

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.301.1003 assessment and)	PROPOSED AMENDMENT
collection of civil penalties,)	
24.301.1007 collection of annual fees,)	
24.301.1009 disputes regarding)	
penalties and fines – mediation, and)	
24.301.1011 training and educational)	
grants, all pertaining to the)	
Underground Facility Protection)	
Program)	

TO: All Concerned Persons

1. On September 1, 2020, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform by dialing 406-444-4647 (local) or 1-833-681-5958 (toll free) and entering meeting ID 5398127 when directed to do so.

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 department no later than 5:00 p.m., on August 25, 2020, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Underground Facility Protection Program, 301 South Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517; telephone (406) 841-2016; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; or buildingcodes@mt.gov.

3. GENERAL REASONABLE NECESSITY STATEMENT: Following a staff review of the rules and consultation with the Underground Facility Protection Advisory Council (council), the department is proposing amendments throughout the Underground Facility Protection Program (program) rules. Most of these changes are technical in nature such as substituting modern language for archaic phrasing, updating grammar and language choices, eliminating repetitive language, and substituting active voice for passive voice. Additionally, amendments are proposed to improve rules for accuracy, consistency, simplicity, better organization, and ease of use for the reader. These technical amendments will not change substantive provisions or procedures. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

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

24.301.1003 ASSESSMENT AND COLLECTION OF CIVIL PENALTIES

(1) ~~In order to~~ The department shall contact each call center serving Montana to determine when the last 100 locate requests were made, or the number of locate requests made in the past 12 months, ~~the department shall contact each call center serving Montana to obtain that information.~~ Each call center shall provide the requested information within seven days of the department's request.

(2) ~~In order to~~ To timely issue civil penalties as required by 69-4-524 and 69-4-525, MCA, if ~~both call centers do~~ a call center does not respond within ten days of a request, the department may issue a civil penalty based solely on the number of locate requests identified by the call center that takes locate requests for the area in which the event or incident occurred.

(a) For good cause shown, a party to whom a civil penalty has been issued pursuant to (2) may seek a recalculation of the penalty based on information received from ~~both~~ all call centers.

(b) remains the same.

(3) A party aggrieved by the imposition of a civil penalty may ~~contest~~ dispute the penalty as provided for in ARM 24.301.1009.

(4) ~~A~~ The department may refer for debt collection any civil penalty that has not been ~~contested~~ disputed and ~~which~~ remains unpaid for more than 75 days after issuance ~~it was issued may be referred by the department for collection of the debt.~~

AUTH: 69-4-522, MCA

IMP: 69-4-522, 69-4-524, 69-4-525, 69-4-529, 69-4-530, MCA

24.301.1007 COLLECTION OF ANNUAL FEES (1) ~~In order to~~ To collect ~~the~~ annual fees from underground facility owners, the department may, by contract or other agreement, have the call centers perform the annual billing ~~performed by the call centers.~~

(2) ~~An underground facility owner may receive a bill from any~~ Any call center from which ~~the~~ an underground facility owner has received locate requests may bill the underground facility owner.

(3) ~~The annual fees must be paid by the underground facility owner~~ Underground facility owners shall pay the annual fees within 30 days of the date of a the bill for those fees.

(4) ~~Annual~~ The department may refer fees which remain remaining unpaid for more than 90 days ~~after billing may be referred by the department for collection of the debt.~~

(a) The department, in its sole discretion, may allow an underground facility owner ~~that is billed an annual fee of less than \$50 to defer the payment of the annual fee until the following year.~~ During the deferral period, the department will not refer an underground facility owner ~~whose~~ having a deferred annual fee ~~payment is deferred will not be referred to collection during the period of deferral.~~

(b) The department ~~may~~ will not allow a ~~deferral of~~ defer payment of annual fees more than once every two years for an underground facility owner.

(5) ~~For the 2018 and 2019 billing cycle, the~~ The amount of the annual fee to be paid by an underground facility owner is \$0.10 per outgoing locate request made by each call center.

AUTH: 69-4-522, MCA

IMP: 69-4-522, 69-4-530, MCA

REASON: The department is amending (5) to remove unnecessary language regarding past billing cycles. The \$0.10 fee per outgoing locate request is not changing.

24.301.1009 DISPUTES REGARDING PENALTIES AND FINES –

MEDIATION (1) A party that timely disputes a civil penalty ~~or fine~~ may, after first satisfying the mediation requirements of this rule, ~~have~~ request a contested case with the department. The contested case must be held in accordance with the Montana Administrative Procedure Act and ~~will be~~ conducted by the department's Office of Administrative Hearings.

(2) The advisory council shall act as the mediator of disputed civil penalties ~~or fines~~. ~~The mediator~~ and shall attempt to bring the parties to mutually acceptable resolution of the dispute.

(3) remains the same.

(4) The department shall promptly notify the advisory council of disputes arising under 69-4-524, or 69-4-525, ~~or 69-4-529~~, MCA. The mediation must be conducted within 45 days of ~~the council being notified~~ notification.

(5) Mediation may be conducted by a majority of the advisory council, or it ~~may be delegated by the council~~ chair may delegate the duty to a subset of the council ~~to act as the mediator~~.

(6) remains the same.

(7) ~~The mediator~~ department shall issue a written report ~~and~~ of the council's recommendation to the parties within 15 days of the mediation.

(8) If the parties agree to a resolution of their dispute during mediation or within 20 days after the report ~~and recommendation~~ is sent to the parties, the department shall notify the advisory council that the matter has been resolved.

(9) If the party ~~that disputes~~ disputing the civil penalty ~~or fine~~ does not agree to resolve the matter, ~~it~~ the party must notify request a contested case with the department within 20 days of the issuance of the mediation report ~~and recommendation being issued that the department must schedule a contested case~~.

(10) An underground facility owner that received a fine may contest the fine by requesting a contested case hearing with the department within 20 days of the fine being levied.

~~(40)~~ (11) Failure of a party to timely ~~notify~~ request a contested case with the department ~~to schedule a contested case~~ acts as waiver of the right to a contested case.

(11) remains the same but is renumbered (12).

AUTH: 69-4-522, MCA

IMP: 69-4-522, 69-4-526, 69-4-529, MCA

REASON: The department is amending (5) to clarify the ongoing process that the chairperson of the council selects the council members to participate in mediations.

It is reasonably necessary to amend (7) and (8) to clarify that the department provides a single report to the parties following a mediation, and that report contains the council's recommendation. This is the current process and there will be no change.

The department determined it is reasonably necessary to amend this rule to separate the processes for disputing a civil penalty and contesting a fine within the program's jurisdiction. Staff noted that the mediation statute 69-4-526, MCA, only applies to disputing civil penalties and not contesting fines. Fines are addressed in 69-4-529, MCA, which provides that an underground facility owner who receives a fine can contest it and request a hearing. The department is further adding (10) to provide the process to request a contested case hearing when contesting a fine.

24.301.1011 TRAINING AND EDUCATIONAL GRANTS (1) and (2) remain the same.

~~(3) A call center may submit only one grant application per year. The department will accept and review grant applications starting January 1, 2019. Each call center in the state may submit one grant application per calendar year due on December 31. The department, in consultation with the advisory council, will review the applications and award one grant by March 31 for the previous calendar year application period.~~

~~(4) Grants are awarded annually on a state fiscal year basis. The amount available for distribution is dependent upon the balance in the grant account that exists on January 1 of the year in which the application is made. The amount of the grant will be the total amount of civil penalties and fines collected in the previous fiscal year.~~

(5) remains the same.

(6) If no grant applications are received in a given year, the grant funds will roll over into the following year's grant amount.

~~(6) (7) The department shall consult with the advisory council in determining how to distribute available grant funding, in light of the applications received. In making the grant distribution, the department will consider:~~

(a) through (e) remain the same.

AUTH: 69-4-522, MCA

IMP: 69-4-522, 69-4-528, MCA

REASON: Following review by staff and to address concerns from the department's fiscal bureau, the department determined it is reasonably necessary to amend this rule to clarify the grant processes. These amendments will address confusion by clearly setting forth the timelines for application and awarding the annual grants. The department is amending this rule to specify that grants are awarded annually by calendar year, but funded on a fiscal year basis. This change is reasonably necessary to comply with generally accepted state accounting practices and achieve efficiencies in utilizing standardized fiscal procedures.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Underground Facility Protection Program, 301 South Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517, by facsimile to (406) 841-2050, or e-mail to buildingcodes@mt.gov, and must be received no later than 5:00 p.m., September 4, 2020.

6. An electronic copy of this notice of public hearing is available at <http://bsd.dli.mt.gov/Building-Codes-Permits/underground-facility-protection> (department's and program's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. 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 program 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 Underground Facility Protection Program, 301 South Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517; faxed to the office at (406) 841-2050; e-mailed to buildingcodes@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.301.1003, 24.301.1007, 24.301.1009, and 24.301.1011 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determination is available upon request to the Underground Facility Protection Program, 301 South Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517; telephone (406) 841-2016; facsimile (406) 841-2050; or to buildingcodes@mt.gov.

10. Traci Collett has been designated to preside over and conduct this hearing.

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

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 28, 2020.