

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING
ARM 17.56.101, 17.56.201,	)	ON PROPOSED AMENDMENT
17.56.202, 17.56.301, 17.56.302,	)	AND REPEAL
17.56.304, 17.56.305, 17.56.309,)	
17.56.312, 17.56.401, 17.56.402,	)	(UNDERGROUND STORAGE
17.56.502, 17.56.503, 17.56.505,	)	TANKS)
17.56.506, 17.56.601, 17.56.603)	
17.56.604, 17.56.605, 7.56.607,)	
17.56.701, 17.56.702, 17.56.703,)	
17.56.705, 17.56.901, 17.56.902,)	
17.56.1301, 17.56.1303, 17.56.1304,)	
17.56.1305, 17.56.1306, 17.56.1308,)	
17.56.1309, 17.56.1401, 17.56.1402,)	
17.56.1403, 17.56.1404, 17.56.1405,)	
17.56.1406, 17.56.1407, 17.56.1408,)	
17.56.1409, 17.56.1410, 17.56.1421,)	
17.56.1422, 17.56.1502, 17.56.1503,)	
pertaining to underground storage)	
tanks petroleum and chemical)	
substances and the repeal of ARM)	
17.56.1002, 17.56.1003, 17.56.1004,)	
17.56.1005, pertaining to delegation to)	
local governments)	

TO: All Concerned Persons

1. On August 11, 2016, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The board 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 Denise Hartman, Administrative Rules Coordinator, no later than 5:00 p.m., August 5, 2016, to advise us of the nature of the accommodation that you need. Please contact Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

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

17.56.101 DEFINITIONS For the purposes of this chapter and unless

otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with those definitions in 75-11-203, 75-11-302, and 75-11-503, MCA.

(1) through (49) remain the same.

(50) "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 ~~(49)~~ (50)(b) and (c), except that pipelines regulated under the following laws are excluded:

(i) and (ii) remain the same.

(iii) state law comparable to the provisions of law referred to in ~~(49)~~ (50)(d)(i) and (ii), if the facility is intrastate.

(51) through (78) remain the same.

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 amend ARM 17.56.101(50)(d) in order to correct the citation in that subsection.

17.56.201 PERFORMANCE STANDARDS FOR NEW UST SYSTEMS

(1) remains the same.

(2) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of the following standards, specifications, and publications:

(a) remains the same.

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

(c) American Society of Testing and Materials Standard D4021, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks," which sets forth design standards for Fiber Reinforced Polyester (FRP) UST tanks, 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, "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, a copy of which may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(e) remains the same.

(f) Underwriters Laboratories of Canada Standard ULC-S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth the requirements that cover single-wall 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;

(g) Underwriters Laboratories of Canada Standard ULC-S603.1, "~~Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids~~ External 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;

(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;

(j) and (k) remain the same.

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

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

(n) through (t) remain the same.

(u) American National Standards Institute Standard B31.3, "~~Petroleum Refinery Piping Process 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~~ Pipeline Transportation Systems for Liquids and Slurries," 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;

(w) Underwriters Laboratory 1856, "Underground Fuel Tank Internal Retrofit Systems," which sets forth requirements for nonmetallic retrofit systems intended for

field installation inside steel or fiberglass underground fuel tanks, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709; and

(x) American Petroleum Institute 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations," which describes recommended practices for the storing, handling, and fire protection of ethanol and gasoline-ethanol blends from E1 to E15 and from E65 to E100 (used for E85) at distribution terminals and filling stations, 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: Industry codes and standards are developed in order to ensure that UST systems are properly designed, constructed, installed, and maintained. The UST rules incorporate UST performance standards and practices adopted by nationally recognized organizations to ensure methods of UST system management are protective of human health and the environment. UST systems must be designed, constructed, and protected from corrosion in accordance with these codes and practices.

The department is proposing to amend ARM 17.56.201(2) in order to adopt and incorporate by reference the latest versions of the standards, specifications, and publications listed in (2)(a) through (v) and to add the standards in (2)(w) and (x), which provide requirements for retrofitting nonmetallic systems and standards for storing and handling ethanol fuel blends.

It is necessary to incorporate the most current standards and procedures to require compliance with the most recent technological advancements in the UST industry.

17.56.202 UPGRADING OF EXISTING UST SYSTEMS (1) through (4) remain the same.

(5) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, 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, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) through (d) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.202(5) in order to adopt and incorporate by reference the latest version of the standards and publications listed in (5)(a) through (d) in order to reflect changes and technological

advancements in the UST industry. It is necessary to incorporate the most current standards and procedures to reflect the most recent changes and technological advancements in the UST industry and to ensure the regulated community uses and complies with up-to-date standards for upgrading existing UST systems.

17.56.301 SPILL AND OVERFILL CONTROL (1) and (2) remain the same.

(3) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of the following standards and publications:

(a) through (c) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.301(3) in order to adopt and incorporate by reference the latest version of the standards and publications listed in (3)(a) through (c) to reflect changes and technological advancements in the UST industry. Furthermore, the department is proposing to incorporate by reference the latest version of the standards and publications in order to ensure that the regulated community uses and complies with the latest standards and publications for spill and overfill control.

17.56.302 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (1) remains the same.

(2) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of ~~the~~ National Association of Corrosion Engineers Standard (NACE) RP0285, "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, 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 amend ARM 17.56.302(2) to adopt and incorporate by reference the latest version of the National Association of Corrosion Engineers Standards RP0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," to reflect changes and technological advancements in the UST industry and ensure that the regulated community uses and complies with the most up-to-date cathodic protection procedures.

17.56.304 REPAIRS (1) through (3) remain the same.

(4) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of the following standards or specifications:

(a) through (e) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.304(4) in order to adopt and incorporate by reference the latest version of the standards or specifications listed in (4)(a) through (e) to reflect changes and technological advancements in the UST industry and ensure that the regulated community uses and complies with the most up-to-date standards and specifications.

17.56.305 REPORTING AND RECORDKEEPING (1) Owners and operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the department ~~or the implementing agency~~, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of RCRA, as amended or pursuant to other state laws or rules, including the following:

(a) owners and operators shall submit the following information to the department:

(i) notification for all UST systems ~~which includes certification of installation for new UST systems;~~

(ii) through (b)(iv) remain the same.

(c) owners and operators shall keep the records required either:

(i) at the UST site and immediately available for inspection by the department ~~or the implementing agency;~~

(ii) at a readily available alternative site and be provided for inspection by the department ~~or the implementing agency~~ upon request; or

(iii) remains the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to eliminate references to "the implementing agency." An implementing agency is an office or program of a local governmental unit (LGU) designated by the department to fulfill certain UST program responsibilities. As described in its statement of reasons for proposed repeal of ARM 17.56.1002 through 17.56.1005, the department is proposing to repeal the LGU program. Therefore, upon the effective date of these rule amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as inspection, monitoring, and testing of UST systems on behalf of the department. The department is proposing to strike language from ARM 17.56.305(1)(a)(i) because licensed installers are required to submit the certification of installation for new UST systems under ARM 17.56.1410. Therefore, it is unnecessary to repeat the requirement in ARM 17.56.305.

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 inspected by a licensed compliance inspector, licensed pursuant to ARM 17.56.1402(3), at least every three years for compliance with the operation and maintenance requirements of this chapter. The inspections

must:

(a) remains the same.

(b) include examination, assessment, and documentation of compliance with all tank operation and maintenance requirements set forth in rules adopted under 75-11-509 75-11-505, MCA, and or in rules adopted or permits issued under 75-11-509, MCA adopted thereunder. ~~The aforementioned "operation and maintenance requirements" are those requirements in ARM Title 17, chapter 56, subchapters 2, 3, and 4 that address the following categories:~~

~~(i) release prevention and detection;~~

~~(ii) spill and overfill prevention;~~

~~(iii) corrosion protection; and~~

~~(iv) testing, monitoring, and recordkeeping related to (1)(a)(i) through (iii).~~

(2) The owner or operator of an underground storage tank system must have all inactive underground storage tank systems inspected by a compliance inspector or an oversight inspector, licensed pursuant to ARM 17.56.1402(3) ~~and or~~ (4), at least every three years for compliance with the requirements of ARM 17.56.701. The inspections must be completed:

(a) at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308; or

(b) if no operating permit has been issued for the inactive underground storage tank, at least 90 days before the three-year compliance inspection is due.

(3) through (5) remain the same.

(6) No later than 15 days after any inspection conducted pursuant to this rule, the owner or operator, or the compliance inspector, shall provide to the department the results of the compliance inspection ~~on a form~~ in a manner approved by the department. ~~The form inspection report~~ must be signed by the licensed compliance inspector and the underground storage tank system owner or operator.

(7) remains the same.

(8) The owner or operator shall correct all violations noted in a compliance inspection report ~~either:~~

(a) within 90 days of receipt of the inspection report by the owner or operator, or;

(b) at least 14 days prior to the expiration of the facility's operating permit, whichever occurs first. ~~For violations that have moderate or minor gravity, as defined in ARM 17.4.303, or~~

(c) within another timeframe established by the department may establish another time period in which the violations must be corrected.

(9) The owner or operator or compliance inspector shall submit to the department a follow-up inspection report ~~either:~~

~~(a) within seven days after completion of the corrective actions required under (8), or;~~

~~(b) at least 14 days before the expiration of the facility's operating permit, whichever occurs first; or~~

~~(b) (c) within another timeframe determined by the department.~~

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

IMP: 75-11-509, MCA

REASON: The department is proposing to modify the citations in ARM 17.56.309(1)(b) in order to eliminate unnecessary language and clarify the intent of the rule, which is to require inspections that ensure compliance with operation and maintenance requirements set forth in ARM Title 17, chapter 56, subchapters 2, 3, and 4. The department is modifying ARM 17.56.309(1)(b) to include inspection for compliance with all tank operation and maintenance requirements set forth in rules adopted under 75-11-505, MCA or in rules or permits issued under 75-11-509, MCA. Additionally, the department is proposing to eliminate ARM 17.56.309(b)(i) through (iv) in order to broaden the scope of compliance inspections. This is necessary because compliance inspectors currently examine areas outside the items listed in ARM 17.56.309(1)(b)(i) through (iv), such as financial responsibility. Furthermore, the department is proposing to make the scope of compliance inspections flexible in order to accommodate recent revisions and updates to federal UST requirements to implement additional inspection requirements such as product and tank compatibility requirements, overfill prevention device inspections, additional release detection equipment function testing, and spill bucket testing once every three years. The department's State Program Approval (SPA) is up for renewal in 2018, and the department's UST rules must be revised to implement the 2015 federal UST regulations before the department submits its SPA renewal application by October 13, 2018. These proposed amendments are a necessary step toward developing all revisions necessary for the department's SPA renewal application.

The department is proposing amendments to (2) that are necessary to require the owner or operator of inactive USTs to have tanks inspected by a compliance inspector, licensed in accordance with ARM 17.56.1402(3), or by an oversight inspector, licensed in accordance with ARM 17.56.1402(4), at least every three years to ensure the tanks are in compliance with the requirements for inactive and out-of-service tanks at ARM 17.56.701. The proposed changes also clarify the timing of the required inactive tank inspections. The inspection must be completed at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308 or, if no operating permit is issued for the inactive tank, at least 90 days before the next three-year compliance inspection is due.

The department is proposing to amend language in ARM 17.56.309(6) to allow inspections to be submitted on a paper form or electronically and to allow the department to receive test results, photographs, and emails to document corrected deficiencies submitted by a licensee, owner, and/or operator.

The department is proposing to amend language in ARM 17.56.309(8) in order to allow greater flexibility and lessen the burden for the regulated community in correcting violations noted in a compliance inspection within a reasonable timeframe acceptable to the department. For example, the department may adjust the timeframe to correct a violation in cases when the department has sufficient information to determine that extending the deadline would not pose a threat to human health or the environment.

The department is proposing to incorporate additional language in ARM 17.56.309(9) in order to make requirements more flexible and less burdensome for the regulated community by allowing a compliance inspector, as well as an owner or

operator, to submit a follow-up inspection report within a reasonable timeframe that is acceptable to the department.

17.56.312 DELIVERY PROHIBITION (1) through (3) remain the same.

(4) Tanks issued a certificate in (2)(c) will be posted on the department's "Do Not Fill" web site at: <http://deq.mt.gov/Land/ust/nonpem/permittedtanks>.

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

IMP: 75-11-509, MCA

REASON: The department is amending ARM 17.56.312 by adding (4), which provides that tanks identified as "ineligible for delivery," and issued a certificate under (2)(c), will be posted on the department's "Do Not Fill" web site as prohibited from receiving fuel delivery. Because operating permits are issued and tracked electronically, this change is necessary to authorize the department to track tank delivery prohibitions electronically.

17.56.401 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS

(1) remains the same.

(2) When a release detection method operated in accordance with the performance standards in ARM 17.56.407 and 17.56.408 indicates a release may have occurred, owners and operators shall notify the department ~~and the implementing agency~~ in accordance with subchapter 5.

(3) through (5) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing changes to eliminate the reference to "the implementing agency." For the reasons set forth in the statement of reasons supporting the proposed amendment of ARM 17.56.305(1), upon the effective date of these rule amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as accepting reports of suspected or confirmed releases from USTs on behalf of the department.

17.56.402 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

(1) through (3) remain the same.

(4) The exempt piping referenced in ~~(2)~~ (3) must be annually leak tested using:

(a) through (5) remain the same.

AUTH: 75-11-302, 75-11-505, MCA

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

REASON: The department is proposing to amend ARM 17.56.402(4) to correct the internal reference from (2), which refers to leak testing requirements, to (3), which refers to operation and maintenance exemptions for terminal piping. The

proposed amendment is necessary to set forth annual leak testing requirements for terminal piping.

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the ~~Remediation Division of the department and the implementing agency~~ or to the 24-hour Disaster and Emergency Services duty officer available at telephone number (406) 324-4777 within 24 hours of discovery of the existence of any of the following conditions:

(a) through (2) remain the same.

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

IMP: 75-11-309, 75-11-505, MCA

REASON: See reason for amendment to ARM 17.56.506.

17.56.503 INVESTIGATION DUE TO OFF-SITE IMPACTS (1) When required by the department based upon a suspected release, an owner and operator must follow the procedures in ARM 17.56.504 to determine if the system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the department or ~~the implementing agency~~ or brought to its attention by another person.

AUTH: 75-10-405, 75-11-319, MCA

IMP: 75-10-405, 75-11-309, MCA

REASON: See reason for amendment to ARM 17.56.506.

17.56.505 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS

(1) Owners and operators must contain and immediately clean up a spill or overflow, immediately report the spill or overflow to the department ~~and the implementing agency~~ pursuant to (3) or by another method that ensures that a person within the ~~Remediation Division~~ of the department receives notice within 24 hours of the release, and must begin corrective action in accordance with subchapter 6 in the following cases:

(a) and (b) remain the same.

(2) Owners and operators must contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons and a spill or overflow of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the department ~~and the implementing agency~~.

(3) Telephone notification required in (1) or (2) must be made to a person in the ~~Remediation Division~~ of the department or to the 24-hour Disaster and

Emergency Services duty officer at (406) 324-4777. Messages left on answering machines, received by facsimile, e-mail, voice mail or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

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

IMP: 75-11-309, 75-11-505, MCA

REASON: See reason for amendment to ARM 17.56.506.

17.56.506 REPORTING OF CONFIRMED RELEASES (1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department and the implementing agency within the specified timeframes and in the following manner:

(a) Except as provided in (1)(b), all confirmed releases must be reported to a person within ~~the Remediation Division of the department, the implementing agency, or to the 24-hour dDisaster and eEmergency sServices~~ duty officer available at ~~telephone number~~ (406) 324-4777 within 24 hours of confirming the release. Messages left on answering machines, received by facsimile, e-mail ~~or~~, voice mail, or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

(b) When a release is confirmed from laboratory analysis of samples collected from a site, the release must be reported to the department ~~and implementing agency~~ by a method that ensures the department ~~or the implementing agency~~ receives the information within seven days of release confirmation. The date of release confirmation, for purposes of this rule, is the date the owner, operator, installer, remover, or person who performs subsurface investigations for the presence of regulated substances received notification of the sample results from the laboratory. Laboratory analytical results that exceed the following values confirm that a release has occurred:

(i) through (iii) remain the same.

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

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing amendments to ARM 17.56.502, 17.56.503, 17.56.505, and 17.56.506 that are necessary to update reporting requirements for suspected and confirmed petroleum releases. Releases must be reported to the department or to the 24-hour Disaster and Emergency Services duty officer's telephone number. These proposed amendments eliminate the requirement to report releases to the Remediation Division. These amendments are necessary because most releases are reported to the department's leak line or to the 24-hour

Disaster and Emergency Services number, which is acceptable for purposes of meeting 24-hour release reporting requirements. The proposed amendments are also necessary to eliminate references to the "implementing agency," for the reasons set forth in the statement of reasons supporting the proposed amendment of ARM 17.56.305(1). Upon the effective date of these rule amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as accepting reports of suspected and confirmed releases from USTs on behalf of the department.

17.56.601 GENERAL (1) remains the same.

(2) If corrective action, initial response and abatement, initial site history, remedial investigation, preparation of remedial investigation and cleanup plans, or cleanup, or any of them are conducted by:

(a) remains the same.

(b) the owner or operator of the PST or UST system, whether with or without a response action contractor, this subchapter governs only to the extent it is not inconsistent with any order issued by a court, the department ~~or the implementing agency~~, or any corrective action plan approved by the department.

AUTH: 75-10-405, 75-11-319, MCA

IMP: 75-10-405, 75-11-309, MCA

REASON: See reason for amendment of ARM 17.56.605.

17.56.603 INITIAL SITE HISTORY (1) Unless directed to do otherwise by the department, owners and operators must assemble and provide to the department information about a site where a release has been confirmed which must include, but is not necessarily limited to the following:

(a) through (d)(xii) remain the same.

(e) a description of all leaks, spills, overfills or other releases from the PST or UST systems located on the site:

(i) remains the same.

(ii) date release was reported to the department ~~and to the implementing agency~~;

(iii) through (2) remain the same.

AUTH: 75-10-405, 75-11-319, MCA

IMP: 75-10-405, 75-11-309, MCA

REASON: See reason for amendment of ARM 17.56.605.

17.56.604 REMEDIAL INVESTIGATION (1) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of free and dissolved product contamination in the surface water and in ground water, owners and operators must conduct a remedial investigation of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(a) through (c) remain the same.

(d) the department ~~or the implementing agency~~ requests a remedial investigation, based on the known or potential effects of contaminated soil or ground water on nearby surface water, ground water, and human health.

(2) through (4) remain the same.

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

IMP: 75-11-309, 75-11-505, MCA

REASON: See reason for amendment of ARM 17.56.605.

17.56.605 CLEANUP PLAN (1) through (5)(f) remain the same.

(6) Within 30 days of department approval of the cleanup plan or as directed by the department, owners and operators must implement the plan, including any modifications made by the department to the plan. Owners and operators must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the department. During implementation of the cleanup plan, a status letter shall be submitted quarterly to the department ~~and to the implementing agency~~. The cleanup plan must contain a plan and schedule for compliance monitoring to evaluate the effectiveness of cleanup activities.

Compliance monitoring must continue for a period of at least two years after completion of cleanup activities specified in the cleanup plan, or another reasonable time period approved by the department. Results of compliance monitoring will be evaluated by the department on a site-specific basis and compared to cleanup goals that should be outlined in the cleanup plan. Final completion of cleanup activities and compliance monitoring must be approved by the department.

(7) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the cleanup plan is approved provided that they:

(a) notify the department ~~and the implementing agency~~ of their intention to begin cleanup;

(b) through (8) remain the same.

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

IMP: 75-11-309, 75-11-505, MCA

REASONS: The department is proposing amendments to ARM 17.56.601, and 17.56.603 through 17.56.605 to eliminate references to the "implementing agency." For the reasons set forth in the statement of reasons supporting the proposed amendment of ARM 17.56.305(1), upon the effective date of these rule amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as issuing corrective action orders, accepting release reports, requesting remedial investigations, and accepting reports and notifications of corrective action plans designed to address releases from USTs on behalf of the department.

17.56.607 RELEASE CATEGORIZATION (1) through (9)(g) remain the

same.

(10) The department may categorize a release as resolved with a petroleum mixing zone and send a letter to the owner or operator in accordance with (11), if the department has determined that conditions at the site ensure present and long-term protection of human health, safety, and the environment and that residual petroleum in soil and ground water will continue to be remediated through natural attenuation processes without additional intervention, active cleanup, or monitoring. The following requirements must also be met before a release may be categorized as resolved with a petroleum mixing zone:

(a) through (h) remain the same.

(i) at the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent does not exceed a water quality standard adopted by the Board of Environmental Review pursuant to 75-5-301, MCA.

The downgradient boundary of a petroleum mixing zone must be determined by documented investigations conducted in accordance with ARM 17.56.604.;

(j) a petroleum mixing zone must remain within the facility property boundary unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend off the facility property. For purposes of this rule, the term "facility property" means a single parcel or contiguous parcels on which one or more petroleum storage tanks are or were located, provided that contiguous parcels must be under single ownership at the time the petroleum mixing zone is established;

(k) through (12) remain the same.

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

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing amendments to ARM 17.56.607(10)(i) to make a formatting correction and to ARM 17.56.607(10)(j) in order to implement amendments made through Senate Bill 49 (2015 Legislative Session) to 75-11-508(3), MCA, by the 64th Legislature expanding the department's authority, which previously only allowed a petroleum mixing zone to extend outside the facility property boundaries when supported by a recorded easement.

17.56.701 INACTIVE AND OUT-OF-SERVICE UST SYSTEMS (1) An UST system is inactive when the owner or operator notifies the department, ~~in writing,~~ that the UST is no longer in use for dispensing, depositing, or storing regulated substances or the department determines inactive status based on available information. 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 percent by weight of the total capacity of the UST system, remains in the system.

(2) through (4) 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 ARM 17.56.701(1) in order to allow different means (e-mail, telephone, compliance inspection, etc.) by which the department may receive notification of the inactive status of UST systems to provide more flexibility and make the notification process less burdensome for the regulated community. The proposed amendments also allow the department to determine inactive status when the department is not notified that a tank is inactive, but makes the status determination based upon available information. This amendment will allow the department to identify UST systems that may present a risk to human health and the environment because the tank is not emptied properly. The proposed changes are necessary to ensure inactive UST systems are empty, incapable of use, and meet the requirements in ARM 17.56.701(2).

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), the owner or operator 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 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) through (4) remain the same.

(5) The department adopts and incorporates by reference the version in effect on ~~July 1, 2006~~ January 1, 2016, of the following standards, specifications, and publications:

(a) American Petroleum Institute Recommended Practice 1604, "~~Removal and Disposal of Used Underground Petroleum Storage Tanks~~ Closure of Underground Petroleum Storage Tanks," which sets forth closure practices for UST systems, 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, 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 and Periodic Inspection of Underground Storage Tanks," which sets forth entrance standards for UST tanks, 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, a copy of which may be~~

obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238;

(d) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks," which sets forth cleaning standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(e) National Fire Protection Association (NFPA) Standard 326, "Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair," which sets forth procedures to safeguard tanks or containers that contain or have contained flammable and combustible liquids or other hazardous substances before entry, cleaning, repair, or other activities can be performed, a copy of which may be obtained at: <http://www.nfpa.org/codes-and-standards> or from the NFPA at 11 Tracy Drive, Avon, MA 02322, 1 (800) 344-3555.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.702(1) eliminate references to the "implementing agency." For the reasons provided for proposed amendments to ARM 17.56.305(1), upon the effective date of these proposed amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as receiving notice of permanent closure or change in service of UST systems on behalf of the department. Additionally, the requirement to notify the department of permanent closure or change in service of an UST "in writing" has been eliminated because the department now accepts other means of notification such as e-mail, telephone, and through compliance inspection.

Industry codes and standards are developed in order to ensure that UST systems are properly closed and removed when taken out of service. The UST rules incorporate UST performance standards and practices adopted by nationally recognized organizations to ensure methods of UST system management, including inspection, emptying, cleaning, and closure, are protective of human health and the environment. UST systems must be permanently closed in accordance with these codes and practices.

Therefore, the department is proposing modifications to ARM 17.56.702(5) that are necessary to adopt and incorporate by reference the latest version of the standards, specifications, and publications listed (5)(a) through (e) to reflect changes and technological advancements in the UST industry. The department is proposing to adopt and incorporate by reference the latest version of American Petroleum Institute Recommended Practice 2016, Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks to ensure that the regulated community uses and complies with the up-to-date information on topics such as cleaning operations for tanks removed from service or returned to service. The department is proposing to incorporate by reference NFPA 326 standard in order to safeguard tanks before entry, cleaning, repair, or other activities.

17.56.703 ASSESSING THE SITE AT CLOSURE OR CHANGE IN

SERVICE (1) Before permanent closure or a change in service is completed, the owner or operator shall measure for the presence of a release where contamination is most likely to be present at the UST site. When measuring for the presence of a release, the owner or operator:

(a) and (b) remain the same.

(c) in selecting sample types, sample locations, and measurement methods, shall consider the method of closure, the nature of the stored substance, type of backfill, depth to ground water, and other factors appropriate for identifying the presence of a release. The department and ~~the implementing agency~~ should be consulted to assist in determining sample types, sample locations, and measurement methods. The Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases should be used as a guide for the collection, preservation, and analysis of field samples; and

(d) remains the same.

(2) If sampling indicates contaminated soils, contaminated ground water, or if free product as a liquid or vapor is discovered under (1), or by any other manner, the owner or operator shall begin corrective action in accordance with subchapter 6. A release must be reported to the department and ~~to the implementing agency~~ by the owner or operator within 24 hours.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.703 are necessary to eliminate references to the "implementing agency." For the reasons provided for proposed amendments to ARM 17.56.305(1), upon the effective date of these proposed amendments, there will no longer be an implementing agency authorized to perform UST responsibilities such as making sampling location and methodology recommendations related to UST tank site assessment upon tank closure and receiving release reports on behalf of the department.

17.56.705 CLOSURE RECORDS (1) remains the same.

~~(2) The owner or operator shall submit a completed tank closure report to the department within 30 days of closure on a form designated by the department.~~

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to delete ARM 17.56.705(2) because ARM 17.56.1410(1)(c) requires submittal of a tank closure report by the licensed remover, making the requirement in ARM 17.56.705 unnecessary and duplicative.

17.56.901 INTERIM NOTIFICATION REQUIREMENTS ~~(1) On or before May 8, 1986, each owner of an underground storage tank currently in use shall submit, in the form prescribed in (9), a notice of the existence of such tank to the department.~~

~~(2) On or before May 8, 1986, each owner of an underground storage tank~~

~~taken out of operation after January 1, 1974 (unless the owner knows that such tank has been removed from the ground) shall submit, in the form prescribed in (9), a notice of the existence of such tank to the department.~~

~~(3) Any owner who brings an underground storage tank into use after May 8, 1986, shall, within 30 days of bringing such tank into use, submit, in the form prescribed in (9), a notice of the existence of such tank to the department.~~

~~(4) Owners required to submit notices to the department under (1) through (3) shall provide the required notice for each underground storage tank they own. Owners may provide notice of several tanks using one notification form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.~~

~~(5) Notices required to be submitted under (1) through (3) must provide all of the information indicated on the prescribed form described in (9) for each tank for which notice must be given.~~

~~(6) Any person who deposits regulated substances from December 9, 1985 through May 9, 1987, in an underground storage tank shall make reasonable efforts to notify the owner or operator of such tank of the owner's obligations under (1) through (3).~~

~~(7) Beginning 30 days after the department issues new tank performance standards pursuant to 75-10-405, MCA, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification obligations under (1) through (3).~~

~~(8) Sections (1) through (3) do not apply to tanks for which notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.~~

~~(9) The form which must be used for notice submitted to the department under this rule is department form, "Notification for Underground Storage Tanks, DEQ form 1 (May, 2010)," or "Notification for Underground Storage Tanks, DEQ form 2 (May, 2010)."~~

~~(10) (1) The department adopts and incorporates by reference the UST notification and registration forms "Notification for Underground Storage Tanks, DEQ form 1 (May, 2010)" and "Notification for Underground Storage Tanks, DEQ form 2 (May, 2010)," Owner Change or Amended Owner Notification and "Complete" available on the department's web site, which asks for information including, but not limited to, ownership, location, age, material of construction, capacity, use, and internal and external construction. Copies of these forms may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: It is necessary to delete ARM 17.56.901(1) through (9) because the provisions are superseded by ARM 17.56.902 and are no longer consistent with federal requirements at 40 CFR 280.22 (UST Notification Requirements). The department is also proposing to incorporate the updated titles of the notification forms to reflect the current forms available on the department's web site at <http://deq.mt.gov/UST/forms.mcp>.

17.56.902 NOTIFICATION REQUIREMENTS (1) through (3) remain the same.

(4) Owners and operators of new or modified UST systems shall provide ~~in~~ the following with the notification form set forth in ARM 17.56.901:

(a) remains the same.

(b) the following information related to the tank system:

(i) through (vii) remain the same.

(viii) any other information required ~~in~~ on the notification form that is necessary to ensure tanks can be adequately identified for regulatory purposes.

(5) and (6) remain the same.

(7) Owners and operators of existing or new UST systems shall notify the department on a form approved by the department when any of the information submitted on the notification form has changed, such as upgrading or repairing new or existing tanks or pipes, or change of owner, or contact person, or meeting the requirements specified in ARM 17.56.202 or subchapter 8.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing amendments to ARM 17.56.902(4) that are necessary to correctly identify the required notification form owners or operators of USTs must provide and to clarify information required by the department in the notification form. Finally, the department is proposing to amend language in ARM 17.56.902(7) to ensure the department receives notification of changes to previously notified UST systems on a department-approved form and not through informal communication to the department so the department can keep track of any changes to regulated tank facilities to better protect human health and the environment. The department is also proposing to amend language in ARM 17.56.902(4)(b)(viii) to correct grammatical errors.

17.56.1301 DEFINITIONS For the purposes of subchapters 13 and 14 and unless otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with the definitions in subchapter 1 of this chapter and those in 75-11-203 and 75-11-503, MCA:

(1) "Annual period" means a calendar year beginning on March 1 and ending on the last day of February of the following year, for the purpose of calculating when fees are due to the department.

~~(1)~~ (2) "Day" means a calendar day.

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

(11) "Triennial period" means a period of three calendar years beginning on March 1 and ending on the last day of February three years later for the purpose of calculating continuing education units earned by a licensee of the department.

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

IMP: 75-11-204, 75-11-209, 75-11-210, 75-11-212, 75-11-509, MCA

REASON: The department is proposing to add the definition "annual period" to ARM 17.56.1301(1) in order to have one expiration date for annual fees for licensees. This amendment is necessary to ease the administrative burden by keeping one consistent deadline.

The department is proposing to add the definition of "triennial period" at ARM 17.56.1301(11) in order to make tracking continuing education units (CEUs) less burdensome. With this proposed amendment, the date is consistent and the department can more easily provide timely training so that licenses can meet CEU requirements.

17.56.1303 INSTALLATION AND CLOSURE PERMIT REQUIREMENT--APPLICATION (1) through (2)(b) remain the same.

(3) If the installation or closure is to be conducted by:

(a) a licensed installer or remover, the licensed installer or remover shall sign the permit application;

(b) an owner or operator with an on-site installation ~~or closure~~ inspector, the owner or operator must sign the permit application.

(4) The department shall notify an applicant if it determines that an application is ~~incomplete and provide an explanation of~~ deficient. The department shall notify the applicant what information is needed required for the application to be considered complete. The department shall hold ~~incomplete~~ deficient applications pending the receipt of ~~additional~~ the required information. The department shall issue the permit within 30 days of the department's receipt of the complete permit application. If the applicant fails to submit the required information within six months of receiving the department's deficiency notice, the deficient permit application expires.

(5) ~~The application must be accompanied by the~~ permit application review fee required by ARM 17.56.1304 and any applicable inspection fee required by ARM 17.56.1309 must be received by the department within five business days of the applicant's submittal of the permit application to the department. If the permit applicant accumulates more than two unpaid permit application review and/or inspection fees, the department shall suspend further permit reviews until all past due fees are paid in full.

(6) For good cause, ~~the department, in its discretion,~~ may waive the 30-day requirement in (2) ~~if the applicant makes a sufficient showing of unforeseen and unforeseeable circumstances and if the applicant does not qualify for an emergency permit under ARM 17.56.1306.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, MCA

REASON: The proposed amendments add licensed remover as signatory to permit applications in ARM 17.56.1303(3)(a) because "remover" has been added in subchapter 14 as a license category. Additionally, the department proposes to include "removers" as licensees because they also must follow specific requirements and are subject to the same level of accountability as "installers" when submitting permit applications.

The proposed amendment deletes "closure" inspectors from ARM 17.56.1303(3)(b) because "closure" inspector has been removed from subchapter 14 as a license category. All licensed department inspectors have the authority to inspect both installations and closures. Therefore, it is no longer necessary to differentiate between closure inspector and installation inspector. Also, closure inspectors are associated with the Local Government Unit (LGU) program. For the reasons set forth for the repeal of ARM 17.56.1002 through 17.56.1005, the department is proposing to repeal the LGU program due to duplication and overlap with the third-party UST compliance inspection program.

The amended language in ARM 17.56.1303(4) is proposed because applications can be either incomplete, incorrect, or both. The proposed amendments also set forth the process for reviewing a permit application and for issuance of a permit within 30 days of receipt of the complete permit application. Additionally, the amendments allow for expiration of deficient permit applications when deficiencies are not cured within six months. These amendments are necessary to ensure timely submittal of all information necessary for the department to review a permit application and issue a permit.

It is necessary to delete "The application must be accompanied by" in ARM 17.56.1303(5) in order to make the process more flexible and less burdensome for the regulated community by not requiring that the application be submitted to the department at the same time as the applicable permit application review fees. Sometimes an application is electronically delivered and the fee is sent by regular mail, thus causing the fee to be received by the department a few days after the application. The department is developing a new database that will allow electronic fee payment, but the option to submit an electronic permit application and remit permit fees by check should be retained.

In addition, the department proposes amendments necessary to update business processes in order to make the application and review fee payment process more efficient for the UST program. Revenue from permit fees has allowed the department to assign staff to meet the statutory and administrative functions of the Underground Storage Tank Installer & Inspector Licensing and Permitting Act and the Montana Underground Storage Tank Act. Section 75-11-509(9), MCA, sets forth procedures whereby the department may determine whether to issue or not renew a permit for a tank for significant noncompliance with the Montana Underground Storage Tank Act, or with rules, permits, or orders issued pursuant to the Act. The new language in (5) provides that, if a permittee fails to timely submit applicable permit application review fees, and has two or more unpaid permit fees, the department may suspend further permit approvals until fees are paid in full following the procedures set forth in 75-11-509(9), MCA. The proposed amendment in ARM 17.56.1303(6) is proposed to allow the department more flexibility in waiving the requirement to file a permit application 30 days prior to a major installation. With this amendment, the department will no longer require a showing of unforeseeable circumstance to waive the 30-day requirement, but may use its discretion to determine good cause for such a waiver.

17.56.1304 PERMIT APPLICATION REVIEW FEES (1) remains the same.
(2) ~~If a permit application is determined by the department to be incomplete,~~

~~the department shall notify the applicant of the deficiencies. An incomplete permit application expires when an applicant fails to respond to the department's notice of deficiencies within six months of receiving the notice from the department. A new permit application, accompanied by the proper permit application review fee, must be submitted before an expired permit application may be processed by the department. A permit application is incomplete deficient until the permit application review fee is paid to the department.~~

(3) through (6) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, MCA

REASON: The department is proposing to remove the first two sentences of ARM 17.56.1304(2) because they are duplicative of the proposed amendment to ARM 17.56.1303(4) and (5) related to complete permit applications. Additionally, for the reasons stated in support of the proposed amendments to ARM 17.56.1303, the term "deficient" replaces the term "incomplete" to describe the status of the permit prior to payment of the permit application review fees.

17.56.1305 MAJOR INSTALLATION, MINOR INSTALLATIONS, AND CLOSURE PERMIT ISSUANCE, TERMS, CONDITIONS (1) through (2)(c) remain the same.

(3) A permit issued to an applicant under this rule must state:

(a) remains the same.

(b) the address or location of the site ~~at which~~ of the planned installation or closure ~~may be conducted;~~

(c) and (d) remain the same.

(e) whether the installation or closure will be inspected by the department ~~or a local inspector and, if so, the name of the inspector;~~ and

(f) any special permit conditions imposed by the department that are necessary to ensure the permit applicant's requested installation or removal activities are in compliance with (2).

(4) remains the same.

(5) ~~If the installation or closure is conducted by a licensed installer, the licensed installer~~ The licensee or the department installer or remover inspector must sign and ~~return a copy of the permit~~ deliver the permit and all other required documentation specified by permit conditions to the department within 30 days of the installation or closure. ~~If the installation or closure is conducted by the owner or operator with an on-site installation or closure inspector, the owner or operator must sign and return a copy of the permit together with any compliance checklist or other documents included with the permit to the department within 30 days of the installation or closure. The signee must certify that the installation or closure was conducted in accordance with applicable statutes and rules and any conditions of the permit.~~

(6) remains the same.

(7) If the department deems it necessary to protect public health or the environment, the department may require any installation to be inspected by a

department inspector ~~or a local government licensed installation or closure inspector~~. Whenever this occurs, the fee must be paid by the owner, operator, installer, or any other person who made the inspection necessary.

(8) remains the same.

~~(9) Upon issuance of a permit, the department shall forward a copy of the permit to any local inspector conducting an inspection of the installation or closure for which the permit was issued.~~

(10) through (12) remain the same, but are renumbered (9) through (11).

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

IMP: 75-11-204, 75-11-209, 75-11-212, 75-11-505, MCA

REASON: The department is proposing to delete language from ARM 17.56.1305(3)(e) that it is associated with the Local Government Unit (LGU) program because the department is proposing to eliminate the LGU program for the reasons set forth for the repeal of ARM 17.56.1002 through 17.56.1005. Additionally, the department proposes grammatical changes to the rule, which do not change the meaning, but improve readability.

The department is proposing to add the word "permit" to clarify the intent of ARM 17.56.1305(3)(f) and add language to clarify the department's ability to add testing or equipment requirements as permit conditions designed to protect human health and the environment when determined necessary.

The department is proposing to delete language from ARM 17.56.1305(5) in order to update business processes and responsibilities for the regulated community. It is necessary to eliminate the term "closure inspectors" and processes that are associated with the LGU program. The department is also proposing to delete language from ARM 17.56.1305(7) and to delete ARM 17.56.1305(9) in its entirety because these provisions pertain to the LGU program.

17.56.1306 EMERGENCY PERMIT APPLICATION AND ISSUANCE

(1) In the event of an emergency requiring immediate installation or closure of an underground storage tank system, the applicant may contact the department, provide the information required by ARM 17.56.1303 and explain the nature of the emergency and the consequences of nonissuance. An emergency permit may be issued orally by the department and it will be valid for a maximum of ten days. Whenever an emergency permit is issued, the applicant shall pay the appropriate fees as provided in ARM 17.56.1304, and submit a completed permit application ~~form~~ to the department within ten days of issuance of the emergency permit.

(2) If the department determines that an emergency exists under (1) and (3) and that the requirements of ARM 17.56.1303(2) have been satisfied, it must issue the permit in the manner provided by this rule and subject to any permit conditions imposed pursuant to this subchapter.

(3) remains the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, MCA

REASON: The department is proposing amendments to ARM 17.56.1306(1) and (2) that are necessary to clarify the intent of the rule. The word "form" in ARM 17.56.1306(1) is unnecessary because the department no longer refers to a permit application "form," but simply to a permit application. This is because written forms are being replaced with electronic applications. Furthermore, adding the word "permit" before "conditions" in (2) requires that any conditions on the installation or closure set forth in an emergency permit must be followed to protect human health and the environment.

17.56.1308 INSPECTION IN LIEU OF LICENSED INSTALLER (1) An owner or operator intending to install or close an underground storage tank system without the services of a licensed installer in accordance with 75-11-213, MCA, must have the installation or closure inspected by a licensed department ~~or local government installation or closure~~ inspector.

(2) remains the same.

(3) A licensed department ~~or local government installation or closure~~ inspector need not be present when concrete or pavement is being removed from over an underground storage tank system in preparation for a closure or repair so long as the tank and its associated piping are not disturbed by the activity.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, 75-11-213, MCA

REASON: Deletion of language in ARM 17.56.1308(1) and (3) that pertains to the Local Government Unit (LGU) program is proposed because the department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309. A licensed department inspector will conduct inspections of installations or closures that are not conducted by a licensed installer.

17.56.1309 INSTALLATION AND CLOSURE INSPECTION FEES (1) An inspection fee deposit of \$90 for the use of a ~~local government or a licensed~~ department ~~installation or closure~~ inspector shall be submitted to the department for each installation or closure not conducted by a licensed installer. The owner or operator shall submit the inspection fee deposit with the permit application in accordance with ARM 17.56.1308 and the fee must be paid in the form of a check or money order made payable to the Montana Department of Environmental Quality.

(2) through (2)(b) remain the same.

(3) Within five days after completion of the inspection, the inspector shall ~~send to the department a report on a form provided by the department. The inspector's report must state~~ the total time required for the inspection, including the inspector's travel time to and from the inspection site, reported to the nearest one-half hour. Upon receipt of the report, the department shall calculate the total inspection fee owing to the department based upon the following formula for closures and installation inspections:

<u>Type of Fee</u>	
Minimum fee (fee deposit)	\$90
Per hour fee for each hour over 2 hours	\$45

(4) remains the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, 75-11-213, MCA

REASON: Deletion of language from ARM 17.56.1309 that pertains to the Local Government Unit (LGU) program is proposed because the department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309. The department is also proposing to amend language in ARM 17.56.1309(3) in order to clarify business processes. For example, the department does not use a report "form" and will accept other means of accounting for travel time and for time required to complete the inspection, such as an invoice.

17.56.1401 GENERAL LICENSE REQUIREMENTS; DEFINITIONS

(1) and (2) remain the same.

(3) ~~Installation or closure inspectors~~ Installers and removers shall ensure that the installation or closure of underground storage tank systems is performed according to Title 75, chapter 11, part 2, MCA, the rules adopted thereunder, and any permit conditions.

(4) remains the same.

(5) The requirements of this subchapter do not prohibit the employment by a licensed installer of any assistants, helpers, or apprentices who have not been issued their own installer license to work at any installation or closure site so long as the licensed installer is physically present at the installation or closure throughout the entirety of the project and personally exercises supervisory control over those unlicensed persons.

(6) and (7) remain the same.

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

IMP: 75-11-204, 75-11-209, 75-11-210, 75-11-212, 75-11-214, 75-11-509, MCA

REASON: The proposed amendment to ARM 17.56.1401(3) is necessary to delete the reference to closure inspectors, as closure inspectors are associated with the Local Government Unit (LGU) program. The department is proposing to eliminate the LGU program with these rule amendments to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309. Licensed installers or removers are qualified to oversee tank installations or removal and these are the terms currently used by the department to describe qualified licensees rather than "installation inspector." The proposed amendments are

necessary to modify this terminology.

The department is proposing to add language to ARM 17.56.1309(5) in order to clarify the role of the licensed installer for installations and removals and to ensure there is oversight by a qualified licensee during the entire tank installation or closure project. Continuous oversight is necessary to ensure proper installation or closure.

17.56.1402 ELIGIBILITY FOR LICENSE (1) A person may not be granted an installer or remover license by the department unless that person:

(a) through (e) remain the same.

(2) A person may not be granted an installation inspector's license unless that person:

(a) remains the same.

~~(b) is a department employee or an employee or independent contractor of a local governmental unit designated for the purpose of this subchapter as an implementing agency in the manner provided in ARM 17.56.1004.~~

(3) through (3)(b) remain the same.

(4) A person may not be granted an oversight inspector's license unless that person:

(a) remains the same.

~~(b) is a department employee or an employee or independent contractor of a local governmental unit designated for the purpose of this subchapter as an implementing agency in the manner provided in ARM 17.56.1004, unless otherwise approved by the department.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-214, 75-11-505, 75-11-509,
MCA

REASON: The proposed amendment to ARM 17.56.1402(1) adds "remover" as a license category. The department proposes to include "removers" as a license category because removers must also follow specific requirements and be held to the same level of accountability as "installers" in order to obtain their license. Having licensing requirements for "removers," as well as "installers," provides clear licensing requirements for both categories and protects human health and the environment.

The department is proposing to delete language from ARM 17.56.1402(2)(b) and 17.56.1402(4)(b) that pertains to the Local Government Unit (LGU) program because the department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309.

17.56.1403 LICENSE APPLICATION CATEGORIES (1) There are five license categories of licenses:

(a) installers, which includes those licensees who install or close underground storage tank systems;

(b) removers, which includes those licensees who only close underground storage tank systems;

~~(b) (c)~~ installation inspectors, which includes those licensees who inspect underground storage tank installations or underground storage tank closures;

~~(c)~~ closure inspectors, who inspect underground storage tank closures;

(d) compliance inspectors, which includes those licensees who inspect operating underground storage tank facilities for compliance with underground storage tank regulations; and

(e) oversight inspectors, which includes those licensees who conduct oversight inspections to verify accuracy of inspection reports submitted by compliance inspectors.

~~(2)~~ An applicant for an installer license may apply to restrict that license to any one or more of the following categories:

~~(a)~~ lining;

~~(b)~~ corrosion protection;

~~(c)~~ external leak detection; or

~~(d)~~ closure.

~~(3)~~ (2) An application for a license ~~under~~ required by this subchapter must be made on the appropriate form provided by the department. ~~On the form the applicant must provide and include~~ all the information required by the department.

~~(4)~~ (3) The application must be subscribed and verified upon oath or affirmation before a notary public and must state include an affirmation that the information provided in the application is true correct.

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

~~(6)~~ (5) References for an applicant seeking an installer license must show that the applicant actively participated in at least three underground storage tank system installations and two closures that were completed in accordance with applicable statutes and rules in the last three years, ~~unless the applicant requests to have his or her license restricted. If the request is to restrict the license to tank lining, cathodic protection system installation, external leak detection device installation, or closure, the applicant shall so state on the application, and the references need only address the applicant's requested area of restricted professional work. The following application and reference requirements also apply:~~

~~(a)~~ (6) References for an applicant seeking a remover license ~~restricted to~~ conducting tank system closures must establish that the applicant has actively participated in at least three closures ~~or installations~~ in the last three years.

~~(b)~~ References for an applicant seeking a license ~~restricted to~~ conducting cathodic protection system installations must establish that the applicant actively participated in at least two cathodic protection system installations in the last three years.

~~(c)~~ References for an applicant conducting ~~external leak detection device~~ installations must establish that the applicant participated in at least two external release detection device installations in the past three years. An applicant holding a current monitoring well constructor's license may provide a copy of that license in lieu of the required references.

~~(d)~~ References for an applicant seeking a license ~~restricted to~~ conducting tank system linings must establish that the applicant actively participated in at least two tank linings in the last three years.

~~(7)~~ An application for an installation or closure inspector license must, in

~~addition to the other requirements of this rule, be accompanied by at least three references attesting to the applicant's experience in inspections and underground storage tank regulations relating to installation and closure. The references must be written on forms provided by the department.~~

~~(8)~~ (7) An application for a compliance or oversight inspector license must, in addition to the other requirements of this rule, be accompanied by at least three references attesting to the applicant's experience in underground storage tank regulations, operation, maintenance, and inspections. The references must be written on a forms provided by the department.

(9) remains the same, but is renumbered (8).

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-509, MCA

REASON: The proposed amendments to ARM 17.56.1403(1) are necessary to update the five license categories. The department is proposing to replace the term "APPLICATION" with "CATEGORIES" in the title of the rule because "CATEGORIES" more accurately depicts the subject of ARM 17.56.1403, which is to explain the licensing categories and requirements for each category. The department is proposing to correct grammar and update license categories covered under ARM 17.56.1403 in order to clearly define each available license. The department is proposing to eliminate "lining," "corrosion protection," and "external leak detection" as license categories because department "installers" are able to perform each and all of these specialized UST upgrades pursuant to 75-11-203(6), MCA. The department expects a higher standard of knowledge and skill when a person is licensed as an "installer" compared to a person holding a license that is restricted to one UST modification. Additionally, streamlining license categories eliminates confusion for the regulated community because it simplifies categories by eliminating categories that are no longer in use. The department is proposing to delete ARM 17.56.1403(2) because three of the previously available license categories, "lining," "corrosion protection," and "external leak detection," are now obsolete due to technological advancements in the industry and "closure" is now a separate license called "remover."

The department is proposing to amend language in ARM 17.56.1403(3), renumbered (2), in order to make a minor editorial revision for clarity that is not intended to change the meaning of the rule. The department is proposing to amend language in ARM 17.56.1403(4), renumbered (3), to require an affirmation by a license applicant, replacing the previous requirement of verification under oath before a notary public. This amendment is necessary to make the application process more efficient, less burdensome for the regulated community, and update language. The department's proposed amendment to ARM 17.56.1403(6), renumbered (5), is necessary to delete references to "restricted" licenses because restricted licenses are proposed to be eliminated through amendments proposed herein. The department is proposing new ARM 17.56.1403(6) in order to add "remover" as a separate license category and eliminate "restricted" licenses for the reasons stated above.

The proposed deletion of ARM 17.56.1403(7) is necessary to eliminate references to closure inspectors because that license category pertains to the LGU program and the department is repealing that program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309.

The department is proposing to amend (8), renumbered (7), to eliminate the requirement for oversight inspectors to provide references. Oversight inspectors are department employees who have already undergone scrutiny prior to being hired by the department. The department is also proposing to make a minor grammatical amendment in (8) that does not change the meaning of the rule. In addition, the department is proposing to update numbering of ARM 17.56.1403 that is necessitated by these proposed amendments.

17.56.1404 LICENSE FEES (1) remains the same.

(2) Licensing fees are as follows:

(a) and (b) remain the same.

~~(c) actual cost of production and distribution of study guides~~

~~(d) reexamination fee.....\$ 35~~

~~(e) (c) duplicate license fee.....\$ 10~~

~~(3) "Actual cost of production and distribution" includes reproduction costs, bindery charges, purchase and shipment of copyrighted material, and the cost of postage, packing, and shipping guides to requesters. The department shall annually review and re-calculate the actual production and distribution costs for the various study guide materials. The department shall make the most recent data and calculations used available for public inspection at the UST program office.~~

~~(4) (3) Department and local government installation, closure, and oversight inspectors are exempt from the licensing fees described in this rule.~~

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

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA

REASON: The proposed deletion of ARM 17.56.1404(2)(c) and deletion of the definition of "actual cost of production and distribution" in ARM 17.56.1404(3) are proposed because the department no longer produces and distributes study guides. Instead, a list of required study materials for each license category (installer, compliance inspector, and remover) is provided on the department's web site.

Deletion of ARM 17.56.1404(2)(d) is proposed because exams are retaken electronically at no extra expense to the department and no charge is passed to the applicant.

It is necessary that the department delete language from ARM 17.561404(4), renumbered (3), that pertains to the Local Government Unit (LGU) program, because the department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309.

17.56.1405 LICENSE EXAMINATION AND RE-EXAMINATION (1) To become licensed, an applicant for a license must successfully complete a written examination. The department shall offer the examination a minimum of two times

~~per year at such time(s) and place(s) as the department determines. The department shall give public notice of the time and place of the examination by submitting a news release to the daily newspapers of general circulation within the state of Montana by appointment to the applicant and the examination must be conducted at a time and place fixed by the department.~~

(2) To take the examination, the applicant must register with the department for the examination at least ~~20~~ 5 days before an examination is scheduled by submitting a completed license application to the department and paying the license application and examination fee provided in ARM 17.56.1404.

~~(3) An applicant may obtain an examination study guide from the department by paying the study guide fee as provided in ARM 17.56.1404. The study guide must contain such material as the department determines will assist individuals in preparing for the licensing examination.~~

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

~~(5) An applicant for an installer license who:~~

~~(a) holds a current monitoring well constructor's license which has been issued by the Board of Water Well Contractors pursuant to the requirements of ARM Title 36, chapter 21; and~~

~~(b) requests that the installer license be restricted to the installation of external leak detection devices, must pass, in lieu of the examination required of other applicants, a department-approved test designed for licensed monitoring well constructors concerning underground storage tank law and regulations, safety, and leak detection monitoring well installation.~~

~~(6) (4) To qualify for licensing, an applicant for a compliance and oversight inspector license must have completed an inspector training course approved by the department that includes training in the operation and maintenance of release detection, corrosion protection, spill and overflow equipment; and regulatory compliance; and field testing of inspection abilities. Applicants possessing an installer license issued in accordance with the rules of this subchapter do not need to complete an inspector training course. The All applicants, including those possessing an installer license, must also successfully complete a field practical examination.~~

(7) remains the same, but is renumbered (5).

~~(8) (6) A score of 80 percent or higher on the written examination and on the compliance and oversight inspector field practical examination constitutes a passing grade. The department shall notify applicants of their examination score within 30 days of the date ~~when~~ the department calculates or receives the test score results.~~

~~(9) Department and local implementing program installation or closure inspectors licensed as of January 1, 2000, are not required to complete the installation or closure inspector licensing examination.~~

~~(10) (7) An applicant who fails the examination may retake the examination only twice at any subsequently scheduled examination date by registering in the same manner as for the original examination, and by paying the reexamination fee provided in ARM 17.56.1404.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA

REASON: The department is proposing amendments to ARM 17.56.1405(1) in order to update its business processes and make the application and examination processes more convenient for the regulated community. Pursuant to the proposed amendments, the regulated community will contact the department to schedule testing at a date and time that is mutually agreeable. Tests are taken in person and are proctored by a designated staff person of the department. The department will no longer limit scheduled exams to two dates per year in order to allow more flexibility and make it less burdensome for the regulated community to schedule and take necessary licensing exams.

In order to make scheduling exams more convenient for the regulated community, the department is proposing amendments to ARM 17.56.1405(2) that require registration 5 days, rather than 20 days, prior to a scheduled exam.

The department is proposing to delete ARM 17.56.1405(3). This change is necessary because the department is no longer producing or distributing study guides. Instead, applicants are able to obtain these materials on their own. The department provides a list of required study materials for each license category (installer, compliance inspector, and remover) on the department's web site.

The department is proposing to delete ARM 17.56.1405(5). This amendment change is necessary because "external leak devices" has been eliminated as a restricted license per the proposed amendment to ARM 17.56.1403(2). External leak detection devices are obsolete technology and are not permitted as a new modification to an existing UST system.

The proposed amendments to ARM 17.56.1405(6), renumbered (4), also ensure that all applicants for compliance and oversight inspector licenses successfully complete a field practical examination. This is necessary to ensure department licensed inspectors are familiar with proper operation and maintenance of UST systems.

The department is also proposing amendments to ARM 17.56.1405(6), renumbered (4), to allow someone with an installer license, issued in accordance with the rules of this subchapter, to qualify as a compliance inspector without having to complete an inspector training course. An applicant that has an installer license is already familiar with the function, operation, and maintenance of UST equipment, as well as compliance requirements due to their existing work experience as a licensed UST installer.

It is necessary that the department delete ARM 17.56.1405(9) because it pertains to the Local Government Unit (LGU) program. The department is repealing the LGU program to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309.

The department is proposing to delete language in ARM 17.56.1405(10), renumbered (7), to make the process for test scheduling more efficient and less burdensome for the regulated community. All testing is now done electronically, providing flexibility and the ability for retesting at one's convenience.

17.56.1406 LICENSE ISSUANCE, TERM, RESTRICTIONS (1) The department shall issue a license upon the applicant's satisfaction of the applicable provisions of this subchapter and Title 75, chapter 11, part 2, MCA. The license

must set forth the name of the licensee, a license identification number, the type of license issued, and the dates of issuance ~~and~~ expiration of the license, and any restrictions.

(2) A license issued under this subchapter ~~expires on the third anniversary of its issuance is valid for one calendar year beginning on March 1 of the year the license is issued and ending on the last day of February of the following year. A license under this subchapter expires at the end of the annual period, unless annual registration fees are paid within the annual period. In addition, the licensee must earn the required department-approved continuing education units within the triennial period.~~

(3) through (5) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA

REASON: The department is proposing necessary amendments to the language in ARM 17.56.1406(1) to clarify the intent of the rule and remove extraneous language. The proposed amendments in ARM 17.56.1406(2) are necessary to clarify the requirements for licensees to avoid license expiration for nonpayment of fees within the annual period and to set forth the additional requirement that licensees earn continuing education units within the triennial period. The proposed amendments are also necessary to incorporate the proposed "annual period" and "triennial period" definitions set forth in proposed amendments to ARM 17.56.1301.

17.56.1407 LICENSE RENEWAL (1) A licensee who does not requesting a change from the type category of license currently held may renew the license within the annual period if the licensee completes a renewal application form provided by the department, pays the license renewal application fee required by ARM 17.56.1404, and, before the conclusion of each triennial period, provides sufficient proof that the applicant ~~has satisfactorily completed the continuing education requirements~~ have been satisfactorily completed as required by (3), or (4), ~~or~~ (5).

(2) remains the same.

(3) Licensed installers ~~whose licenses are restricted to closures and licensed closure inspectors~~ removers must complete at least one department-approved refresher training course administered by the department for a total of four credit hours of continuing education within the triennial period ~~three years prior to the date the current license expires. One course must be a department-sponsored refresher training course.~~

(4) A licensed installer ~~whose license is restricted to the installation of external leak detection devices need not take formal continuing education courses to demonstrate continuing competency in monitoring well installation if the installer:~~

(a) ~~is currently a licensed water well constructor;~~

(b) ~~submits to the department a copy of the current water well constructor license; and~~

(c) ~~provides evidence of at least three successful installations performed within the three years prior to the date the current installer license expires.~~

~~(5)~~ (4) All licensees not subject to (3) or ~~(4)~~ must complete at least two department-approved or sponsored continuing education courses for a total of 16 credit hours of continuing education within the triennial period ~~three years prior to the date the current license expires~~. One course must be a department-sponsored administered refresher training course.

(6) remains the same, but is renumbered (5).

~~(7)~~ (6) An installer A licensee, whose license has expired or who wants to change license categories, ~~for any reason~~ is subject to the same licensing requirements as a new applicant, including payment of the license application and examination fees and the satisfactory completion of the written licensing examination.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA

REASON: The department is proposing to add language in ARM 17.56.1407(1) that is necessary to set forth requirements for annual license renewal. The department requires a license renewal application fee on an annual basis and requires continuing education requirements to be met every three years. Therefore, the department is proposing to add the language "within the annual period" to clarify that license renewal application fees are due every year. Adding "at the conclusion of each triennial period" ensures that licensees satisfactorily complete their continuing education requirements every three years.

The department is proposing necessary modifications to language in ARM 17.56.1407(3) to clarify the intent of the rule and update business processes. The department is proposing to delete "installers whose licenses are restricted to closures" and "licensed closure inspectors" because these license categories pertain to the Local Government Unit (LGU) program, which the department proposes to repeal in order to avoid duplication and overlap with the third-party inspection program implemented under ARM 17.56.309. The department is proposing to: 1) require one refresher course administered by the department during the triennial period in order to ensure that the course content is pertinent; and 2) make the license renewal requirements in ARM 17.56.1407 consistent with the general license requirements in ARM 17.56.1401(1) in order to provide consistent annual renewal periods for licensing and triennial periods in which licensees must fulfill training requirements.

The department is proposing to delete ARM 17.56.1407(4), which pertains to restricted licenses, because these proposed rule amendments eliminate the restricted license categories.

The department is proposing to amend ARM 17.56.1407(5), renumbered (4), in order to better explain and simplify the process of renewing licenses. Furthermore, the department is proposing to match the language proposed in ARM 17.56.1406 in order to help the regulated community know when they need to complete their continuing education units.

The proposed amendments in ARM 17.56.1407(7), renumbered (6), are necessary to clarify the requirements that all licensees are treated as new applicants when their license expires and all licensees changing license categories are treated

as new applicants for the new license category. This change is intended to ensure that license applicants receive and maintain proper training and are qualified for licensing to better protect human health and the environment.

17.56.1408 APPROVAL OF CONTINUING EDUCATION COURSES ~~(1) An entity offering a continuing education course intended to fulfill the requirements of ARM 17.56.1407, or an installer planning to take the course, must submit a detailed description of the course to the department for approval of the course at least 15 days before the beginning of the course.~~

~~(2)~~ (1) The department shall approve the a continuing education course if it finds that it:

(a) remains the same.

(b) offers instruction on current technology or methods for the subject(s) in ~~(2)~~ (a) and that technology or those methods will satisfy applicable department rules.

(2) The amount of continuing education credits earned by the licensee for a course is determined by the department and must be based on the department's evaluation of the course syllabus submitted by the licensee to the department.

(3) Within five days of the department receiving documentation that a licensee has successfully completed a continuing education credit course, the department shall notify the licensee whether the course is approved and the number of credits earned.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, MCA

REASON: The department is proposing to delete ARM 17.56.1408(1) to simplify the process of receiving department-approved continuing education course credits. There are many opportunities for licensees to obtain continuing education credits. The UST program has evolved and many manufacturers of UST equipment offer their own continuing education courses. The department is proposing to add language in ARM 17.56.1408(2), renumbered (1), in order to ensure that all department-approved continuing education courses are pertinent to their license category.

The department is proposing ARM 17.56.1408(2) and (3) in order to modify the process of obtaining department approval of continuing education courses for credit so that the department can determine whether courses are relevant and appropriate to ensure licensees are qualified to carry out their job duties and better protect human health and the environment. Furthermore, the department is proposing to be more flexible and allow five days instead of 15 in order to make the course review and approval process less burdensome for the regulated community.

17.56.1409 DUPLICATE LICENSES (1) The department shall issue a duplicate license to replace a lost, damaged, or destroyed license upon receipt of sufficient evidence indicating the loss, damage, or destruction and upon payment of the duplicate licensing fee provided in ARM 17.56.1404. The duplicate license must be designated as a duplicate and contain the same information ~~and restrictions~~ as

the original license. A duplicate license is subject to the same rules and requirements as an original license.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-509, MCA

REASON: It is necessary to delete "and restrictions" from ARM 17.56.1409(1) because, under these proposed rule amendments, restricted licenses are eliminated in ARM 17.56.1403(2).

17.56.1410 LICENSEE RECORDKEEPING (1) Within 30 days of completion of an underground storage tank system installation or closure, a licensed installer shall submit to the department and to the owner or operator:

(a) one copy of the installation or closure permit signed by the installer or remover certifying that the work was completed according to the applicable state statutes, rules, and any permit conditions;

(b) for installations, ~~one copy of the certificate of compliance signed by the installer;~~ and

(c) for closures, ~~one copy of each closure form signed by the licensed installer and owner and one copy of the laboratory results for the site assessment a completed tank closure report submitted in accordance with ARM 17.56.705.~~

(2) If the installation or closure is conducted by the owner or operator with an on-site installation ~~or closure~~ inspector, the documents specified in (1) must be signed by the installation ~~or closure~~ inspector and underground storage tank system owner or operator ~~and a copy returned to the department by the owner or operator.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, MCA

REASON: The department is proposing amendments to the language in ARM 17.56.1410(1)(a), (b), and (c) in order to include the proposed "remover" license category, to delete unnecessary wording, to require submittal of a tank closure report, and to ensure the department receives necessary information for confirmation that all procedures are followed during tank installation or closure.

The department is proposing to delete "closure inspector" in ARM 17.56.1410(2) in order to make these proposed rule amendments consistent with the proposed license categories in ARM 17.56.1403. Additionally, the department proposes to eliminate unnecessarily duplicative language under ARM 17.56.1410(1)(c) and (2) requiring submittal of installation or closure forms to the department.

17.56.1421 DISCIPLINARY AND OTHER LICENSING ACTION
GENERALLY (1) The department may restrict, condition, modify, suspend, revoke, or refuse to renew any license, previously issued under this subchapter upon its finding that there is substantial evidence that the licensee has committed any of the following:

(a) through (c) remain the same.

(d) a violation of any statute or rule of the department governing the licensing of underground tank system installers, ~~removers, or compliance~~ or inspectors, including any of the rules of professional conduct provided in this subchapter;

(e) a violation of the terms of any department-issued license, permit, order, or stipulation issued or agreed to by the department relating to the installation, modification, repair, closure, or inspection of an underground storage tank system ~~or installer's or inspector's license~~;

(f) ~~had a violation that resulted in the similar license suspended~~ suspension or ~~revoked~~ revocation of a similar license in this state, another state, or U.S. territory; or

(g) ~~fails~~ failure to pay the license fees required by ARM 17.56.1404.

(2) through (6) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-211, 75-11-509, MCA

REASON: The proposed amendments to ARM 17.56.1421(1) list all categories of license, provided under proposed amendment to ARM 17.56.1403, in order to ensure all licensees may be subject to disciplinary action. The department is also proposing to add language in ARM 17.56.1421(1)(d), (e), (f), and (g) to improve readability to the rule, but the amendments do not change the meaning of the rule.

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 (c) remain the same.

(d) failure to cooperate with the department by:

(i) remains the same.

(ii) not responding to a subpoena issued by the department or any court, whether or not the recipient of the subpoena is the respondent named in any proceeding; or

(iii) ~~failing~~ failure to submit the signed permit ~~and the installation or closure checklist, the certification of compliance, or to meet any other permit special condition imposed under ARM 17.56.1305(3)(f) for installations; or~~

(iv) failure to submit the tank closure report, the signed permit, or the laboratory results for the site assessment for closures.

(e) through (j) remain the same.

(k) failure to display his or her license upon request of any client, prospective client, ~~or any representative of the department,~~ or local licensed inspector;

(l) through (n) remain the same.

AUTH: 75-11-204, MCA

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

REASON: The department is proposing additional language in ARM 17.56.1422(1)(d)(iii) and the addition of 17.56.1422(1)(d)(iv) to enumerate all specific items that would trigger department action against a licensee for unprofessional conduct. Prohibition of the enumerated acts protects human health and the environment and ensures professional conduct by department licensees. This additional language is needed in order to set forth specific actions that constitute unprofessional conduct and that are prohibited and may result in the department conditioning, restricting, suspending, or revoking a license issued under this subchapter.

The department is proposing amendments to ARM 17.56.1422(1)(k) to establish that representatives of the department or a licensed inspector are entitled to demand to see a licensee's license consistent with these proposed rule amendments in order to ensure UST systems are installed, removed, and inspected by properly licensed professionals.

The department is proposing to delete "local" from ARM 17.56.1422(1)(k) because the term is affiliated with the Local Government Unit (LGU) program. The LGU program was used to perform UST inspections on behalf of the department. These inspections are no longer necessary due to the adoption of the third-party UST compliance inspection program in ARM 17.56.309.

17.56.1502 OPERATOR TRAINING (1) ~~By August 8, 2010, t~~The owner or operator of an UST system that has a valid operating permit or that is required to have an operating permit under ARM 17.56.308 shall have trained Class A, B, and C operators for the system. The operators must be trained in accordance with ARM 17.56.1503. Each Class A, B, or C operator shall be responsible for his or her applicable operation, maintenance, and emergency response activities, even when the operator is not present at the facility.

(2) ~~After August 8, 2010, a~~ A trained Class A or B operator of an UST system may be replaced by an untrained operator if, within 30 days after assuming operation responsibilities, the new operator receives training in accordance with ARM 17.56.1503. Class C operators must be trained before assuming their responsibilities.

(3) remains the same.

(4) If the department determines that an UST system does not meet EPA's significant operational compliance (SOC) requirements for release prevention and release detection measures, the appropriate operators, as determined by the department, must be retrained. Retraining must include the subjects in which the UST system was found to be not in significant compliance. Retraining must occur within ~~90 days~~ a reasonable timeframe set forth in a department-approved corrective action plan after the department's determination that an UST system does not meet EPA's SOC requirements for release prevention and release detection measures, ~~or within a longer time frame established by the department in writing, on a case-by-case basis.~~ For purposes of this chapter, the department adopts and incorporates by reference the EPA SOC requirements dated March 2005. Copies of the documents incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

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

REASON: The department is proposing to strike language from ARM 17.56.1502(1) and (2) that is no longer applicable since the date of August 8, 2010, has already occurred. The department is proposing to strike language in ARM 17.56.1502(4) to allow more flexible compliance timeframes for operators subject to retraining requirements. When a Corrective Action Plan is issued, the goal is to provide a single corrective action due date in order to avoid confusion for owners and operators and to allow flexibility to adapt each Corrective Action Plan allowing the owner or operator to meet the requirements within a reasonable timeframe. The department is proposing to allow the department to exercise the ability to establish a "reasonable timeframe" for retraining when a SOC violation exists as set forth under the EPA's "Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act of 2005." U.S. EPA, Office of Underground Storage Tanks (EPA-510-R-07-005). The document may be obtained by contacting DEQ, P.O. Box 200901, Helena, MT 59620.

17.56.1503 OPERATOR TRAINING: AUTHORIZED PROVIDERS; AND REQUIRED SUBJECTS (1) through (5) remain the same.

(6) Class C operators who:

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

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

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

REASON: The department is proposing necessary amendments to change "sponsored" to "approved" in ARM 17.56.1504(6)(a) in order to more accurately reflect the department's action after reviewing and accepting the adequacy of a training course. The department is also proposing to amend language in ARM 17.56.1503(6) to eliminate the unnecessary requirement for pre-approved Class C training and to improve readability of the rule. Under the EPA's Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act of 2005, the state may accept training conducted by a trained Class A or Class B operator for Class C operators. The department is proposing to eliminate department pre-approval of testing or other evaluation procedures to lessen the burden for the regulated community and more closely align the department's requirements with those of the Energy Policy Act.

4. The rules proposed to be repealed are as follows:

Subchapter 10

~~Tank Fees and Delegation to Local Governments~~

17.56.1002 GRANTS TO LOCAL GOVERNMENTAL UNITS (AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA)

17.56.1003 DESIGNATION OF LOCAL UST PROGRAMS (AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA)

17.56.1004 IMPLEMENTING AGENCY PROGRAM SERVICES AND REIMBURSEMENT (AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA)

17.56.1005 REVOCATION AND SURRENDER OF DESIGNATION (AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA)

REASON: The department is proposing to repeal ARM 17.56.1002 through 17.56.1005 because these rules pertain to the Local Government Unit (LGU) program. The LGU program was used to perform UST inspections and perform other UST program obligations on behalf of the department. The LGU program is no longer necessary due to the adoption of the third-party UST compliance inspection program in ARM 17.56.309. The department values its relationships with local governments and will continue to work with local governments on tank issues.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to dhartman2@mt.gov, no later than 5:00 p.m. August 19, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Denise Hartman at dhartman2@mt.gov; or may be made by completing a request form at any rules hearing held by the

department.

7. Kirsten Bowers, attorney for the department, has been designated to preside over and conduct the hearing.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and were fulfilled through a letter addressed to the Honorable Jim Keane, dated January 8, 2016.

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL
QUALITY

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

BY: /s/ Tom Livers
TOM LIVERS
Director

Certified to the Secretary of State, July 11, 2016.

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.162.415 general	)	PROPOSED AMENDMENT,
requirements, 24.162.420 fee	)	ADOPTION, AND REPEAL
schedule, 24.162.502 military training)	
or experience, 24.162.504)	
examinations, 24.162.510 reciprocity)	
licenses, 24.162.515 inactive license,)	
and 24.162.2105 continuing)	
education, the adoption of NEW)	
RULE I nonroutine applications, and)	
the repeal of ARM 24.162.401)	
quorum, 24.162.403 submittals and)	
requests, 24.162.407 record of)	
minutes and hearings, 24.162.408)	
application denial, 24.162.409)	
hearings or proceedings, 24.162.509)	
reinstatement, and 24.162.2101)	
renewals)	

TO: All Concerned Persons

1. On August 15, 2016, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing Home Administrators (board) no later than 5:00 p.m., on August 8, 2016, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnha@mt.gov.

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

24.162.415 GENERAL REQUIREMENTS (1) The license, together with evidence of current validation, shall be conspicuously displayed within the facility served by the licensee, and the holder of a license licensee shall have evidence of current validation in ~~his~~ the licensee's possession at all times.

(2) Each ~~person who holds a license or permit~~ licensee shall:

(a) file his the licensee's current mailing address with the board; and
(b) notify the board office in writing or electronically of any and all changes which occur within ten days of such the address change.

AUTH: ~~37-9-201~~ 37-9-203, MCA
IMP: 37-9-203, ~~37-9-304~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to update to current board processes, including electronic communications, and eliminate gender-specific references. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.162.420 FEE SCHEDULE (1) Applicant and licensee fees are as follows:

(a) application fee <u>by examination</u>	\$225
(b) application by examination and temporary license	425
(c) application by credential	500
(b) (d) jurisprudence reexamination (<u>each retake</u>)	75
(e) (f) inactive renewal fee	100
(d) (e) active renewal fee	235
(e) temporary permit	200
(f) reciprocity	275

(2) through (4) remain the same.

AUTH: 37-1-131, 37-1-134, 37-9-304, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-9-304, MCA

REASON: The board is amending this rule to increase efficiencies in application processing by providing the total fee for examination applicants who obtain a temporary practice permit, and those applying by credential. Additionally, the amendments will address confusion and questions by both department staff and license applicants. The board is not increasing any licensure fees, only combining those fees that are always charged to the applicants.

24.162.502 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a nursing home administrator. ~~At a minimum, satisfactory~~ Satisfactory evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The board is amending this rule to allow applicants to submit other discharge documentation in lieu of the DD 214 form. It came to the department's attention that certain military personnel (i.e., Reservists and National Guardsmen who have never been activated) do not receive a DD 214 form upon their discharge from the military. The amendment will clearly allow the board to consider other evidence of military discharge in lieu of a DD 214 form.

24.162.504 EXAMINATIONS (1) Each applicant ~~shall be required to~~ must attain a passing scaled score on the national examination, as determined by the National Association of Boards of Examiners for Nursing Home Administrators, ~~on an examination prepared by the Professional Examination Service, or the National Association of Boards.~~

(2) ~~In addition, each~~ Each applicant must attain a final score of at least 90% ~~in~~ on the open book jurisprudence examination relating to the provisions of the Montana long-term care facility licensing law and regulations.

~~(2) (3) In the event of failure, the individual~~ An applicant who fails an examination may retake the examination by after paying ~~exam~~ the examination fees referenced in ARM 24.162.420.

AUTH: 37-1-131, 37-1-134, ~~37-9-201~~, 37-9-203, 37-9-304, MCA

IMP: 37-1-131, 37-1-134, ~~37-9-201~~, 37-9-203, 37-9-301, ~~37-9-303~~, 37-9-304, MCA

REASON: The board is reorganizing this rule to address confusion by separately listing the national and jurisprudence examinations that are required for licensure. The board is further amending (1) to correctly identify the National Association of Board of Examiners for Nursing Home Administrators as the administrator of the board-approved national examination.

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

24.162.510 RECIPROCAL LICENSES LICENSURE BY CREDENTIAL (1) An application for licensure by ~~reciprocity~~ credential without examination must include a signed statement from the examining board of another jurisdiction attesting:

(a) that the applicant attained a passing scaled score, as determined by the National Association of Boards of Examiners for Nursing Home Administrators ~~on an examination prepared by the Professional Examination Service or the National Association of Boards;~~ and

(b) remains the same.

(2) An application for license by ~~reciprocity~~ credential may be filed at any time and must be accompanied by the required fees, which shall not be refunded.

(3) remains the same.

AUTH: 37-1-131, 37-9-203, MCA

IMP: 37-1-131, 37-1-304, 37-9-203, ~~37-9-301~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to utilize the correct terminology for licensing those with licenses in other jurisdictions. Because the board does not have reciprocal licensing agreements with any jurisdiction, the board will grant licensure by credential to individuals meeting the listed requirements. The actual requirements for licensure by endorsement are not changing.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.162.515 REQUIREMENTS FOR INACTIVE LICENSE NURSING HOME ADMINISTRATORS (1) A licensee is prohibited from practicing as a nursing home administrator while on inactive status.

(1) ~~(2)~~ Registered inactive Inactive licenses will be granted to those individuals presently licensed or eligible to be licensed as nursing home administrators, but who are not presently working in the nursing home administration field by submitting a request and paying the required fee.

~~(2)~~ (3) The requirements for obtaining a registered an inactive license status shall be the same as for obtaining a nursing home administrator's license, with the following exception:

~~(a) the fee may be used as a credit towards the full fee for an administrator's license, at such time as application may be made during any license year for the administrator's license.~~

~~(3)~~ (4) Renewal of registered inactive nursing home licenses Inactive licensees shall utilize the renewal process and pay the required fee be accompanied with satisfactory evidence of completion of approved continuing education in the nursing home field for each calendar year.

(5) Inactive licensees shall be exempt from the continuing education (CE) requirements as set out in ARM 24.162.2105.

~~(4) Applicants for an inactive nursing home administrator's license shall so indicate with the proper designation in the application for license which may be obtained from the board.~~

(6) To return to active status, inactive licensees must submit the following:

(a) a request and payment of the fee;

(i) At any time during the renewal period, the inactive license fee will be credited towards the full fee for an active license.

(b) verification of the licensee's good standing from every jurisdiction in which the licensee was licensed during the inactive period; and

(c) proof of completion of the required CE for the prior renewal period as set out in ARM 24.162.2105.

AUTH: 37-1-134, 37-1-319, 37-9-201, 37-9-203, MCA

IMP: 37-1-134, 37-1-319, 37-9-203, 37-9-304, 37-9-305, MCA

REASON: The board is amending this rule to remove terminology regarding registration and clarify the processes surrounding inactive status licensure and return to active status. The amendments will update to current, standardized

processes to include requesting inactive license status and paying any corresponding fees.

The amendments also remove the requirement for inactive licensees to complete continuing education while renewing as inactive. While acknowledging that inactive licensees may remain inactive for several renewal periods, the board concluded that requiring continuing education for the immediately previous licensing period when applying to return to active status will sufficiently protect the public.

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

24.162.2105 CONTINUING EDUCATION (1) ~~All applicants for renewal of licenses and inactive registration shall have completed continuing education (CE) as a condition of renewal.~~

~~(2) Each active licensee must complete Twenty 20 hours of continuing education (CE) will be required annually for renewal of a license or renewal of an inactive registration.~~

(2) A licensee with an inactive license must complete 20 hours of CE for the immediately prior renewal period before requesting the board to issue an active license.

(3) through (8) remain the same.

~~(9) Up to ten hours earned in excess of 20 hours in a calendar year may be carried over into the succeeding year.~~

(10) through (12) remain the same but are renumbered (9) through (11).

AUTH: 37-1-131, 37-1-319, ~~37-9-201~~, 37-9-203, MCA

IMP: 37-1-306, 37-1-319, 37-9-203, MCA

REASON: The board is amending this rule to align with amendments to ARM 24.162.515 in this notice and remove the annual CE requirement for inactive licensees except when requesting to return to active status. Following this change, the board will audit only active licensees for CE compliance, while continuing to protect the public by requiring current CE before returning to active licensure.

The board is striking (9) to no longer allow carrying over of excess CE credits to subsequent years. The board determined that eliminating carryover CE credit is necessary to remedy issues with the timeliness and content of CE courses found by the board, and to simplify the requirements and reporting process for licensees.

Authority citations are being amended to provide the complete sources of the board's rulemaking authority.

4. The proposed new rule is as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) Applications for active or inactive licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

(a) the applicant has a prior felony conviction;

(i) For purposes of this rule, "conviction" includes any disposition in a criminal case other than acquittal, without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) the applicant has pled guilty or no contest to, or has been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;

(c) any of the applicant's occupational or professional licenses have been disciplined, or an application for a license was denied in this state, another state, or jurisdiction;

(d) the applicant has a pending or completed legal or disciplinary action involving licensure in this state, another state, or jurisdiction;

(e) the applicant has been a respondent in a complaint for unlicensed practice of nursing home administration in this state, another state, or jurisdiction that led to communication from the licensing authority to cease and desist or an injunctive action; or

(f) the application contains any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

AUTH: 37-1-131, 37-9-203, 37-9-301, MCA

IMP: 37-1-101, 37-1-131, 37-9-203, 37-9-301, MCA

REASON: The board determined it is reasonably necessary to adopt NEW RULE I to further implement 37-1-101, MCA, which states the department will process routine licensure applications on behalf of the licensing boards. This new rule identifies criteria determined by the board to characterize nonroutine applications and therefore require board review and consideration for processing. Currently, the board reviews applications upon request of department licensing staff.

5. The rules proposed to be repealed are as follows:

24.162.401 QUORUM at ARM page 24-17051

AUTH: 37-9-201, MCA

IMP: 37-9-201, MCA

REASON: Current statutes already provide that a quorum is a majority of the board/panel members present to conduct business and that the ex-officio member is a nonvoting member. See 37-1-131(2) and 2-15-1735, MCA. The board is repealing this rule as unnecessary because it duplicates the statutes.

24.162.403 SUBMITTALS AND REQUESTS at ARM page 24-17051

AUTH: 37-9-201, MCA

IMP: 37-9-301, 37-9-302, 37-9-303, MCA

REASON: The board is repealing this rule as it conflicts with current statutes and standardized department processes. Public records requests are adequately addressed in Title 2, chapter 6, MCA, while applications, certificates, and documents are covered by 37-1-101, MCA. Additionally, this rule does not align with current processes as it prohibits electronic filing, posting, and license applications.

24.162.407 RECORD OF MINUTES AND HEARINGS at ARM page 24-17052

AUTH: 37-1-131, 37-9-201, MCA
IMP: 37-9-201, MCA

REASON: It is the department's duty to maintain the official records per 37-1-101, MCA. The board is repealing this rule as unnecessary because the provisions are adequately addressed in statute.

24.162.408 APPLICATION DENIAL at ARM page 24-17052

AUTH: 37-9-201, MCA
IMP: 37-9-305, 37-9-311, MCA

REASON: The board is repealing this rule as unnecessary because hearing requests are adequately addressed in statute at 37-1-309, MCA.

24.162.409 HEARINGS OR PROCEEDINGS at ARM page 24-17052

AUTH: 37-9-201, MCA
IMP: 37-9-311, MCA

REASON: The board is repealing this rule as unnecessary because the provisions are adequately addressed in statute at 37-1-309, 37-1-310, and 37-1-311, MCA.

24.162.509 REINSTATEMENT at ARM page 24-17093

AUTH: 37-1-131, 37-9-201, 37-9-203, MCA
IMP: 37-1-131, 37-9-201, 37-9-203, 37-9-305, MCA

REASON: Because section 37-1-141, MCA, adequately addresses reactivation of a license, the board is repealing this rule as unnecessary.

24.162.2101 RENEWALS at ARM page 24-17225

AUTH: 37-1-141, 37-9-201, MCA
IMP: 37-1-141, 37-9-304, 37-9-305, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

6. 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 Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdnha@mt.gov, and must be received no later than 5:00 p.m., August 19, 2016.

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

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

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

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.162.415, 24.162.420, 24.162.502, 24.162.504, 24.162.510, 24.162.515, and 24.162.2105 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.162.401, 24.162.403, 24.162.407, 24.162.408,

24.162.409, 24.162.509, and 24.162.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or e-mail dlibsdnha@mt.gov.

11. Linda Grief, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF NURSING HOME
ADMINISTRATORS
KATHRYN BEATY, BOARD CHAIR

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

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

Certified to the Secretary of State July 11, 2016

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.2.404 pertaining to	)	AMENDMENT
department of livestock brands)	
enforcement division fees	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 21, 2016, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m., August 12, 2016, to advise us of the nature of the accommodation that you need. Please contact Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

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

32.2.404 DEPARTMENT OF LIVESTOCK BRANDS ENFORCEMENT
DIVISION FEES (1) through (2)(b) remain the same.

- (c) Horse, mule, or ass inspection:
 - (i) before moving across a county line or before change of ownership ~~6.00~~ 10.00 a head
 - (A) remains the same.
 - (ii) before sold or offered for sale at a licensed livestock market ~~6.00~~ 10.00 a head
- (d) through (4)(f) remain the same.
- (g) Lifetime or permanent bull inspection permit 30.00 a head
- ~~(g)~~ (h) Market consignment permit or transportation permit before moving across a county line 1.00
- ~~(h)~~ (i) Sheep transportation permit 1.00
- ~~(i)~~ (j) Releasing livestock, except horses, mules, or asses for removal from a licensed livestock market 1.00 a head
- ~~(j)~~ (k) Releasing horses, mules, or asses for removal from a licensed livestock market ~~6.00~~ 10.00 a head
- (5) remains the same.

AUTH: 81-1-102, MCA

IMP: 81-3-205, 81-3-211, 81-4-602, 81-4-605, 81-5-112, 81-7-504, 81-8-256, 81-8-264, 81-8-271, 81-8-276, 81-8-304, 81-9-113, ~~81-9-122~~, 81-9-411, MCA

REASON: The department proposes to raise these fees because they have not been raised since 2003. Since that time, the average cost of performing horse inspections, personnel, equipment, printing, postage, and fuel have all increased. The department's cost of performing horse inspections is at least \$10 per inspection.

The lifetime or permanent bull inspection permit fee is established based on the costs associated with performing permanent inspections for rodeo bulls including, personnel costs, fuel, equipment, printing, and postage.

Authority and implementation citations are being proposed to accurately reflect all statutes implemented through the rule and to provide the complete sources of rulemaking authority. The citation 81-9-122, MCA has been proposed to be removed as no such statute exists.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Michael S. Honeycutt, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., August 19, 2016.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., August 19, 2016.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Those persons directly affected by the increase fee for horse inspections and lifetime or permanent bull inspection permits have been estimated to be greater than 25, based upon approximately 12,745 horse inspection certificates written in 2015 and approximately 67 producers raising or selling bucking bulls.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

DEPARTMENT OF LIVESTOCK

BY: /s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State, July 11, 2016

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

In the matter of the amendment of)
ARM 37.85.406, 37.86.2803,)
37.86.2806, 37.86.2907, 37.86.2916,)
37.86.4401, 37.86.4412 pertaining to)
hospital reimbursement and FQHC)
and RHC definitions)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 11, 2016, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 3, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.85.406 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) through (17) remain the same.

(18) Except as otherwise provided in the rules of the department which pertain to the method of determining payment rates for claims of recipients members who have Medicare and Medicaid coverage (cross-over claims), the Medicaid allowed amount for Medicare covered services is:

(a) for facility based providers who generally bill on the ~~UB-92~~ UB-04 billing form, for covered medical services the full Medicare coinsurance and deductible as defined by the Medicare carrier;

(i) through (21) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131, 53-6-149, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

(1) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants.

(a) remains the same.

(b) For cost report periods occurring on or after May 1, 2010, such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15, Form 2552-10, ~~Transmittal 2~~, subject to the exceptions and limitations provided in the department's administrative rules.

(c) For cost report periods occurring prior to May 1, 2010, such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15, Form 2552-96, ~~Transmittal 25~~, last updated April 2011, subject to the exceptions and limitations provided in the department's administrative rules.

(d) through (3) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2806 COST-BASED HOSPITAL, GENERAL REIMBURSEMENT

(1) through (7) remain the same.

~~(8) Cost-based hospital claims that do not meet the requirements of the elective deliveries policy as provided in ARM 37.86.2801, will be subject to a 33% reduction in interim reimbursement based on the total claim payment and will not be eligible for final reimbursement through cost settlement. The following are cost-based hospital claims that are not eligible for final reimbursement through cost settlement:~~

~~(a) elective deliveries as set forth in ARM 37.86.2801; and~~

~~(b) services that are reimbursed at a set rate outside of the CCR.~~

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

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

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The provider reimbursement rates for inpatient hospital services, except as otherwise provided in ARM 37.85.206, is stated in the department's APR-DRG fee schedule adopted and effective at ARM 37.85.105. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) and (b) remain the same.

(c) The department computes a Montana average base price per case. This base price includes in-state and out-of-state distinct part rehabilitation units and long term care (LTC) facilities. The effective date and base rate amount is adopted and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.

(d) The department computes a base price for long term care (LTC) hospitals. The effective date and base rate amount is adopted and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.

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

(h) Inpatient reimbursement will be calculated at the lesser of the assigned APR-DRG rate or the claim billed charges.

(2) The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds adopted and effective at ARM 37.85.105. The Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~29~~ 33 are contained in the APR-DRG Table of Weights and Thresholds which are adopted and effective as provided at ARM 37.85.105 and published by the department. 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

37.86.2916 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, COST OUTLIERS (1) and (2) remain the same.

(3) The department determines the outlier reimbursement for cost outliers for all hospitals and distinct part units, entitled to receive cost outlier reimbursement, as follows:

(a) computing an estimated cost for the inpatient hospital stay by multiplying the allowed charges for the stay by:

(i) the statewide average PPS facility-specific cost-to-charge ratio as set forth in ARM 37.86.2905; or

(ii) for non-Center of Excellence out-of-state facilities, their statewide average cost-to-charge ratio;

(b) remains the same.

(c) multiplying the cost outlier amount by ~~60%~~ 50% to establish the marginal cost outlier payment for the hospital stay.

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

37.86.4401 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, DEFINITIONS (1) through (7) remain the same.

(8) "Health professional" means services furnished by a physician, nurse practitioner (NP), physician assistant (PA), certified nurse-midwife (CNM), clinical psychologist (CP), clinical social worker (CSW), licensed professional counselor (LCPC), and licensed addiction counselor (LAC).

(8) through (16) remain the same, but are renumbered (9) through (17).

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

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

37.86.4412 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT (1) through (6) remain the same.

(7) Approved RHC and FQHC group and education health service payments will be reimbursed separately from their prospective payment at a rate determined by the department. The fee schedule is adopted and effective as provided at ARM 37.85.105.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.406, 37.86.2803, 37.86.2806, 37.86.2907, 37.86.2916, 37.86.4401, and 37.86.4412 regarding claims processing and reimbursement, hospital cost reporting, inpatient hospital reimbursement, rural health clinic and federally qualified health centers. The above rules are being updated to correct dates and claim forms, update reimbursement policies for inpatient APR-DRG hospitals, and update and add new definitions to rural health clinics and federally qualified health centers.

General Billing, Reimbursement, Claims Processing and Payment

In 2005, the National Uniform Billing Committee approved the updated Uniform Bill (UB-04) paper claim and set it as the replacement to the Uniform Bill-92 (UB-92), the department switched to the UB-04 after its creation. The department does not accept the UB-92 claim and is proposing to update the rule to reflect this change.

The following describes the proposed updates to the following rule:

ARM 37.85.406

(18)(a)- Update UB-92 to UB-04.

Fiscal Impact

The changes to the above rule will have no fiscal impact.

All Hospital Reimbursement, Cost Reporting

The department is proposing to remove the dates related to the Medicare Provider Reimbursement Manuals, CMS Publication, Form 2252-10 and 2552-96. These forms have been updated since the last filing of this rule. CMS maintains and updates these forms related to cost reporting for hospitals and requires that hospitals use the most current form.

The following describes the proposed updates to the following rule:

ARM 37.86.2803

(1)(b)- Remove Transmittal 2. The remainder of the section remains the same.

(1)(c)- Remove Transmittal 25, last updated April 2011. The remainder of the section remains the same.

Fiscal Impact

The changes to the above rule will have no fiscal impact.

Cost-Based Hospital, General Reimbursement

The department is proposing to exempt services performed in a critical access hospital that are reimbursed at a set rate be excluded from the final cost settlement process. These outpatient services will be reimbursed at the fee schedule rate instead of the facility cost-to-charge ratio. Elective deliveries that do not meet the requirements in ARM 37.86.2801 are already exempt from the final cost settlement process.

The following describes the proposed update of the following rule:

ARM 37.86.2806

(8) – Updated language to cost-based hospital claims that will not be eligible for final reimbursement through cost settlement are as follows:

(8)(a) – Updated language to elective deliveries that do not meet the requirements stated in policy in ARM 37.86.2801, will be subject to a 33% reduction in interim reimbursement based on the total claim payment;

(8)(b) –added services that are reimbursed at a set rate outside of the cost-to-charge.

Fiscal Impact

The change to the above rule will have no fiscal impact.

Inpatient Hospital Prospective Reimbursement, APR-DRG Hospitals

The department is proposing to update the APR-DRG base rate for long-term care (LTC) hospitals in ARM 37.85.105 effective October 1, 2016. The below rule is being updated to clarify that LTC base rates are separate from other inpatient hospitals.

The department is also adding a new lesser of payment methodology for inpatient APR-DRG hospitals. This payment methodology calculates the claim reimbursement at the lesser of the assigned APR-DRG rate or the claim billed charges. The department uses this payment methodology throughout the Medicaid

program and is updating the inpatient APR-DRG methodology to maintain program consistency. The department is also updating the APR grouper version used to 33.

The following describes the proposed updates to the following rule:

ARM 37.86.2907

- (1)(c)- Remove long-term care facilities. The remainder of the section remains the same.
- (1)(d)- Add language regarding that the department computes a base price for long-term care hospitals. The adopted fee schedule and effective date is provided in ARM 37.85.105, and that disproportionate share payments are not included in this price
- (1)(h)- Add language that inpatient reimbursement will be calculated at the lesser of the assigned APR-DRG rate or the claim billed charges. The remainder of section (1) will be renumbered.

- (2) Change the APR grouper to version 33 from version 29.

Fiscal Impact

The changes to the above rule will have no fiscal impact. The estimated fiscal impact from the proposed lesser of payment methodology is being rebased to allow for the new proposed long-term care hospital base rate.

Inpatient Hospital Prospective Reimbursement, Cost Outliers

The APR-DRG payment methodology uses a calculation by multiplying the allowed charges for the inpatient stay by cost-to-charge ratio. The current methodology in ARM states that the department will use the statewide average Prospective Payment System (PPS) cost-to-charge ratio set forth in ARM 37.86.2905. In July of 2015, the department changed the methodology to use the facility-specific average PPS cost-to-charge ratio for in-state facilities and Centers of Excellence facilities. Out-of-state facilities, that are not Centers of Excellence, use their statewide average cost-to-charge ratio. The below rule is being updated to reflect this change. These changes were incorporated into ARM 37.85.105 effective July 1, 2015, the changes to the below rule are to clarify the methodology used in the adopted APR-DRG fee schedule.

The department is also updating the cost outlier amount from 60 percent to 50 percent. The cost outlier amount is used to establish the marginal cost outlier payment for the hospital stay.

The following describes the proposed updates to the following rule:

ARM 37.86.2916

(3)(a)- Update the language to state the use of the facility-specific PPS cost-to-charge ratio for in-state and Center of Excellence facilities. For out-of-state, non-Center of Excellence facilities, update the language to state that they will use their statewide average PPS cost-to-charge ratio.

(3)(c)- Change to cost outlier amount from 60% to 50%.

Fiscal Impact

The changes to the above rule will have no fiscal impact in the aggregate. Hospitals will receive less reimbursement for cost outliers and charge cap. This decrease will be offset in the aggregate by the base price increase to the APR-DRG.

Rural Health Clinics and Federally Qualified Health Centers, Definitions

Health professional and licensed addiction counselor (LAC) were added as definitions.

ARM 37.86.4401

(8)- Added "Health professional" means services furnished by physician, nurse practitioner (NP), physician assistant (PA), certified nurse-midwife (CNM), clinical psychologist (CP), clinical social worker (CSW), licensed professional counselor (LCPC), and licensed addiction counselor (LAC).

The remainder of the definitions will be renumbered.

Fiscal Impact

The addition of licensed addiction counselors to the allowed core service providers could increase the number of visits at these clinics. The estimated total fiscal impact for state fiscal year 2017 would be \$157,481.

Rural Health Clinics and Federally Qualified Health Centers, Reimbursement

The department may provide payment for approved FQHC and RHC group and education health services on October 1, 2016. Group and education health service(s) payments will be paid separately from the prospective payment system (PPS) at a paid rate determined by the department. The methodology used will be based on either the Montana RBRVS or outpatient prospective payment system (OPPS) hospital methodology.

ARM 37.86.4412

(7) – add approved RHC and FQHC group and education health service(s) payments will be reimbursed separately from their prospective payment at a rate determined by the department. The fee schedule is adopted and effective as provided at ARM 37.85.105.

Fiscal Impact

The addition of group and education health services could increase the number of visits at these clinics. The estimated total fiscal impact for state fiscal year 2017 would be \$32,174.

5. These rule amendments are proposed to be effective October 1, 2016.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 19, 2016.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies,

make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are appropriate for performance-based measurement and therefore are subject to the performance-based measures requirement of 53-6-196, MCA. The department will measure access to long-term care hospitals, Centers of Excellence, and licensed addiction counselors (LAC).

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State July 11, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.18.206, 42.18.207, and) PROPOSED AMENDMENT
42.18.208 pertaining to certification)
testing requirements for department)
property appraisers)

TO: All Concerned Persons

1. On August 18, 2016, at 11 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building from Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on August 8, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.18.206 RESIDENTIAL PROPERTY APPRAISER CERTIFICATION

(1) remains the same.

(2) Training and testing criteria shall be as follows:

(a) remains the same.

(b) Employees shall attend the first next available residential training session offered by the department after commencement of employment. Satisfactory completion of the residential training session shall include successful completion of the written IAAO residential examination. If the employee fails to successfully complete the first written examination, attendance at the next residential IAAO training session shall be required. Failure to successfully complete the second written IAAO examination may result in the immediate termination of employment. The department may choose to demote the employee to a property valuation specialist, if the position is available and the individual is qualified to perform in that position. The employee will be notified of exam results directly by IAAO.

(c) Employees voluntarily attending training not required for their current position will be required to adhere to all training class rules and procedures and take the exam, but they will not be subject to personnel action for failing to pass the exam.

(3) Upon beginning employment with the department as a residential

appraiser, the employee shall undertake a one-year period of on-the-job residential appraisal work during which time the employee will begin the process of meeting the requirements set forth in (1) and (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic probation period set forth in department policy 3.1.4. The beginning of the one-year experience requirement will coincide with the employee's notification of being ~~assessed~~ assigned residential appraisal responsibilities. All work will be supervised by the department. Failure to perform the appraisal work satisfactorily at any time during the one-year period may result in immediate termination of employment. The department may choose to demote the employee, ~~to a property valuation specialist position if the~~ if a position is available and the individual is ~~qualified~~ certified to perform in that position.

(4) The department may waive the criteria set forth in (2) if ~~sufficient proof~~ evidence is provided within six months of hire that the employee has previously fulfilled ~~those~~ the requirements set out in that section. Specific Evidence of fulfilling the requirements evidence may include, but is not limited to ~~providing proof of having~~ documentation showing that the individual has successfully completed a course of instruction from a professional appraisal and real estate related organization, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102, MCA. The course must be equal to or greater in complexity than that of IAAO course 101. An employee who is a Licensed Real Estate Appraiser through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry or another state in accordance to the Appraisal Qualifications Board (AQB) ~~is also~~ may be eligible for a waiver under this ~~rule~~ section.

(5) remains the same.

(6) Uniform Standards of Professional Appraisal Practice (USPAP) training will be offered annually if funding is available and if there are sufficient numbers of staff who require the course.

(a) Employees shall attend the next available USPAP 15-hour training session offered by the department after commencement of employment. Satisfactory completion of the USPAP training session shall include attending the 15-hour course as provided by a USPAP certified instructor.

(b) Employees shall attend the next available USPAP 7-hour training session offered by the department within five years of satisfactory completion of the 15-hour training in (a).

(c) If an employee has physical limitations that prevent them from attending the USPAP courses identified in (a) and (b), the department may waive their requirement to attend the USPAP training sessions in person. If waived, the employee shall be responsible for thoroughly reading and comprehending the required material. The employee's manager shall verify and document in the employee's personnel file the employee's successful completion and comprehension of the material.

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASON: The department proposes amending ARM 42.18.206(2)(b) to provide for situations where the required training session may be full prior to the new employee being hired, which would not allow them to attend the "first" training session. The proposed amendment will allow the employee flexibility in attending a subsequent training session available after employment begins.

Subsection (2)(c) is proposed to be amended to allow employees who are not required to take the training the option to still voluntarily participate in the training sessions for informational purposes or for future employment advancement. All voluntary training participants will be subject to the same rules and procedures so as not to interfere with other employees in attendance that are required to take and pass the exam as a condition of their employment.

Section (3) is proposed to be amended to correct a wording error and to remove the reference to a specific position an employee can be demoted to as there may be other jobs that the employee is certified to perform. This will allow the department to retain an employee who may have worked for the department in other positions where the department and the employee can still benefit from their experience and knowledge in another capacity.

As proposed, new (6) defines the training required for employees to adhere to the Uniform Standards of Professional Appraisal Practice (USPAP) - mass appraisal standard and jurisdictional exception. The proposed new language delineates the process for employees to receive the required training. Subsection (6)(c) further provides for a waiver to employees who may have physical limitations that would prevent them from attending the training sessions in person, while still requiring the employee to learn and understand the department's requirements.

42.18.207 AGRICULTURAL PROPERTY APPRAISER CERTIFICATION

(1) remains the same.

(2) Training and testing criteria shall be as follows:

(a) remains the same.

(b) The employee shall attend the ~~first~~ next available scheduled Agricultural Land Classification/Appraisal (ALCA) training session after being assigned ALCA responsibilities. Satisfactory completion of the ALCA training session shall include successful completion of the written examination conducted at the conclusion of the ALCA training session. If the employee fails to successfully complete the first written examination, attendance at the next ALCA training session shall be required. Failure to successfully complete the second written examination may result in immediate termination of employment. The department may choose to demote the employee to a residential appraisal position, if the position is available and the individual is certified to perform in that position. The employee will be notified of exam results within one month of completion of the exam.

(c) Employees voluntarily attending training not required for their current position will be required to adhere to all training class rules and procedures and take the exam, but they will not be subject to personnel action for failing to pass the exam.

(3) Upon beginning employment with the department as an agricultural appraiser, the employee shall undertake a one-year period of on-the-job agricultural appraiser work during which time the employee will begin the process of meeting the

requirements set forth in (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic probation period set forth in department policy 3.1.4. The beginning of the one-year experience requirement will coincide with the employee's notification of being assigned ALCA responsibilities. All work will be supervised by the department. Failure to perform the classification/appraisal work satisfactorily at any time during the one-year period may result in immediate termination. The department may choose to demote the employee ~~to a residential appraisal position if the~~ if a position is available and the individual is certified to perform in that position.

(4) The department may waive the criteria set forth in (2) if sufficient proof is ~~presented~~ provided within six months of hire that the employee has previously fulfilled such criteria. ~~Evidence of fulfilling the requirements~~ Specific evidence may include but is not limited to ~~providing proof of having~~ documentation showing that the individual has successfully completed a course of instruction from a professional appraisal and real estate related organization, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102, MCA. The course must be equal to or greater in complexity than that of the department's ALCA course. An employee who is a Certified Residential Appraiser through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry or in another state in accordance to the Appraisal Qualifications Board (AQB), is also may be eligible for a waiver under this ~~subsection~~ section.

(5) remains the same.

(6) Uniform Standards of Professional Appraisal Practice (USPAP) training will be offered annually if funding is available and if there are sufficient numbers of staff who require the course.

(a) Employees shall attend the next available USPAP 15-hour training session offered by the department after commencement of employment. Satisfactory completion of the USPAP training session shall include attending the 15-hour course as provided by a USPAP certified instructor.

(b) Employees shall attend the next available USPAP 7-hour training session offered by the department within five years of satisfactory completion of the 15-hour training in (a).

(c) If an employee has physical limitations that prevent them from attending the USPAP courses identified in (a) and (b), the department may waive their requirement to attend the USPAP training sessions in person. If waived, the employee shall be responsible for thoroughly reading and comprehending the required material. The employee's manager shall verify and document in the employee's personnel file the employee's successful completion and comprehension of the material.

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASON: The department proposes amending ARM 42.18.207(2)(b) to provide for situations where the required training session may be full prior to the new employee being hired, which would not allow them to attend the "first" training

session. The proposed amendment will allow the employee flexibility in attending a subsequent training session available after employment begins.

Subsection (2)(c) is proposed to be amended to allow employees who are not required to take the training the option to still voluntarily participate for informational purposes or for future employment advancement. All voluntary training participants will be subject to the same rules and procedures so as not to interfere with other employees in attendance that are required to take and pass the exam as a condition of their employment.

Section (3) is proposed to be amended to remove the reference to a specific position an employee can be demoted to as there may be other jobs that the employee is certified to perform. This will allow the department to retain an employee who may have worked for the department in other positions where the department and the employee can still benefit from their experience and knowledge in another capacity.

As proposed, new (6) defines the training required for employees to adhere to the Uniform Standards of Professional Appraisal Practice (USPSP) - mass appraisal standard and jurisdictional exception. The proposed new language delineates the process for employees to receive the required training. Subsection (6)(c) further provides for a waiver to employees who may have physical limitations that would prevent them from attending the training sessions in person while still requiring the employee to learn and understand the department's requirements.

42.18.208 COMMERCIAL PROPERTY APPRAISER CERTIFICATION

(1) remains the same.

(2) Training and testing criteria shall be as follows:

(a) remains the same.

(b) The employee shall attend the ~~first~~ next available scheduled commercial training session after being assigned commercial appraisal responsibilities. Satisfactory completion of the commercial training session shall include successful completion of the written IAAO commercial examination conducted at the conclusion of the commercial training session. If the employee fails to successfully complete the first written IAAO examination, attendance at the next IAAO commercial training session shall be required. Failure to successfully complete the second written IAAO examination may result in immediate termination of employment. The department may choose to demote the employee to a residential appraisal position or a residential/agricultural appraisal position, if such a position is available and the individual is certified to perform the duties necessary for that position. The employee will be notified directly of the exam results by IAAO.

(c) Employees voluntarily attending training not required for their current position will be required to adhere to all training class rules and procedures and take the exam, but they will not be subject to personnel action for failing to pass the exam.

(3) Upon beginning employment with the department as a commercial appraiser, the employee shall undertake a one-year period of on-the-job commercial appraisal work during which time the employee will begin the process of meeting the requirements set forth in (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic probation period set

forth in department policy 3.1.4. The beginning of the one-year experience requirement will coincide with the employee's notification of being assigned commercial appraisal responsibilities. All work will be supervised by the department. Failure to perform the appraisal work satisfactorily shall result in immediate termination, ~~or demotion to a residential appraisal position or residential/agricultural appraisal position if such~~ The department may choose to demote the employee if a position is available and the individual is certified to perform the duties necessary for that position.

(4) The department may waive the criteria set forth if sufficient proof is ~~presented~~ provided within six months of hire that the employee has previously fulfilled such criteria. ~~Evidence of fulfilling the requirements~~ Specific evidence may include, but is not limited to providing ~~proof of having~~ documentation showing that the individual has successfully completed a course of instruction from a professional appraisal and real estate related organization, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102, MCA. The course must be equal to or greater in complexity than that of IAAO course 102. An employee who is a Certified General Appraiser through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry or another state in accordance to the Appraisal Qualifications Board (AQB), ~~is also~~ may be eligible for a waiver under ~~this subsection~~ section.

(5) remains the same.

(6) Uniform Standards of Professional Appraisal Practice (USPAP) training will be offered annually if funding is available and if there are sufficient numbers of staff who require the course.

(a) Employees shall attend the next available USPAP 15-hour training session offered by the department after commencement of employment. Satisfactory completion of the USPAP training session shall include attending the 15-hour course as provided by a USPAP certified instructor.

(b) Employees shall attend the next available USPAP 7-hour training session offered by the department within five years of satisfactory completion of the 15-hour training in (a).

(c) If an employee has physical limitations, the department may waive their requirement to attend the USPAP training sessions in person. If waived, the employee shall be responsible for thoroughly reading and comprehending the required material. The employee's manager shall verify and document in the employee's personnel file the employee's successful completion and understanding and comprehension of the material.

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASON: The department proposes amending ARM 42.18.208(2)(b) to provide for situations where the required training session may be full prior to the new employee being hired, which would not allow them to attend the "first" training session. The proposed amendment will allow the employee flexibility in attending a subsequent training session after employment begins.

Subsection (2)(c) is proposed to be amended to allow employees who are not required to take the training the option to still voluntarily participate for informational purposes or for future employment advancement. All voluntary training participants will be subject to the same rules and procedures so as not to interfere with other employees in attendance that are required to take and pass the exam as a condition of their employment.

Section (3) is proposed to be amended to remove a specific position an employee may be demoted to as there may be other jobs that the employee is certified to perform. This will allow the department to retain an employee who may have worked for the department in other positions where the department and employee can still benefit from their experience and knowledge in another capacity.

As proposed, new (6) defines the training required for employees to adhere to the Uniform Standards of Professional Appraisal Practice (USPSP) - mass appraisal standard and jurisdictional exception. The proposed new language delineates the process for employees to receive the required training. Subsection (6)(c) further provides for a waiver to employees who may have physical limitations that would prevent them from attending the training sessions in person while still requiring the employee to learn and understand the department's requirements.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 2, 2016.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.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. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov or upon request from the person in 4.

/s/ Laurie Logan

Laurie Logan
Rule Reviewer

/s/ Mike Kadas

Mike Kadas
Director of Revenue

Certified to the Secretary of State July 11, 2016

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the Montana Ammunition Availability Act - property tax exemption applications) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION))

TO: All Concerned Persons

1. On August 18, 2016, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rule. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on August 8, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

NEW RULE I AMMUNITION COMPONENTS MANUFACTURING - PROPERTY TAX EXEMPTION APPLICATIONS (1) The property owner of record or the property owner's agent must file an application, on a form provided by the department, for a property tax exemption for the manufacture of ammunition components, as defined in 30-20-203, MCA. The exemption applies only to property taxes levied on class eight personal property and to the mills levied on real property for state educational purposes, as described in 30-20-204, MCA. The application filing deadline for each tax year for which the exemption is being sought is:

- (a) November 1 for tax year 2016 only; and
- (b) March 1 beginning with tax year 2017 and for all tax years thereafter.

(2) Applications postmarked after the dates in (1) will be considered for the following tax year unless the department determines, on a case-by-case basis, that the applicant can demonstrate that unusual or personal circumstances existed in the tax year for which the application is being submitted that prevented timely filing of the application.

(3) The following criteria must be met in order to qualify for the exemption:

(a) the person or business entity must engage in the manufacture of ammunition components, in Montana, as their primary business as defined in 30-20-203, MCA;

(b) the products of the business are and must remain available to commercial and individual consumers in the state;

(c) the business entity must sell its products to in-state commercial and individual consumers for a price no greater than that for out-of-state purchasers, including any products that leave the state regardless of destination or purchaser; and

(d) the business entity must not enter into any agreement or contract that could actually or potentially command or commit all of its production to out-of-state consumers or interfere with or prohibit sales and provision of products to in-state consumers.

(4) The exemption applies only to:

(a) class eight personal property;

(b) improvements used to:

(i) manufacture ammunition components; or

(ii) store products manufactured onsite; and

(c) land owned by the person or business entity of any improvement used to either manufacture or store ammunition components. The property to be exempted is measured from each corner of a structure used for the manufacture or storing of ammunition components to a distance of 500 yards. Property owned by the person or business entity that is not used for the manufacture of ammunition components is not subject to the exemption.

(5) The department will verify eligibility requirements once the application form is received. The department may request additional information from the applicant during the application review process to verify property use and ownership.

(6) Upon receipt of the application and supporting documents, the department will perform a field evaluation. The department will approve or deny the application and provide the applicant with a decision in writing.

AUTH: 15-1-201, MCA

IMP: 15-6-219, 15-24-1410, 30-20-201, 30-20-202, 30-20-203, 30-20-204, 30-20-205, 30-20-206, MCA

REASON: The department proposes adopting New Rule I to implement a process for property taxpayers to apply for the property tax exemption provided for with the enactment of Senate Bill 122, L. 2015, cited as the "Montana Ammunition Availability Act," which encourages the manufacture of ammunition in Montana by providing manufacturers with an opportunity to receive a property tax exemption for producing ammunition components. The proposed rule sets forth the criteria for qualifying for the exemption, filing deadlines, and how to apply for the exemption.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 2, 2016.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.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. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 122, L. 2015, Matthew Rosendale, was notified by letter on July 6, 2015, and subsequently notified on June 27, 2016.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State July 11, 2016.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I through III and amendment) AMENDMENT
of ARM 4.16.201 and 4.16.509)
pertaining to growth through)
agriculture (GTA))

TO: All Concerned Persons

1. On May 6, 2016, the Department of Agriculture published MAR Notice No. 4-16-233 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 790 of the 2016 Montana Administrative Register, Issue Number 9.
2. The department has adopted the above-stated rules as proposed: New Rule I (4.16.104), II (4.16.512), and III (4.16.513).
3. The department has amended the above-stated rules as proposed.
4. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State July 11, 2016.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) CORRECTED NOTICE OF
Rule I pertaining to the administration) ADOPTION
of the 2018 Biennium Federal)
Community Development Block Grant)
(CDBG) Program – Planning Grants)

TO: All Concerned Persons

1. On April 8, 2016, the Department of Commerce published MAR Notice No. 8-94-142 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 554 of the 2016 Montana Administrative Register, Issue Number 7. On May 20, 2016, the department published the notice of adoption at page 879 of the 2016 Montana Administrative Register, Issue Number 10.

2. The rule number is corrected as follows, deleted matter interlined, new matter underlined:

8.94.3848 ~~8.94.3728~~ INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – PLANNING GRANTS (1) through (3) remain as adopted.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on June 30, 2016.

/s/ KELLY A. LYNCH
KELLY A. LYNCH
Rule Reviewer

/s/ DOUGLAS MITCHELL
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State July 11, 2016.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	CORRECTED NOTICE OF
Rule I pertaining to the administration	)	ADOPTION
of the 2016 and 2017 Program Year)	
Federal Community Development)	
Block Grant (CDBG) Program –)	
Public Facilities Projects)	

TO: All Concerned Persons

1. On April 22, 2016, the Department of Commerce published MAR Notice No. 8-94-143 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 633 of the 2016 Montana Administrative Register, Issue Number 8. On June 3, 2016, the department published the notice of adoption at page 1007 of the 2016 Montana Administrative Register, Issue Number 11.

2. The rule number is corrected as follows, deleted matter interlined, new matter underlined:

~~8.94.3819~~ 8.94.3729 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – PUBLIC FACILITIES PROJECTS (1) through (3) remain as adopted.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on June 30, 2016.

/s/ KELLY A. LYNCH
KELLY A. LYNCH
Rule Reviewer

/s/ DOUGLAS MITCHELL
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State July 11, 2016.

BEFORE THE MONTANA COAL BOARD
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.101.203 and 8.101.302)
pertaining to the Montana Coal Board)
and applications for Montana Coal)
Board grant assistance)

TO: All Concerned Persons

1. On June 3, 2016, the Department of Commerce published MAR Notice No. 8-101-146 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 935 of the 2016 Montana Administrative Register, Issue Number 11.

2. The department has amended the above-stated rules as proposed.

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

COMMENT #1: Is there a provision in the environmental requirements for any categorical exemptions? Such as a minimal amount of work being done, minor repairs, the percentage of an addition to a building?

RESPONSE #1: Yes, Administrative Rule of Montana 8.2.328 provides a list of actions that qualify for a categorical exclusion. The list includes projects that will be partially funded or permitted by another state or federal agency that has primary responsibility to consider the environmental impacts of the project under MEPA or the National Environmental Policy Act; planning studies, scientific research and analysis, surveys, or engineering activities; projects primarily involving the acquisition of capital equipment; projects that involve only minor repairs or rehabilitation to an existing facility; projects where the footprint of the proposed structures, pipelines, or other infrastructure would be substantially unchanged from existing conditions, and there is no increase in the population served by the facility; and emergency repairs, reconstruction, restoration, retrofitting, or replacement of an existing facility that is in operation or under construction when damaged. Please see ARM 8.2.328 for a full list, description, and conditions of activities funded by the Coal Board under the new rule that may be considered categorically excluded from MEPA review.

COMMENT #2: Please clarify if the entire environmental review has to be completed and submitted with the application.

RESPONSE #2: All necessary environmental review of the proposed project must be completed prior to submission of the application for grant funding. The process for completing environmental review is explained in detail beginning on page 27 of the 2017 Biennium Coal Board Impact Grant Application. Board staff is available to assist applicants through the process and answer any questions about the process. Any application received without documentation that the public and the applicant have considered the potential environmental impacts of the project may be rejected by the department.

/s/ Kelly A. Lynch
KELLY A. LYNCH
Rule Reviewer

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State July 11, 2016.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.3.1203 isolation of rabid or)
suspected rabid animals and)
32.3.1205 animal contacts)

TO: All Concerned Persons

1. On May 20, 2016, the Department of Livestock published MAR Notice No. 32-16-274 regarding the proposed amendment of the above-stated rules at page 863 of the 2016 Montana Administrative Register, Issue Number 10.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

BY: /s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State July 11, 2016.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.2.406 pertaining to licensee)
assessments to administer the milk)
inspection and milk diagnostic lab)
functions of the department)

TO: All Concerned Persons

1. On June 3, 2016, the Department of Livestock published MAR Notice No. 32-16-275 regarding the proposed amendment of the above-stated rule at page 998 of the 2016 Montana Administrative Register, Issue Number 11.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comment received. A summary of this comment and the department's response is as follows:

COMMENT 1: The Montana Department of Livestock (Milk Control Board) has passed significant inspection fee increases to dairies and other small processors to make up for a \$130,000 budget deficit that the department is predicting for the upcoming year. These increases would specifically affect small businesses licensed with the Milk and Egg Bureau. I believe that this fee increase should be examined more carefully and reconsidered as it will substantially and negatively impact small businesses throughout Montana.

Manufacturers suggest that a startup artisan cheese manufacturing company produces no more than 2,500 lbs. of milk/month in its first year. This is a stark contrast to the proposed 263,636 lbs. of milk/month that the Department of Livestock (Milk Control Board) is proposing as a minimum monthly inspection fee assessment. This will kill any artisan cheese manufacturing company startup in Montana. What will Montana lose? Let's not kill this new emerging industry in Montana through legislation.

The industry is way ahead of the government on this public safety issue. In the very rare event of a positive plate count, then there should be a follow up testing and inspection to help identify the source of contamination. Once a false positive is ruled out, then the product should be certified for sale, or if a true positive is confirmed, then the product should be condemned for human consumption. In the case of Vintage Cheese of Montana, the proposed changes for inspection fees would cost \$8,700 or over \$2.50/lb. (\$25 per cwt or hundred weight of milk) of cheese for two annual, 1/2 hour, inspections. With only a \$2.50/lb. of gross profit margin, the new proposal would lead to immediate bankruptcy. However, the annual cost to perform a standard plate count in the bonded private sector would only be \$435 per year at \$.10 per lb. of cheese. This is 97 percent cheaper, and would allow small startups to survive, and be 100 percent safer for the consuming public. Also, it

would eliminate the large bureaucratic costs of inspections (\$8,700 for two annual 1/2-hour inspections).

If the Department of Livestock (Milk Control Board) chooses to continue in the direction of the current proposal of increased inspection fees, then please consider charging the manufacturer, like the producer, on a milk volume basis - \$ per cwt of milk. During the initial startup, before full sales are realized, a new company could survive. As sales increase their ability to pay more will increase. This would ensure that Montana doesn't discriminate against the smaller manufacturers, stays competitive with other states, and will fiscally benefit in the future through taxes and job creation by supporting this new emerging industry.

If the Department of Livestock (Milk Control Board) chooses to continue in the direction of outrageous monthly fees, then please allow in the legislation, a grace period of six or more months (a typical cheese ripening time) for the selling of finished product inventory, liquidation of assets, and time to move operations to a state that supports the Artisanal Cheese Manufacturing Industry.

The logic and methodology behind the 263,636 lbs. of milk/month as a minimum assessment and 1,036,364 lbs. of milk/month as a maximum could be none other than to drive small manufacturers into bankruptcy, leaving the large manufacturers in complete control over volume and pricing, giving them a monopoly and complete market control in the state of Montana.

With the minimum and maximum assessments, the number of small dairies selling their herds to the larger dairies at distressed prices will increase, and the Department of Livestock's budget deficit will continue to increase, as well, into the future. The fewer the dairies; the fewer the fees. This proposal will have a disastrous cyclical pattern of failure for both the dairy industry and the Department of Livestock's budget deficit. The larger manufacturers that may survive these fees will have a large burden on their cleaning, sanitizing, and pest control budgets making more risk of a tainted product. There should be another option in the assessment revenue shortfall. The minimum and maximum assessments for plants should be removed or the minimum lowered to a reasonable volume of 2,500 lbs. of milk/month, the maximum increased to 2,100,000 lbs. of milk/month, and lean heavily on a \$/cwt basis.

The minimum of 81,818 lbs. of milk/month for dairies is way too high as well and speaks for itself, by adding up the number of small dairies that have had to sell their herds to larger dairies since the beginning of this outrageous minimum.

RESPONSE: The department thanks you for your comment. The Board of Livestock took in to consideration that the minimums initially proposed in the Montana Administrative Register, MAR Notice No. 32-15-268, Issue #21 - 11/12/15, would be detrimental to start ups and small dairy processors. As a result the Board of Livestock undertook two public work sessions with members of the industry to gain a better understanding of how these fees could potentially be barriers to business sustainability and market entry. In the new proposed amendment, MAR Notice No. 32-16-275, Issue #11, 6/3/16, the Board of Livestock addressed this concern by maintaining the minimum at \$50 per month and further lowering the per cwt fee from \$0.155 to \$0.14. For 64 of the department's licensees, this represents a reduction in the fees they currently pay the department, which will hopefully have a

positive impact on the industry and in the end, the consumer. The Board of Livestock will be able to accomplish this reduction through the appropriation of general fund money to offset the cost of the state's FDA certified lab as opposed to applying the full cost of this program to the fee structure charged to producers and processors.

While the statute, 81-23-202, MCA, does not directly address the use of minimums and maximums, the statute does require that the Board of Livestock establish a fee to pay for both the milk inspection and milk laboratory programs. Both of these programs are critical components for maintaining compliance with FDA standards and the ability to ship dairy products across state lines. The statute does not prohibit the use of minimums and maximums and it has been standard practice to use these tools through the fee established by rule. This practice is done to ensure that the fees are within the threshold of being commensurate with costs by capturing the minimum cost of the state providing these compliance programs for smaller operators and not overcharging large operators for this program simply because their volume of production is higher. Higher volume production or processing of dairy products has not proven to be a driver of higher costs incurred for the department.

DEPARTMENT OF LIVESTOCK

BY: /s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Cinda Young-Eichenfels
Cinda Young- Eichenfels
Rule Reviewer

Certified to the Secretary of State July 11, 2016.

PUBLIC SAFETY OFFICERS - The definition of "agent" in Mont. Code Ann. § 44-2-111 does not restrict the persons that the Attorney General may appoint as agents to employees "within the department of justice";

STATUTORY CONSTRUCTION - Where statutory language is ambiguous, I must look outside of the plain language to determine the intent of the Legislature;

MONTANA CODE ANNOTATED - Title 44, chapter 1, part 1; sections 1-2-101, 1-2-102, 7-32-303, 44-2-111, 44-2-113, 44-2-115, 44-2-115(1), 44-2-115(2), 44-2-115(3), 44-2-115(5).

HELD: The definition of "agent" in Mont. Code Ann. § 44-2-111 does not restrict the persons that the Attorney General may appoint as agents to employees "within the department of justice."

July 1, 2016

Sheriff Tony Harbaugh, Chair
Montana POST Council
2260 Sierra Road East
Helena, MT 59602

Dear Sheriff Harbaugh:

The Montana Public Safety Officer Standards and Training Council (POST) has requested an Attorney General Opinion as to a question that I have rephrased as:

Does the definition of "agent" in Mont. Code Ann. § 44-2-111 restrict the persons that the Attorney General may appoint as agents to employees "within the department of justice"?¹

Part 1 of Volume 44, Chapter 2, Montana Code Annotated, provides the Attorney General with the authority to appoint "agents." An agent appointed by the Attorney General "is a peace officer" and is provided the powers and duties (and limitations on those powers) in Mont. Code Ann. § 44-2-115.

At issue here is Mont. Code Ann. § 44-2-111 which defines "agent." This statute reads: "[a]s used in this part, 'agent' means a person appointed by the attorney general to conduct criminal investigations and perform related duties within the

¹ Because I conclude that 44-2-111 does not restrict "agents" to employees within the Department of Justice (DOJ), I do not reach your second question regarding the authority of the Department to enter into a Memorandum of Understanding (MOU) with the Department of Corrections (DOC) regarding DOC investigators.

department of justice." Your letter questions whether the phrase "within the department of justice" qualifies "agent" and thereby limits an "agent" to DOJ employees only.

While 44-2-111 could be read to limit agents to DOJ employees, it is not the only way to read the sentence, grammatically speaking. "Within the department of justice" could be read to modify "related duties" but not "conduct criminal investigations." Under this reading an "agent" may be appointed from departments other than DOJ, but, if the agent is to "perform related duties" outside of conducting criminal investigations, these related duties must be within DOJ. An example of such a "related duty" is teaching at the Law Enforcement Academy. The instructors at the Academy are not actively conducting criminal investigations, but they are performing related duties within DOJ.

Because the statute is subject to more than one reasonable interpretation as to whether it limits an "agent" to employees of DOJ, it is ambiguous. I must therefore look outside the plain language of the definition to determine the meaning intended by the Legislature. See *State v. Johnston*, 2008 MT 318, ¶ 26, 346 Mont. 93, 193 P.3d 925 ("We resolve ambiguous terms, however, by looking to the structure, purpose and/or legislative history of a statute to determine the intent of the Legislature."). I also must consider statutory schemes "in their entirety and the legislative intent may not be gained from the wording of any particular section or sentence, but only from a consideration of the whole." *Friends of the Wild Swan v. Department of Natural Res. & Conservation*, 2005 MT 351, ¶ 16, 330 Mont. 186, 127 P.3d 394.

First, I note that 44-2-111 speaks to the "definition" of agent, not the "qualifications" of an agent. The Legislature listed the specific qualifications of agents in Mont. Code Ann. § 44-2-113: "a person qualified by experience, training, and high professional competence in criminal investigation. Each agent shall meet all the requirements of 7-32-303 (listing POST certification standards)." The Legislature could have expressly included "employed by the department of justice" or similar language as a qualification, but did not do so. This weighs against reading such a limitation into the definition. See Mont. Code Ann. § 1-2-101 (an interpretation of a statute should not "insert what has been omitted or . . . omit what has been inserted."). Additionally, as 44-2-113 is the more particular provision regarding qualifications, it should control. Mont. Code Ann. § 1-2-102.

Importantly, for ten years or more, beginning under former Attorney General McGrath, DOJ has maintained an MOU with DOC designating DOC employees as investigators so that these employees may conduct criminal investigations within DOC prison and treatment facilities. As such, three Attorneys General, myself included, have implicitly acknowledged that agents may be appointed by the Attorney General in departments other than DOJ. The DOC agents subject to the MOU are essential to conducting investigations within DOC facilities, because local law enforcement often does not have the time or resources to investigate all alleged crimes within these facilities. This long-standing, consistent interpretation is entitled

to "respectful consideration." *Friends of the Wild Swan*, ¶ 11 (granting DNRC, "as a state agency . . . respectful consideration of its long and continued course of consistent interpretation of a statute") (citation and internal quotations omitted).

Additionally, I understand from DOC that a prior Legislature was informed of the MOU between DOJ and DOC, and then opted not to pass legislation designating DOC investigators as "peace officers," preferring instead the additional oversight provided by the MOU. Thus the Legislature, despite having knowledge of the use of this statute to appoint non-DOJ agents, has not taken steps to change the law but instead relied on the MOU. The Legislature's inaction in light of knowledge of the MOU weighs in favor of an interpretation that does not limit agents to DOJ employees. See *Swanson v. Hartford Ins.*, 2002 MT 81, ¶ 22, 309 Mont. 269, 46 P.2d 584 ("We presume that if the legislature disagreed with our interpretation . . . it would have amended the statute accordingly.") (internal citation and quotation marks omitted).

On the other hand the lists of powers and duties under Mont. Code Ann. § 44-2-115 seem tailored toward DOJ criminal investigators. For example, the agent "shall provide investigative assistance" to federal, state and local agencies "at their request in accordance with rules adopted by" DOJ. 44-2-115(1). The only "concurrent jurisdiction" expressly granted is the investigation of "offenses involving dangerous drugs [and] organized criminal activity," -115(2), and the section also speaks to investigating gambling and workers' compensation fraud. -115(3), (5).

The majority of agents appointed by the Attorney General will, of course, work within DOJ. It thus makes sense that the powers and duties section refers primarily to the type of work performed by DOJ agents. The listed duties do not apply to all agents within DOJ, however. Not all agents, for example, "investigate gambling activities" or workers' compensation fraud. -115(3), (5). Thus the listed duties cannot be read as mandatory for all agents. Though primarily directed at DOJ agents, this list of powers and duties could be intended to place limits on the authority of non-DOJ agents as well. A non-DOJ agent, for example, would be able to provide "investigative assistance" to local law enforcement agencies, but only at the request of a local agency and "in accordance with rules adopted by" DOJ.

Looking at the statute and Part 1 as a whole, and considering the history of agency interpretation and inaction by the Legislature, my opinion is that the phrase "within the department of justice" in Mont. Code Ann. § 44-2-111 is not intended to limit the definition of "agent" to DOJ employees only. A person "qualified by experience, training, and high professional competence in criminal investigation," Mont. Code Ann. § 44-2-113, may be appointed as an "agent" by the Attorney General, even if he works for a state agency other than DOJ.²

² It is unnecessary in this opinion to address whether "agent" is limited to state employees. However, I note that Mont. Code Ann. § 44-2-114 requires all agents to "be covered by the public employees' retirement system."

THEREFORE, IT IS MY OPINION:

The definition of "agent" in Mont. Code Ann. § 44-2-111 does not restrict the persons that the Attorney General may appoint as agents to employees "within the department of justice."

Sincerely,

/s/ Timothy C. Fox
TIMOTHY C. FOX
Attorney General

tcf/jss/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2016. This table includes those rules adopted during the period April 1, 2016, through June 30, 2016, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2016, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2016 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in June 2016 appear. Vacancies scheduled to appear from August 1, 2016 through October 31, 2016, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 2016.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JUNE 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Real Estate Appraisers (Labor and Industry)			
Mr. Pete Fontana Great Falls	Governor	reappointed	6/3/2016 7/1/2019
Qualifications (if required): licensed or certified real estate appraiser			
Mr. George Luther Jr. Miles City	Governor	reappointed	6/3/2016 7/1/2019
Qualifications (if required): licensed or certified real estate appraiser			
Commission on Practice of the Supreme Court (Supreme Court)			
Ms. Jean Faure Great Falls	elected	reappointed	6/30/2016 6/30/2020
Qualifications (if required): none specified			
District Court Council (District Court)			
Mr. Glen Welch	District Court	reappointed	6/30/2016 6/30/2019
Qualifications (if required): nominated			
Governor's Council on Healthcare Innovation (Public Health and Human Services)			
Dr. Monica Berner Helena	Governor	Frank	6/3/2016 10/1/2016
Qualifications (if required): Public and private payers			
Ms. LeeAnn Bruised Head Missoula	Governor	Bailey	6/3/2016 10/1/2016
Qualifications (if required): Indian/Tribal Health Representatives			

BOARD AND COUNCIL APPOINTEES FROM JUNE 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Rail Service Competition Council (Transportation)			
Mr. Dylan Boyle Whitefish	Governor	Not listed	6/3/2016 1/1/2019
Qualifications (if required): Person with substantial knowledge/experience related to rail passenger service by Amtrak			
State Library Commission (Education)			
Mr. Bruce Newell Helena	Governor	reappointed	6/1/2016 6/1/2019
Qualifications (if required): Public Representative			

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2016 THROUGH OCTOBER 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Alternative Health Care Board (Labor and Industry) Dr. Christine White Deeble, Missoula Qualifications (if required): naturopathic physician</p>	Governor	9/1/2016
<p>Board of Barbers and Cosmetologists (Labor and Industry) Ms. Darlene Battaiola, Butte Qualifications (if required): cosmetologist</p>	Governor	10/1/2016
<p>Ms. Juanita Mace, Billings Qualifications (if required): barber</p>	Governor	10/1/2016
<p>Board of Medical Examiners (Labor and Industry) Dr. Dean Center, Bozeman Qualifications (if required): doctor of medicine</p>	Governor	9/1/2016
<p>Dr. James Feist, Bozeman Qualifications (if required): Doctor of Medicine</p>	Governor	9/1/2016
<p>Board of Outfitters (Labor and Industry) Mr. Patrick Tabor, Swan Lake Qualifications (if required): Big Game Hunting Outfitter</p>	Governor	10/1/2016
<p>Board of Private Security (Labor and Industry) Mr. Dirk Bauwens, Billings Qualifications (if required): Representing an Electronic Security Company</p>	Governor	8/1/2016

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2016 THROUGH OCTOBER 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Psychologists (Labor and Industry) Dr. Marla Lemons, Butte Qualifications (if required): public health psychologist</p>	Governor	9/1/2016
<p>Board of Veterans' Affairs (Military Affairs) Mr. Johnathon Kenneway, Great Falls Qualifications (if required): Senator Walsh Representative</p>	Governor	8/1/2016
<p>Mr. Bruce W. Knutson, Helena Qualifications (if required): representative of Senator Jon Tester</p>	Governor	8/1/2016
<p>Sen. Ryan K. Zinke, Whitefish Qualifications (if required): U.S. Representative</p>	Governor	8/1/2016
<p>Mr. Peter Olson, Culbertson Qualifications (if required): veteran and resident of region 5</p>	Governor	8/1/2016
<p>Mr. Johnathon Kenneway, Great Falls Qualifications (if required): veteran and resident of region 5</p>	Governor	8/1/2016
<p>Mr. Denny Lenoir, Helena Qualifications (if required): Representative of U.S. Senator Steven Daines</p>	Governor	8/1/2016
<p>Burial Preservation Board (Administration) Mr. Videll Stump Sr., Box Elder Qualifications (if required): representative of the Chippewa Cree Tribe</p>	Governor	9/1/2016

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2016 THROUGH OCTOBER 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Burial Preservation Board (Administration) cont. Dr. Ruthann Knudson, Great Falls Qualifications (if required): representative of the Montana archaeological association</p>	Governor	9/1/2016
<p>Mr. Terry Bullis, Hardin Qualifications (if required): representative of the Montana coroners' association</p>	Governor	9/1/2016
<p>Councilman Richard Parenteau, Great Falls Qualifications (if required): Representative of Little Shell Band of Chippewa Indians</p>	Governor	9/1/2016
<p>Commission on Community Service (Governor) Mr. Holter Bailey, Missoula Qualifications (if required): youth representative</p>	Governor	10/1/2016
<p>Corn Crop Advisory Committee (Agriculture) Sen. Donald J. Steinbeisser, Sidney Qualifications (if required): Corn Crop Producer</p>	Director	10/23/2016
<p>Mr. Donald Fast, Glasgow Qualifications (if required): Corn Crop Producer</p>	Director	10/23/2016
<p>Mr. Glenn Rohde, Glasgow Qualifications (if required): Corn Crop Producer</p>	Director	10/23/2016
<p>Mr. Jason Brewer, Forsyth Qualifications (if required): Corn Crop Producer</p>	Director	10/23/2016

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2016 THROUGH OCTOBER 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Corn Crop Advisory Committee (Agriculture) cont. Mr. Kim Nile, Forsyth Qualifications (if required): Corn Crop Producer</p>	Director	10/23/2016
<p>Mr. Jack Dion, Terry Qualifications (if required): Corn Crop Producer</p>	Director	10/23/2016
<p>Historical Preservation Review Board (Historical Society) Ms. Lesley M. Gilmore, Gallatin Gateway Qualifications (if required): historic architect</p>	Governor	10/1/2016
<p>Mr. Charles McLeod, Missoula Qualifications (if required): archaeologist</p>	Governor	10/1/2016
<p>Mr. Jon Axline, Helena Qualifications (if required): architectural historian</p>	Governor	10/1/2016
<p>Montana Wheat and Barley Committee (Governor) Mr. Chris Kolstad, Ledger Qualifications (if required): From District 3 and a Republican</p>	Governor	8/20/2016
<p>Mr. Randy Hinebauch, Conrad Qualifications (if required): From District 2 and a Republican</p>	Governor	8/20/2016
<p>Vocational Rehabilitation Council (Public Health and Human Services) Ms. Robin Haux, Montana City Qualifications (if required): Organized Labor</p>	Governor	10/1/2016

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2016 THROUGH OCTOBER 31, 2016

Board/current position holder

Appointed by

Term end

Water and Waste Water Operators' Advisory Council (Environmental Quality)

Mr. John Alston, Bozeman

Governor

10/16/2016

Qualifications (if required): representative of a municipality