

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 13

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULES I through IX pertaining to ) PROPOSED ADOPTION  
Military Sales Practices )

TO: All Concerned Persons

1. On July 26, 2007, at 10:00 a.m., the State Auditor and Commissioner of Insurance will hold a public hearing in the 2nd floor conference room of the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The State Auditor and Commissioner of Insurance will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., July 19, 2007, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

NEW RULE I PURPOSE (1) The purpose of this rule is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

(2) Nothing herein may be construed to create or imply a private cause of action for a violation of this rule.

AUTH: 33-1-313, 33-18-103, MCA  
IMP: 33-18-103, MCA

NEW RULE II SCOPE (1) This rule shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

AUTH: 33-1-313, 33-18-103, MCA  
IMP: 33-18-103, MCA

NEW RULE III AUTHORITY (1) This rule is issued under the authority of 2007 Montana Laws, chapter 333 (to be codified as 33-18-103, MCA, 2007).

AUTH: 33-1-313, 33-18-103, MCA  
IMP: 33-18-103, MCA

NEW RULE IV EXEMPTIONS (1) This rule shall not apply to solicitations or sales involving:

- (a) credit insurance;
- (b) group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;
- (c) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
- (d) individual stand-alone health policies, including disability income policies;
- (e) contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;
- (f) life insurance contracts offered through or by a nonprofit military association, qualifying under section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or
- (g) contracts used to fund:
  - (i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - (ii) a plan described by sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established or maintained by an employer;
  - (iii) a government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;
  - (iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
  - (v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
  - (vi) prearranged funeral contracts.

(2) Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 "Personal Commercial Solicitation on DoD Installations" or successor directive.

(3) For purposes of this rule, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this rule shall be construed to exempt an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this rule.

AUTH: 33-1-313, 33-18-103, MCA  
IMP: 33-18-103, MCA

NEW RULE V DEFINITIONS For the purposes of [New Rules I through IX]:

(1) "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(2) "Department of Defense (DoD) personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(3) "Door to door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

(4) "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

(5) "Insurer" means an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

(6) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate life insurance, including annuities.

(7) "Known" or "knowingly" means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

(a) is a service member; or

(b) is a service member with a pay grade of E-4 or below.

(8) "Life insurance" means insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

(9) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(10) "MyPay" is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(11) "Service member" means any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

(12) "Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement, or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(a) accumulated value or cash value or secondary guarantees provided by a universal life policy;

(b) cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; and

(c) a premium deposit fund which:

(i) contains only premiums paid in advance which accumulate at interest;

(ii) imposes no penalty for withdrawal;

(iii) does not permit funding beyond future required premiums;

(iv) is not marketed or intended as an investment; and

(v) does not carry a commission, either paid or calculated.

(13) "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

(14) "United States Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

AUTH: 33-1-313, 33-18-103, MCA

IMP: 33-18-103, MCA

NEW RULE VI PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE, OR UNFAIR ON A MILITARY INSTALLATION (1) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive, or unfair:

(a) knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser;

(b) soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary;

(c) knowingly making appointments with or soliciting service members during their normally scheduled duty hours;

(d) making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;

(e) soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;

(f) posting unauthorized bulletins, notices, or advertisements;

(g) failing to present DD Form 2885, "Personal Commercial Solicitation Evaluation," to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885; or

(h) knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the DoD or any branch of the Armed Forces.

(2) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and are declared to be false, misleading, deceptive, or unfair:

(a) using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or

(b) using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

AUTH: 33-1-313, 33-18-103, MCA

IMP: 33-18-103, MCA

NEW RULE VII PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE, OR UNFAIR REGARDLESS OF LOCATION (1) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and are declared to be false, misleading, deceptive, or unfair:

(a) submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This rule does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form; or

(b) knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this rule, a formal banking relationship is established when the depository institution:

(i) provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. section 4301 et seq., and the regulations promulgated thereunder; and

(ii) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "savings" or "checking" and where the service member has no formal banking relationship as defined in (1)(b);

(d) entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

(e) using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

(f) offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member;

(g) knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited; and

(h) advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(2) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair:

(a) making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant," or "Veteran's Benefits Counselor."

(i) Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS); or

(b) soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, or the United States Armed Forces.

(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and are declared to be false, misleading, deceptive, or unfair:

(a) using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; and

(b) excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

(4) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive, or unfair:

(a) making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading, or deceptive;

(b) making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive; or

(c) suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(5) The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive, or unfair:

(a) deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

(b) failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

(c) excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

(d) failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16; and

(e) excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

(i) an explanation of any free look period with instructions on how to cancel if a policy is issued; and

(ii) either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of 33-20-604, MCA (2005) and ARM 6.6.303 shall be deemed sufficient to meet this requirement for a written disclosure.

(6) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive, or unfair:

(a) excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable; and

(b) offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance:

(i) "insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents; and

(ii) "other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

(c) excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

(i) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(ii) unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity, or final expiration; and

(iii) which by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due.

(d) excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance; and

(e) selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

AUTH: 33-1-313, 33-18-103, MCA

IMP: 33-18-103, MCA

NEW RULE VIII SEVERABILITY (1) If any provision of these rules or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules which can be given effect without the invalid provisions or application. To this end all provisions of these rules are declared to be severable.

AUTH: 33-1-313, 33-18-103, MCA

IMP: 33-18-103, MCA

NEW RULE IX EFFECTIVE DATE (1) [New Rules I through IX] shall become effective September 27, 2007, and shall apply to acts or practices committed on or after the effective date.

AUTH: 33-1-313, 33-18-103, MCA

IMP: 33-18-103, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to adopt RULES I through IX to protect active duty members of the Armed Forces from dishonest and predatory insurance sales practices while located in this state and to authorize the insurance commissioner to implement a system for the receipt and dissemination of reports from governmental agencies and insurers of disciplinary action taken by federal or state governmental entities or insurers against persons that sell or solicit the sale of any life insurance product to active duty members of the armed forces.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Patrick M. Driscoll, Staff Attorney, State Auditor's Office, 840 Helena Ave., Helena, Montana 59601; telephone (406) 444-2040; fax (406) 444-3497; or e-mail [padriscoll@mt.gov](mailto:padriscoll@mt.gov), and must be received no later than 5:00 p.m., August 3, 2007.

6. Patrick M. Driscoll, Staff Attorney of the State Auditor's Office and Commissioner of Insurance, has been designated to preside over and conduct this hearing.

7. The department maintains a list of concerned 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 and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601, 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 notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by regular mail on June 18, 2007.

/s/ Christina L. Goe  
Christina L. Goe  
Rule Reviewer

/s/ Patrick M. Driscoll  
Patrick M. Driscoll  
Staff Attorney  
State Auditor/Commissioner of Insurance

Certified to the Secretary of State June 25, 2007

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

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rule I pertaining to the purchase of ) PROPOSED ADOPTION  
duplicate licenses )

TO: All Concerned Persons

1. On July 25, 2007, at 6:00 p.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing at 1420 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., July 16, 2007, to advise us of the nature of the accommodation that you need. Please contact Mike Korn, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-2456; fax (406) 444-7894; or e-mail mkorn@mt.gov.

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

NEW RULE I REPLACEMENT LICENSES (1) A person may replace a department-issued hunting license or permit that is lost, stolen, or destroyed by signing an affidavit affirming that the license was lost, stolen, or destroyed. A person may obtain and submit the affidavit at a department office or any department license provider.

(2) To replace a lost, stolen, or destroyed license requiring a carcass tag the second time for the same species within a two-year period the following apply:

(a) a carcass tag is that portion of a hunting license that a person is required to affix to the carcass of an animal;

(b) the two-year period shall run from March 1 of the year of license purchase through February 28, 24 months later;

(c) the person shall obtain, complete, and submit an affidavit affirming that the tag was lost, stolen, or destroyed;

(d) the person shall appear personally at a department regional or area office or at headquarters in Helena, Montana to obtain, complete, and submit the affidavit; and

(e) a third replacement tag for the same species in a two-year period is not allowed.

(3) The fee for a replacement hunting license or permit is \$5.

AUTH: 87-2-104, MCA  
IMP: 87-2-104, MCA

4. The purpose of a replacement license is to assist a hunter who has legitimately lost or inadvertently destroyed a license, permit, or tag. The first section of the proposed rule reflects the department's current process for issuing a replacement license. This process has been effective, and it is now appropriate that the department adopt it by administrative rule.

The part of New Rule I which pertains to the procedure for replacing a license for a species a second time within a two-year period is necessary to prevent illegal use of replacement licenses. The number of replacement licenses issued has increased drastically over the last four years. For instance, the number of deer replacement licenses went from about 4500 in 2002 to over 8000 in the year 2006. A portion of the replacement licenses that have been issued multiple times have been used illegally. Department enforcement has discovered a number of cases and circumstances where a hunter obtains multiple licenses, permits, and/or tags and uses them to facilitate the crimes of hunting without a license (87-2-103, MCA) using a license, tag, or permit illegally (87-2-110, MCA) and possessing unlawfully-taken game animals (87-2-111, MCA). Generally, the illegal circumstances involve a person obtaining a replacement while still possessing or having used the original and then using the replacement to unlawfully take a second animal. Or, a person falsely replacing a game license or tag has made a "replacement" available to another person who is not licensed.

The use and presentation of a tag on a game animal carcass is the method by which a person can attempt to transport and possess an unlawfully taken game animal, unless and until an investigation reveals the illegalities involved. Thus, the illegal use of replacement tags plays a major part in enforcement's inability to initially detect (at game check stations, etc.) illegal taking of wildlife. Requiring that anyone who loses more than one license for the same species in the course of two license years to make replacement requests at regional, area, or state offices will substantially reduce the number of capricious duplicate licenses sold as well as provide means to reduce the number of duplicates in circulation for unlawful purpose.

The fee increase is necessary to offset department administrative costs for issuing duplicate licenses and to reduce the number of unnecessary duplicates sold. A maximum fee of \$5 for replacement licenses is permitted under 87-2-104, MCA. This fee increase will affect approximately 50,860 people based on the total number of replacement licenses issued in 2006. The fee increase will increase revenue from replacement licenses by approximately \$184,125.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mike Korn, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-2456; fax (406) 444-7894; or e-mail mkorn@mt.gov. Any comments must be received no later than August 2, 2007.

6. Rebecca Dockter, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearing.

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

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

/s/ M. Jeff Hagener  
M. Jeff Hagener,  
Director  
Department of Fish, Wildlife and  
Parks

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

Certified to the Secretary of State June 25, 2007.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
17.56.101, 17.56.102, 17.56.104,	)	PROPOSED AMENDMENT,
17.56.105, 17.56.201 through 17.56.203,	)	ADOPTION, AND REPEAL
17.56.301 through 17.56.304, 17.56.308	)	
through 17.56.310, 17.56.403, 17.56.407,	)	(UNDERGROUND STORAGE
17.56.408, 17.56.701 through 17.56.705,	)	TANKS)
17.56.801 through 17.56.803, 17.56.805	)	
through 17.56.811, 17.56.816, 17.56.817,	)	
17.56.820 through 17.56.825, 17.56.827,	)	
17.56.828, 17.56.901, 17.56.1002,	)	
17.56.1003 through 17.56.1005, and	)	
17.56.1422; the adoption of new rule I; and	)	
the repeal of ARM 17.56.120 and 17.56.121)	)	
pertaining to the management of	)	
underground storage tanks, incorporation	)	
by reference, and assessment of	)	
administrative penalties	)	

TO: All Concerned Persons

1. On July 25, 2007, at 10:30 a.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., July 16, 2007, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail [rmartin@mt.gov](mailto:rmartin@mt.gov).

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

17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and shall be used in conjunction with those definitions in 75-11-203, 75-11-302, and 75-11-503, MCA.

(1) through (31) remain the same.

(32) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey

regulated substances. Installation also includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system. The terms "installation" and "to install" do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(33) "Installer" means an individual who ~~is engaged in the business of installation or closure of~~ installs or closes underground storage tanks systems.

(34) through (43) remain the same.

(44) "Operator" means ~~any person in control of, or having responsibility for, the daily operation of the UST system.;~~

(a) for purposes of administration of Title 75, chapter 11, parts 2 and 5, MCA, the term as defined in 75-11-203, MCA; and

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA.

(45) through (47)(c)(ii) remain the same.

(48) "Person" means ~~an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.;~~

(a) for purposes of administration of Title 75, chapter 11, part 2, MCA, the term as defined in 75-11-203, MCA;

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA; and

(c) for purposes of administration of Title 75, chapter 11, part 5, MCA, the term as defined in 75-11-503, MCA.

(49) "Petroleum storage tank" or "PST" means a tank that contains or contained petroleum or petroleum products and that is:

(a) through (c) remain the same.

(d) aboveground pipes associated with tanks under ~~(47)~~ (49)(b) and (c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Laws Act of 1968 (49 USC 60404 1671, et seq.); ~~and~~

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC 2001, et seq.); and

~~(ii) (iii)~~ (iii) state law comparable to the provisions of law referred to in ~~(47)~~ (49)(d)(i) and (ii), if the facility is intrastate.

(50) through (52) remain the same.

(53) "Public water supply system" means a public water supply system as defined ~~by 75-6-107~~ in 75-6-102, MCA.

(54) and (55) remain the same.

(56) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank system into ground water, surface water, surface soils, or subsurface soils.

(57) through (61) remain the same.

(62) "Secondary containment" means:

(a) a liquid-tight (secondary) shell or jacket that extends around the inner (primary) shell of a tank or piping that is designed, constructed, and installed to contain any leak from any part of the tank or piping that routinely contains a regulated substance. Secondary containment must be designed, constructed, and installed to:

(i) prevent releases to the environment;

(ii) allow for monitoring of releases between the primary and secondary shells; and

(iii) allow for detection of any leak; and

(b) liquid-tight tank sumps, transition sumps, or under-dispenser containment sumps that will contain a leak from any part of the tank or piping that routinely contains a regulated substance until detection.

(62) through (69) remain the same, but are renumbered (63) through (70).

(71) "Under-dispenser containment" means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water (see [NEW RULE I]).

(72) "Underground storage tank" or "UST" has the meaning given in 75-11-503, MCA.

(70) remains the same, but is renumbered (73).

(74) (74) "UST system" or "tank system" means an underground storage tank or petroleum storage tank, as appropriate, ~~underground~~ ancillary equipment designed to prevent, detect, or contain a release from an UST system, the equipment necessary to connect dispensers to product piping, and containment system, if any.

(72) remains the same, but is renumbered (75).

AUTH: 75-11-204, 75-11-319, 75-11-505, MCA

IMP: 75-11-203, 75-11-302, 75-11-319, 75-11-505, MCA

**REASON:** The department is proposing to review the definitions of "installation," "installer," "operator," "person," and "UST system" to conform the terms to the definitions of the same terms in 75-11-203, MCA. Allowance is made for the differing definitions of "person" in 75-11-203, 75-11-302, and 75-11-503, MCA. Allowance is made for the differing definitions of "operator" in 75-11-203 and 75-11-302, MCA. The department is proposing to revise the definitions of "petroleum storage tank" and "release" to conform the terms to the definitions of the same terms in 75-11-302, MCA. These amendments are necessary to keep the rules consistent with applicable statutes.

The department is proposing to add definitions of "secondary containment" and "under-dispenser containment" because the terms are used in New Rule I. The department is proposing to add the definition of "underground storage tank" because the term is used throughout the chapter.

The department is proposing to revise the definition of "UST system" to include connecting equipment including shear valves, check valves, and flex connectors. This inclusion is necessary to implement New Rule I, which requires under-dispenser containment.

17.56.102 APPLICABILITY (1) through (2)(b) remain the same.

(3) Subchapters 2, 3, 4, 7, 8, 9, 10, 13, and 14 do not apply to any of the following types of PSTs and UST systems:

(a) through (e) remain the same.

(f) aboveground pipes associated with tanks under (3)(d) or (e), ~~except that pipelines regulated under the following laws are excluded:~~

~~(i) the Pipeline Safety Laws (49 USC 60101, et seq.); and~~

~~(ii) state law comparable to the provisions of law referred to in (3)(f)(i), if the facility is intrastate; or~~

(g) through (6)(c) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-319, 75-11-505, MCA

**REASON:** The department is proposing to delete outdated language in ARM 17.56.102(3)(f) that does not affect the meaning of the rule. The pipelines referenced in this subsection are excluded from regulation under the definitions in Title 75, chapter 11, MCA, and in ARM 17.56.101. The reference to those pipelines in this rule was intended to simply restate the exclusion in the definitions. However, the reference was inserted as an exception to a list of excluded systems, which has the opposite effect of what was intended. It is necessary to delete the reference because it is redundant and misleading.

17.56.104 TANK STANDARDS FOR EXEMPTED UST SYSTEMS (1) No person may install an UST system listed in ARM 17.56.102(4) or (5) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) through (3) remain the same, but are renumbered (a) through (c).

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

**REASON:** The first paragraph of this rule was inadvertently not numbered in a previous rulemaking. The department is proposing to correct the rule numbering.

The authorization and implementation statutes listed for ARM 17.56.104 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.105 VARIANCES (1) through (6) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP ~~75-10-405~~ 75-11-505, MCA

REASON: The authorization and implementation statutes in ARM 17.56.105 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.201 PERFORMANCE STANDARDS FOR NEW UST SYSTEMS

(1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems ~~must~~ shall meet the following requirements:

(a) Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory ~~adopted by reference~~ in (1)(a)(i) through (iii):

(i) the tank is constructed of fiberglass-reinforced plastic in accordance with any one of the standards ~~adopted by reference~~ in ~~(1)(f)~~ (2)(a) through (c); or

(ii) the tank is constructed of steel and cathodically protected in the following manner and in accordance with any one of the standards ~~adopted by reference~~ in ~~(1)(g)~~ (2)(d) through (j):

(A) through (D) remain the same.

(iii) the tank is constructed of a steel-fiberglass-reinforced-plastic composite in accordance with all of the standards ~~adopted by reference~~ in ~~(1)(j)(i) and (ii)~~ (2)(e) and (k).

(b) The piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be properly designed, constructed, and protected from corrosion in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory ~~adopted by reference~~ in (1)(b)(i) and (ii):

(i) the piping is constructed of fiberglass-reinforced plastic in accordance with all of the standards ~~adopted by reference~~ in ~~(1)(i)~~ (2)(l) through (o); or

(ii) the piping is constructed of steel and cathodically protected in the following manner and in accordance with all of the standards ~~adopted by reference~~ in ~~(1)(j)~~ (2)(p) through (s):

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

(d) All tanks and piping must be properly installed in accordance with this chapter, the manufacturer's instructions or specifications, all permit conditions, and all applicable standards ~~adopted by reference~~ in ~~(1)(k)~~ (2)(q) and (t) through (v).

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

~~(f)~~ (2) The department hereby adopts and incorporates by reference the version in effect on July 1, 2006, of the following standards, specifications, and publications:

~~(i)~~ (a) Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products" which sets

forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum products, and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(ii) ~~(b)~~ Underwriter's Laboratories of Canada ~~CAN4-S615-M83~~ Standard ULC-S615, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products," which sets forth requirements for the manufacture and installation of horizontal reinforced plastic underground tanks for petroleum products, and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; and

~~(iii)~~ ~~(c)~~ American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks," which sets forth design standards for FRP UST tanks, and a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017-;

~~(g)~~ The department hereby adopts and incorporates by reference:

~~(i)~~ ~~(d)~~ Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks," which sets forth design and installation standards of cathodically protected steel underground storage tanks, and a copy of which may be obtained from Steel Tank Institute, ~~728 Anthony Trail, Northbrook, IL 60062, (312) 498-1980~~ 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265;

~~(ii)~~ ~~(e)~~ Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," which sets forth ~~design standards for cathodically protected steel~~ requirements for corrosion protection systems for underground storage tanks, and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

~~(iii)~~ ~~(f)~~ Underwriters Laboratories of Canada ~~CAN4-S603-M85~~ Standard ULC-S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and ~~CAN4-5603.1-M85~~, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and ~~CAN4-S631-M84~~, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems" which sets forth design standards for cathodically protected steel underground storage tanks and which sets forth the requirements that cover single- and double-wall cylindrical steel tanks of the horizontal, nonpressure type that are used for the underground storage of flammable liquids and combustible liquids, a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; and

~~(g)~~ Underwriters Laboratories of Canada Standard ULC-S603.1, "Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth the requirements for external corrosion protection systems on carbon steel underground storage tanks, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

~~(h)~~ Underwriters Laboratories of Canada Standard ULC-S631, "Standard for Isolating Bushing for Steel Underground Tanks Protected with External Corrosion

Protection Systems," which sets forth requirements for low profile nylon isolating bushings with internal and external threads and component thread sealant which are intended for use in the external corrosion protection of underground steel tanks, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

~~(iv)~~ (i) National Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200; and

(j) Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth ~~design standards for cathodically protected steel underground storage~~ requirements for horizontal atmospheric-type steel tanks intended for the underground storage of flammable and combustible liquids, and single wall tanks, secondary containment tanks, multiple compartment single wall, and multiple compartment secondary containment tanks, a copy of which may be obtained from Underwriters Laboratory, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

~~(h) The department hereby adopts and incorporates by reference:~~

~~(i) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" which sets forth requirements for corrosion protection systems for underground storage tanks and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709; and~~

~~(ii)~~ (k) The Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks," which sets forth a minimum consensus standard for the fabrication of FRP clad/composite tanks, and a copy of which may be obtained from The Association for Composite Tanks, 108 N. State Street, Suite 720, Chicago, IL 60602;

~~(i) The department hereby adopts and incorporates by reference:~~

~~(j)~~ (l) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe," which sets forth design standards for fiberglass reinforced plastic pipe, and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

~~(ii)~~ (m) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas," which sets forth manufacture and installation standards for pipe connectors, and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

~~(iii)~~ (n) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids," which sets forth requirements of manufacture and installation of fiberglass reinforced plastic pipe and fittings, and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; and

~~(iv)~~ (o) Underwriters Laboratories of Canada Standard ~~CAN 4-S633-M84~~ ULC-S633, "Flexible Underground Hose Connectors," which sets forth requirements for flexible underground hose connectors for petroleum products, and a copy of

which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

~~(j) The department hereby adopts and incorporates by reference:~~

~~(i) (p) "Uniform Fire Code", article 79, "Flammable and Combustible Liquids" (1997 edition) which sets forth the fire protection requirements where flammable and combustible liquids are stored or dispensed, and a copy of which may be obtained from Uniform Fire Code Association, 1260 Lake Boulevard, Suite 250, Davis, CA 95616, (888) 785-3473 National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555;~~

~~(ii) (q) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems," (5th edition, revised March 1996) which sets forth requirements for sound proper installation of procedures for UST systems, and a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;~~

~~(iii) (r) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," which sets forth the cathodic protection standards for UST systems, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and~~

~~(iv) (s) National Association of Corrosion Engineers RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," which sets forth practices for the control of external corrosion on buried or submerged metallic piping systems, and a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;~~

~~(k) The department hereby adopts and incorporates by reference:~~

~~(i) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems" (5th edition, revised March 1996) which sets forth proper installation procedures for UST systems, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;~~

~~(ii) (t) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems," (revised 2000) which sets forth proper installation procedures for UST systems, a copy of which may be obtained from Petroleum Equipment Institute, P.O. Box 2380, Tulsa, OK 74101, (918) 494-9696; and~~

~~(iii) (u) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," which sets forth proper installation and design standards for piping of an UST system, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017; and~~

~~(v) American National Standards Institute Standard B31.4, "Liquid Petroleum Transportation Piping System," which sets forth proper installation and design standards for piping of an UST system, and a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York,~~

NY 10017.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to provide an effective date for the standards, specifications, and publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department has attempted to compare the edition of the publications currently referenced in this rule with the 2006 edition. The department found that most of the editions that were effective in 1989 (the year most of the listed publications were initially referenced) are not readily available. In those cases where the currently incorporated edition of a publication could be compared with the edition proposed to be referenced, the department found no significant differences between the two editions. The department is also proposing to revise incorrectly cited publications.

17.56.202 UPGRADING OF EXISTING UST SYSTEMS (1) through (1)(c) remain the same.

(2) Steel tanks must be upgraded to meet any one of the following requirements in accordance with all of the standards adopted by reference in (5):

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

(3) Metal piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be cathodically protected in accordance with all of the standards adopted by reference in ARM 17.56.201(4)(j) (2)(p) through (s), and must meet the requirements of ARM 17.56.201(1)(b)(ii)(B), (C), and (D).

(4) remains the same.

(5) The department hereby adopts and incorporates by reference the version in effect on July 1, 2006, of the following publications and standards:

(a) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks," which sets forth repair and lining of standards for UST systems, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection," which sets forth repair and lining standards for UST systems, and a copy of which may be obtained from National Leak Prevention Association, 7685 Sields Ertel Road, Cincinnati, OH 45241, (800) 543-1838;

(c) National Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200; and

(d) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," which sets forth cathodic protection standards for UST systems, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

AUTH: 75-11-505, MCA  
IMP: 75-11-505, MCA

REASON: The department is proposing to provide an effective date for the standards and publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department has attempted to compare the edition of the publications currently referenced in this rule with the 2006 edition. The department found that most of the editions that were effective in 1989 (the year most of the listed publications were initially referenced) are not readily available. In those cases where the currently incorporated edition of a publication could be compared with the edition proposed to be referenced, the department found no significant differences between the two editions. The department is also proposing to revise incorrectly cited publications.

17.56.203 ADDITIONAL PERFORMANCE STANDARDS FOR NEW UNDERGROUND PIPING CONNECTED TO ABOVEGROUND TANKS OR TO UNDERGROUND TANKS NOT LOCATED AT A FARM OR RESIDENCE WITH A CAPACITY OF 4400 660 GALLONS OR LESS USED TO STORE HEATING OIL

(1) through (3) remain the same.

AUTH: ~~75-10-405~~, 75-11-302, 75-11-505, MCA  
IMP: ~~75-10-405~~, 75-11-302, 75-11-505, MCA

REASON: The department is proposing to revise the title of ARM 17.56.203 from 1100 to 660 gallons because the title does not match the text in ARM 17.56.203(1). Also, the phrase "not located at a farm or residence" is deleted because it misstates the content of the rule.

Some of the authorization and implementation statutes in ARM 17.56.203 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.301 SPILL AND OVERFILL CONTROL (1) Owners and operators ~~must~~ shall ensure that releases due to spilling or overfilling do not occur. The owner and operator ~~must~~ shall ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. The transfer procedures described in ~~Article 79, Division XII of the Uniform Fire Code adopted by reference in (3) shall~~ National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids," must be

used to comply with this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(2) The owner and operator ~~must~~ shall report, investigate, and clean up any spills and overfills in accordance with ARM 17.56.505.

(3) The department ~~hereby~~ adopts and incorporates by reference the ~~Uniform Fire Code, Article 79, "Flammable and Combustible Liquids" (1997 edition) which sets forth the fire protection requirements where flammable and combustible materials are stored or dispensed, a copy of which may be obtained from Uniform Fire Code Association, 1260 Lake Boulevard, Suite 250, Davis, CA 95616, (888) 785-3473. Further guidance on spill and overfill prevention appears in~~ version in effect on July 1, 2006, of the following standards and publications:

(a) National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids," which applies to tank vehicles to be used for the transportation of normally stable flammable and combustible liquids with a flash point below 200°F (93.4°C). Standard 385 provides minimum requirements for the design and construction of cargo tanks and their appurtenances. A copy may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(b) American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956; and

(c) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," (2000 edition) which sets forth transferring and dispensing practices for flammable and combustible liquids, and a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956, or National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to replace the incorporation by reference of Article 79 of the Uniform Fire Code with the National Fire Protection Association Standard 385, because the National Fire Protection Association has superseded Article 79 with Standard 385. This amendment is not substantive.

The department is proposing to provide an effective date for the standards and publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department is also proposing to revise incorrectly cited publications.

17.56.302 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (1) All owners and operators of steel UST systems with corrosion

protection ~~must~~ shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) remains the same.

(b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) remains the same.

(ii) the criteria that are used to determine that cathodic protection is adequate as required by this rule must be in accordance with National Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", ~~adopted by reference in (1)(e).~~

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

~~(e)~~ (2) The department ~~hereby~~ adopts and incorporates by reference the version in effect on July 1, 2006, of National Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection system standards for prevention of corrosion on buried or submerged metallic UST systems, and a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

**REASON:** The department is proposing to provide an effective date for the standard referenced in this rule. This amendment is not substantive and would make it easier for the regulated community to identify the applicable edition of the standard that is utilized. The department has compared the edition of the standard currently referenced in this rule with the 2006 edition. The department found no significant differences between the two editions. The department is also proposing to update the citation of the standard.

17.56.303 COMPATIBILITY (1) Owners and operators ~~must~~ shall use an UST system made of or lined with materials that are compatible with the substance stored in the UST system. Owners and operators storing alcohol blends shall use the following codes ~~adopted by reference in (2) below~~ to comply with the requirements of this rule:

(a) American Petroleum Institute Publication ~~4620~~ 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

(2) The department ~~hereby~~ adopts and incorporates by reference the version in effect on July 1, 2006, of the following publications:

(a) American Petroleum Institute Publication ~~4620~~ 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service

Stations," which sets forth requirements for storing and handling regulated substances at UST facilities, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations," which sets forth requirements for storing and handling regulated substances of UST facilities, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The department is proposing to revise an incorrect publication number for the publication "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations." The correct publication number is 1626.

The department is proposing to provide an effective date for the publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized.

The authorization and implementation statutes in ARM 17.56.303 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.304 REPAIRS (1) Owners and operators of UST systems ~~must~~ shall ensure that repairs will prevent releases due to structural failure or corrosion for as long as the UST system is used to store regulated substances. Owners and operators ~~must~~ shall receive a permit from the department prior to making any repair of an UST system.

(2) Tanks not meeting the design or construction standards of the applicable code of practice ~~adopted by reference~~ in (4) may not be repaired and must be closed in accordance with ARM 17.56.702.

(3) Repairs must meet the following requirements:

(a) Repairs to UST systems must be conducted in accordance with all applicable state, federal, and local laws and regulations and the applicable code of practice ~~adopted by reference~~ in (4). If there is a conflict in the referenced codes, the more stringent and protective code shall apply.

(b) through (h) remain the same.

(4) The department ~~hereby~~ adopts and incorporates by reference the version in effect on July 1, 2006, of the following standards or specifications:

(a) Underwriters Laboratories Standard 1316, ~~2nd revised ed. April 12, 1996,~~ "Standard for ~~Safety for~~ Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products," which sets forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum

products, and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) Underwriters Laboratories Standard 1746, ~~2nd revised ed. September 24, 1998~~, "Corrosion Protection Systems for Underground Storage Tanks," which sets forth ~~design standards for cathodically protected steel~~ requirements for corrosion protection systems for underground storage tanks, and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(c) American Society of Testing and Materials Standard D4021-92, ~~(1992 edition)~~, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks," which sets forth design standards for FRP UST tanks, and a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;

(d) Steel Tank Institute "Specifications and Manual for External Corrosion Protection of Underground Steel Storage Tanks #STI-P3, STI-P3-99 for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks," ~~(1999 edition)~~ which sets forth design and installation standards of cathodically protected steel underground storage tanks, and a copy of which may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265; and

(e) Steel Tank Institute ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks ~~F894-99~~," ~~(1999 edition)~~ which sets forth a minimum consensus standard for the fabrication, installation, and repair of FRP clad/composite tanks, and a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

**REASON:** The department is proposing to provide an effective date of the standards and specifications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department has compared the edition of the publications currently referenced in this rule with the 2006 edition. The department found no significant differences between the two editions. The department is also proposing to update the citations of the standards and specifications.

17.56.308 OPERATING PERMIT REQUIRED (1) After March 31, 2003, except as provided in ~~(9)~~ (10), a person may not place a regulated substance in, dispense a regulated substance from, or otherwise operate an underground storage tank system unless the owner or operator has a valid operating permit and an operating tag for the system.

(2) When the ownership of an UST changes, the operating permit in the name of the previous owner will remain valid for the new owner for 45 days after the transfer is completed.

~~(2)~~ (3) The department shall issue an operating permit when:

(a) the owner or operator has filed with the department an inspection report signed by a licensed compliance inspector and the department determines, on the basis of the inspection report and other relevant information, that the operation and maintenance of the underground storage tank systems at that facility are not in significant noncompliance with Title 75, chapter 11, part 5, MCA, or rules adopted thereunder, on the date of the inspection. The department may issue and renew permits for tanks that are in significant noncompliance with applicable requirements. The department may take enforcement actions, including actions for penalties, and may pursue any other remedy available to the department to address noncompliance with statutes, rules, permits, or orders issued pursuant to this chapter; and

(b) the department has received all required UST-related permit, inspection, and registration fees.

(3) through (9) remain the same, but are renumbered (4) through (10).

AUTH: 75-11-505, MCA

IMP: 75-11-509, MCA

REASON: The department is proposing to add language to (1) that would give the new owner time to notify the department of a change in UST ownership, and to provide time for the department to issue a new operating permit reflecting the change.

The department is proposing the addition of language to (3) because the department believes it is not appropriate to issue an operating permit before all relevant fees are paid.

#### 17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS

(1) The owner or operator of an underground storage tank system shall have all active underground storage tank systems at an individual facility inspected by a licensed compliance inspector, certified under this chapter, at least every three years for compliance with the operation and maintenance requirements of Title 75, chapter 11, part 5, MCA, and the rules adopted thereunder. Inspections must be completed at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308.

(a) through (b) remain the same.

(2) For an underground storage tank system that is installed before November 1, 2001, an initial inspection must occur no later than January 1, 2002. ~~Subsequent inspections must be completed at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308.~~

(3) For an underground storage tank system that is installed or returned to active status pursuant to ARM 17.56.701 after November 1, 2001, an initial inspection must be completed at least 90 days, but no more than 120 days, after the date the conditional operating permit is issued or reissued pursuant to ARM 17.56.310. If the facility has other underground storage tank systems installed prior to November 1, 2001, all subsequent inspections of an underground storage tank system installed on or after November 1, 2001, must be conducted on the same

schedule as the underground storage tank systems in existence prior to that date.  
(4) through (8) remain the same.

AUTH: 75-11-505, 75-11-509, MCA  
IMP: 75-11-509, MCA

REASON: The requirement to complete inspections at least 90 days prior to permit expiration has been moved to (1) to clarify that the requirement applies to all tanks, not just those installed before November 1, 2001. The department is proposing to revise the compliance inspection schedule criteria in (3) to include the reissuing of conditional operating permits to conform the rule to revisions the department is proposing in ARM 17.56.310.

17.56.310 CONDITIONAL, ONE-TIME FILL AND EMERGENCY OPERATING PERMITS (1) remains the same.

(2) The department may issue or reissue a conditional operating permit when an UST system does not have an operating permit and active operation is to be resumed after the UST system has been out of use. ~~A conditional operating permit may be issued upon the department's receipt of the test results or written notice required in ARM 17.56.701~~ underground storage tank system is returned to active status, pursuant to ARM 17.56.701, or when the department has determined that violations resulting from a compliance or oversight inspection have not been resolved.

(3) through (6)(d) remain the same.

AUTH: 75-11-505, 75-11-509, MCA  
IMP: 75-11-509, MCA

REASON: The department is proposing to clarify that the department may issue or reissue a conditional operating permit when violations identified in a compliance inspection have not been resolved. The department has encountered instances when, after a conditional operating permit has expired, the ensuing compliance inspection has documented violations that indicate the facility was not properly operated or maintained. By reissuing the conditional operating permit, the department would provide an opportunity for the facility to establish appropriate operation and maintenance.

17.56.403 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS (1) Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

(4) (a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in ARM 17.56.402. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in ~~(2) of this rule~~ (1)(b).

~~(2)~~ (b) Release detection at new hazardous substance UST systems must meet the following requirements as provided in 40 CFR ~~265.193~~ 264.193, adopted by reference in this rule:

(a) remains the same, but is renumbered (i).  
(i) through (iii) remain the same, but are renumbered (A) through (C).  
(b) remains the same, but is renumbered (ii).  
(i) and (ii) remain the same, but are renumbered (A) and (B).  
(c) remains the same, but is renumbered (iii).  
(i) through (iii) remain the same, but are renumbered (A) through (C).  
(d) (iv) underground piping must be equipped with secondary containment that satisfies the requirements of ~~(a) above (1)(b)(i)~~ (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with ARM 17.56.408(1). The department hereby adopts and incorporates by reference 40 CFR ~~265.193~~ 264.193, ~~Containment and Detection of Releases~~ which sets forth standards for secondary containment and detection of releases of UST systems, and a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: In (2), renumbered (1)(b), the department is proposing to replace 40 CFR 265.193 with 40 CFR 264.193. Part 265 contains interim status standards for owners and operators of hazardous waste facilities. Section 3005(e) of RCRA defines "interim status" as a condition when an owner or operator of a hazardous waste facility that was required to have a permit on October 21, 1976, and which had applied for a permit, would be treated as having been issued such a permit until final administrative disposition of the owner's and operator's permit application was made. Because 30 years has passed since the necessity for interim status, 40 CFR 265.193 has no current relevance. 40 CFR 264.193, which applies to owners and operators of all facilities that treat, store, or dispose of hazardous waste, is the appropriate reference to the release detection standards for hazardous substance UST systems. The proposed amendment would not alter the standards, but simply correct the reference to the CFR.

The authorization and implementation statutes in ARM 17.56.403 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

#### 17.56.407 METHODS OF RELEASE DETECTION FOR TANKS

(1) through (1)(h) remain the same.  
(2) An owner or operator of an UST who conducts continuous interstitial monitoring pursuant to this chapter shall document the communication of all sensors with the console at least monthly, and maintain the records on site for the previous 12 months.

AUTH: 75-11-505, MCA  
IMP: 75-11-505, MCA

REASON: The department is proposing the addition of ARM 17.56.407(2) to clarify the existing rule and to conform the rule to the requirements proposed in New Rule I. In New Rule I, the department is proposing to implement the secondary containment option pursuant to the Energy Policy Act of 2005, Pub. L. 109-58 (Act). The proposed requirement to document the communication of sensors with the console and maintain records would provide an effective tool for the department to determine compliance with the leak detection monitoring requirements.

17.56.408 METHODS OF RELEASE DETECTION FOR PIPING (1) Each method of release detection for piping used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

(a) Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ~~40~~ ten pounds per square inch line pressure within one hour.;

(b) An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. If an automatic line leak detector fails the annual test at 3.0 gallons per hour, it must be replaced or retested at 5.0 gallons per hour. An automatic line leak detector must be replaced if it fails the 5.0 gallons-per-hour test;

~~(b)~~ (c) A periodic test of piping may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at 1 1/2 times the operating pressure.;

~~(c)~~ (d) Any of the methods in ARM 17.56.407(1)(e) through ~~(h)~~ (2) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to add performance standards for the annual testing of automatic line leak detectors. Performance standards are necessary for automatic line leak detectors to ensure that they are working properly. Pursuant to New Rule I(2)(d), any pressurized product piping regulated under this chapter that is installed or replaced must employ an automatic line leak detector.

17.56.701 INACTIVE AND OUT-OF-SERVICE UST SYSTEMS (1) ~~When the status of an active An~~ UST system is ~~changed to~~ inactive, when owners and operators shall notify the department, in writing, ~~within ten days after the date the UST ceases to be used~~ that the UST is no longer in use for dispensing, depositing, or storing regulated substances. The owner or operator shall continue operation and maintenance of corrosion protection on an out-of-service UST in accordance with ARM 17.56.302, and shall continue operation and maintenance of any release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3% by weight of the total capacity of

the UST system, remains in the system.

(2) through (4)(e)(ii) remain the same.

AUTH: 75-11-505, 75-11-509, MCA

IMP: 75-11-505, 75-11-509, MCA

REASON: The department is proposing to amend (1) to conform the rule to the definition of "inactive tank" in ARM 17.56.101(31). The proposed amendments would regulate out-of-service USTs as the department intended before the term "inactive" replaced the term "temporarily closed" in an earlier rulemaking.

#### 17.56.702 PERMANENT CLOSURE AND CHANGES IN SERVICE

(1) At least 30 days before beginning either permanent closure or a change in service under (2) and (3), owners and operators ~~must~~ shall notify the department and the implementing agency, in writing, of their intent to permanently close or make the change in service, unless such action is in response to corrective action already ~~notified~~ noticed to the department under subchapter 6. The required assessment of the excavation zone under ARM 17.56.703 must be performed after notifying the department and the implementing agency but before completion of the permanent closure or a change in service.

(2) To permanently close a tank or connected piping or both, owners and operators ~~must~~ shall empty and clean it by removing all liquids and accumulated sludges. All tanks, connected piping, or both, taken out of service permanently must also be either removed from the ground or, when approved by the department, filled with an inert solid material.

(3) Continued use of an UST system to store a nonregulated substance is considered a change in service. Before a change in service, owners and operators ~~must~~ shall empty and clean the UST system by removing all liquid, accumulated sludge, and all combustible and flammable vapors and conduct a site assessment in accordance with ARM 17.56.703.

(4) ~~The following cleaning and closure procedures adopted by reference in (5) must be used to comply with this rule:~~

~~(a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";~~

~~(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";~~

~~(c) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and~~

~~(d) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard \* \* \* Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.~~

(5) The department hereby adopts and incorporates by reference the version in effect on July 1, 2006, of the following standards, specifications, and publications:

(a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks," which sets forth

closure practices for UST systems, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks," which sets forth cleaning standards for UST tanks, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(c) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," ~~may be used as guidance for compliance with this section~~ which sets forth entrance standards for UST tanks, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(d) The National Institute for Occupational Safety and Health publication No. 80-106, "Criteria for a Recommended Standard \* \* \*: Working in Confined Space," which sets forth standards for working inside an UST tank, and a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The department is proposing to provide an effective date for the publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department is also proposing to revise an incorrectly cited publication.

The authorization and implementation statutes in ARM 17.56.702 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.703 ASSESSING THE SITE AT CLOSURE AND CHANGE IN SERVICE (1) through (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.704 APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS (1) remains the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.705 CLOSURE RECORDS (1) through (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.801 APPLICABILITY (1) through (5) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.802 COMPLIANCE DATES (1) Owners of petroleum underground storage tanks are required to comply with the requirements of this subchapter by the following dates:

(1) through (4) remain the same, but are renumbered (a) through (d).

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.803 DEFINITION OF TERMS For the purposes of this subchapter, the following terms have the meanings given in this rule:

(1) through (16) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.805 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY (1) through (8) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.806 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS (1) and (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.807 FINANCIAL TEST OF SELF-INSURANCE (1) through (7) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.808 GUARANTEE (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.809 INSURANCE AND RISK RETENTION GROUP COVERAGE (1) through (3) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.810 SURETY BOND (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.811 LETTER OF CREDIT (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.816 TRUST FUND (1) through (6) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.817 STANDBY TRUST FUND (1) through (5) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.820 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR (1) and (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.821 CANCELLATION OR NONRENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE (1) and (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.822 REPORTING BY OWNER OR OPERATOR (1) through (3) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.823 RECORDKEEPING (1) through (2)(f) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.824 DRAWING ON FINANCIAL ASSURANCE MECHANISMS (1) through (3) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.825 RELEASE FROM THE REQUIREMENTS (1) remains the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.827 BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.828 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS (1) through (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.901 INTERIM NOTIFICATION REQUIREMENTS (1) through (10) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.1002 GRANTS TO LOCAL GOVERNMENT UNITS (1) through (6) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.1003 DESIGNATION OF LOCAL UST PROGRAMS (1) through (7) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.1004 IMPLEMENTING AGENCY PROGRAM SERVICES AND REIMBURSEMENT (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA  
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.1005 REVOCATION AND SURRENDER OF DESIGNATION

(1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The authorization and implementation statutes in ARM 17.56.702 through 17.56.705, 17.56.801 through 17.56.803, 17.56.805 through 17.56.811, 17.56.816, 17.56.817, 17.56.820 through 17.56.825, 17.56.827, 17.56.828, 17.56.901, and 17.56.1002 through 17.56.1005 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when these rules were adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.1422 PROHIBITION OF UNPROFESSIONAL LICENSEE CONDUCT

(1) Any of the following acts of a person licensed under this subchapter constitute unprofessional conduct, are prohibited, and may result in the department conditioning, restricting, suspending, or revoking a license issued under this subchapter:

(a) through (k) remain the same.

(l) failure to adequately inspect an underground storage tank system for compliance with its operation, maintenance, and recordkeeping requirements in accordance with ARM 17.56.309;

(m) and (n) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-211, MCA

REASON: The department is proposing to revise the list of acts that may constitute unprofessional conduct. The phrase "adequately inspect" is clarified to include inspection requirements in ARM 17.56.609. The addition of this phrase would clarify the department's authority to restrict, suspend, or revoke a license for unprofessional conduct related to inspecting the operation, maintenance, and recordkeeping for underground storage tank systems.

4. The proposed new rule provides as follows:

NEW RULE I SECONDARY CONTAINMENT, UNDER-DISPENSER CONTAINMENT, AND INTERSTITIAL MONITORING (1) Any UST that is replaced or installed must employ:

(a) secondary containment and approved continuous interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method;

(b) under-dispenser containment that provides access; and

(c) a liquid-tight tank top sump where the product piping exits the tank.

(2) Any pressurized product piping regulated under this chapter that is installed or replaced must:

(a) employ secondary containment;

(b) terminate in a liquid tight sump at each end. The sumps must:

- (i) be liquid-tight on their sides, bottom, and at any penetrations;
  - (ii) be compatible with the substance conveyed by the piping; and
  - (iii) allow for visual inspection and access to the components in the containment system and/or otherwise allow the system to be monitored;
  - (c) employ approved continuous interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method; and
  - (d) employ an automatic line leak detector.
- (3) If over 50% of the length (measured from the piping terminus at the tank to the nearest point where the product is dispensed or otherwise used) or a pressurized product pipe regulated under this chapter is replaced, then the entire length of product piping must be replaced with secondarily-contained piping. The replacement of a line of product piping from a particular UST does not require the replacement of product pipes connected to other USTs.
- (4) Under-dispenser containment must be installed under dispensers when:
    - (a) a new UST system is installed;
    - (b) dispensers and any associated hardware used to attach the dispenser to the product piping are replaced;
    - (c) product piping is repaired or replaced at an associated dispenser island;
    - (d) significant modifications are made to the concrete at a dispenser island;
- or
- (e) the department determines under-dispenser containment is necessary to meet the requirements of this rule.
- (5) If under-dispenser containment is required pursuant to (1) or (4), the containment must:
- (a) employ approved interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method;
  - (b) be liquid-tight on its sides, bottom, and at any penetrations;
  - (c) be compatible with the substance conveyed by the piping; and
  - (d) allow for visual inspection and access to the components in the containment system and/or allow the system to be monitored.

AUTH: 75-11-505, MCA

IMP: 75-11-509, MCA

**REASON:** The department is proposing New Rule I, which implements Section 1530 of the Energy Policy Act of 2005, Pub. L. 109-58, (Act). Section 1530 of the Act requires that each new UST, or piping connected to any such new tank installed after February 8, 2007, either have secondary containment if it is within 1000 feet of any existing community water system or existing potable drinking water well, or the person who manufactures or installs the UST system shall maintain financial responsibility for the costs of corrective action. Because the vast majority of USTs are located within 1000 feet of a community water system, and it is difficult to determine the exact distance to a community water system, this rule would require all USTs, newly replaced or installed, to have secondary containment. Requiring all newly replaced or installed USTs to have secondary containment is environmentally sound and would be simpler for the regulated community to implement.

The department has historically allowed continuous interstitial monitoring for

catastrophic line leak detection which is less stringent than EPA's preferred method for line leak detection. (EPA's preferred method for line leak detection is not codified in any federal regulation.) The department is proposing a requirement in (2)(d) to install an automatic line leak detector on new and replaced pressurized product lines to conform the rule to EPA's preferred method.

5. The rules proposed for repeal are as follows:

17.56.120 NOTICE OF ASSESSMENT OF ADMINISTRATIVE PENALTY (AUTH: 75-11-505, MCA; IMP: 75-11-505, 75-11-525, MCA), located at page 17-6041, Administrative Rules of Montana. This rule would not be replaced.

17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES (AUTH: 75-11-505, MCA; IMP: 75-11-505, 75-11-525, MCA), located at page 17-6041, Administrative Rules of Montana. This rule would not be replaced.

REASON: The repeal of ARM 17.56.120 is necessary because the rule substantively repeats the language in 75-11-525(2), MCA, and rules may not unnecessarily repeat statutory language. Also, retaining the rule would be confusing and redundant.

The repeal of ARM 17.56.121 is necessary because House Bill 94 (2007) eliminates the authority for the department to adopt a schedule of minimum and maximum penalties for specific violations. Section 75-1-1001, MCA, and ARM Title 17, chapter 4, subchapter 3, now provide factors for calculating penalties assessed under Title 75, chapter 11, MCA, and the rules adopted thereunder.

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 Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail to [rmartin@mt.gov](mailto:rmartin@mt.gov), no later than August 3, 2007. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. James Madden, attorney, has been designated to preside over and conduct the 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 must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: 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. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Kendall Van Dyk, the primary sponsor of HB 94 (2007), was notified by mail on April 19, 2007.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

/s/ Richard H. Opper  
RICHARD H. OPPER, Director

Certified to the Secretary of State, June 25, 2007.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
17.74.401 through 17.74.404 pertaining to ) PROPOSED AMENDMENT  
the asbestos control program fees )  
) (ASBESTOS)

TO: All Concerned Persons

1. On September 12, 2007, at 10:30 a.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., August 29, 2007, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail [rmartin@mt.gov](mailto:rmartin@mt.gov).

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

17.74.401 PERMITS FEES (1) Concurrent with submittal of an asbestos project permit application, the applicant shall submit a permit fee to the department as follows:

(a) asbestos project permit: ... 10.0% of the contract volume, as defined in (2)

<u>Contract Volume</u>	<u>Permit Fee</u>
<del>\$0-\$500</del> .....	<del>None</del>
<del>\$501-\$3,000</del> .....	<del>\$ 91</del>
<del>\$3,001-\$5,000</del> .....	<del>\$ 201</del>
<del>\$5,001-\$7,500</del> .....	<del>\$ 304</del>
<del>\$7,501-\$10,000</del> .....	<del>\$ 417</del>
<del>\$10,001-\$20,000</del> .....	<del>\$ 686</del>
<del>\$20,001-\$50,000</del> .....	<del>\$ 1,531</del>
<del>\$50,001-\$75,000</del> .....	<del>\$ 2,652</del>
<del>\$75,001-\$100,000</del> .....	<del>\$ 3,627</del>
<del>\$100,001-\$250,000</del> .....	<del>\$ 6,552</del>
<del>\$250,001-\$375,000</del> .....	<del>\$13,416</del>
<del>greater than \$375,000</del> .....	<del>\$20,000</del>

(b) annual permit.....~~\$850~~ 2,000

(c) amendments to annual permit .....\$300 600

(2) For "Contract volume" means, for purposes of calculating the asbestos project permit fee, ~~the contract volume cost is based upon~~ the itemized contract charges directly associated with conducting the asbestos project. If there is no itemization of charges, the total of all charges associated with the contract is the contract volume ~~cost for the asbestos project permit fee~~. The cost of the asbestos project permit fee is not included in the determination of the contract volume ~~cost~~ if the fee is separately itemized in the contract.

~~(a)~~ (3) The asbestos project permit applicant shall submit a copy of the contract to the department to verify the contract volume ~~amount~~ specified in the permit application.

~~(b)~~ If the final contract volume of an asbestos project is more than two tiers greater than the volume specified in the permit application, the applicant shall apply to the department for an amended asbestos project permit and shall pay the difference between the original permit fee and the permit fee based on the new contract volume.

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

AUTH: 75-2-503, MCA  
IMP: 75-2-503, 75-2-504, MCA

17.74.402 ACCREDITATION AND ACCREDITATION RENEWAL FEES

(1) A person seeking accreditation or renewal of accreditation in an asbestos-related occupation shall pay a fee to the department. The fees for accreditation or renewal of accreditation are:

- (a) asbestos project worker.....\$ 40 45
- (b) asbestos project contractor/supervisor .....\$165 170
- (c) asbestos inspector.....\$165 170
- (d) asbestos management planner .....\$165 170
- (e) asbestos project designer.....\$165 170

(2) remains the same.

(3) For simultaneous, i.e., on the same application with the same date, accreditation or accreditation renewal in more than one asbestos-related occupation, the fee is \$325 plus any applicable surcharges, or the total of the two highest fees plus any applicable surcharges for those two occupations, whichever is less.

AUTH: 75-2-503, MCA  
IMP: 75-2-503, MCA

17.74.403 COURSE APPROVAL FEES (1) A person seeking approval of a training course for accreditation in an asbestos-related occupation shall pay to the department a fee of ~~\$975~~ 1,100 per course.

AUTH: 75-2-503, MCA  
IMP: 75-2-503, MCA

17.74.404 COURSE AUDIT FEES (1) A person offering a training course or refresher course for accreditation in an asbestos-related occupation that is audited by the department, as required under subchapter 3, shall pay the following fees, as applicable, within 60 days after receiving a bill from the department:

(a) asbestos project worker course .....	\$ 780	<u>480</u>
(b) asbestos project contractor/supervisor course .....	\$1,300	<u>800</u>
(c) asbestos inspector course .....	\$1,300	<u>800</u>
(d) asbestos management planner course.....	\$ 780	<u>480</u>
(e) asbestos project designer course .....	\$ 780	<u>480</u>
(f) asbestos inspector course and asbestos management planner course presented in conjunction.....	\$1,560	<u>960</u>
(g) refresher course .....	\$ 325	<u>200</u>
(h) two or more refresher courses presented consecutively .....	\$ 520	<u>320</u>

(2) remains the same.

AUTH: 75-2-503, MCA  
IMP: 75-2-503, MCA

REASON: Pursuant to 75-2-503(1)(k), MCA, the Department of Environmental Quality (department) shall assess fees for asbestos project permits, annual permits, amendments to annual permits, accreditation, and accreditation renewal. These fees must be commensurate with the department's costs for issuance and administration of the permits and accreditations.

In ARM 17.74.401(1), the department is proposing to revert back to the original permit fee rule assessment format (used from 1989 through 2002) that was based on a flat percentage of the asbestos project contract volume. The proposed format is simpler to administer than the current tiered percentage format. The new format for determining the asbestos project permit fee would be based on 10.0% of the contract volume. Contract volume is defined as the itemized or total contract charges directly associated with conducting the asbestos project.

The department last revised the fees in November 2003. Since FY 2004, the asbestos program costs have increased by approximately 13%. The increase in program costs is primarily due to an approximate 11% increase in salaries of asbestos program staff, and a 16% increase in operating expenses. Since FY 2004, the Performance Partnership Grant from the U.S. Environmental Protection Agency for funding of the asbestos program has decreased \$19,264 or 27%. With current fees the budget projections indicate a \$35,302 deficit at the end of FY 2008, and a \$346,270 deficit in FY 2011.

In ARM 17.74.401(1)(a) and 17.74.402(1), the department is proposing to increase the asbestos project permit fee and accreditation fees commensurate with the 13% increase in program costs since FY 2004. In FY 2006, the program staff issued 215 project permits. The cumulative amount of the project permit fee increase for the 215 project permit holders in FY 2007 is projected to be \$66,838. In FY 2006, the program staff issued 440 accreditations. The cumulative amount of the accreditation fee increase for 440 persons in FY 2007 is projected to be \$2,200.

In ARM 17.74.401(1)(b), the department is proposing to increase the asbestos project annual permit fee to an amount commensurate with current

program costs. The annual permit fee was adopted in 1989, and was initially set at \$1,000. In 2002, the annual permit fee was reduced to \$850. This reduction was necessary to meet the requirements of 75-2-504(2), MCA (2001). Pursuant to 75-2-504(2), MCA, the annual permit fee was required to reflect the actual cost of the department's annual permit application review, permit issuance, and facility inspections. Section 75-2-504(2), MCA, was repealed in 2003. Therefore, the department is proposing to increase the annual permit fee to \$2,000, which is commensurate with current program costs as required pursuant to 75-2-503(1)(k), MCA. In FY 2006, the program staff issued ten annual permits. The cumulative amount of the annual permit fee increase for the ten annual permit holders in FY 2007 is projected to be \$15,500.

In ARM 17.74.401(2), the department is proposing to revise the definition of "contract volume." The proposed amendments would not change the meaning of the definition.

ARM 17.74.401(2)(b) is proposed to be deleted because the proposed revisions to (1)(a) would remove the fee assessment tiers. The section would be superfluous.

In ARM 17.74.402(3), the department is proposing the addition of language to clarify the meaning of "simultaneous." The proposed language would not change the meaning of the section.

In ARM 17.74.403, the department is proposing to increase the course approval fee from \$975 to \$1,100, which is an amount commensurate with the 13% increase in program costs since FY 2004. The department approved one course in FY 2005 and none in FY 2006. Based on an assumption of one course being approved in FY 2007, the cumulative amount of the course approval fee increase for one training provider in FY 2007 is projected to be \$125.

In ARM 17.74.404(1), the department is proposing to reduce the course audit fees by approximately 40%. The audit fees currently are so high that many training course providers can't afford the fee. The department believes it may conduct as many as ten audits a year with the proposed lower fees. The cumulative amount of the course audit fee decrease for ten training providers in FY 2007 is projected to be \$5,600.

The title of ARM Title 17, chapter 74, subchapter 4, would be revised from "Fees" to "Asbestos Control Fees." This and other proposed editorial amendments are not intended to change the meaning of the rules.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail to [rmartin@mt.gov](mailto:rmartin@mt.gov), no later than September 19, 2007. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Jane Amdahl, attorney, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: 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. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ David Rusoff

DAVID RUSOFF

Rule Reviewer

/s/ Richard H. Opper

RICHARD H. OPPER, Director

Certified to the Secretary of State, June 25, 2007.

BEFORE THE BOARD OF REALTY REGULATION  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.210.401 fees, 24.210.641 ) ON PROPOSED AMENDMENT  
unprofessional conduct, 24.210.667 ) AND ADOPTION  
continuing education, 24.210.1016 )  
timeshare course, 24.210.1018 timeshare )  
exam, 24.210.1020 timeshare renewal, and )  
adoption of NEW RULE I fee schedule )

TO: All Concerned Persons

1. On July 26, 2007, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on July 20, 2007, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrre@mt.gov.

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

24.210.401 FEE SCHEDULE (1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services listed ~~below~~ in this rule. All fees are subject to change by the board, within the limitations provided in 37-51-311, MCA.

(2) through (19) remain the same.

(20) Each additional course hour-option from one course outline 20

(20) remains the same but is renumbered (21).

AUTH: 37-1-131, 37-1-134, 37-51-203, ~~37-51-204~~, MCA

IMP: 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-303, 37-51-311, MCA

REASON: The board is statutorily required to set fees that are commensurate with costs per 37-1-134, MCA. It is reasonably necessary to add this fee to cover the administrative costs involved in logging and tracking these additional course options for approved continuing education courses, including staff time for input, database

maintenance, tracking, and renewal. The board receives approximately ten requests per year from instructors or course providers to change the course hour options of board approved courses. The board estimates this new fee will generate an additional \$200 in annual revenue. Authority cites are being amended to provide the complete sources of the board's rulemaking authority.

24.210.641 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(g) remain the same.

(h) Licensees shall not knowingly enter, or willfully continue in, any transaction, either as a principal or agent, wherein a purpose or objective of the licensee or his principal is to commit any of the following acts: use, or conspire with others to obtain, inflated property appraisals; influence others to purchase property for another person in order to circumvent credit and down payment requirements or other limitations imposed by lenders, the Department of Housing and Urban Development or the Veterans Administration; file an application to refinance a loan for the purpose of drawing out the equity, when prohibited by lenders, ~~the department of HUD or VA regulations~~; or acquire as an investor, or personally, properties subject to a loan guaranteed or insured by ~~the department of HUD~~, collect rents thereon, while purposely failing to make mortgage payments on the property;

(i) through (ad) remain the same.

(ae) Licensees must comply with all completion and reporting requirements for continuing education as established by the board- ;

(af) A licensee shall not engage in or conduct business as a real estate licensee, or advertise as a real estate licensee, or engage in or conduct the business of a real estate licensee at a time when the licensee's real estate license has expired or is on inactive status.

(4) remains the same.

AUTH: 37-1-131, 37-1-136, ~~37-1-306~~, 37-1-319, ~~37-51-202~~, 37-51-203, ~~37-51-321~~, MCA

IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, ~~37-51-204~~, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: It is reasonably necessary to amend this rule to specify that practicing with an expired license or while a license is on inactive status constitutes unprofessional conduct. Per 37-1-141, MCA, a licensee may reinstate an expired license prior to termination, but may not practice with an expired license. This amendment allows the board to discipline a licensee who performs licensed activities after failing to renew and meet education requirements but still within the two-year expiration period prior to license termination. The amendment also allows the board to discipline a licensee who continues to perform licensed activity after placing a license on inactive status. The board is amending the authority and implementation cites to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority. The rule is further amended to delete unnecessary language.

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (15) remain the same.

(16) The board may grant continuing education credit to board members for actively preparing and participating in board meetings. Credit will be limited to no more than three hours of credit per meeting.

AUTH: 37-1-131, 37-1-136, ~~37-1-306~~, 37-1-319, 37-51-203, ~~37-51-204~~, MCA  
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, ~~37-51-203~~, 37-51-204, MCA

REASON: It is reasonably necessary to amend this rule to allow the board members to obtain a minimal amount of continuing education credit for board meeting preparation and attendance. Board members spend in excess of eight hours preparing for each board meeting by reviewing applications, considering numerous complaints with many legal and practice issues, and reviewing education program offerings to determine appropriateness for approval. Board members devote a great deal of time in preparing for and attending board meetings held every six to eight weeks and the board considers these duties equivalent to those obtained at a legal or practice issues education program.

24.210.1016 TIMESHARE COURSE OF EDUCATION REQUIRED FOR LICENSURE (1) remains the same.

(2) The board shall provide a correspondence course equivalent to eight classroom hours of instruction ~~and otherwise meeting the requirements of 37-53-501, MCA~~. The course is available from the board office upon application and payment of the required fee, ~~\$25~~. Persons taking the course must file an affidavit of completion included with the course packet prior to receiving a certificate of completion or taking the required examination for licensure.

(3) remains the same.

AUTH: 37-1-131, 37-53-104, 37-53-301, MCA  
IMP: 37-53-301, MCA

REASON: It is reasonably necessary to amend this rule to relocate all timeshare fees to one fee rule (New Rule I) for convenience and to comply with ARM fee schedule formatting. The board is also amending this rule to delete reference to a repealed statute.

24.210.1018 TIMESHARE EXAMINATION REQUIREMENTS FOR LICENSURE (1) remains the same.

(2) Application to take the examination shall be made to the board in writing and shall be received no less than 15 days prior to the date of examination, ~~accompanied by a~~ with the required fee of ~~\$35, which is not refundable~~.

(3) and (4) remain the same.

AUTH: 37-1-131, 37-53-104, MCA  
IMP: 37-53-301, MCA

REASON: It is reasonable and necessary to amend this rule to relocate all timeshare fees to one fee rule (New Rule I) for convenience and to comply with ARM fee schedule formatting.

24.210.1020 RENEWALS (1) remains the same.

~~(2) Licenses and certificates of completion for timeshare brokers and salespersons shall be renewed by the date set by ARM 24.101.413. Include payment of the required fee, and, except as contained in ARM 24.210.1003 renewal~~  
All renewals shall include a typewritten, or printed, and sworn update to the personal disclosure statement. Incomplete renewal forms or renewals without the personal disclosure statement will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal deadline or late renewal fees will be required.

(3) remains the same.

AUTH: 37-1-131, 37-53-104, MCA

IMP: 37-1-131, 37-1-141, ~~37-53-104~~, MCA

REASON: It is reasonably necessary to amend this rule to coincide with ARM 24.101.413, the department renewal rule as the department has set an October 31 annual renewal deadline for all timeshare licensees. Additionally, the board is amending this rule to clarify that incomplete renewals will not be accepted and explain what is expected of licensees when incomplete applications are received. The board is amending the implementation cites to accurately reflect all statutes implemented through the rule.

4. The proposed new rule provides as follows:

NEW RULE I FEE SCHEDULE (1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services listed in this rule.

(2) Fees are deemed earned by the board upon receipt and not refundable.

(3) For initial filing of an application for registration of the sale of a timeshare	\$500
(4) For an amendment of registration of the sale of a timeshare	200
(5) For the renewal of registration of the sale of a timeshare	200
(6) For each original timeshare broker license application	35
(7) For each timeshare broker license renewal	35
(8) For each original timeshare salesperson license application	15
(9) For each timeshare salesperson license renewal	15
(10) For each timeshare correspondence course	25
(11) For the original exam registration and any subsequent exam registration	35

AUTH: 37-1-131, 37-1-134, 37-53-104, MCA

IMP: 37-1-134, 37-1-141, 37-53-201, 37-53-202, 37-53-203, 37-53-204, 37-53-301, MCA

REASON: The board determined it is reasonably necessary to propose this new rule to set forth all timeshare fees in a single rule for convenience and ease of use. The fees for timeshare registration were previously set forth in statute at 37-53-103, MCA, which was repealed by the 2005 Montana Legislature through House Bill 182 (Chapter 467, Laws of 2005). In addition, the board is striking the fees for the board's timeshare correspondence course and for timeshare licensure examinations from ARM 24.210.1016 and 24.210.1018 and including them in this new rule. No new or amended fees are proposed and the amendment results in no fiscal impact.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [dlibsdrre@mt.gov](mailto:dlibsdrre@mt.gov), and must be received no later than 5:00 p.m., August 3, 2007.

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

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Realty Regulation administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to [dlibsdrre@mt.gov](mailto:dlibsdrre@mt.gov), or made by completing a request form at any rules hearing held by the agency.

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

9. Kathy Lubke, Rules Unit Supervisor, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION  
TEDDY BEEBE, CHAIRPERSON

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

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

Certified to the Secretary of State June 25, 2007

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

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.216.402 fee schedule, ) ON PROPOSED AMENDMENT  
24.216.502 minimum standards for )  
licensure, and 24.216.503 examination )

TO: All Concerned Persons

1. On July 26, 2007, at 9:00 a.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Sanitarians (board) no later than 5:00 p.m., on July 20, 2007, to advise us of the nature of the accommodation that you need. Please contact Chris Bernet, Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2334; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail [dlibsdsan@mt.gov](mailto:dlibsdsan@mt.gov).\*

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

24.216.402 FEE SCHEDULE (1) through (7) remain the same.

(8) In addition to the examination fees specified in this rule, there is a vendor fee set by the exam vendor. Current fee amounts for the sanitarian examination are available at the board office.

AUTH: 37-1-134, 37-40-203, MCA

IMP: 37-1-134, 37-1-141, 37-40-101, 37-40-301, 37-40-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify for applicants the existence of the exam vendor fee. The board collects this fee from applicants and passes it along to the exam vendor. The board does not retain any portion of the fee and does not profit from the transaction, thus this amendment results in no fiscal impact. This amendment will enable the board to adjust the fee in sync with exam vendor changes without amending the fee rule.

24.216.502 MINIMUM STANDARDS FOR LICENSURE (1) The board ~~will~~ may accept graduation from an accredited college or university with a bachelor's degree and including a minimum of ~~30~~ 45 quarter or ~~20~~ 30 semester hours in the physical and biological sciences, including courses in chemistry, microbiology, and

biology as an equivalent qualification of a bachelor's degree in environmental health as required by 37-40-302, MCA.

(2) ~~The board will review microbiology correspondence courses on a case-by-case basis for appropriate equivalency.~~ A holder of current National Environmental Health Association (NEHA) registration is qualified to be registered as a sanitarian in the state of Montana.

AUTH: 37-1-131, 37-40-203, MCA

IMP: 37-40-302, MCA

REASON: It is reasonable and necessary to amend this rule to allow the board discretion in approving or denying applications submitted under these equivalency standards. The board determined that situations may exist where an applicant meets the minimum educational equivalency but is still not qualified to become a registered Montana sanitarian, and the amendment allows the board discretion in evaluating the entire application.

The board is amending this rule to increase the minimum number of quarter and semester hours required as equivalent to an environmental health bachelor's degree to match current NEHA requirements. The board determined that requiring more equivalency hours will help ensure that equivalency standard applicants are qualified for Montana registration and help maintain the integrity of the profession.

It is reasonably necessary to delete (2) as the board reviews all courses and transcripts on a case-by-case basis, and it is not necessary to specify any one course. The board is also amending this rule to allow applicants holding current NEHA sanitarian credentials to become registered Montana sanitarians without proving any further qualifications. The board determined that NEHA's qualifications are substantively equivalent to or greater than Montana's current standards and any holder of a current NEHA registration is duly qualified for Montana registration. Authority cites are being amended to provide the complete sources of the board's rulemaking authority.

24.216.503 EXAMINATION (1) remains the same.

(2) An overall score of ~~70%~~ 68 percent will be required to pass the examination.

(3) remains the same.

(4) Applicants who fail the examination and wish to reschedule to take the examination must pay the reexamination ~~examination~~ fee, and schedule and sit for the examination ~~within 30 days of the last examination date~~. Applicants who fail the examination twice shall wait 60 days before taking the examination again.

(5) and (6) remain the same.

AUTH: 37-1-131, 37-40-203, ~~37-40-302~~, MCA

IMP: 37-1-131, 37-40-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align the board's examination score requirement with NEHA's current requirement. The board is amending ARM 24.216.502 to allow applicants with current NEHA

certification to qualify for Montana registration as sanitarians, and this amendment is necessary to comply with and further facilitate the change.

The board is deleting the requirement for applicants to retake failed examinations within 30 days as unreasonable and unnecessary. The board concluded that the 30-day requirement is not feasible due to the time it takes to receive the first exam results, and then order, schedule, and sit for a reexamination. The board found no compelling reason to require applicants retake at the earliest possible opportunity and concluded that candidates should be able to sit for reexaminations when they consider themselves sufficiently prepared. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

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 Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [sanitarian@mt.gov](mailto:sanitarian@mt.gov), and must be received no later than 5:00 p.m., August 3, 2007.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at [www.sanitarian.mt.gov](http://www.sanitarian.mt.gov). 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 which includes the name 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. Such written request may be mailed or delivered to the Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to [sanitarian@mt.gov](mailto:sanitarian@mt.gov), or made by completing a request form at any rules hearing held by the agency.

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

8. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF SANITARIANS  
TED KYLANDER, R.S., CHAIRPERSON

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

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

Certified to the Secretary of State June 25, 2007

\*EDITOR'S NOTE: The e-mail address for alternative participation accommodations was incorrectly printed in the hard copy of the Montana Administrative Register. This is the correct e-mail address.

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

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
37.85.207, 37.86.2820, 37.86.2907,	)	ON PROPOSED AMENDMENT
37.86.2932, 37.86.3001, 37.86.3020,	)	
and 37.86.4406 pertaining to inpatient	)	
hospital, outpatient hospital, and Rural	)	
Health Clinic (RHC) services	)	
	)	

TO: All Interested Persons

1. On July 27, 2007, at 10:00 a.m., a public hearing will be held in the Wilderness Room, 2401 Colonial Drive, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 16, 2007, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.85.207 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) remains the same.

(2) The following medical and nonmedical services are explicitly excluded from the Montana Medicaid program ~~except for those services covered under the health care facility licensure rules of the Montana department of public health and human services when provided as part of a prescribed regimen of care to an inpatient of a licensed health care facility,~~ except for those services specifically available, as listed in ARM 37.40.1406, 37.90.402, and Title 37, chapter 34, subchapter 9 to persons eligible for home and community-based services; and ~~except for those Medicare covered services, as listed in ARM 37.83.812 to qualified Medicare beneficiaries for whom the Montana Medicaid program pays the Medicare premiums, deductible, and coinsurance:~~

(a) through (d) remain the same.

(e) physical therapy aide services, except as provided in ARM 37.86.601, 37.86.605, 37.86.606, and 37.86.610 ~~and 46.12.529;~~

(f) through (k) remain the same.

(l) delivery services not provided in a licensed health care facility or nationally

accredited birthing center unless as an emergency service. Delivery services means services necessary to protect the health and safety of the woman and fetus from the onset of labor through delivery. Emergency service is defined in ARM 37.82.102;

(m) through (4)(d) remain the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-2-201, 53-6-101, 53-6-103, 53-6-116, 53-6-131, 53-6-141, 53-6-402, MCA

37.86.2820 DESK REVIEWS, OVERPAYMENTS, AND UNDERPAYMENTS

(1) remains the same.

(2) For cost reporting purposes ~~Where~~ where the department finds that an overpayment has occurred, the department will notify the provider of the overpayment.

(a) ~~In the event of an overpayment, the department will, within 30 days after the day the department notifies the provider that an overpayment exists, arrange to recover the overpayment by set-off against amounts paid for hospital services or by repayments by the provider. The provider will have 60 days from the date of the initial notification to repay the amount of the overpayment or to have an agreed upon repayment schedule. If the provider does not repay the whole overpayment within 60 days or defaults on a payment schedule, the department will make deductions from any payments the state of Montana makes to the provider. Recovery will be undertaken even though the provider disputes in whole or part the department's determination of the overpayment and requests a fair hearing.~~

(b) ~~If repayment is not made within 30 days after notification to the provider, the department will make deductions from rate payments with full recovery to be completed within 60 days from the date of the initial request for payment. Recovery will be undertaken even though the provider disputes in whole or in part the department's determination of the overpayment and requests a fair hearing. The amount of the overpayment constitutes a debt due the department as of the date of the initial notification to the provider and may be recovered from any person, party, transferee, or fiduciary who has benefited from either the payment or from the transfer of assets.~~

(3) For cost reporting purposes ~~in~~ in the event an underpayment has occurred, the department will reimburse the provider within ~~30~~ 60 days from the date of the initial notification to the provider following the department's determination of the amount.

(a) ~~The amount of any overpayment constitutes a debt due the department as of the date of initial request for payment and may be recovered from any person, party, transferee, or fiduciary who has benefited from either the payment or from a transfer of assets.~~

(4) Providers aggrieved by adverse determinations by the department may request an administrative review and fair hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, DRG PAYMENT RATE DETERMINATION (1) The department's DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to DRGs. The procedure for determining the DRG prospective payment rate is as follows:

(a) through (b) remain the same.

(c) The department computes a Montana average base price per case. This average base price per case is \$1980 excluding capital expenses, medical education, and disproportionate share hospital payments effective for services provided from August 1, 2003 through December 31, 2005. For services provided January 1, 2006 through June 30, 2006, the average base price per case is \$2037 excluding capital expenses, medical education, and disproportionate share hospital payments. For services provided between July 1, 2006 and September 30, ~~2006~~ 2007, the average base price is \$2118 excluding capital expenses, medical education, and disproportionate share hospital payments. For services provided on or after ~~October 1, 2006~~, the average base price is \$2025 October 1, 2007, the average base price is \$2187 and for services on or after July 1, 2008, the average base price is \$2220 excluding capital expenses, medical education, and disproportionate share hospital payments.

(d) through (2)(c) remain the same.

(3) The Montana Medicaid DRG relative weight values, average length of stay (ALOS), and outlier thresholds are contained in the DRG Table of Weights and Thresholds (effective October 1, ~~2006~~ 2007) published by the department. The department adopts and incorporates by reference the DRG Table of Weights and Thresholds (effective October 1, ~~2006~~ 2007). Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2932 MEDICAID INPATIENT UTILIZATION RATE (1) A hospital's Medicaid inpatient utilization rate is the hospital's percentage rate computed by dividing the total number of Medicaid inpatient days in the hospital's fiscal year by the total number of the hospital's inpatient days in that same period.

(2) through (3)(a) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (4) remain the same.

(5) "Conversion factor" means a base rate initially calculated by CMS and used to translate APC relative weights into dollar payment rates an adjustment equal to Medicare's highest urban rate for Montana as published at 67 Federal Register

~~(FR) 43616 (June 28, 2002).~~

(6) through (19) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.3020 OUTPATIENT HOSPITAL SERVICES, OUTPATIENT PROSPECTIVE PAYMENT SYSTEM (OPPS) METHODOLOGY, AMBULATORY PAYMENT CLASSIFICATION (1) Outpatient hospital or birthing center services that are not provided by exempt hospitals or critical access hospitals as defined in ARM 37.86.2901(4) and (8) will be reimbursed on a rate-per-service basis using the Outpatient Prospective Payment System (OPPS) schedules. Under this system, Medicaid payment for outpatient services included in the OPPS is made at a predetermined, specific rate. These outpatient services are classified according to a list of APCs published annually in the Code of Federal Regulations (CFR). The rates for OPPS are determined as follows:

(a) The department uses a conversion factor for each APC group as defined at ARM 37.86.3001~~(2)~~(5). The conversion factor for August 1, 2003 through September 30, 2007 is \$47.75. The conversion factor for October 1, 2007 through June 30, 2008 is \$49.71. The conversion factor for services on or after July 1, 2008 is \$50.61. The APC based fee equals the Medicare specific relative weight for the APC times the conversion factor that is the same for all APCs with the exceptions of services in ARM 37.86.3025. APCs are based on classification assignment of CPT/HCPCS codes.

(b) through (2) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.4406 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, SERVICE REQUIREMENTS (1) and (2) remain the same.

(3) RHC services are covered by Montana Medicaid when provided in accordance with these rules to a recipient at the clinic, the recipient's residence or a ~~hospital or~~ other medical facility. RHC services are not covered by Montana Medicaid when provided to a hospital patient.

(4) through (7) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

3. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.85.207, 37.86.2820, 37.86.2907, 37.86.2932, 37.86.3001, 37.86.3020, and 37.86.4406 pertaining to Medicaid reimbursement for inpatient and outpatient hospital services and Rural Health Clinic (RHC) services. The purpose of the proposed rule amendments is to clearly state the department's intention to reimburse only nationally accredited birthing centers for Medicaid services. The department wishes to extend the time allowed for a provider to repay

Medicaid reimbursement to which it was not entitled and to specify in the rule pertaining to Medicaid utilization that Medicaid's disproportionate share (DSH) calculations are based on inpatient utilization. It also wishes to add a legislatively mandated provider rate increase to inpatient and outpatient services provided in hospitals reimbursed under a prospective payment reimbursement system. The proposed RHC rule amendment allows the department to conform to Medicare site of service practices.

ARM 37.85.207

The proposed amendment to this rule enumerating services not covered by Medicaid would clearly state the department's intention to reimburse nationally accredited birthing centers as well as licensed health care facilities. As written, the rule was difficult for providers and program staff to interpret. In addition, the department recently added rules for reimbursing birthing centers. The department is adding "nationally accredited birthing centers" as a covered entity for births in order to distinguish them from health care facilities. This change would affect two birthing centers. There would be no financial effects on birthing centers or health care facilities as a result of this proposal.

ARM 37.86.2820

For cost reporting purposes, department fiscal rules and practice allow 60 days for a provider to repay Medicaid reimbursement that it was not entitled to. A Legislative Audit Division audit revealed that this rule, pertaining to hospitals, was more restrictive than department policies and practices pertaining to other health care providers. The proposed amendment would correct that inequity. This proposed amendment would affect 59 in-state hospitals and approximately 40 out-of-state hospitals. The department cannot predict the financial effect on hospitals, but any effect would be mildly beneficial.

ARM 37.86.2907

On June 1, 2007, House Bill 2 (HB 2), 2007 Laws of Montana, chapter 5, became law. It appropriated money for a Medicaid rate increase to inpatient hospital services reimbursed under the prospective payment system. The proposed amendments are necessary to implement the rate increase and to withdraw a proposed rate decrease in October 2006 that was never implemented. The proposed inpatient rate increase for physical and mental health is \$828,058 for SFY 08 and \$1,625,792 for SFY 09.

A Diagnosis Related Group (DRG) base rate decrease was proposed in the original filing of the October 1, 2006 inpatient hospital rule. After responses to comments and further analysis by the department, it was determined that this cut did not need to be made and a proposal to delete this amendment was read at the hearing. Removal of the rate reduction language was inadvertently left in the final rule.

Because the effective date of the HB 2 rate increase is October 1 instead of July 1, 2007, the amount of the increase is greater in October 2007 than in July 2008. The average base price increased from \$2118 to \$2187 effective October 1, 2007 and to \$2220 effective July 1, 2008.

This proposed rule change also incorporates the annual DRG rebase in October of each year. The rebase is budget neutral.

#### ARM 37.86.2932

Rules regarding Medicaid's disproportionate share hospital (DSH) calculations are based on inpatient utilization. This was clearly stated in all rules pertaining to DSH except this rule pertaining to Medicaid utilization. This proposal would add the term "inpatient" to this section, making it consistent with other rules. This proposal would affect 59 in-state hospitals and would have no financial impact.

#### ARM 37.86.3001 and 3020

The department has used the Center for Medicare and Medicaid Services' (CMS's) June 2002 conversion rate since the inception of the Outpatient Prospective Payment System (OPPS) in August 2003. The proposed amendment to these rules provides for a legislatively mandated (HB 2) rate increase to outpatient hospital services reimbursed under the prospective payment system. The proposed outpatient rate increase for physical and mental health is \$527,340 SFY 08 and \$1,028,519 for SFY 09.

Because the first year increase takes place October 1 of 2007, the amount of the increase is greater in October 2007 than in July 2008. The conversion factor increased from \$47.75 to \$49.71 effective October 1, 2007 and to \$50.61 effective July 1, 2008.

#### ARM 37.86.4406

The department proposes to amend the sites of service for Rural Health Care (RHC) providers to no longer include hospitals. This will conform Medicaid sites of service to that practiced by Medicare providers. The department considered and rejected the option of continuing to allow RHC providers to practice in hospitals but determined that this option causes confusion on the part of RHC providers.

The purpose of the proposed new rule amendment is to conform Medicaid policy to Medicare practice.

#### Fiscal effects

The department expects the proposed amendments to ARM 37.85.207, 37.86.2820, and 37.86.2932 to be budget neutral to the state. None of the affected medical service providers would experience a detrimental financial effect.

The proposed changes to ARM 37.86.2907, 37.86.3001, and 37.86.3020 are expected to increase reimbursement to inpatient and outpatient hospital services for prospective payment hospitals.

The department expects the proposed amendment to ARM 37.86.4406 to have no effect on the 49 RHC facilities that are enrolled Medicaid providers in Montana as of the date of publication of this notice. They receive approximately \$4.0 million in Medicaid reimbursement annually. No fiscal impact on state or federal funds and no material effect on Medicaid recipients or RHCs is anticipated.

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

5. Interested 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on August 2, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov). The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Barbara Hoffmann  
Rule Reviewer

/s/ John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 25, 2007.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
2.4.401 through 2.4.411 pertaining to the )  
Single Audit Act )

TO: All Concerned Persons

1. On May 10, 2007, the Department of Administration published MAR Notice No. 2-2-379 regarding the public hearing on the proposed amendment of the above-stated rules at page 552 of the 2007 Montana Administrative Register, Issue No. 9.

2. No comments or testimony were received.

3. The department has amended ARM 2.4.401 and 2.4.403 through 2.4.411 exactly as proposed. The department is further amending ARM 2.4.402 as follows, stricken matter interlined, new matter underlined:

2.4.402 REPORT FILING FEE (1) through (6)(c) remain as proposed.  
(7) The annual filing fees for local government entities are as follows:

<u>Annual Revenues Equal to or Greater Than:</u>	<u>Annual Revenues Less Than:</u>	<u>Fee</u>
\$-0-	\$200,000	\$-0-
\$200,000	\$500,000	\$200
\$500,000	\$1,000,000	\$435
\$1,000,000	\$1,500,000	\$635
\$1,500,000	\$2,500,000	\$760
\$2,500,000	\$5,000,000	\$845
\$5,000,000	\$10,000,000	\$890
\$10,000,000	\$50,000,000	\$965
\$50,000,000		\$1,000

This filing fee schedule is effective for annual financial reports for years ended June 30, 2007, and after. For annual financial reports for years ended ~~June 30, 2008~~ October 1, 2007, and after, the annual filing fee for local government entities with annual revenues less than \$500,000 is zero.

AUTH: 2-7-514, MCA  
IMP: 2-7-514, MCA

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

BY: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State June 25, 2007.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 12.3.185 pertaining to adding )  
three new species to the annual )  
lottery of hunting licenses )

To: All Concerned Persons

1. On May 10, 2007, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-326 regarding the proposed amendment of the above-stated rule at page 565 of the 2007 Montana Administrative Register, Issue No. 9.

2. The commission has amended ARM 12.3.185 as proposed.

3. The following comment was received and appears with the commission's responses:

Comment 1: One person commented in favor of the proposed amendment because he thought it would generate revenue.

Response: The commission appreciates the support for this rule amendment.

/s/ Steve Doherty  
Steve Doherty, Chairman  
Fish, Wildlife and Parks  
Commission

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

Certified to the Secretary of State June 25, 2007.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	CORRECTED NOTICE OF
23.16.209, 23.16.401, 23.16.406,	)	AMENDMENT
23.16.410, 23.16.1101, 23.16.1224,	)	
23.16.1225, 23.16.1231, and 23.16.3103	)	
concerning display of antique illegal	)	
gambling devices, dealer license	)	
application process, temporary dealer	)	
licenses, possession of dealer license,	)	
card game tournament rules, card dealer	)	
restrictions, house player restrictions,	)	
rake restrictions, and casino night	)	
requirements	)	

TO: All Concerned Persons

1. On May 10, 2007, the Department of Justice published MAR Notice No. 23-16-186, pertaining to the public hearing on the proposed amendment of the above-stated rules at page 567 of the 2007 Montana Administrative Register, Issue Number 9. On June 21, 2007, the Department of Justice published the notice of amendment at page 848 of the 2007 Montana Administrative Register, Issue Number 12.

2. This corrected notice serves to delete card game tournament regulations supplanted by recent rule amendment. Specifically, the prior rule set out a maximum prize payout per hand for card game tournaments and also required tournament applicants to provide the division with an estimate of the total number of hands required to win the prize. The change in law replaced the per-hand limit with a maximum total dollar amount for entry and reentry fees to limit and control the size of card game tournament prizes. The division's failure to delete the per-hand limit language from the rule was an oversight. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

23.16.1101 CARD GAME TOURNAMENTS (1) through (2)(i) remain as amended.

(j) copy of the tournament rules, which must identify the face value of the chips to be used ~~and provide an estimate of the total number of hands to be played to be eligible to win a prize.~~

(3) through (8) remain as amended.

(9) Winners are determined by points or chips accumulated during the course of a game. ~~Prizes cannot exceed \$300 per hand and may be awarded following each game or at the end of the tournament.~~

(10) through (15) remain as amended.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on June 29, 2007.

By: /s/ Mike McGrath  
MIKE McGRATH  
Attorney General, Department of Justice

/s/ Jon Ellingson  
JON ELLINGSON  
Rule Reviewer

Certified to the Secretary of State June 25, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment ) CORRECTED NOTICE OF  
of ARM 24.17.127, pertaining to prevailing ) AMENDMENT  
wage rates for public works projects - )  
building construction services, )  
heavy and highway construction services, )  
and nonconstruction services )

TO: All Concerned Persons

1. On April 12, 2007, the Department of Labor and Industry published MAR Notice No. 24-17-215 regarding the public hearing on the proposed amendment of the above-stated rule at page 404 of the 2007 Montana Administrative Register, issue no. 7. On June 21, 2007, the Department of Labor and Industry published the notice of amendment at page 851 of the 2007 Montana Administrative Register, issue no. 12.

2. In Comment and Response 14, the department noted that a typographical error had been discovered with respect to travel pay for Carpenters in Districts 4 through 10 for building construction services. The department has now discovered that the same typographical error was present with respect to the occupational classifications of drywall applicator, floor layer, and pile buck in Districts 4 through 10. The corrected rates are shown in paragraph 3.

3. The rule has been amended exactly as proposed. The following rates in "The State of Montana Prevailing Wage Rates - Building Construction Services" publication incorporated by reference in the rule have been amended as follows, stricken matter interlined, new matter underlined:

Drywall applicators:

Travel

Districts 4 – 10:

0-15 miles free zone  
15-30 mi Base pay + \$1.00  
30-50 mi Base pay + ~~\$2.50~~ \$1.50  
Over 50 mi Base pay + \$2.00

Floor layer:

Travel

Districts 4 – 10:

0-15 miles free zone  
15-30 mi Base pay + \$1.00  
30-50 mi Base pay + ~~\$2.50~~ \$1.50

Over 50 mi Base pay + \$2.00

Pile buck:

Travel

Districts 4 – 10:

0-15 miles free zone

15-30 mi Base pay + \$1.00

30-50 mi Base pay + ~~\$2.50~~ \$1.50

Over 50 mi Base pay + \$2.00

4. The replacement pages for this corrected notice were submitted to the Secretary of State on June 29, 2007.

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ DORE SCHWINDEN

Dore Schwinden, Deputy Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified by the Secretary of State June 25, 2007

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

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 24.180.401 fee schedule )

TO: All Concerned Persons

1. On April 26, 2007, the Board of Plumbers (board) published MAR Notice No. 24-180-44 regarding the proposed amendment of the above-stated rule, at page 498 of the 2007 Montana Administrative Register, issue no. 8.

2. On May 21, 2007, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the May 29, 2007, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Two people stated they would have no objection to the proposed fee increases if they and other licensed plumbers who regularly pay license fees as well as the costs of continuing education, plumbing permits, inspections, apprenticeships, workers' compensation, unemployment and general liability insurance, and apprentice and journeyman wages, received protection from the board against those who avoid such costs by practicing without licenses. The commenters stated the board is not doing enough to adequately address the unlicensed practice of plumbing or is just unresponsive to unlicensed practice complaints.

RESPONSE 1: The board agrees that the unlicensed practice of plumbing is a serious problem. The board does investigate unlicensed practice complaints and issues cease and desist orders to individuals found practicing plumbing unlawfully. Board inspectors regularly issue "citations and fines" to unlicensed persons performing plumbing work. However, the incidence of unlicensed plumbing practice continues to rise. The board has formed a committee to review this problem and report back on possible legislative, public education, and other solutions. The board intends to seek misdemeanor criminal prosecutions of persons engaging in unlicensed practice and to identify circumstances when the board will seek district court civil injunctions. All recourses pursued by the board must be undertaken within statutory and budgetary constraints.

COMMENT 2: Thirty-nine persons signed a written comment opposing the proposed fee increase because the increase is more than double the board's projected budget shortfall. One commenter questioned the legality of such an increase. Commenters compared the plumbers' renewal fees with the lesser renewal fees of architects, pharmacists, electricians, public accountants, professional engineers, dentists, and physicians. One commenter asserted the

median wage for plumbers is far less than the wage for the other named occupations and professions with the exception of electricians.

RESPONSE 2: The board had an end-of-month cash balance for April 2007 of \$88,619.46. By the end of June 2008, without a fee increase, it will have a projected negative balance (i.e., a budget shortfall) of \$52,211. Thus it would have expended \$140,830.46 or \$52,211 more than its projected revenue, not a total of only \$52,211. The proposed fee increase is not double what the board needs to operate. The \$118,020 revenue that is expected to be generated by the fee increase will merely offset most board expenses.

Boards are statutorily prohibited from accumulating a cash balance of more than twice its annual legislative appropriation (spending authority). In the unlikely event the board ever reached that cap, the department would abate plumbers' renewal fees in whole or in part until the surplus was depleted. Otherwise, the surplus would revert to the state's general fund. There is no advantage to the board to collect more fees than needed to meet expenses.

Professional and occupational licensing boards receive no funding from the legislature. By law, boards must set their fees commensurate with their costs and they must be wholly self-sufficient. The proposed fees are commensurate with the board's costs and thus, are legal in all respects. Fees are not and cannot be set based on the income that licensees can expect to earn in their chosen field.

Comparing plumbers' renewal fees with other occupations or professions is not instructive. The primary source of revenue for boards is their renewal fees. Thus, boards with larger numbers of licensees can set renewal fees lower while boards with fewer licensees must set theirs higher to meet operating expenses. The Board of Plumbers has 1368 licensees. In contrast, the Board of Medical Examiners has seven licensing categories and approximately 9200 licensees (including physicians, EMTs, physician assistants, nutritionists, acupuncturists, and others); the Board of Pharmacy has approximately 3025 licensees (including pharmacists, pharmacies, pharmacy technicians, mail order pharmacies, and wholesale distributors); the Board of Public Accountants has 1982 licensees; the Board of Professional Engineers and Professional Land Surveyors has 4373 licensees; the Board of Dentistry has 1188 licensees; and the State Electrical Board has 3967 licensees (including electricians and electrical contractors).

Further, unlike most boards, the Board of Plumbers and the State Electrical Board employ and pay expenses for two full time inspectors who travel the state checking licensure compliance and investigating unlicensed practice. The expenses include wages and benefits, fuel, motor pool vehicle, per diem, and lodging.

COMMENT 3: One commenter suggested that the board charge master plumbers of record a separate fee, keep the fines collected from violators to cover board costs instead of depositing the fines to the general fund, and issue maximum fines for violations and/or obtain reimbursement for the time and expense of prosecuting violators.

RESPONSE 3: The board acknowledges the suggestion, but has no immediate plan to establish a separate fee for master plumbers of record for plumbing businesses.

To keep fine money rather than deposit it to the general fund would require legislative authorization. In addition, if fines were a source of the board's operating revenue, there would be legal due process implications, i.e., the appearance that decisions regarding discipline are or could be based on budget considerations rather than solely on merit.

In determining what sanction to impose, the board is required by law to first consider what is necessary to protect or compensate the public. Not every violation may warrant the maximum allowable fine of \$1000. To assess the costs of prosecution against violators would require legislative authorization.

4. The board has amended ARM 24.180.401 exactly as proposed.

BOARD OF PLUMBERS  
TIM REGAN, CHAIRPERSON

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

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

Certified to the Secretary of State June 25, 2007

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

In the matter of the amendment of ARM     )  
37.12.401 pertaining to laboratory         )  
testing fees                                     )         NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 10, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-403 pertaining to the proposed amendment of the above-stated rule, at page 581 of the 2007 Montana Administrative Register, issue number 9.

2. The department has amended ARM 37.12.401 as proposed.

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: A commentor asked when the new pricing for lab tests would be effective.

RESPONSE: The new pricing will be effective on the first day following publication of this final notice of adoption of the revised laboratory fees in the Montana Administrative Register. The prices will take effect on July 6, 2007.

/s/ Denise Pizzini  
Rule Reviewer

/s/ John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 25, 2007.

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
37.70.305, 37.70.311, 37.70.312,	)	
37.70.401, 37.70.406, 37.70.408,	)	
37.70.601, 37.70.602, and 37.71.601	)	
pertaining to Low Income Energy	)	
Assistance Program (LIEAP) and Low	)	
Income Weatherization Assistance	)	
Program (LIWAP)	)	

TO: All Interested Persons

1. On May 10, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-404 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 584 of the 2007 Montana Administrative Register, issue number 9.

2. The department has amended ARM 37.70.305, 37.70.311, 37.70.312, 37.70.406, 37.70.408, 37.70.601, and 37.71.601 as proposed.

3. The department is not amending ARM 37.70.602 at this time.

4. The department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.70.401 DEFINITIONS (1) through (4) remain as proposed.

(5) "Eligible energy costs" means costs of the various types of energy supplied by the household's fuel vendors. Energy delivered by the household's fuel vendors prior to October 1 ~~are~~ is ineligible for payment in the current heating season, except that charges incurred from July 1 through September 30 for propane to heat a residence are eligible for payment in the current heating season. Provided, however, that eligible energy costs may include energy delivered prior to October 1 for applications filed after September 30, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable.

(6) through (23) remain as proposed.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

5. The department noticed there is a grammatical error in the second sentence of ARM 37.70.401(5) and corrected it. It should read "Energy delivered by the household's fuel vendors prior to October 1 is ineligible for payment," rather than "are ineligible". The department is changing the verb "are" to "is".

6. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The Notice of Public Hearing on Proposed Amendment does not include a statement of the reasonable necessity for the proposed amendments to ARM 37.70.602 as required by 2-4-302(1), MCA.

RESPONSE: The department inadvertently omitted the statement of the reasonable necessity for the proposed amendments to ARM 37.70.602 and therefore is not amending ARM 37.70.602 as proposed at this time.

/s/ Barbara Hoffmann  
Rule Reviewer

/s/ John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 25, 2007.

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
37.78.102, 37.78.103, 37.78.202,	)	
37.78.206, 37.78.207, 37.78.216,	)	
37.78.228, 37.78.425, 37.78.430,	)	
37.78.801, 37.78.806, and 37.78.807	)	
pertaining to Temporary Assistance for	)	
Needy Families (TANF)	)	

TO: All Interested Persons

1. On May 10, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-405 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 597 of the 2007 Montana Administrative Register, issue number 9.

2. The department has amended ARM 37.78.102, 37.78.103, 37.78.202, 37.78.206, 37.78.207, 37.78.216, 37.78.228, 37.78.425, 37.78.430, 37.78.801, 37.78.806, and 37.78.807 as proposed.

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: I am concerned about the proposed amendment of ARM 37.78.430 to provide that the department will recover overpayments due to receipt of continued benefits when a recipient loses a hearing regarding the issue of a TANF sanction at the rate of 25% per month rather than 10%. This policy will place an impediment on those wishing to have a hearing when the adverse action is a TANF sanction. It appears to be based on the assumption that the majority of recipients who request hearings regarding TANF sanctions do so only to receive the continuing benefits, which is not a correct assumption. Additionally, even if it were true, why should individuals who really want to argue their case have to be penalized because of some who abuse the hearing system? How do you justify distinguishing the recovery rate between overpayments caused by continuing benefits of sanctions versus all other issues such as a decrease in TANF benefits based upon income calculations? There are abusers amongst all the various adverse action issues.

RESPONSE: By the proposed ARM change, the department does not intend to prevent anyone from pursuing the right to appeal, nor does the department believe the proposed change will have that effect. Instead, as is reflected in the rationale language in the proposal submission of the ARM to the Secretary of State, the department maintains this change is necessary to assist the department in meeting the mandated work participation rate and in negating possible monetary penalties to the state by lowering the incentive for individuals to request a fair hearing solely for

the purpose of retaining cash assistance without a requirement to participate in allowable work activities. In addition to assisting the department in meeting the work participation rate, the department also believes the proposed change will benefit participants by avoiding overpayments on their part, as well as the negative impacts such overpayments may cause to clients' future financial benefits. The department also maintains that at the point of imposition of the higher recoupment amount, the sanction has been found to be justified and an overpayment in the amount of the continued benefits has been established. The department has the right to collect overpayments by any and all means outlined in Administrative Rules of Montana.

4. The department intends that the amendments to ARM 37.78.102, 37.78.103, 37.78.202, 37.78.206, 37.78.207, 37.78.216, 37.78.228, 37.78.425, 37.78.430, 37.78.801, 37.78.806, 37.78.807 be applied retroactively to July 1, 2007. No detrimental effects are anticipated as a result.

/s/ Francis X. Clinch  
Rule Reviewer

/s/ John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 25, 2007.

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

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rule I and the amendment of ARM	)	AMENDMENT
37.86.5201, 37.86.5202, and	)	
37.86.5205 pertaining to the disease	)	
management program	)	

TO: All Interested Persons

1. On May 24, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-406 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 656 of the 2007 Montana Administrative Register, issue number 10.

2. The department has adopted New Rule I (37.86.5204) as proposed.

3. The department has amended ARM 37.86.5201, 37.86.5202, and 37.86.5205 as proposed.

4. No comments or testimony were received.

/s/ Geralyn Driscoll  
Rule Reviewer

/s/ John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 25, 2007.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

### Use of the Administrative Rules of Montana (ARM):

- |                  |   |
|------------------|---|
| Known<br>Subject | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute          | 2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department corresponding ARM rule numbers.                     |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2007. This table includes those rules adopted during the period April 1 through June 30, 2007, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2007, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2006 and 2007 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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