will have drilling notification legislation.

RESPONSE: The board appreciates the comment. The board has the authority to adopt this rule under 82-11-122, 82-11-127, 82-11-134, and 82-11-141, MCA, and the board voted to adopt the drilling notice requirement prior to the legislative session.

COMMENT 8: A commenter stated it is an undue burden on landowners to continually monitor legal postings in the newspapers or online.

RESPONSE: The board appreciates the comment. The new notification rule would require operators to ensure that the owners of occupied structures closest to drilling activity would directly receive notice of the proposed activity.

COMMENT 9: A commenter requested confirmation that the proposed rule will not replace ARM 36.22.601.

RESPONSE: The board appreciates the comment. The proposed rule will be in addition to ARM 36.22.601.

COMMENT 10: A commenter stated that the certificate of service is unnecessary and that failure to provide the certificate of service to the permit applicant and the board should not preclude the opportunity for a hearing.

RESPONSE: The board appreciates the comment. The certificate of service provides evidence that the demand for opportunity to be heard was served upon the permit applicant. Requiring a certificate of service that the applicant was notified of the potential protest is not unreasonable.

/s/ Linda Nelson
LINDA NELSON
Chair, Board of Oil and Gas Conservation

/s/ Rob Stutz
ROB STUTZ
Rule Reviewer

Certified to the Secretary of State December 27, 2016.

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

In the matter of the amendment of ARM 37.85.204 pertaining to Medicaid cost share	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 10, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-780 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2051 of the 2016 Montana Administrative Register, Issue Number 21.

2. The department has amended the above-stated rule as proposed.

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

COMMENT #1: One comment was received requesting consideration that all mental health clinic services be exempt from cost share under the auspice that the services are preventive.

RESPONSE #1: The department would like to thank you for your comment but intends to continue with the rule as proposed. Any service on the preventive service list is exempt from cost share.

4. The department intends to apply this rule retroactively to June 1, 2016. A retroactive application of the proposed rule does not result in a negative impact to any affected party.

/s/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

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

Certified to the Secretary of State December 27, 2016.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.12.204 pertaining to the payment threshold--inflation adjustment for lobbyists	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 25, 2016, the Commissioner of Political Practices published MAR Notice No. 44-2-222 pertaining to the proposed amendment of the above-stated rule at page 2182 of the 2016 Montana Administrative Register, Issue Number 22.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jonathan R. Motl
Jonathan R. Motl
Commissioner

Certified to the Secretary of State December 23, 2016.

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.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

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

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2016. This table includes those rules adopted during the period June 30, 2016, through September 30, 2016, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2016, this table, and the table of contents of this issue of the Register.

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 2016 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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