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# **MONTANA ADMINISTRATIVE REGISTER**

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AUG 14 1998

OF MONTANA

1998 ISSUE NO. 15  
AUGUST 13, 1998  
PAGES 2133-2187



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## MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back 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 Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM	)	ON PROPOSED AMENDMENT OF
2.21.812, 2.21.814,	)	ARM 2.21.812, 2.21.814,
2.21.821 and 2.21.822	)	2.21.821 and 2.21.822
related to the sick leave	)	RELATED TO THE SICK LEAVE
fund	)	FUND

TO: All Interested Persons.

1. On September 11, 1998, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.812, 2.21.814, 2.21.821 and 2.21.822 related to the sick leave fund.

2. The proposed amendments provide as follows:

2.21.812 MEMBERSHIP IN SICK LEAVE FUND (1) ~~A~~ Any full-time or part-time ~~seasonal or permanent~~ employee in a position ~~designated as permanent or seasonal~~ of the executive, legislative or judicial branches of state government or of the Montana university system may become a participating employee in the sick leave fund.

(2) remains the same.

(a) have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618~~++~~, MCA;

(b) through (3) remain the same.

(4) An employee meeting the requirements in ~~(2)~~ ~~(a-c)~~ this rule may enroll in the sick leave fund at any time.

(5) through (7) remain the same.

(Auth. 2-18-618, MCA; Imp. 2-18-618, MCA)

2.21.814 ELIGIBILITY TO RECEIVE GRANTS FROM THE SICK LEAVE FUND (1) A participating employee who meets the eligibility requirements of ~~paragraph (6)~~ of this rule may receive no more than a maximum of 160 hours of sick leave ~~fund grants~~ in any continuous 12-month period ~~in grants from the sick leave fund~~. Leave approved for a part-time employee shall be prorated. The maximum allowable benefit in any 12-month period from either grants from the fund or direct grants is 160 hours.

(2) through (3) remain the same.

(4) Participation in the sick leave fund or meeting the eligibility requirements of ~~paragraph (6)~~ of this rule does not guarantee that receipt of sick leave shall be approved in any specific case by the agency head.

(5) through (6) remain the same.

(a) have met the 90-day qualifying period to take sick leave provided for in 2-18-618 ~~++~~, MCA;

(b) through (c) remain the same.

(d) take ~~5 days~~ 20 consecutive hours of leave of absence without pay following exhaustion of all accrued leave and compensatory time;

(e) through (8) remain the same.

(9) An employee may request a grant from the sick leave fund, as provided in ARM 2.21.132 ~~(1g)~~, to provide "necessary care of or attendance to an immediate family member...until other attendance can reasonably be obtained." The employee must meet all eligibility requirements of ~~paragraph (6)~~ of this rule.

(Auth. 2-18-618, MCA; Imp. 2-18-618, MCA)

2.21.821 ELIGIBILITY TO MAKE DIRECT GRANT (1) To be eligible to make a direct grant of sick leave, an employee shall have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618 ~~(1)~~, MCA, and shall have a minimum balance of 40 hours of accrued sick leave remaining in the employee's account, following the contribution. The minimum balance for a part-time employee shall be prorated.

(2) through (4) remain the same.

(Auth. 2-18-618, MCA; Imp. 2-18-618, MCA)

2.21.822 ELIGIBILITY TO RECEIVE DIRECT GRANTS (1) through (3) remain the same.

(a) have met the 90-day qualifying period to take sick leave provided for in 2-18-618 ~~(1)~~, MCA;

(b) through (c) remain the same.

(d) take ~~5 days~~ 20 consecutive hours of leave of absence without pay following exhaustion of all accrued leave and compensatory time;

(e) through (4) remain the same.

(5) A supervisor may approve a combination of paid sick leave and leave of absence without pay in a workweek, as provided in ARM 2.21.814 ~~(5)~~.

(6) If an employee is incapacitated and unable to apply for leave of absence and direct grants, another person may do so, as provided in ARM 2.21.814 ~~(7)~~.

(7) An employee may receive direct grants of sick leave, as provided in ARM 2.21.132 ~~(1g)~~, to provide "necessary care of or attendance to an immediate family member...until other attendance can reasonably be obtained." The employee must meet all eligibility requirements of ~~paragraph (3)~~ of this rule.

(Auth. 2-18-618, MCA; Imp. 2-18-618, MCA)

3. Amendment of ARM 2.21.812, 2.21.814, 2.21.821 and 2.21.822 is necessary due to numerous agency and employee requests to modify and lessen the potential financial hardship created by a 5 day leave without pay requirement. Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State.

4. The State Personnel Division maintains an interested


persons list and sends copies of proposed rule notices to everyone on the list. Anyone wishing to be placed on the list may contact State Personnel Division's receptionist at (406) 444-3871 or send a request to State Personnel Division, PO Box 200127, Helena, MT 59620-0127 and ask to be placed on the interested persons list for proposed rule changes. Interested persons may also request to be placed on the list at the scheduled hearing.


5. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Kathy Samson, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to [ksamson@mt.gov](mailto:ksamson@mt.gov). All responses must be received no later than September 10, 1998.

6. Kathy Samson, address given in paragraph 5 above, has been designated to preside over and conduct the hearing.

7. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Kathy Samson, at the address given in paragraph 5 above, or telephone (406)-444-3871. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:

  
Dal Smilie  
Rule Reviewer

  
Lois Menzies  
Director

Certified to the Secretary of State August 3, 1998

BEFORE THE BOARD OF CLINICAL  
LABORATORY SCIENCE PRACTITIONERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of rules pertaining ) AMENDMENT OF ARM 8.13.303  
to fees and renewal and the ) FEES AND 8.13.304 RENEWAL  
adoption of new rules pertain- ) AND THE ADOPTION OF NEW  
ing to inactive status and ) RULES I INACTIVE STATUS AND  
reactivation of license ) II REACTIVATION OF LICENSE  
)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1998, the Board of Clinical  
Laboratory Science Practitioners proposes to adopt the above-  
stated rules.

2. The proposed amendments will read as follows: (new  
matter underlined, deleted matter interlined)

"8.13.303 FEES (1) through (2)(f) will remain the same.  
(g) reactivation of license fee 30"

Auth: Sec. 37-34-201, MCA; IMP, Sec. 37-34-201, MCA

**REASON:** Section 37-1-134, MCA, mandates that fees must be  
commensurate with program area costs. The Board is amending  
this rule to add a fee for reactivation of inactive status  
licenses to cover administrative costs.

"8.13.304 RENEWAL (1) will remain the same.

(2) Licenses will be renewed on a biennial basis every  
even-numbered year beginning with the May 1, 1998 renewal."

Auth: Sec. 37-34-201, MCA; IMP, Sec. 37-34-201, MCA

**REASON:** This amendment is being proposed to implement Senate  
Bill 598 which allows the staggered renewal dates in an effort  
to alleviate work loads.

3. The proposed new rules will read as follows:

"I INACTIVE STATUS (1) A licensee may place the  
licensee's license on inactive status by:

(a) submitting a written request for inactive status; and  
(b) paying the required fee in accordance with 37-34-201,  
MCA, and ARM 8.13.303.

(2) A licensee on inactive status has sole responsibility  
for providing the board information regarding changes in  
residency or mailing address.

(3) A licensee may remain on inactive status for a period not to exceed three years. After three years, the licensee shall submit a request for further inactive status or reactivate the license. Failure to renew an inactive status license or reactivate will result in termination of the license. The holder of a terminated license will be required to re-apply for licensure."

Auth: Sec. 37-1-131, 37-34-201, MCA; IMP, Sec. 37-1-131, 37-34-201, MCA

**REASON:** This rule is being proposed to allow licensees the option of placing their license on inactive status rather than allowing their license to lapse and require licensee to reapply.

**"II REACTIVATION OF LICENSE** (1) For a licensee to reactivate a license, the licensee must:

(a) file an updated application form and pay the required fee in accordance with ARM 8.13.303;

(b) submit proof of obtaining the required continuing education in accordance with ARM 8.13.306, for the two-year period immediately preceding the submission of a reactivation application."

Auth: Sec. 37-1-131, 37-34-201, MCA; IMP, Sec. 37-1-131, 37-34-201, MCA

**REASON:** This rule is being proposed to provide licensees with the procedures, and the requirements for, reactivation of a license after having been on inactive status.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Clinical Laboratory Science Practitioners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 10, 1998.

5. If a person who is directly affected by the proposed amendments and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Clinical Laboratory Science Practitioners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 10, 1998.

6. If the Board receives requests for a public hearing on the proposed amendments and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those

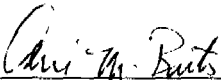


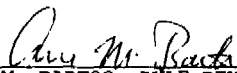
persons directly affected has been determined to be 89 based on the approximately 890 licensees in Montana.

7. Persons who wish to be informed of all Board of Clinical Laboratory Science Practitioners administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3561.

BOARD OF CLINICAL LABORATORY  
SCIENCE PRACTITIONERS  
JOANNE SCHNEIDER, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 3, 1998.

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of rules pertaining ) OF ARM 8.34.414 EXAMINATIONS  
to examinations and fees ) AND 8.34.418 FEE SCHEDULE  
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 12, 1998, the Board of Nursing Home Administrators proposes to amend the above-stated rules.
2. The proposed amendment of ARM 8.34.414 will read as follows: (new matter underlined, deleted matter interlined)

"8.34.414 EXAMINATIONS (1) and (2) will remain the same.

(3) In the event of failure, the individual may retake the examination within the period of one year, by paying \$75.00 125."

Auth: Sec. 37-1-131, 37-1-134, 37-9-201, 37-9-203, 37-9-304, MCA; IMP, Sec. 37-1-134, 37-9-201, 37-9-203, 37-9-301, 37-9-303, 37-9-304, MCA

REASON: This amendment will cover the examination fee charged to the Board by the examination service and will make it commensurate with program area costs.

"8.34.418 FEE SCHEDULE (1) The examination and license fees shall be as follows:

- |  |          |     |
|--|----------|-----|
| (a) application fee                            | \$ 30.00 | 50  |
| (b) examination and license for the            | 100.00   | 125 |
| <del>April examination</del>                   |          |     |
| <del>(c) examination and license for the</del> | 120      |     |
| <del>October examination</del>                 |          |     |

(d) through (k) will remain the same, but will be renumbered (c) through (j)."

Auth: Sec. 37-1-131, 37-1-134, 37-9-201, 37-9-203, 37-9-304, MCA; IMP, Sec. 37-1-134, 37-9-203, 37-9-304, MCA

REASON: This amendment is being proposed to cover the cost of the examination charged to the Board by the examination service and to make the application fee commensurate with program area costs.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Nursing Home Administrators, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 10, 1998.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written

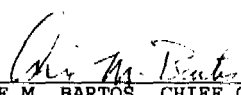
request for a hearing and submit the request along with any comments he has to the Board of Nursing Home Administrators, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 10, 1998.


5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 28 based on the 282 licensees in Montana.

6. Persons who wish to be informed of all Board of Nursing Home Administrators administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3561.

BOARD OF NURSING HOME  
ADMINISTRATORS  
DONNA KAY JENNINGS, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 3, 1998.

In the matter of the proposed amendment of rules pertaining to fees, continuing education and unprofessional conduct ) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF OF 8.58.411 FEE SCHEDULE, 8.58.415A CONTINUING REAL ESTATE EDUCATION AND 8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT )

1. On September 4, 1998, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The proposed amendment of ARM 8.58.411 will read as follows: (new matter underlined, deleted matter interlined)

(3) Examination fees are payable to the national testing service under contract with the board.

(b) ~~For each subsequent examination by the~~  
~~same nominee~~

(5) through (24) will remain the same.

(25) Late filing of annual continuing education 100"

Auth: Sec. 37-1-131, 37-1-134, 37-51-203, 37-51-204, MCA:

IMP, Sec. 37-1-134, 37-51-202, 37-51-204, 37-51-207, 37-51-303,  
37-51-310, 37-51-311, MCA

**REASON:** Fees are charged and collected by the testing service under the contract with the Board of Realty Regulation. The fees are determined by the contract and reflect the actual cost of the examination. The Board does not collect or set the fees. The late filing of annual continuing education fee is commensurate with the additional administrative, monitoring, notification, verification and board action that must occur when a licensee fails to report continuing education requirements in the prescribed time frame.

"8.5B.415A CONTINUING REAL ESTATE EDUCATION (1) through (5) will remain the same.

~~(6) Proof of successful completion must be submitted to the board with the licensee's renewal application at the conclusion of every year.~~

(7) through (11) will remain the same, but will be renumbered (6) through (10).

(11) A sworn affidavit attesting to the successful completion of the continuing education requirement must be submitted to the board by December 31 of each year. Affidavits will be accepted until January 15 without incurring the late filing fee. Filing of an affidavit after January 15, but on or before February 15 will result in a late filing fee of \$100. No affidavit will be accepted after February 15.

(12) All continuing education courses must be taken and completed within a calendar year. Courses completed after the December 31 deadline but reported within the allowable reporting period will not be accepted.

(13) The board may audit licensees for compliance with continuing education requirements. Audited licensees must provide copies of completion certificates to the board as verification of compliance within 20 days of receipt of the audit request.

(14) Failure to comply with the completion or reporting requirements established by the board is unprofessional conduct and will result in disciplinary action by the board.

(15) Affidavits will be mailed to all real estate licensees at their last address of record. Failure to receive an affidavit does not eliminate the reporting requirement. Each licensee is required to annually report continuing education."

Auth: Sec. 37-1-306, 37-1-131, 37-51-203, 37-51-204, MCA; IMP, Sec. 37-51-202, 37-51-203, 37-51-204, MCA

**REASON:** This amendment is being proposed to enact annual continuing education reporting requirements formerly included in the annual renewal process. The rule establishes the reporting process, time frame for completion and the auditing of attendance to assure compliance with the continuing education requirement.

"8.58.419. GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(ag) will remain the same.

(ah) Licensees must comply with all completion and reporting requirements for continuing education as established by the board.

(4) will remain the same."

Auth: Sec. 37-1-306, 37-1-131, 37-1-136, 37-51-102, 37-51-203, 37-51-321, MCA; IMP, Sec. 37-51-102, 37-51-201, 37-51-202, 37-51-321, 37-51-512, MCA

**REASON:** This rule reiterates that non-compliance with all continuing education rules will be considered unprofessional conduct and will be grounds for license discipline.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., August 25, 1998, to advise us of the nature of the

accommodation that you need. Please contact Grace Berger, Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-0866; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Grace Berger.

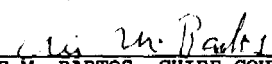
4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Realty Regulation, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., September 10, 1998.

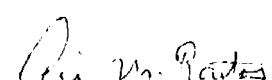
5. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Realty Regulation administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-0866.

BOARD OF REALTY REGULATION  
JOHN BEAGLE, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 3, 1998.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF PUBLIC HEARING  
new rules I through III, the ) ON PROPOSED ADOPTION,  
amendment of rules 18.9.602 and ) AMENDMENT, AND REPEAL  
18.9.603, and the repeal of rule )  
18.9.604 concerning the Alcohol )  
Tax Incentive Program. )

TO: All Interested Persons.

1. On September 17, 1998, at 10 a.m., a public hearing will be held in the auditorium of the Department of Transportation building at 2701 Prospect Avenue, Helena, Montana, to consider the adoption of new rules I through III and the amendment and repeal of the above-listed rules.

2. The proposed new rules provide as follows:

RULE I. QUARTERLY REPORTS (1) The department may require quarterly reports from the applicant during the 18-month grace period to ensure alcohol implementation is on schedule.  
AUTH: 15-70-104 and 15-70-522, MCA; IMP: 15-70-512 and 15-70-522, MCA

REASON: This proposed rule is reasonably necessary to ensure that the plan as written by the alcohol tax incentive recipient is being accomplished. Section 15-70-522(7)(b), MCA.

RULE II. CANCELLATION OR DENIAL OF LICENSE (1) The department may cancel or deny a licence if it is discovered that the applicant has provided inaccurate information to the department.  
AUTH: 15-70-104 and 15-70-522, MCA; IMP: 15-70-511 and 15-70-522, MCA

REASON: This proposed rule is reasonably necessary to ensure that the information being provided is accurate. Section 15-70-522(7)(b), MCA.

RULE III. USE OF MONTANA PRODUCTS (1) The payment of the alcohol tax incentive will be based solely on the percentage of Montana products, including Montana wood or wood products, that are used in the production of anhydrous ethanol.  
AUTH: 15-70-522, MCA; IMP: 15-70-522, MCA

REASON: Proposed Rule III is reasonably necessary to assure that fuel tax money being used for the alcohol tax incentive program is being allocated on the basis of the use of Montana products in the production of alcohol. Section 15-70-522(2), MCA.

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

18.9.602 DEFINITIONS

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

(b) "Alcohol" means anhydrous ethanol produced in Montana from Montana agricultural products, including Montana wood or wood products, or from non-Montana agricultural products when Montana products are not available.

(c) "Consecutive twelve months" means state fiscal year, July 1 through June 30.

~~(c)~~(d) "Division" means the administration division, department of transportation.

(e) "Written plan" means a detailed proposed business plan providing information that allows the department to estimate the alcohol incentive tax reservation of funds.

AUTH: 15-70-522, MCA; IMP: 15-70-522, MCA

**REASON:** The proposed amendments are necessary to clarify the start date in establishing "any consecutive 12 month period" as prescribed in section 15-22-522(4), MCA, to more fully define "alcohol" as required by section 15-70-522, MCA, and to give direction to a prospective producer of alcohol information as to the material required for the approval of the Department to receive the alcohol tax incentive monies.

18.9.603 PROCESSING OF THE TAX INCENTIVE PAYMENT

(1) through (4) remain the same.

(5) The application must be sent to:

Administration Division  
Department of Transportation  
2701 Prospect  
P.O. Box 201001  
Helena, MT 59620-1001

~~(6) The applications for the alcohol tax incentive shall be processed by the division beginning on the 25th day of each month:~~

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

~~(6)~~(7) The report may include an application for refund of the basic gasoline license tax on gasoline which was used to denature alcohol. The application for refund shall include:

(a) the gallons of anhydrous alcohol which were denatured by the alcohol distributors;

(b) gallons of gasoline used in denaturing; and

(c) the total amount of refund at \$15 per gallon of gasoline tax per gallon pursuant to 15-70-521, MCA.

~~(7)~~(8) Original bills of lading, or invoices, or copies shall be attached to each report which contains an application for refund of the basic gasoline license tax on gasoline which was used to denature alcohol.

AUTH: 15-70-522, MCA; IMP: 15-70-522, MCA



**REASON:** This amendment is to ensure that this section is in compliance with House Bill 555, deleting reference to a specific refund rate, and giving applicants the complete address for the Department.

4. The 1997 Legislature made changes to the statutes dealing with tax incentives for production of alcohol. House Bill 555, passed and signed into law, says the Department "shall prescribe the rules necessary to carry out the provisions of this section." Section 15-70-522(9), MCA. Department is defined as the "department of transportation." Section 15-70-522, MCA. The Department has assigned the responsibility to the Administration Division, Department of Transportation.

5. Rule 18.9.604, which can be found on page 18-1133 of the Administrative Rules of Montana, is no longer necessary and is proposed to be repealed because section 15-70-522, MCA, provides for the payment of alcohol tax incentive. It is necessary to repeal ARM 18.9.604 because House Bill 555 changes the payment of the alcohol tax incentive from a formula to a fixed 30 cents per gallon for all fuel that is 100 percent produced from Montana products, with the amount of the tax incentive per gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol.

AUTH: 15-70-104, MCA; IMP: 15-70-522, MCA

6. Interested 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 William G. Salisbury, Administration Division, Montana Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than 5 p.m., September 17, 1998.

7. Nick A. Rotering, Staff Attorney, Legal Unit, has been designated to preside over and conduct the hearing.

8. The two bill-sponsor-notice requirements of section 2-4-302, MCA, apply and have been complied with.

9. MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this document will be provided upon request. For further information call (406) 444-7284 or T.D. users can call 1-800-TDD-NETT by September 3, 1998.


10. The Department of Transportation maintains a list of interested persons who wish to receive notices of the rulemaking actions it proposes. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the subject area or areas of interest of the person requesting notice, including, but not limited to, rules proposed

by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, and Rail, Transit and Planning Division. Such written request may be mailed or delivered to the Montana Department of Transportation, Legal Services, P.O. Box 201001, Helena, MT 59620-1001, faxed to the office at (406)444-7206, or may be made by completing a request form at any rules hearing held by the Department.

MONTANA DEPARTMENT OF TRANSPORTATION

By:

  
MARVIN DYE, Director

  
Lyle Manley, Rule Reviewer

Certified to the Secretary of State August 3, 1998 .

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the proposed	)	
amendment of rules 23.5.101 and	)	
23.5.102 to incorporate	)	
amendments to federal	)	
regulations pertaining to motor	)	NOTICE OF PUBLIC
carrier and commercial motor	)	HEARING
vehicle safety standards	)	
previously incorporated by	)	
reference in current rules and	)	
to make general revisions to	)	
clarify scope of rules.	)	

TO: All Interested Persons.

1. On September 3, 1998 at 10:00 a.m., a public hearing will be held in the conference room for the Attorney General's Office in the Justice Building, 215 North Sanders, Helena, Montana, to consider the amendment of rules 23.5.101 and 23.5.102.

2. The rules proposed to be amended provide as follows (text of rule with stricken matter interlined, new matter underlined):

23.5.101 TRANSPORTATION OF HAZARDOUS MATERIALS -  
DEFINITIONS (1) ~~All A commercial motor vehicles, as defined in~~  
~~61-1-134, MCA, that are vehicle or motor carrier~~ subject to  
regulation by the department under 44-1-1005, MCA, shall comply  
with and the department does hereby adopt, by reference, the  
following federal regulations of the department of  
transportation which concern the transportation of hazardous  
materials. The regulations adopted by reference are 49 CFR part  
107, 49 CFR part 171, 49 CFR part 172, 49 CFR part 173, subject  
to the exception provided in (2) below, 49 CFR part 177, 49 CFR  
part 178, and 49 CFR part 180. The regulations adopted may be  
found in the Code of Federal Regulations, Title 49, chapter 1,  
subchapters B and C ~~(1992)~~, as updated through the effective  
date of this rule July 24, 1998; they may be obtained from the  
Superintendent of Documents, U.S. Government Printing Office,  
Washington, D.C. 20402.

(2) Notwithstanding requirements for specification  
packagings in subpart F of part 173 and parts 178 and 180 of  
subchapter C of Title 49, CFR, non-specification packagings used  
in intrastate transportation of hazardous material may continue  
to be used for such purpose through June 30, 2000, provided:

(a) the material is offered for transportation and  
transported in conformance with all other applicable  
requirements of this rule;

(b) the packaging is not used to transport a flammable  
cryogenic liquid, hazardous substance, hazardous waste, or  
marine pollutant (except for gasoline); and

(c) if a flammable liquid petroleum product is being transported, the capacity of a non-specification cargo tank must be less than 3,500 pounds (13,250 liters) and the capacity of a non-specification metal tank permanently secured to a transport vehicle must be less than 119 gallons (450 liters) and the tank must be protected against leakage or damage in the event of a turnover.

(3) The following definitions apply to the federal regulations incorporated in this rule and ARM 23.5.102 with respect to the operation of a commercial motor vehicle or motor carrier in intrastate commerce:

(a) "Commercial motor vehicle" means any self-propelled or towed vehicle used on a way of this state open to the public to transport passengers or property when the vehicle:

(i) has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds (11,804 or more kilograms); or

(ii) is designed to transport more than 15 passengers, including the driver; or

(iii) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq.) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR chapter I, subchapter C); and

(iv) is not a farm vehicle.

(b) "Farm vehicle" means a commercial motor vehicle that is:

(i) controlled by a farmer and operated by the farmer or a person employed by the farmer as a private motor carrier of property;

(ii) being used to transport either:

(A) agricultural products; or

(B) farm machinery, farm supplies, or both, to or from a farm;

(iii) not being used in the operation of a for-hire motor carrier; and

(iv) not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with 49 CFR 177.823.

(c) "Farmer" means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which are:

(i) owned by that person; or

(ii) under the direct control of that person.

(d) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(e) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single

motor vehicle. In the absence of a stated manufacturer's rated capacity for a particular vehicle, GVWR will be deemed to equal the maximum weight limit for which the vehicle is licensed under Title 61, chapter 10, MCA, or the actual physical weight of the vehicle.

(f) "Intrastate commerce" means any trade, traffic, or transportation within the state of Montana which is not described in the term "interstate commerce," as defined in 49 CFR 390.5.

(g) "Motor carrier" means a person transporting goods or passengers by operation of a commercial motor vehicle upon a way of the state open to the public. The term includes duly authorized agents, officers, and representatives, as well as employees of the motor carrier who are responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection and maintenance of motor vehicle equipment or accessories.

(h) "Way of this state open to the public" means any highway, road, alley, lane, parking area or other public or private place adapted and fitted for public travel that is in common use by the public, including, but not limited to, any roadway available to, and passable by, except during scheduled periods, extreme weather or emergency conditions, four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of vehicle registration.

AUTH: 44-1-1005(1), MCA

IMP: 44-1-1005(1), MCA

23.5.102 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) ~~All commercial motor vehicles, as defined in 61-1-134, MCA; and motor carriers~~ Any commercial motor vehicle or motor carrier that are subject to regulation by the department under 44-1-1005, MCA, shall comply with and the department does hereby adopt, by reference, the following portions of the federal motor carrier safety regulations of the department of transportation, subject to the provisions of (2) below. The regulations adopted are ~~49 CFR part 382, 49 CFR part 385, 49 CFR part 387, 49 CFR parts 390 through 399 (excluding subpart H of part 391) and Appendices B and Appendix G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, as updated through the effective date of this rule July 24, 1998.~~ Copies of the regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) The federal regulations incorporated herein by reference are subject to the following modifications:

(a) For purposes of intrastate motor carriers, subsection (a) of the definition of "commercial motor vehicle" in 49 CFR 390.5 shall be restricted to those vehicles with a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more.

~~(b) For purposes of part 385 and parts 390 through 399, the definition of "commercial motor vehicles" in section 390.5; shall include vehicles used in either interstate commerce or intrastate commerce.~~

~~(c)(a)~~ For purposes of part 385 as applied to intrastate carriers, the "compliance review" will be referred to as a "safety fitness review." A safety fitness review may only be conducted by a specially trained civilian inspector authorized by the department to perform such reviews.

~~(d)(b)~~ With respect to 49 CFR 385.21, a "Motor Vehicle Inspection Application" prescribed by the department shall be used by all intrastate carriers instead of a "Motor Carrier Identification Report, Form MCS-150"; this report may be obtained from the Montana Highway Patrol/Motor Vehicle Inspection Bureau, 2550 Prospect, P.O. Box 201419, Helena, MT 59620-1419.

~~(e)(c)~~ Part 391 is subject to the age and physical qualification provisions of ARM 23.3.505 and 23.3.506, for those individuals operating under a type 2 commercial vehicle operator's endorsement driver's license and not engaged in "interstate commerce", as defined in 49 CFR, part 391.

~~(f) 49 CFR 392.10 and 49 CFR 393.42 apply only to vehicles that are engaged in interstate commerce as defined in 49 CFR 390.5.~~

~~(g) Any reference to the federal highway administration, administrator or PHWA staff or special agents shall be considered to be a reference to the department as applied to commercial motor vehicles and motor carriers operating intrastate, and where appropriate to the context, to commercial motor vehicles and motor carriers operating interstate.~~

(d) For purpose of 49 CFR 395.1(k), the planting and harvesting seasons during which transportation of agricultural commodities or farm supplies for agricultural purposes is conducted shall be deemed to run from January 1 through December 31 of each year.

(e) For purpose of 49 CFR 395.8, a person exempted from 49 CFR 395.3 pursuant to the exclusion set forth in 49 CFR 395.1(k) must keep a daily record of the number of hours worked. No record of duty status must be maintained. The format of the daily record may be determined by the record keeper, so long as the format includes a provision for entry of hours worked by calendar day. The daily record must be retained for a period of 6 months from initial entry date. Payroll records or time sheets may be used for this purpose, if they are updated on a daily basis.

AUTH: 44-1-1005(1), MCA

IMP: 44-1-1005(1), MCA

### 3. RATIONALE:

#### (a) Overview of federal rules incorporation.

The Department proposes the amendment of these rules in order to bring the rules concerning the appropriate hazardous material and safety regulations into compliance with the most

recent version of applicable federal regulations. Such revisions will ensure minimum duplication and maximum coordination of enforcement effort with the federal authorities and compliance with program requirements for continued federal funding under 49 CFR Part 350, Appendix C. Periodic updating of state rules to conform with applicable federal regulations is required to ensure continued federal funding.

This proposal also incorporates, for the first time, 49 CFR part 382, governing controlled substances and alcohol use and testing. Part 382 applies to "every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State." 49 CFR § 382.103. As such, part 382 extends to intrastate operations, as well as interstate operations. By incorporating part 382, any question as to the department's ability to enforce its provisions against individual operators or motor carriers should be eliminated.

Rules 23.5.101 and 23.5.102, as currently written, were last amended in 1995, the notice of public hearing having been published November 9, 1995 in the Montana Administrative Register, and the notice of amendment on December 21, 1995. Since that time, questions have been posed as to whether the December 21 adoption included amendments, if any, to the incorporated federal regulations which were published after November 9, 1995, but before December 21, 1995.

To avoid similar confusion here, the department proposes to adopt the specified federal regulations, as amended by final rule adoptions published in the Federal Register on or before a date certain, specifically, July 24, 1998. By such proposal, the incorporation may include final rule adoptions with effective dates and/or compliance dates beyond July 24, 1998. For example, 49 CFR Part 393 was amended by final rule adoption published February 18, 1998 (63 FR 8330), however, the effective date of the amendment was delayed until November 16, 1998. Similarly, 49 CFR § 173.8 was amended on January 8, 1997, and September 22, 1997, via 62 FR 1208 and 62 FR 49560, and both amendments were given an effective date of October 1, 1997. That same section was again amended on February 18, 1998 [63 FR 8140], but this time the mandatory compliance date for use of non-specification packagings in intrastate commerce was delayed until October 1, 1998. The department's intent is to incorporate each of these amendments with the respective effective dates.

This proposal specifically incorporates any revision to the federal regulations by the United States department of transportation, federal highway administration and research and special programs administration, listed below:

<u>Federal Register</u> <u>Cite (Date Published)</u>	<u>Effective</u> <u>Date</u>	<u>Amended</u> <u>49 CFR Parts</u>
63 FR 37454 (07/10/98)	10/01/98	171, 172, 173, 177, 178, 180
63 FR 33254 (06/18/98)	07/20/98	387, 390, 391, 392, 395, 396, 397

63 FR 24454	(05/04/98)	06/03/98	393
63 FR 16070	(04/01/98)	10/01/98	172
63 FR 8330	(02/18/98)	11/16/98	393
63 FR 8140	(02/18/98)	02/18/98	173
63 FR 1383	(01/09/98)	02/09/98	393
62 FR 60035	(11/06/97)	11/28/97	385
62 FR 51554	(10/01/97)	10/01/97	107, 171, 172, 173, 177
62 FR 49939	(09/24/97)	09/24/97	387 & 390
62 FR 49560	(09/22/97)	10/01/97	171, 173
62 FR 44038	(08/18/97)	08/18/97	171
62 FR 39398	(07/22/97)	10/01/97	171, 172
62 FR 37150	(07/11/97)	08/11/97	382, 391, 392
62 FR 34667	(06/27/97)	08/07/97	171, 172
62 FR 34415	(06/26/97)	06/26/97	107
62 FR 30767	(06/05/97)	07/07/97	171, 172
62 FR 29673	(06/02/97)	10/01/97	171
62 FR 28807	(05/28/97)	05/28/97	385
(Interim final rule) to 11/28/97			
62 FR 24690	(05/06/97)	10/01/97	171, 172, 173, 178
62 FR 24055	(05/02/97)	05/02/97	107
62 FR 16707	(04/08/97)	04/08/97	387, 390, 395
62 FR 14334	(03/26/97)	03/26/97	172, 173, 178
62 FR 7638	(02/19/97)	02/19/97	171
(Interim final rule) to 08/15/97			
62 FR 2970	(01/21/97)	01/21/97	107, 171
62 FR 1293	(01/09/97)	01/09/97	382, 383, 390
62 FR 1208	(01/08/97)	10/01/97	171, 173, 180
62 FR 1217	(01/08/97)	10/01/97	171, 172, 173, 177
61 FR 65958	(12/16/96)	06/01/97	171
61 FR 5123	(10/01/96)	10/01/96	172, 173
61 FR 51334	(10/01/96)	10/01/96	107, 171, 172, 173, 177, 178, 180
61 FR 50616	(09/26/96)	01/01/97	171, 172, 173, 178
61 FR 50252	(09/25/96)	10/01/96	172, 173
61 FR 33250	(06/26/96)	07/01/96	171, 173, 180
61 FR 28666	(06/05/96)	10/01/96	171, 172, 173, 178
61 FR 27166	(05/30/96)	10/01/96	171, 172, 173, 177, 178, 180
61 FR 26750	(05/28/96)	10/01/96	171, 173
61 FR 25940	(05/23/96)	10/01/96	171, 173, 178
61 FR 21084	(05/09/96)	10/01/96	107, 171, 173, 178
61 FR 20747	(05/08/96)	06/03/96	172, 173
61 FR 20496	(05/07/96)		397
61 FR 18926	(04/29/96)	10/01/96	107, 171, 172, 173, 177, 178
61 FR 14677	(04/03/96)	04/03/96	383, 395
		05/26/96	383.3(d)(3) & 395.1(n), (o)
61 FR 13338	(03/26/96)	03/31/96	391
61 FR 9546	(03/08/96)	03/08/96	382, 383, 390, 391, 392
61 FR 7958	(02/29/96)	10/01/96	171
61 FR 7178	(02/26/96)	05/15/96	107



61 FR 1842 (01/24/96) 01/24/96

382, 385, 391,  
393, 397

(b) Deletion of reference to Mont. Code Ann. § 61-1-134, defining commercial motor vehicle.

The current versions of 23.5.101 and 23.5.102 both refer to Mont. Code Ann. § 61-1-134's definition of commercial motor vehicle, as a means of characterizing the types of vehicles that are subject to regulation under Mont. Code Ann. § 44-1-1005. By this reference, the department unwittingly excluded combination vehicles with a gross combination weight rating of 26,001 or more inclusive of a towed unit with a gross vehicle weight rating of 10,000 pounds or less. Such an exclusion does not conform to federal requirements, and as a matter of policy, no distinction should be drawn between combination vehicles with a GCWR of 26,001 more, based on the weight of the towed unit. Consequently, the department proposes to remove the reference to Mont. Code Ann. § 61-1-134 in both rules.

(c) Inclusion of specific definitions with respect to application of rules to a commercial motor vehicle or motor carrier operating in intrastate commerce.

The department's proposal to affirmatively set forth the definition of several critical terms in the rules, as opposed to merely relying on definitions incorporated by reference from the federal regulations, is based on several factors.

First, there is a need to recognize that, in many instances, the federal regulations only pertain to commercial motor vehicles and motor carriers operating in interstate commerce. These rules are intended to reach intrastate commerce operation of commercial motor vehicles and motor carriers.

Additionally, these rules must conform to Montana statutes, to the extent that there is a difference between state law and federal regulations, and address those circumstances unique to intrastate operations in Montana. For example, Montana law does not require or permit the department to regulate commercial motor vehicles with a GVWR of 26,000 or less, unless the vehicles are used to transport placardable quantities of hazardous materials or more than 15 passengers, including the driver. Mont. Code Ann. § 44-1-1005(1)(c). Montana law also exempts farm vehicles with a gross vehicle weight in excess of 26,001 pounds from safety regulations. Mont. Code Ann. § 44-1-1005(1)(b). The proposed definitions adhere to those restrictions.

The proposed definitions also are adapted to meet current practices in terms of providing alternative means of classifying a commercial motor vehicle in the absence of a manufacturer's rated capacity. See, e.g., proposed definitions for "gross combination weight rating" and "gross vehicle weight rating." Further, the proposed definitions employ legal terms or phrases, such as "way of this state open to the public," with which local law enforcement and the public have familiarity in other contexts and thus, may be more descriptive and accessible than the term "highway" as recently defined in 49 CFR 390.5.

With the incorporation of state-specific definitions, modifications to the federal regulations, as currently set forth in rule 23.5.102(2)(a), (b) and (g), are no longer necessary.

(d) Recognition of temporary exception for non-specification packagings used in intrastate commerce.

On January 8, 1997, the research and special programs administration of the federal department of transportation published a final rule which amended the hazardous material regulations to expand the scope of the regulations to all intrastate transportation of hazardous materials. The final rule permitted states to allow continued operation of non-specification packagings used in intrastate transportation through September 30, 2000, so long as the practice was recognized by state law and otherwise met the requirements for the federal exception as set forth in 49 CFR § 173.8. The proposed subparagraph (2) of 23.5.101 is intended to take advantage of this exception.

(e) Establishment of a planting and harvesting season with respect to transportation of agricultural commodities or farm supplies.

Federal regulations governing hours of service of drivers (49 CFR part 395) except from coverage certain drivers transporting agricultural commodities or farm supplies for agricultural purposes if the transportation is conducted during the planting and harvesting seasons within a state. 49 CFR 395.1(k). The determination of what constitutes a state's "planting and harvesting seasons" is left to the state. The department proposes a 365-day per year planting and harvest season, starting January 1 and ending December 31 of each year, largely due to the nature of local sugar beet operations.

(f) Inclusion of daily record requirement for persons exempted from 49 CFR 395.3.

49 CFR 395.3 establishes the maximum driving time for commercial motor vehicle drivers. Drivers transporting agricultural commodities or farm supplies are exempted from the maximum driving time restriction, as long as the requirements of 49 CFR 395.1(k) are met. The department is proposing a daily record requirement for these exempted drivers, in lieu of the more stringent record of duty status imposed under 49 CFR 395.8. Maintenance of a daily record will allow the department to generally oversee exempted operations with respect to safety of operations.

4. Interested persons may present their data, views or arguments concerning the proposed amendments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Curt Rissman, Montana Highway Patrol, 2550 Prospect Avenue, Helena, MT 59620-1419 or faxed to (406) 444-4169, no later than September 10, 1998.

5. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you desire an accommodation, please contact the department no later than

August 31, 1998, to advise it of the nature of the accommodation that you need. Please contact Brenda Nordlund at the Attorney General's Office, P.O. Box 201401, Helena, MT, telephone (406)444-2713 or fax (406)444-3549.

6. Brenda Nordlund, Assistant Attorney General in the Legal Services Division, Justice Building, 215 North Sanders, Helena, Montana 59620 has been designated to preside over and conduct the hearing.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions it proposes. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the subject area or areas of interest of the person requesting notice, including but not limited to rules proposed by the Motor Vehicle Division, the Forensic Science Division, the Highway Patrol Division, the Fire Prevention and Investigation Bureau, the Division of Criminal Investigation, the Board of Crime Control or the Law Enforcement Academy, or proposed rules pertaining to certificates of public advantage for health care.

Such written request may be mailed or delivered to the Montana Attorney General's Office, Attn: Interested Party Notice, Justice Building, 215 North Sanders, P.O. Box 2001401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, or may be made by completing a request form at any rules hearing held by the department.

By: 

JOSEPH P. MAZUREK  
Attorney General

By: 

MELANIE A. SYMONS  
(Rule Reviewer)

Certified to the Secretary of State August 3<sup>rd</sup>, 1998.

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendments of ARM 24.11.442, ) ON PROPOSED AMENDMENTS TO  
and 24.11.443, related to ) ARM 24.11.442 AND 24.11.443  
unemployment insurance benefit) claims )

TO ALL INTERESTED PERSONS:

1. On September 10, 1998, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 Roberts, Helena, Montana, to consider proposed amendments to ARM 24.11.442 and 24.11.443, related to unemployment insurance benefit claims.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., September 4, 1998, to advise us of the nature of the accommodation that you need. Please contact Jon Moe, Unemployment Insurance Division, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3783; TTY (406) 444-0532; fax (406) 444-2699. An alternative accessible format of this Notice of Public Hearing for any person needing it to participate in this rule-making action is available upon request.

3. The Department of Labor and Industry proposes to amend the rules as follows: (new matter underlined, deleted matter interlined)

24.11.442 INITIAL MONETARY DETERMINATION--WAGES--REVISIONS

(1) After filing a claim, a claimant will receive an initial monetary determination stating whether the claimant has sufficient wages to qualify for benefits.

(2) The initial monetary determination informs the claimant of:

(a) the department's records of claimant's base period employer or employers;

(b) the amount of wages reported in the base period;

(c) the potential amount of benefits the claimant may receive in the benefit year; and

(d) the effective date of the claim.

(3) If a claimant's wage records have not been received, and the department has determined that the employer is subject to unemployment tax, the claimant may support the claim by affidavit or documented evidence for the department's consideration in establishing the amount of base period wages.

(4) Generally, only wages actually or constructively paid determine the amount of wages in the claimant's base period. Wages are constructively paid if they are credited to the

employee's account or set apart for an employee so that they may be drawn upon by the employee at any time, although not actually in the employee's possession. However, unpaid wages may be considered if a claimant:

- (a) completes an affidavit stating:
  - (i) the name and address of any employer from whom wages are due;
  - (ii) the amount of unpaid wages; and
  - (iii) the reasons why the wages have not been paid; and
- (b) provides at least one of the following:
  - (i) a W-2 or 1099 form as required by the internal revenue service;
  - (ii) a signed statement from the employer affirming the truth of the claimant's affidavit;
  - (iii) a certified copy of the employer's schedule of assets and liabilities filed in a bankruptcy proceeding showing the unpaid wage claim;
  - (iv) a certified copy of the claimant's wage claim filed with the department, if the department has not dismissed the wage claim; or
  - (v) a certified copy of a decision of the department or a court of competent jurisdiction stating that the wages are owed the claimant.

(5) The following payments are wages assignable which must be reported by employers on their quarterly reports in accordance with ARM 24.11.702, but these wages can be recorded in the wage record of the claimant after the filing of a claim, if necessary, in the following manner:

(a) Payments based upon length of employment or paid upon termination of the employment will be treated as follows: The attributable portion of the payment will be prorated from the date of hire or from the beginning of the base period, whichever occurs later, through the date of separation. No portion of the payment will be assigned past the date of separation. However, if the accumulated pay is \$1,000 or less, the pay will be attributed to the quarter in which the separation occurred. Such payments include:

- (i) accumulated vacation or sick pay made upon termination of employment;
- (ii) bonus payments;
- (iii) wages in lieu of notice, for termination, dismissal pay, severance and separation; or other similar payments.

(b) Payments made for vacation taken by the claimant are attributable to the period covered by the payment.

(c) Payments made for back pay are attributable to the period of time under dispute and are assigned to the period specified by the back pay award.

(d) Payments made for a holiday are attributable to the week in which the holiday occurs.

(e) Weeks of sick leave taken by the claimant are attributable to the period of employment when the sick leave is taken.

(a) Payments made for termination of employment generally known or described as severance pay, separation pay, termination

pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of work, or other similar payment, and payments made under an incentive, employee buy-out, or similar plan designed to produce a general or specific reduction in force by inducing employees to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time, are attributable to the quarter in which the separation from work occurred.

(b) Accrued vacation and sick leave paid at or after separation, other than a temporary layoff, are attributable to the quarter in which the separation from work occurred.

(c) Bonus, awards, incentives, rewards, profit sharing, and stocks are attributable to the quarter the payment was issued.

(d) Holiday pay is attributable to the quarter in which the holiday occurred.

(e) Payments received for accrued unused vacation, sick leave, compensatory time or other similar leave when separation has not occurred or during periods of temporary layoff are attributable to the quarter in which the payment was issued.

(f) Backpay and settlements, in all cases, will be prorated back over the time the payment represents. Only the portion of the payment that is wages which would have been earned, or wages earned and not paid, will be applied to weeks claimed and quarterly wages.

(g) Strike pay is attributable to the quarter in which it was paid by the employer (union), however, upon request by the claimant the wages will be adjusted to when earned (picket duty performed).

(h) Use of vacation or sick leave, compensatory time or other similar leave paid during the course of employment, including periods of temporary layoff, for time off from work for vacation, whether voluntary or mandated, sick leave, or other leave with pay is attributable to the quarter in which the time off from work occurred.

(i) Royalties, residual payments, and commissions are attributable to the quarter in which the payment was issued.

(6) Except as provided in this rule, the initial monetary determination is final unless a claimant requests revision of the determination within 10 days after the determination was mailed. Upon request of the department, the claimant may be required to provide proof of earnings, such as check stubs, W-2 forms, or statements from employers.

~~(7) The amount of wages may be revised after the initial monetary determination becomes final if newly obtained wage information changes the claimant's maximum benefit amount by at least \$50.00-~~

~~(8) (7). A monetary redetermination is final unless a claimant appeals the decision as provided in sections 39-51-2402 and 39-51-2403, MCA, within 10 days of the date the redetermination was mailed.~~

AUTH: 39-51-301- and 39-51-302, MCA

IMP: 39-51-2105, and 39-51-2201 through 39-51-2204, MCA

24.11.443 CONTINUED CLAIMS (1) After making an initial application for benefits in a benefit year, and in order to receive benefits, a claimant must file bi-weekly a continued claim. A continued claim is also known as a pay card, a UI-203, or weekly certification. A claimant is required to file the continued claim via the interactive voice response (IVR) telephone system which is available for this purpose, unless it is determined that the claimant cannot use the IVR system. In those instances, the claimant will be allowed to file bi-weekly via a mail-in process.

(2) Each continued claim covers two weeks. The week ending dates are stated in a message on the IVR system or are shown on the mail-in claim.

(3) \* In the use of the IVR system for filing the continued claim, a claimant must answer each question in order to certify eligibility for each week. A personal identification number which must be entered by the claimant, and is to be known only by the claimant, is considered to be the equivalent of the claimant's signature. For the mail-in continued claim, a claimant must answer each question on the claim and sign it, or it will be returned to the claimant for completion.

(4) A claimant must report all earnings, except for commissions, in the week they were earned and not the week they were paid, except as otherwise provided in this rule. Commissions may be reported when paid. For purposes of this rule, earnings are wages as defined in 39-51-201, MCA, and as further clarified by example in this rule.

(a) Payments made for termination of employment generally known or described as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of work, or other similar payment, and payments made under an incentive, employee buy-out, or similar plan designed to produce a general or specific reduction in force by inducing employees to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time, must be reported for the week in which the separation from work occurred.

(b) Accrued vacation and sick leave paid at or after separation, other than a temporary layoff, must be reported for the week in which the separation from work occurred.

(c) Bonus, awards, incentives, rewards, profit sharing, and stocks must be reported for the week in which the payment was received.

(d) Holiday pay and the hours paid must be reported for the week in which the holiday occurred.

(e) Payments received for accrued unused vacation, sick leave, compensatory time or other similar leave when separation has not occurred or during periods of temporary layoff must be reported by the claimant on the continued claim for the week in which the payment was received.

(f) Strike pay must be reported on the continued claim for the week in which picket duty was performed.

(g) Payments for vacation or sick leave, compensatory time

or other similar leave paid during the course of employment, including periods of temporary layoff, for time off from work for vacation, whether voluntary or mandated, sick leave, or other leave with pay must be reported for the week during which the time off from work occurred.

(h) Royalties, residual payments, and commissions must be reported as earnings for the week in which the payment was received. The hours must be reported for the week in which the work was performed.

(5) A claimant must file a continued claim with the department within 7 days of the last week ending date on the claim. The department may extend the time limit for receipt of continued claims if the claimant shows good cause for the delay. Otherwise, the department may require a claimant to reactivate the claim.

(6) If a claimant files a redetermination request or an appeal, the claimant must also file continued claims for each week the redetermination or appeal is pending.

~~(7) A continued claim may be filed by mail.~~

AUTH: 39-51-3017 and 39-51-302, MCA

IMP: 39-51-2101 through ~~39-51-2300~~ 39-51-2108, MCA

**Reason:** There is reasonable necessity to amend ARM 24.11.442 and ARM 24.11.443 to clarify when certain forms of payments must be reported by both employers and employees, with respect to the employer's quarterly reports and the employee's claims for benefits. The amendments are reasonably necessary to make sure that both employer and employee report such wages in a consistent manner. The Department has recently determined that despite the existing language, some employers and some claimants have misunderstood the reporting requirements. In addition, the Department has met with members of the Legislature, representatives of employer interests and representatives of employee interests concerning the issue of allocation of severance or termination pay. Following those meetings, the Department has concluded that allocation of severance or termination pay to the quarter in which the separation occurred is appropriate. Such allocation is appropriate because it does not unduly favor either employer or employee, because it reduces the administrative cost of the unemployment insurance program for both the employer and the Department, and because it is consistent with the treatment of other types of similar payments. In addition, various types of payments have been added as examples, in order to advise employers and employees as to proper reporting of those payments.

There is also reasonable necessity to amend ARM 24.11.443 in order to clarify that the responses provided via the new Interactive Voice Response (IVR) telephone system have the same effect as a signed, mailed claim form. The IVR system has been recently fully implemented by the Department, and is now used for all but a few claims.



4. Interested parties 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:

Jon Moe, Bureau Chief  
Benefits Bureau  
Unemployment Insurance Division  
Department of Labor and Industry  
P.O. Box 1728  
Helena, Montana 59624-1728

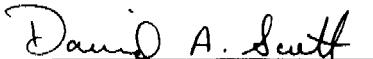
so that they are received by not later than 5:00 p.m., September 17, 1998.

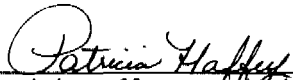
5. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

6. The Department is not required to comply with the provisions of 2-4-302, MCA, regarding notification of the bill sponsor about the proposed action regarding these rules.

7. The Department proposes to make the amendments effective on November 1, 1998. The Department reserves the right to adopt only a portion of the proposed changes, or to adopt some or all of the proposed changes at a later time.

8. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

  
David A. Scott  
Rule Reviewer

  
Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 3, 1998.

BEFORE THE BOARD OF COSMETOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of a rule pertaining to fees ) 8.14.814 FEES - INITIAL  
 ) RENEWAL, PENALTY AND REFUND

TO: All Interested Persons:

1. On May 14, 1998, the Board of Cosmetologists published a notice of proposed amendment of the above-stated rule at page 1226, 1998 Montana Administrative Register, issue number 9.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF COSMETOLOGISTS  
VERNA DUPUIS, CHAIRMAN

BY: Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 3, 1998.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

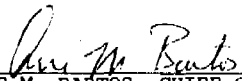
In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of rule pertaining to applica- ) 8.32.306 APPLICATION FOR  
tion for recognition ) RECOGNITION

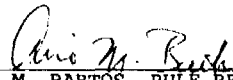
TO: All Interested Persons:

1. On May 28, 1998, the Board of Nursing published a notice of public hearing on the proposed amendment of the above-stated rule at page 1308, 1998 Montana Administrative Register, issue number 10. The hearing was held on June 25, 1998, in Helena, Montana.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF NURSING  
RITA HARDING, RN, MN, PRESIDENT

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 3, 1998.

BEFORE THE BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of rules pertaining to examin- ) 8.62.404 EXAMINATIONS -  
ations - schedule of supervision) 8.62.502 SCHEDULE OF  
and continuing education ) SUPERVISION - CONTENTS AND  
 ) 8.62.703 CONTINUING EDUCA-  
 ) TION REQUIRED - WHEN

TO: All Interested Persons:


1. On June 11, 1998, the Board of Speech-Language Pathologists and Audiologists published a notice of proposed amendment of the above-stated rules at page 1465, 1998 Montana Administrative Register, issue number 11.

2. The Board has amended the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
LYNN HARRIS, CHAIRMAN

BY:

  
PETER BLOUKE, DIRECTOR  
DEPARTMENT OF COMMERCE

  
R. PERRY ESKRIDGE, RULE REVIEWER

Certified to the Secretary of State, August 3, 1998.

BEFORE THE ECONOMIC DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

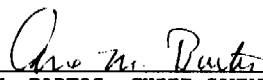
In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of rules pertaining to the ) RULES 8.99.506 AND  
Microbusiness Finance Program ) 8.99.511

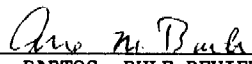
TO: All Interested Persons:

1. On June 11, 1998, the Economic Development Division published a notice of proposed amendment of the above-stated rules at page 1468, 1998 Montana Administrative Register, issue number 11.
2. The Division has amended the rules exactly as proposed.
3. No comments or testimony were received.

ECONOMIC DEVELOPMENT DIVISION

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 3, 1998.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION OF A  
of Rule I, 24.5.337 ) NEW RULE OF THE  
 ) WORKERS' COMPENSATION COURT

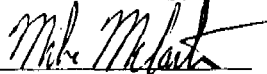
TO: All Interested Persons

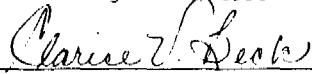
1. On June 25, 1998, the Workers' Compensation Court published a Notice of Proposed Adoption of New Rule I (24.5.337 Motion For Reconsideration) at page 1579, 1998 Montana Administrative Register, Issue No. 12.

2. No public hearing was held but interested parties were asked to submit their data, views or arguments to the court in writing by July 25, 1998. The court did not receive any comments on the proposed new rule.

3. The Office of the Workers' Compensation Judge has adopted the rule as proposed.

4. This rule becomes effective August 14, 1998.

  
MIKE McCARTER, JUDGE

  
Clarice V. Beck, Hearing Examiner

August 3, 1998  
CERTIFIED TO THE SECRETARY OF STATE

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of 46.12.303, )  
46.12.502A, 46.12.505, )  
46.12.508, 46.12.540, )  
46.12.541, 46.12.542, )  
46.12.703, 46.12.802, )  
46.12.806, 46.12.1005, )  
46.12.1015 and 46.12.1025 )  
pertaining to medicaid )  
coverage and reimbursement of )  
various medical items and )  
services )

TO: All Interested Persons

1. On June 11, 1998, the Department of Public Health and Human Services published notice of the proposed amendment of 46.12.303, 46.12.502A, 46.12.505, 46.12.508, 46.12.540, 46.12.541, 46.12.542, 46.12.703, 46.12.802, 46.12.806, 46.12.1005, 46.12.1015 and 46.12.1025 pertaining to medicaid coverage and reimbursement of various medical items and services at page 1470 of the 1998 Montana Administrative Register, issue number 11.

2. The Department has amended rules 46.12.303, 46.12.505, 46.12.508, 46.12.540, 46.12.703, 46.12.802, 46.12.806, 46.12.1005, 46.12.1015 and 46.12.1025 as proposed.

3. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.502A RESOURCE BASED RELATIVE VALUE SCALE (RBRVS)  
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) through (7)(b)  
(iii) remain as proposed.

(c) if neither medicare nor medicaid sets RVUs, then reimbursement will be by report. For services provided on or after ~~July 1, 1998~~ August 1, 1998, the "by-report" rate is 55% of the provider's usual and customary charges.

(8) through (11) remain as proposed.

AUTH: Sec. ~~53-2-201~~ and ~~53-6-113~~, MCA

IMP: Sec. 53-2-201, ~~53-6-101~~, 53-6-111 and ~~53-6-113~~, MCA

46.12.541 HEARING AID SERVICES, REQUIREMENTS AND LIMITATIONS (1) through (3)(c) remain as proposed.

(i) for persons over 21 years of age, the audiological examination results show that there is an average pure tone loss of at least 40 decibels ~~over the frequency at 500~~, for each of

the frequencies of 1,000, 2,000 and 3,000 hertz in the best better ear and word recognition or speech discrimination scores obtained at a level to ensure pb max. The following criteria shall apply to adults aged 21 years or older for binaural hearing aids:

(3) (c) (i) (A) through (ii) remain as proposed.

(d) the original hearing aid no longer meets the needs of the individual, and a new hearing aid is determined to be medically necessary by a licensed audiologist.

(4) through (7) remain as proposed.

(a) the original hearing aid has been irreparably broken after the 1 year warranty period or has been lost;

(7) (b) and (c) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-6-101 and 53-6-141, MCA

46.12.542 HEARING AID SERVICES, REIMBURSEMENT (1) (a) through (b) remain as proposed.

(2) The provider may bill medicaid for a dispensing fee, as specified in the fee schedule adopted in (1) (b), in addition to the invoice price for the purchase of a hearing aid or aids. The dispensing fee covers and includes the initial ordering, the fitting, the orientation, the counseling, two return visits for the services listed, and the insurance for loss or damages covered under a 1 year warranty.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

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

COMMENT #1: One commentor proposed the following amendments to the hearing aid rules. The commentor noted that similar provisions were included in the original draft, but omitted in the final version:

ARM 46.12.541(3) (c) (i) ...of at least 40 decibels over the frequency at for each of the frequencies of...hertz in the best ear Hertz in the better ear.

ARM 46.12.541(3) (c) (ii) Word recognition or speech discriminations scores, obtained at levels which insure that pb max has been reached.

ARM 46.12.542(2) ...covers and includes the initial audiometric evaluation, ordering, ~~the~~ fitting, ~~the~~ orientation, ~~the~~ counseling...

RESPONSE: The Department concurs and will adopt the suggested



changes, except the language "initial audiometric evaluation" proposed for ARM 46.12.542(2). Hearing aid services are provided by licensed hearing aid dispensers, and initial audiometric evaluations are provided by licensed audiologists. The initial audiometric evaluation need not be included in the hearing aid service coverage specified in ARM 46.12.541 since it would constitute audiometric services reimbursable under ARM 46.12.538.

COMMENT #2: One commentor expressed concern that the effect of proposed ARM 46.12.541(7) is to limit the number of hearing aids that will be reimbursed within a five year period to one per Medicaid recipient. The commentor argued that if the needs of the recipient change, and a different or "replacement" hearing aid is medically necessary, Montana Medicaid should offer the flexibility to provide that hearing aid to the recipient.

The commentor also expressed concern that if a recipient received a Medicaid reimbursed hearing aid which was accidentally broken or misplaced within a five year period, the recipient would be forced to wait for replacement of this piece of assistive technology. The commentor argued that a person who genuinely required a device would not intentionally abuse his or her right to receive a replacement.

RESPONSE: A hearing aid reimbursed by Montana Medicaid is required under proposed ARM 46.12.541(7) to have a one year loss or damage warranty. If, within the 5 years following the initial purchase and after the first year warranty, the hearing aid is lost or damaged beyond repair and the Medicaid recipient meets the criteria proposed in the rule, Montana Medicaid will reimburse the cost of a replacement hearing aid. The second hearing aid must also have a one year loss or damage warranty. The Department finds the limitation in proposed ARM 46.12.541 is reasonable given the requirement of a one year loss or damage warranty for each hearing aid reimbursed by Montana Medicaid and the existence of Medicaid coverage for the repair of broken hearing aids under ARM 46.12.541(7).

Further, the Department consults with a licensed audiologist to review requests for Medicaid reimbursement for hearing aids. The consultant not only reviews the information as to whether the criteria within the rule is met but also reviews the medical information to assure the instrument being requested is appropriate for the degree of hearing loss for the individual. This procedure is designed to assure that the hearing aid is medically necessary and will accommodate any foreseeable changes within a five year period.

The department agrees with the commentor that a new hearing aid should be available in the event an individual's hearing loss becomes more severe, and a new hearing aid is determined to be

medically necessary by a licensed audiologist. Consequently, the Department added new subsection (3)(d) to the rule.


COMMENT #3: One commentor expressed approval that the proposed rule provides for Medicaid coverage of orthopedic shoes.

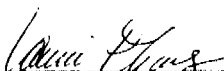
RESPONSE: The Department acknowledges the positive comment, and will adopt the amendment to ARM 46.12.802 as proposed.

COMMENT #4: One commentor suggested that the Department's proposed fee schedule for per diem items is extremely low. The commentor argued that only \$9.79 of the per diem amount would be available to pay lodging expenses. The commentor pointed out this would be only a fraction of the cost of lodging in Montana's major population areas, where hospitals are located.

RESPONSE: While the Department acknowledges the commentor's concerns, it was not the intent of the proposed amendments of 46.12.1005(3) to address or adjust the per-diem rates.

6. These rule changes will be applied effective retroactively to August 1, 1998. Due to lack of staff, the Department was unable to file this notice sooner. Delayed publication of the rules does not have a negative impact on the public.

  
Rule Reviewer

  
Director, Public Health and  
Human Services

Certified to the Secretary of State August 3, 1998.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has 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. In addition, the Committee 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 or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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) 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      | 1. Consult ARM topical index.                 |
| Subject    | Update the rule by checking the accumulative  |
| Matter     | 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 which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1998. This table includes those rules adopted during the period April 1, 1998 through June 30, 1998 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1998, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1996, 1997 and 1998 Montana Administrative Registers.

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

### GENERAL PROVISIONS, Title 1

- 1.2.419      Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1913, 2301

### ADMINISTRATION, Department of, Title 2

- I-VI          and other rules - Payroll Administration - Decedent's Warrants, p. 1855, 2278  
2.13.201      and other rules - 9-1-1 Emergency Telephone Systems, p. 1691, 2178  
2.21.1412      and other rules - Employment Preference for Persons with Disabilities, p. 1845, 2277, 157  
2.21.3704      and other rules - Recruitment - Selection, p. 1861, 2279  
2.21.6401      and other rules - Performance Appraisal, 1452  
(Public Employees' Retirement Board)  
I              Members of Retirement Systems who may Elect Coverage under the Guaranteed Annual Benefit Adjustment, p. 1843, 2280  
2.43.302      and other rules - Definitions used in Rules and Statutes - Actuarial Data - Mailing for Non-profit Groups, p. 376, 920

- (State Compensation Insurance Fund)  
I and other rules - Employers' Liability - Premium Rates, p. 1697, 158  
I&II Individual Loss Sensitive Dividend Distribution Plan, p. 695, 1273

AGRICULTURE, Department of, Title 4

- I Weed District Supervisor Training, p. 811, 1913  
4.5.102 and other rules - Ranking of Weed Grant Projects - Identifying New Noxious Weeds, p. 1986  
4.5.203 Category 2 Noxious Weeds, p. 809, 1912  
4.5.302 and other rules - Certification of Noxious Weed Seed Free Forage, p. 1546, 1827  
4.9.401 Wheat and Barley Assessment - Refunds, p. 807, 1696  
4.12.3801 and other rule - Grading Standards for Mustard Seed, p. 1869, 345  
4.13.1001A Grain Fee Schedule, p. 698, 1276  
4.13.1004 and other rules - Change of Implementing Statutes, p. 1867, 346

STATE AUDITOR, Title 6

- I Fidelity Bond, p. 1706, 2180  
I-XV Annuity Disclosure and Sales Illustrations, p. 382, 2012  
6.6.302 and other rules - Replacement of Life Insurance, p. 395  
6.6.2503 and other rules - Group Health Insurance in the Large and Small Group Markets - Individual Health Insurance, p. 1, 1698, 2020  
6.6.4001 Valuation of Securities other than those Specifically Referred to in Statutes, p. 47, 528  
6.6.5101 Plan of Operation for the Small Employer Health Reinsurance Program, p. 814, 1406

(Classification Review Committee)

- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 599, 1407

COMMERCE, Department of, Title 8

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