# MONTANA ADMINISTRATIVE REGISTER



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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 inserted at the back of each register.

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE

OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the proposed amendment of rules relating to the designation of noxious weeds) | NOTICE OF PROPOSED AMENDMENT OF RULE 4.5.203 RELATING TO THE DESIGNATION OF NOXIOUS WEEDS. |
| | NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons

1. On June 26, 1989 the Montana Department of Agriculture proposes to amend the rule stated in the above entitled matter.

2. The proposed amendment of 4.5.203 will read as follows: (new matter underlined, deleted matter interlined).

4.5.203 CATEGORY 2 (1) Category 2 noxious weeds, are weeds that have not been detected in the state of Montana or have recently been introduced into the state of Montana. These weeds have the potential for rapid spread and invasions of lands, thereby rendering them unfit for beneficial uses. County planning to prevent the spread or introduction of these weeds is necessary. Management criteria for detection and immediate action to eradicate or contain these weeds is necessary in all counties.

(2) The following are designated as category 2 noxious weeds:

(a) Dyers Woad (Isatis tinctoria)

(b) Yellow Starthistle (Centaurea solstitialis)

(c) Common Crupina (Crupina vulgaris)

~~(d) Tansy ragwort (Senecio jacobaea)~~

~~(e)~~(d) Rush Skeletonweed (Chondrilla juncea).

AUTH: 7-22-2101 and 80-7-802 MCA, IMP: 7-22-2101 and 80-7-802 MCA.

REASON: Tansy ragwort was included on the Category II noxious weed list based on its threat to forestry lands in Oregon and the potential for movement eastward into Washington and Idaho, toward Montana. Surveys for the last several years have shown this weed to be less of a threat to Montana than was originally anticipated.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than June 23, 1989.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than June 23, 1989.

5. If the Department receives requests for a public hearing on the proposed amendments from either 10% 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.

E.M. Snortland

E.M. Snortland
Director
Department of Agriculture

Certified to the Secretary of State May 11, 1989

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ATHLETICS

| | |
|---|---|
| In the matter of the proposed amendment of rules pertaining to prohibitions, boxing contestants, physican requirements, weights and classes, scoring, down, equipment, judges, inspectors, and appeals and adoption of a new rule pertaining to appeal of decisions of officials | NOTICE OF PROPOSED AMENDMENT AND ADOPTION OF RULES PERTAINING TO ATHLETICS |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 24, 1989, the Board of Athletics proposes to amend and adopt the above-stated rules.

2. The proposed amendments and the reasons for the amendments are as follows: (new matter underlined, deleted matter interlined)

"8.8.2803 PROHIBITIONS (1) The board will not license the following types of professional boxing or wrestling matches, contests or exhibitions:

~~(1)~~ (a) Bouts in which more than 2 boxing contestants are to appear in the ring at the same time ~~are prohibited~~.

~~(2)~~ (b) Boxing, sparring or wrestling matches between members of the opposite sex ~~is prohibited~~.

~~(3)~~ (c) ~~All~~ Any barroom type brawls, "so you think your tough" type contests, and roughneck type boxing and sparring matches or contests where contestants receive remuneration directly or indirectly, and where they have no prior organized amateur or professional training ~~are prohibited~~.

~~(4) All semiprofessional and professional boxing, wrestling contests or exhibitions where contestants receive remuneration directly or indirectly, which are held or given in connection with any circus, carnival, theatrical performance, picnic, sideshows at fairs, club smokers, lodges, stag parties, benefits or any other amusements are prohibited, except when duly licensed by the board.~~

~~(5)~~ (d) Wrestling in mud, polyurethene or synthetic substances ~~is prohibited~~."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, MCA

REASON: Prohibitions contained in the rule are being updated to conform to current conditions in the fields of boxing and wrestling.

"8.8.2901 BOXING CONTESTANTS (1) through (5) will remain the same.

(6) Any boxing contestant who has participated in the following professional bouts, and lost the bout, unless specifically ~~authorized~~ granted an exception by the board, shall be placed under temporary suspension for the health and safety of the contestant:

(6)(a) through (9) will remain the same.

(10) Whenever a licensed boxer, because of injury or illness ~~in~~ is unable to take part in a contest for which he is under contract, he or his manager shall immediately report the fact to the board, or inspector. He must submit to an examination by a physician designated by the board, which examination must be made prior to the date set for the contest. The expense of the physician's examination is to be paid by the contestant."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, 23-3-603, MCA

REASON: This amendment is being proposed to make clear that the boxer losing the contest will be placed under temporary suspension. This is for the health, safety and welfare of the losing contestant.

"8.8.2904 PHYSICIAN REQUIREMENTS ~~(1)--Physicians shall be licensed by the Montana state board of medical examiners and approved by the board.~~

~~(2)~~ (1) ~~The~~ An examining physicians shall be present at ringside and be available to assist the referee until the conclusion of the final bout, ~~and~~ He will be compensated for his services by the promoter.

~~(3)--Any physician who knowingly makes a false return of physical examinations, shall have his approval revoked and complaint filed concerning his conduct to the Montana state board of medical examiners.~~"

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: This amendment is being proposed as the board does not have authority to set standards for physicians.

"8.8.3001 WEIGHTS AND CLASSES (1) The following limitations or weights are placed on all boxing bouts:

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| (a) | between junior flyweights | (~~109~~ 108 lbs.) |
| (b) | between flyweights | (112 lbs.) |
| (c) | between junior bantamweights | (115 lbs.) |
| (d) | between bantamweights | (118 lbs.) |
| (e) | between junior featherweights | (122 lbs.) |
| (f) | between featherweights | (126 lbs.) |
| (g) | between junior lightweights | (130 lbs.) |
| (h) | between junior welterweights | (140 lbs.) |
| (i) | between welterweights | (147 lbs.) |
| (j) | between middleweights | (160 lbs.) |
| (k) | between light heavyweights | (175 lbs.) |
| (l) | between cruiser weights | (175-190 lbs.) |
| (m) | heavyweights, all over 190 lbs. | (no limitation)" |

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: This amendment is being proposed because the weight class for junior flyweights is incorrect. The correction will make Montana rules consistent with those of other states and with international regulations.

"8.8.3103 POINT SYSTEM - SCORING (1) through (3) will remain the same.

(4) Officials will have discretion at all times to decide what, in their opinion, constitutes points on behalf of the winner or the loser.

(5) Officials will use only ink or indelible pencil in scoring.

(6) When neither contestant has a decided margin, the winner should be determined on points scored and on aggressiveness.

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: This is a style and drafting amendment to place all provisions regarding the subject of the point system in the same rule. These sections were located under ARM 8.8.3403 JUDGES.

"8.8.3105 DOWN (1) through (8) will remain the same.

(9) When a contestant has been knocked down three times in one round, the referee will declare him the loser by a technical knockout."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: This amendment is being proposed for the safety of the boxer, so that a contestant would not suffer permanent mental or physical damage as a result of being continually knocked down.

"8.8.3201 RING - EQUIPMENT (1) through (4)(e) will remain the same.

(f) adrenaline 1:1000, Thrombostat and 2% Adrelin Cloride

(g) through (6) will remain the same."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: This amendment is being proposed to add additional, newly-developed, safe substances that can be used on a cut on a boxer to stop the flow of blood during a boxing match. These substances are allowed by the majority of states, professional boxing organizations and amateur boxing programs, including the olympic games.

"8.8.3403 JUDGES (1) will remain the same.

(a) must ~~present evidence of~~ have 3 years prior experience in judging boxing events;

(b) through (4) will remain the same.

~~(5) It is understood that officials have discretionary power at all times to decide what in their opinion constitutes points on behalf of winner or loser.~~

~~(6)--Officials-will-only-use-ink-or-indelible-pencil-in scoring;~~

~~(7)--When-neither-contestant-has-a-decided-margin, the-winner-should-be-determined-on-points-scored-and-on aggressiveness;~~"

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, 23-3-405, 23-3-501, MCA

REASON: This amendment is part of a style and drafting proposal to place all provisions regarding the subject of the point system in the same rule. These sections have been placed under ARM 8.8.3103 entitled "POINT SYSTEM - SCORING." The amendment proposed to subrule (1)(a) is simply to strengthen it by clarification.

3. The proposed new rule will read as follows:

"I. APPEAL OF DECISIONS OF OFFICIALS (1) In cases involving appeal to the board of an officials' decision, the decision of the officials shall not be changed unless:

(a) the board determines that there was collusion affecting the officials' decision; or

(b) the board determines that actual bias or prejudice on the part of one or more officials affected the officials' decision; or

(c) the officials' decision was the result of an incorrect interpretation of a statute or rule applicable to the circumstances of the bout; or

(d) the officials' decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

(2) On review of an officials' decision, the board shall not substitute its judgment for (second guess) that of the officials as to the weight of the evidence on questions of fact."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: This rule is being proposed to provide standards for review of officials' decisions upon appeal thereof.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Athletics, 1424 - 9th Avenue, Helena, Montana, 59620-0407 no later than June 22, 1989.

5. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Athletics, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than June 22, 1989.

6. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are

directly affected by the proposed amendments and adoption, 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 2 based on the 20 licensees in Montana.

BOARD OF ATHLETICS
JOHN R. HALSETH, M.D., CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 15, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

| | | |
|---|---|---|
| In the matter of the proposed amendment of rules pertaining to definitions; parimutuel exercise persons; jockeys; pony persons; trainers; veterinarians; general requirements; and general rules; and adoption of new rules pertaining to medication | ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON RULES PERTAINING TO HORSE RACING |

TO: All Interested Persons:

1. On June 23, 1989, at 10:00 a.m., a public hearing will be held at the State Fair Paddock Club in Great Falls, Montana, to consider the amendment and adoption of the above-stated rules.

2. The proposed amendment of 8.22.501 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-631 through 8-635, Administrative Rules of Montana)

"8.22.501 DEFINITIONS (1) through (22) will remain the same.

(23) Maiden - for purposes of eligibility at race meetings whose race records are recorded in an official chart book or the Daily Racing Form, is a horse which, at the time of starting, has never won a race on the flat in any country at a track whose racing records are recorded in an official chart book or the Daily Racing Form.

(a) A maiden for purposes of eligibility at race meetings whose racing records are not recorded in an official chart book or the Daily Racing Form is a horse which at the time of starting has never won a race on the flat in any country.

~~(a)~~ (b) will remain the same.

(24) through (49) will remain the same.

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: This rule amendment has been requested by one of the smaller tracks. It is felt that the existing rule undermines the recruitment of good horses for races at small tracks, and that the suggested rule amendment will remedy the problem.

3. The proposed amendment of 8.22.502 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-635 through 8-641, Administrative Rules of Montana)

"8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (42) will remain the same.

(43) All stakes payments, nomination fees and entrance fees, shall be placed in an account separate from any other account containing operating capital used by a licensed track. No stakes payments, nomination fees or entrance fees may be used for operating expenses, except for a percentage of the account authorized by the Montana board of horse racing, and interest generated on the account. The state parimutuel supervisors (state auditors) shall audit the stakes accounts on a weekly basis. The account balance shall be reported, as part of the parimutuel bookkeeping records."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: This proposed amendment is in response to recent financial problems that some tracks have had. Stakes payments have recently been used as operating capital. This amendment will provide controls that will protect stakes monies against misapplication and assure that they are applied to the purposes for which they were paid.

4. The proposed amendment of 8.22.703 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-663 and 8-664, Administrative Rules of Montana)

"8.22.703 EXERCISE PERSONS (1) will remain the same.

(2) No exercise person shall ride or exercise any horse on the race track without wearing a protective helmet and boots which shall be approved by the board or a representative of the board.

(3) Before approving an application for an exercise person's license, the board of stewards, the jockey guild representative and the starter shall concur that the applicant has the ability to safely and correctly perform duties of an exercise person, pony person and outrider."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: The boots are standard safety equipment for horseback riding and required by insurance companies. This amendment was requested from within the horse racing industry, because there is a concern that some exercise people are not competent to handle the responsibilities that go with the license and pose a threat to the health and safety of horses, exercise people and the public.

5. The proposed amendment of 8.22.705 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-664 through 8-667, Administrative Rules of Montana)

"8.22.705 JOCKEYS (1) through (28) will remain the same.

(29) No jockey shall have an attendant other than those provided by the licensee. ~~Such attendants shall be paid from an assessment collected from the jockeys.~~ Attendants shall be a minimum of 18 years of age. Attendants shall be subject to rules and regulations of the Montana board of horse racing. Attendants shall be authorized to assist trainers in the saddling paddock. They shall also care for the jockey equipment, but not be responsible for the cost of necessary repairs to equipment not caused by their own acts.

(30) through (42) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: Jockey attendants are no longer paid by jockeys. They are paid by the tracks. Furthermore they are an occupation subject to a license fee. This amendment defines for the first time in Montana what an attendant (valet) is and what the functions and responsibilities of attendants are.

6. The proposed amendment of 8.22.709 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-671, Administrative Rules of Montana)

"8.22.709 PONY PERSONS (1) will remain the same.

(2) No pony person or outrider shall pony or parade any horse on the race track without wearing a protective helmet and boots with heels which shall be approved by the board or representative of the board.

(3) and (4) will remain the same.

(5) Before approving an application for a pony person's license, the board of stewards, the jockey guild representative and the starter shall concur the applicant has the ability to safely and correctly perform the duties of an exercise person, pony person and outrider."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: The boots are standard safety equipment for horseback riding and required by insurance companies. This amendment was requested within the horse racing industry because there is a concern that some pony persons are not competent to handle the responsibilities that go with the license and pose a threat to the health and safety or horses, pony people and the public.

7. The proposed amendment of 8.22.710 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-671 through 8-673, Administrative Rules of Montana)

8.22.710 TRAINERS AND ASSISTANT TRAINERS (1) Each trainer shall obtain a license from the board. Minors shall

not be licensed as trainers. Any application for trainer's license must establish financial responsibility to the satisfaction of the board. Each applicant for trainer's license must provide evidence of workers' compensation insurance for the protection of his employees and workers prior to being issued a license. Failure to maintain financial responsibility and workers' compensation insurance shall be grounds for revocation of license.

(2) Effective January 1, 1982, an applicant may not be issued a trainer license if he fails to attain a passing score of at least 75% on an examination prepared by the board and administered by the state steward. Persons licensed by the board as trainers at any time during the period January 1, 1976 through December 31, 1981 shall be licensed for the 1982 racing season without examination upon application and payment of the license fee. All applicants for a trainer license after the 1982 racing season who were licensed as a trainer by the board in the immediately preceding year shall be licensed without examination upon application and payment of the license fee. Trainers licensed in other racing jurisdictions which are members of the national associations of state racing commissioners and which requires examination for licensure may be licensed without examination upon application and payment of the license fee.

(3) through (27) will remain the same.

(28) Except as provided in the permissible medication rule (new rule I ) A a trainer shall not enter or start a horse that is not in serviceably sound racing condition, is a known bleeder, has been traches-tubed, has been nerved by alcohol block or otherwise, except a horse that has had a digital neurectomy may be permitted to race subject to a pre-race veterinarian examination; has impaired eyesight in both eyes, or has been administered any narcotic, stimulant, depressant, local anesthetic, analgesic, or any derivative or compound thereof or any substance that interferes with the testing of or masks.

(29) A licensed trainer may employ an assistant trainer. Such assistant trainer must be licensed before acting in such capacity on behalf of his employer. Qualifications for obtaining an assistant trainer's license shall be the same as those for a trainer's license. A licensed assistant trainer shall assume the same duties and responsibilities as imposed on the holder of a trainer's license. The licensed trainer shall be jointly responsible with his assistant trainer for all acts and omissions of such assistant trainer involving a racing matter."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: This amendment recognizes a nationwide problem. Many employees are not covered by workers' compensation insurance. State law requires all employers to have workers' compensation insurance. Failure on the part of the Board to insist on compliance with workers' compensation laws could expose it to

risk of liability to injured employees of uninsured owners and trainers.

The amendment to subsection (2) was actually adopted at page 684, 1982 Montana Administrative Register, issue #4. The wording shown was inadvertently omitted when replacement pages were prepared.

This amendment also would allow a person to work as an apprentice trainer without having the full responsibilities of a trainer. This amendment will provide the opportunity of furthering these persons' education and competence and encourage new people to enter the field.

8. The proposed amendment of 8.22.711 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-674, Administrative Rules of Montana)

8.22.711 VETERINARIANS (1) will remain the same.

(2) ~~There shall be no hour limitation relative to medication.~~ Except as provided in the "permissible medication" rule (new rule I ) Nno medication shall be administered other than in the barn area during the course of a licensed race meeting.

(3) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: This is a housekeeping amendment to cross-reference with the proposed "permissible medication" rule for clarification and consistency.

9. The proposed amendment of 8.22.801 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-679 through 685.1, Administrative Rules of Montana)

8.22.801 GENERAL REQUIREMENTS (1) through (66) will remain the same.

(67) All stakes payments, nomination fees and entrance fees, shall be placed in an account separate from any other account containing operating capital used by a licensed track. No stakes payments, nomination fees or entrance fees may be used for operating expenses, except for a percentage of the account authorized by the Montana board of horse racing, and interest generated on the account. The state parimutuel supervisors (state auditors) audit the stakes account on a weekly basis. The account balance shall be reported, as part of the parimutuel bookkeeping records."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: Weekly audits are necessary because the majority of race tracks run two to three days per week, basically

weekends. This proposed amendment is in response to recent financial problems that some tracks have had. Stakes payments have recently been used as operating capital. This amendment will provide controls that will protect stakes monies against misapplication and assure that they are applied to the purposes for which they were paid.

10. The proposed amendment of 8.22.1401 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-717 through 8-720, Administrative Rules of Montana)

"8.22.1401 GENERAL RULES (1) through (9) will remain the same.

(10) ~~There shall be no hour limitation relative to medication.~~ Except as provided in the "permissible medication" rule (new rule I ) ~~N~~no medication shall be administered other than in the barn area during the course of a licensed race meeting.

(11) through (16) will remain the same.

(17) Except as provided in the "permissible medication" rule (new rule I ) ~~T~~the use of any narcotic, stimulant, depressant local anesthetic, analgesic, or any derivative or compound thereof is forbidden ~~except by a licensed veterinarian~~. Any substance that interferes with the testing or analysis and any substance that masks the presence of a narcotic, stimulant, depressant, local anesthetic, analgesic, or any derivative or compound thereof is forbidden.

(18) Any trainer, groom, owner, veterinarian, or other person found to be responsible for administering or permitting to be administered to any horse entered to be raced, any forbidden substance as shown by the test and/or analysis of the approved chemist shall be subject to a fine, suspension or both. No veterinarian shall be subject to any penalty for administering any substance insofar as he has fully complied with ARM 8.22.1401(9), hereof, or the "medication" rule herein, and has informed the owner, trainer, or other person requesting the treatment of the name, dosage and probable effect of the medication used.

(19) through (23) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-202, MCA

REASON: This is a housekeeping amendment to cross reference to the proposed "permissible medication" rule for clarification and consistency.

11. The proposed new rule will read as follows:

"I PERMISSIBLE MEDICATION (1) No horse participating in a race shall carry in its body any substance foreign to the natural horse except as hereinafter provided.

(2) No foreign substance shall be administered to a horse entered to race by injection, oral administration, rectal infusion or suppository, or by inhalation within 24

hours prior to the scheduled post time for the first race, except as hereinafter provided.

(3) The only substances permitted to be administered to a horse by this rule is phenylbutazone (butazoladin) or derivatives thereof and furosemide (lasix).

(4) The track veterinarian shall approve phenylbutazone drug request only if, in the exercise of his or her professional judgment, a need for the use of the drug for the treatment of the particular horse's injury or disease has been satisfactorily demonstrated. In arriving at the decision, the track veterinarian may take into account, or rely upon, a written professional diagnosis made by a qualified veterinarian duly licensed by the board.

(5) Approved medication may be discontinued with written permission of the track veterinarian on a medication request form after a minimum of thirty (30) days from the time that permission to medicate was initially granted. Otherwise, approval will expire on December 31 of the year in which it is approved.

(6) Phenylbutazone, or derivatives thereof, shall be administered in such dosage amount that the test sample shall contain not more than 5 micrograms of the drug substance, its metabolites and analogs, per milliliter of blood plasma. No urine sample taken from a horse authorized to use phenylbutazone shall exceed 165 (one hundred sixty-five) micrograms total of phenylbutazone or its metabolites per milliliter of urine.

(7) Race day medication is allowed in the treatment of exercise induced pulmonary hemorrhage. 250 mg. of furosemide (5 cc lasix) i.v. is permitted up to 4 hours before race time.

(8) A horse which, during a race or following a race, or which, during exercise or following exercise, is found to be hemorrhaging from one or both nostrils or is found to have bled into its trachea is eligible to be placed on a bleeder list and treated on race day to prevent bleeding during its race. In order to obtain authorization for race day treatment of the bleeder, the horse's trainer must obtain a certificate of examination from the track veterinarian and have the horse placed on the official bleeder list. The track veterinarian must, by examination, and/or in consultation with the stewards, establish that the horse did in fact hemorrhage from one or both nostrils or that an edoscopic examination in the test barn or receiving barn showed observable amounts of free blood in the horse's respiratory tract. When confirmed by the track veterinarian, the horse shall be placed on the bleeder list which is maintained by the track veterinarian. Once on the list, a horse may be removed from the bleeder list only upon the direction of the track veterinarian, who must certify in writing to the board his recommendation for removal of the horse from the list. Bleeder lists will apply to horses listed at all tracks on a statewide basis.

(9) A horse on a bleeder list may be treated at least four hours prior to post time with furosemide (lasix). No other medication may be administered for bleeder treatment. Bleeder medication must be administered in the manner approved

by the track veterinarian. Oral administration of furosemide (lasix) is not permitted for such purpose. Permitted bleeder medication shall be administered by the horse's regular veterinarian, and shall be witnessed by the track veterinarian, or his designee, at a place designated by the track veterinarian.

(10) A bleeder shipped into Montana from another racing jurisdiction must conform to Montana rules. However, a horse on a bleeder list in another racing jurisdiction may be placed on the Montana bleeder list, provided that a current certificate from the jurisdiction in which it was first placed on a bleeder list is presented to the track veterinarian and, provided further that it is approved by the track veterinarian.

(11) No horses may be entered into races under the influence of phenylbutazone or furosemide unless the trainer and veterinarian of the horse submits to the track veterinarian a drug request form and obtain written approval from the track veterinarian. The board shall publish and supply the appropriate drug request form and a copy of the established procedures shall be posted in the office of the racing secretary. The drug request form shall include provision for the following:

(a) the name, age, sex and breed of the horse;

(b) the name of the licensed trainer and veterinarian;

(c) the nature of the horse's injury or disease as determined by an examination by a qualified and duly licensed veterinarian;

(d) a place for a request by the trainer to discontinue medication;

(e) a place for the signature of trainer and veterinarian attending the horse and the board approved track veterinarian.

(12) The first violation of the foregoing rule by the trainer shall result in a fine imposed upon the horse's trainer, loss of purse and such other penalty deemed appropriate.

(13) A second violation, and each succeeding violation of the foregoing rule, by the same trainer, may result in suspension, imposition of a fine, loss of purse and such other penalty deemed appropriate.

(14) If phenylbutazone or furosemide are not detected in the urine or in any other specimen taken from a horse authorized to be on limited medication, then the trainer of record shall be subject to such penalties deemed appropriate by the stewards as to protect the integrity of the racing industry.

(15) If phenylbutazone or furosemide is detected in the urine or in any other specimen taken from a horse not authorized to use the drugs, the horse's trainer is subject to such penalties deemed appropriate as provided elsewhere in these rules.

(16) Notwithstanding any other provision of this rule, no two-year-old horse shall carry in its body while participating in a race any medication whatsoever specifically

including phenylbutazone or furosemide. The finding of any medication in a two-year old horse participating in a race shall disqualify the owner of such horse from participating in the purse distribution and, in addition, the stewards may take any authorized action they may consider necessary to preserve the integrity of racing.

(17) If any horse is found to be unattended during the period between the time of medication and the time of the race or found to have been tampered with during that time, the trainer will be deemed negligent in performing his duties.

(18) The horse's veterinarian shall be responsible for any medication he administers, prescribes, or causes to be administered to a horse. If the veterinarian is found to have made an error in type or quantity of medication administered, or in causing a trainer to be in violation of these rules, then such veterinarian shall be subject to disciplinary action.

(19) Horses that are being treated with phenylbutazone or furosemide need not be indicated on the daily racing programs or any other publications, but the medication list must be posted at a location at the track designated by the board.

(20) Systemic therapy consistent with accepted standards of veterinary practice is allowed up to 24 hours before race time. Systemic therapy consistent with acceptable standards of veterinary practice includes the administration of phenylbutazone given at dosage of 2 grams i.v. or the oral equivalent thereof at 24 hour intervals on a daily basis, with the final dosage given by injection 24 hours prior to post time.

(21) A fee approved by the board will be assessed against each horse on the medication list before the horse is allowed to run. This fee will be divided between the track and the board for administration and regulation of this rule. The fee will be used to offset additional testing costs, veterinarian costs and board regulation costs."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: Permissible medication is the prevalent form of regulation in racing jurisdictions in the United States. Montana is one of only two jurisdictions that do not allow medication. All jurisdictions surrounding Montana permit some medication. The proposed rule permits horses to run closer to highest natural level of performance. The health and longevity of the race horse will be enhanced. The state of the art in testing has advanced to the point that reliable qualitative and quantitative analyses can be made of an aid to enforcement of the rules of racing. Horsemen will be less likely to search for illegal drugs that will avoid detection.

Example for fee: $25 fee = $ 5 to track for testing cost
10 to track for additional vet expenses
10 to board for regulation or administration purposes

12. 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 Horse Racing, 1225 8th Avenue, Helena, Montana 59620, no later than June 23, 1989.

13. Geoffrey L. Brazier, of Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF HORSE RACING
GARY KOEPPLIN, EXECUTIVE SECRETARY

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State May 15, 1989.

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

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| In the matter of the proposed amendment of a rule pertaining to nonallowable functions of aides | ) ) ) ) | NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.62.504 NONALLOWABLE FUNCTIONS OF AIDES |

TO: All Interested Persons:

1. On June 14, 1989, at 9:00, a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The proposed amendment will read as follows:

"8.62.504 NONALLOWABLE FUNCTIONS OF AIDES (1) will remain the same.

(2) ~~It does not seem feasible to develop guidelines that attempt to specify job tasks peculiar to any specific employment setting. However, it does seem possible to speak to those functions that an aide typically shall not perform regardless of employment setting. The aide shall not:~~ Although aides must be under the supervision of a licensee, the aide shall, nevertheless, not do the following activities:

(a) conduct speech/language evaluations, although screening activities allowed by the supervisor are permitted;

(a) through (d) will remain the same but will be renumbered (b) through (e).

(f) write or plan individual or group therapy/rehabilitation plans.

(3) Speech aides who were registered with the board between the dates of August 1, 1988 and June 1, 1989, and who were allowed, as part of their registration plan, to conduct evaluations and participate on CSTs and IEPs will continue to be allowed to perform these activities under supervision if they are enrolled in a graduate program for the purpose of completing licensure requirements. However, speech aides who fall under this subsection must meet licensure requirements by September 1992 or they will no longer be able to conduct these activities. Upon annual registration, these aides must provide to the Board verification of coursework from the graduate school program attained toward licensure requirements."

Auth: 37-15-202, MCA; IMP, Sec. 37-15-102, MCA

3. REASON: These amendments are being proposed to 1) protect the consumer by providing that evaluation, diagnosis, referral, consultation and rehabilitation plans for any individual who has, or who is suspected of having, a communication disorder, are provided by qualified, licensed personnel; 2) provide clear definitions and descriptions of those activities which may not be performed by unlicensed

individuals who may otherwise be serving individuals or groups of individuals that have, or are suspected of having, a communication disorder; and 3) to insure that the standards for the practice of speech/language pathology are consistent statewide.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Speech Pathologist and Audiologists, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than June 22, 1989.

5. Geoffrey L. Brazier has been designated to preside over and conduct the hearing.

BOARD OF SPEECH PATHOLOGISTS
AND AUDIOLOGISTS

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 15, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION

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| In the matter of the proposed adoption of a new rule for the administration of the 1989 Federal Community Development Block Grant Program | NOTICE OF PUBLIC HEARING ON A PROPOSED RULE PERTAINING TO THE ADMINISTRATION OF THE 1989 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM |

TO: All Interested Persons:

1. On June 27, 1989, at 1:30, p.m., a public hearing will be held in Room C-209 of the Cogswell Building, Helena, Montana, to consider the adoption by reference of a rule governing the administration of the 1989 Federal Community Development Block Grant (CDBG) program.

2. The proposed new rule will read as follows:

"I. INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1989 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program, February, 1989 Grant Administration Manual published by it as rules for the administration of the 1989 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) procedures for local project administration,
(b) environmental review of project activities,
(c) procurement of goods and services,
(d) financial management,
(e) protection of civil rights,
(f) fair labor standards,
(g) acquisition of property and relocation of persons displaced thereby, and
(h) administrative considerations specific to public facilities, housing and neighborhood revitalization and economic development projects.

(3) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-1-103, MCA; IMP, Sec. 90-1-103, MCA

3. REASON: It is reasonably necessary to adopt the rule because the federal regulations governing the states' administration of the 1989 CDBG program and section 90-1-103, MCA, require the Department to adopt rule to implement the program.

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 Local Government Assistance Division, Department of Commerce,

Capitol Station, Helena, Montana 59620, no later than June 27, 1989.

5. Richard M. Weddle will preside over and conduct the hearing.

DEPARTMENT OF COMMERCE
LOCAL GOVERNMENT ASSISTANCE
DIVISION

BY: _____
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 15, 1989.

STATE OF MONTANA
BEFORE THE MONTANA ARTS COUNCIL

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| In the matter of the proposed amendment of rules pertaining to Challenge Grants for Permanent Endowment Development | ) ) ) ) | NOTICE OF PROPOSED AMENDMENT OF 10.111.705 CHALLENGE GRANTS FOR PERMANENT ENDOWMENT DEVELOPMENT<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons:

1. On June 24, 1989, the Montana Arts Council proposes to amend the above-stated rule.

2. The proposed amendment of 10.111.705 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located on pages 10-1355 through 10-1358., Administrative Rules of Montana)

"10.111.705 CHALLENGE GRANTS FOR PERMANENT ENDOWMENT DEVELOPMENT (1) through (3)(d)(iii) remain the same.

(iv) ~~information regarding their~~ detailed plans for raising the matching funds.

(e) ~~Endowments are intended to be permanent.~~ Challenge grants and their matching funds must be held as a permanent endowment with only earnings from investment for use in operations and programs or to add to the principal of the endowment. Grants and matching funds must be held inviolable. ~~in trust in Montana financial institutions. Trustees will have the powers and duties as specified in Montana Trustees' Powers Act (72-21-101 through 72-21-104 and 72-21-201 through 72-21-206).~~ The Challenge grant and matching funds may be held in either:

(i) a trust as authorized by Montana law;

(ii) an IRC 1.170A-9(e) community trust, fund or foundation incorporated in Montana; or

(iii) an IRC 501(c)(3) foundation established to support a university or college operated under the auspices of the Montana Board of Regents of Higher Education.

~~(i) The principal of the endowment must be held inviolable by a trust agent which may be:~~

~~(A) the trust department of a bank;~~

~~(B) a trust company or;~~

~~(C) a public or community foundation.~~

(f) Trustees will have and other authorized endowment holders shall observe the powers and duties as specified in Montana Trustees' Powers Act (72-21-101 through 72-21-104 and 72-21-201 through 72-21-206, MCA).

~~(ii)~~ (g) Documentation of the ~~trust~~ endowment agreement must be provided to the Montana Arts Council prior to release of grant funds which stipulates:

(3)(e)(ii)(A) through (D) remain the same but will be renumbered as (3)(g)(i) through (iv)

~~(E)~~ (v) that the Montana Arts Council will inform the ~~trustee~~ holder of the endowment account of the dissolution of the grantee;

~~(F)~~ (vi) that the ~~trustee~~ holder will transfer an amount equal to the challenge grant and any undistributed interest income earned by that grant to the Montana Arts Council for reversion to the coal tax trust fund;

~~(G)~~ (vii) that if the ~~trustee~~ holder of the endowment is a ~~public or~~ community trust, fund or foundation or foundation established to support a college or university operated under the auspices of the Montana Board of Regents of Higher Education ~~which maintains endowment accounts for cultural organizations as all or part of its services~~, the Montana Arts Council encourages the foundation to use the matching funds and undistributed interest income earned by those funds to the organization undergoing dissolution to create or add to a "field of interest" fund for Montana arts and cultural organizations;

~~(H)~~ (viii) that if the ~~trustee~~ holder of an endowment is an authorized trust agent ~~bank or trust company~~, the matching funds and undistributed interest income earned by those funds of the grantee undergoing dissolution will be distributed to the beneficiary named in the ~~trust~~ endowment agreement;

(3)(e)(ii)(I) and (J) remain the same but will be renumbered as (3)(g)(ix) and (x).

~~(K)~~ (xi) that if no organization meets 10.111.705 (3)~~(e)(ii)(J)~~(g)(x) then an appropriate beneficiary is an organization which is organized and operated exclusively for arts or cultural purposes;

~~(L)~~ (xii) If no organization meets 10.111.705 (3)~~(e)(ii)(K)~~(g)(xi), then an appropriate beneficiary is an organization which is organized and operated exclusively for arts or cultural purposes;

~~(M)~~ (xiii) If no beneficiary is named, the ~~trustee~~ holder of the endowment and Board of the organization undergoing dissolution is required to contact the Montana Arts Council as to the distribution of these funds."

Auth: 22-2-303, MCA; Imp 22-2-301 and 22-2-308 MCA

REASON: The original rules had been written when no community foundation had served as a holder of Challenge Grant for Permanent Endowment Development funds. Review by the Attorney General of an agreement between the Montana Community Foundation and a grantee revealed problems of inconsistency within the rules. These amendments are submitted to correct this problem and to allow community trusts, funds and foundations to act as holders of permanent endowment funds which was the original intent of the rules.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana Arts Council, 48 North Last Chance Gulch, New York Block, Helena, Montana 59620, no later than June 22, 1989.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Montana Arts Council, 48 North Last Chance Gulch, New York Block, Helena, MT 59620, no later than June 22, 1989.

5. If the Montana Arts Council receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those person 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 10 based on the approximately 100 applicants for Cultural and Aesthetic Project Grants in Montana.

MONTANA ARTS COUNCIL
DAVID E. NELSON
EXECUTIVE DIRECTOR

MONTANA HISTORICAL SOCIETY
ROBERT CLARK
ACTING DIRECTOR

BY: 
DAVID E. NELSON
EXECUTIVE DIRECTOR
MONTANA ARTS COUNCIL

BY: 
ROBERT CLARK
ACTING DIRECTOR
MONTANA HISTORICAL SOCIETY

Certified to the Secretary of State, May 15, 1989.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.217 regarding Authority Extensions in Rule History Notes. ) NOTICE OF PROPOSED AMENDMENT OF ARM 1.2.217 HISTORY NOTES - AUTHORITY EXTENSIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 24, 1989, the office of the Secretary of State proposes to amend ARM 1.2.217 regarding the deletion of Authority Extensions in Register material and rule history notes in the Administrative Rules of Montana.

2. The rule as proposed to be amended provides as follows:

1.2.217 RULE HISTORY NOTES (1) through (1)(f) remains the same.

(2) A history will contain the following:

(a) MCA statutory authority citation;

~~(b) authority extension and citation to session laws of Montana;~~

~~(c)~~(b) session law or MCA citation being implemented, IMP;

(d) and (e) remain the same, but will be renumbered (c) and (d).

~~(f)~~(e) follow punctuation shown below:

~~New Example indicating Authority Extension Citation:~~

~~Example: (History: Sec. 46-2-303 MCA; AUTH Extension, Sec. 14, Ch. 350, Lr 1963, Eff. 10/1/83; IMP, Sec. 46-2-308 MCA; Eff. 12/31/72; AMD, 1978 MAR p. 212, Eff. 5/28/78; AMD, 1983 MAR p. 766, Eff. 10/28/83.)~~

Example: For a new rule included in ARM after 12/31/72: (History: Sec. 46-2-303 MCA; IMP, Sec. 46-2-308 MCA; NEW, Eff. 7/17/76; AMD, 1978 MAR p. 717, Eff. 8/14/78; AMD, 1980 MAR p. 713, Eff. 4/26/80.)

(3) Chapter ~~466, L. 1983 (House Bill 35)~~ 420, L. 1989 (House Bill 610) amended 5-4-402, MCA by removing the provision ~~to provide~~ that no grant of rulemaking authority is effective as such to implement new agency duties required or authorized by law after October 1, 1983, unless the law to be implemented is accompanied by language extending the rulemaking authority to the law to be implemented. Amendments made to 2-4-305, MCA by Chapter ~~466, L. 1983~~ 420, L. 1989 ~~also require~~ remove the requirement that the rule history to cite the session laws extending the rulemaking authority to the law ~~to be~~ being implemented.

(a) Since Chapter 420, L. 1989 has an immediate effective and retroactive applicability date, authority extension citations are no longer necessary. Existing authority extension notations will be removed at replacement page time as pages are being reprinted, i.e., amending a rule, or adding a new rule, on any page.

(4) through (7)(b) remains the same.

AUTH: 2-4-201, 2-4-306, MCA IMP: 2-4-306, MCA

3. These amendments to ARM 1.2.217 are necessary because Chapter 420 Laws of Montana 1989 amended section 5-4-402 MCA by removing the requirement for the legislature to enact an extension of legislative authority for agencies to promulgate rules. The changes in this rule reflect the change in section 5-4-402 by removing the requirement of citing the extension of authority reference. The amendment also provides for an orderly method of removing references to the extension of authority references in the existing rule history sections.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to:

Kathy Lubke, Bureau Chief
Administrative Rules Bureau
Secretary of State
Room 225
Capitol Building
Helena, MT 59620

no later than June 22, 1989.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Kathy Lubke, address given in paragraph 4, no later than June 22, 1989.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a 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 2 persons based on the number of agencies which promulgate rules.

MIKE COONEY
Secretary of State

Dated this 15th day of May, 1989.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

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| In the matter of the amendment of Rules 46.12.550, 46.12.551 and 46.12.552 pertaining to home health services | ) ) ) ) | NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.550, 46.12.551 AND 46.12.552 PERTAINING TO HOME HEALTH SERVICES |

TO: All Interested Persons

1. On June 20, 1989, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.550, 46.12.551 and 46.12.552 pertaining to home health services.

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

46.12.550 HOME HEALTH SERVICES, DEFINITION (1) Home health services are the following services provided by a licensed home health agency ~~on a part-time of intermittent basis~~ to a recipient considered homebound in his place of residence for the purposes of postponing or preventing institutionalization:

(a) skilled short-term nursing services;
(~~a~~b) skilled maintenance nursing services;
(~~b~~c) home health aide services;
(~~c~~d) physical therapy services;
(~~d~~e) occupational therapy services;
(~~e~~f) speech therapy services; and
(~~f~~g) medical supplies and equipment suitable for use in the home.

(2) Skilled short-term nursing services means nursing services provided on a part time basis to meet the medical needs of persons who need nursing procedures for a short time in order to recover from a serious medical illness or procedure. A medical condition for which skilled short-term nursing services may be provided must be reasonably expected to change or improve to the point that nursing services will not be necessary for more than 60 days.

(3) Skilled maintenance nursing services means nursing services provided to meet a chronic medical condition. Maintenance nursing services are limited to those services reasonably necessary to prevent institutionalization. A medical condition for which skilled maintenance nursing services may be provided must be reasonably expected to be more than 60 days in duration.

(4) Home health aide services means assistance in the activities of daily living and the care of the household

provided on a short term basis that is necessary to maintain the person in their home. Home health aide services may only be provided when there is a reasonable expectation that the recipient's medical condition will improve so that services will no longer be required after 60 days.

(a) Home health aide services must be provided under the supervision of a registered professional nurse and in accordance with a written plan of treatment established by a physician.

(b) Home health aide services and personal care attendant (pca) services (ARM 46.12.555 et. seq.) may not be provided to a person simultaneously. When it is anticipated that the recipient's medical condition will require personal care services for a period of greater than 60 days, the personal care attendant program must be utilized.

~~(i) Homebound means the attending physician certifies on the physician order sheet that the recipient is confined to his home for medical reasons. The homebound status exists when there is a general part time or intermittent inability to leave home without considerable and taxing effort.~~

~~(A) The department hereby adopts and incorporates by reference section 200 of chapter two of the medicare home health manual dated June, 1977. This section defines generally the conditions under which patients are confined to their own homes. A copy of the incorporated section may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, P.O. Box 4210, Helena, Montana 59601.~~

(5) Homebound status means either that a recipient is confined to his home for medical reasons and unable to leave home without considerable taxing effort or that the recipient cannot readily obtain needed medical services other than through a home health agency. The confinement can be of a part time or intermittent basis.

(a) Homebound status must be certified by the attending physician on the physician order sheet.

~~(ii)~~(6) Place of residence includes a person's own home, a personal care facility, a foster home, a community home for the persons who are developmentally disabled or physically disabled, a rooming house or a retirement home. Place of residence does not include a hospital ~~skilled~~ or a nursing facility ~~or intermediate care facility except that home health services may be provided in an intermediate care facility if those services are not required to be provided by the facility~~.

(7) A home health service unit or visit is a personal contact in the place of residence of a recipient made for the purpose of providing a covered home health service.

~~(iii)~~(8) Nursing services may be provided by contract with a licensed registered nurse in geographic areas not covered by a licensed home health agency.

(9) A visit made by a registered nurse for the purpose of evaluating the home health needs of the recipient or to review the provision of such services by the nurse aide or licensed practical nurse is considered to be an administrative function and is not billable as a nursing visit.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.551 HOME HEALTH SERVICES, REQUIREMENTS

Subsections (1) through (1)(f) remain the same.

(g) Home health services except skilled maintenance nursing services are limited to a combined maximum of 200 visits per recipient per fiscal year. Skilled maintenance nursing services are limited to 365 visits per recipient per fiscal year.

(h) When a recipient who has been receiving skilled maintenance nursing services develops a need for skilled short-term nursing services and these services are provided on the same day, the skilled maintenance service must be included in the skilled short-term nursing service.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.552 HOME HEALTH SERVICES, REIMBURSEMENT

Subsections (1) through (1)(b) remain the same.

(c) payment for home health services which are skilled maintenance nursing services may not exceed $20.00 per visit.

Subsections (2) and (2)(a) remain the same.

(b) ~~the medicare rate~~ the lower of the average medicare cost or upper limit; or

Subsection (2)(c) remains the same.

(i) The 1986 indexed fee per category of service will be determined from the settled cost reports ending state fiscal year June 30, 1984, which will be indexed by the DRI market basket index percentage established for 1984 at 5.6 percent, 1985 at 4.6 percent, and 1986 at 3.6 percent plus two percent (2%). The final sum will become the 1986 indexed reimbursement fee. The department hereby adopts and incorporates by reference the DRI market basket rate which is a forecast model of market basket increase factors prepared by Data Resources, Inc., 1750 K Street N.W., 9th Floor, Washington, D.C., 20006. A description of the general methodology and variables used in formulating this model is available from the Department of Social and Rehabilitation Services, Economic Assistance Division, 111 Sanders, Helena, Montana 59601.

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

(b) ~~the medicare rate~~ the lower of the average medicare cost or upper limit; or

Subsection (3)(c) remains the same.

(i) The averaged medicaid fee will be derived by combining the total charges within each category of service from all participating in-state home health providers and dividing that sum by the total number of delivered services. The final sum will be indexed by an inflation factor for 1984, 1985 and 1986 plus two percent (2%) to become the averaged fee.

Subsections (4) through (4)(a) remain the same.

(b) the 1986 plus two percent (2%) averaged medicaid fee.

Subsections (5) through (7) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. Since the indexed fee system was implemented on January 1, 1987, the Department has completed the cost settlement report for each agency for their fiscal years ending on or before December 30, 1986. Thus the actual cost per category of service by agency is known. The Department has not made any adjustments to the indexed fee system since its' implementation on January 1, 1987.

For 1986, the Department's total reimbursement for all cost settlements for all contracted home health services was $351,420.25. At this time the data is not readily available to determine whether there has been a significant increase in the Medicare cost settlement total and, it may be 6 months before the Department has received all of the contracted agencies completed and settled cost reports for 1987.

First, the estimated financial impact of the 2% increase authorized by the current legislature would increase the 1986 settlement costs by $1500.

Second, the addition of the skilled maintenance nursing services is estimated to cause an increase of $50,220. This estimate was computed by utilizing the projected number of Specialized Attendant units (2511) under the current contract in the PCA program and multiplying by $20.00.

Copies of this notice are available from local county welfare offices and human services offices.

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 the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 22, 1989.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

6. This rule change will be applied retroactively to July 1, 1989.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1989.

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

| | | |
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| In the matter of the repeal of existing rules; adoption of new rules pertaining to the Economic Development Bond Program; and amendment of rules pertaining to investments by the Montana Board of Investments | ) ) ) ) ) ) | NOTICE OF REPEAL OF EXISTING RULES, ADOPTION OF NEW RULES PERTAINING TO THE ECONOMIC DEVELOPMENT BOND PROGRAM AND AMENDMENT OF RULES PERTAINING TO INVESTMENTS BY THE MONTANA BOARD OF INVESTMENTS |

TO: All Interested Persons:

1. On February 9, 1989, the Board of Investments published a notice of public hearing on the proposed repeal, adoption and amendment of the above-stated rules at page 252, 1989 Montana Administrative Register, issue number 3.

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

3. The Board has numbered the new rules as follows: I. through IX. will be under Sub-chapter 17 as 8.97.1701 through 8.97.1709; X. through XIV. will be under Sub-chapter 18 as 8.97.1801 through 8.97.1805; XV. through XVII. will be under Sub-chapter 19 as 8.97.1901 through 8.97.1903. The new rules were adopted as proposed but with the following changes: (new matter underlined, deleted matter interlined)

"8.97.1701 DEFINITIONS (1)(a) through (h) will remain the same as proposed.

(i) "Project" means any land; any building or other improvement; and any other real or personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state and federal government facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; higher education facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these facilities.

(j) and (k) will remain the same as proposed.

(2) As required by 2-4-305, MCA, notice is hereby provided that definitions contained in subsections (a), (b) and ~~(g)~~ (d) above repeat 17-5-1503, MCA, in order to assist in more fully describing the scope of the board's programs."

Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMP, Sec. 17-5-1504, 17-5-1521, MCA

"8.97.1801 DESCRIPTION OF MOBP PROGRAM (1) For projects other than major projects financed by the board under the MOBP program, an approved financial institution must participate in financing the project, either directly or through a letter of credit, to the extent of at least ten percent (10%) of the financing to be provided by the board.

~~(2)--The financing by the board is limited to ninety percent (90%) of the cost or appraised value of the project or $10,000,000 respectively, whichever is less.~~

(2) For major projects, an approved financial institution must participate in financing the project if the cost or appraised value is less than $1 million, either directly through a letter of credit, to the extent of at least ten percent (10%) of the financing to be provided by the board.

(3) For projects other than major projects, the financing provided by the board may not exceed $800,000 or ninety percent (90%) of the cost or appraised value of the project, whichever is less.

(4) For major projects, the financing provided by the board may not exceed either $10 million or ninety percent (90%) of the cost or appraised value of the project, whichever is less.

(5) As required by section 2-4-305, MCA, notice is hereby provided that sections (2), (3) and (4) of 8.97.1801, in part, repeat sections 17-5-1527(1)(c), 17-5-1526(1)(b) and 17-5-1527(1)(b), in order to assist in more fully describing the scope of the board's programs."

Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMP, Sec. 17-5-1505, 17-5-1526, 17-5-1527, MCA

"8.97.1802 ELIGIBILITY REQUIREMENTS OF MOBP PROGRAM (1) In order to qualify for financing under the MOBP program, the board shall determine that a project meets the criteria set forth in sections 17-5-1526 and ~~17-5-1727~~ 17-5-1527, in addition to meeting the following eligibility requirements:

(a) through (4)(d) will remain the same as proposed."

Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-5-1526, 17-5-1527, MCA

"8.97.1901 DESCRIPTION OF THE SABP PROGRAM (1) through (3) will remain the same as proposed."

Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMP, 17-5-1505, 17-5-1506, 17-5-1526, 17-5-1527, MCA

"8.97.1902 ELIGIBILITY REQUIREMENTS OF SABP PROGRAM (1) through (3) will remain the same as proposed."

Auth: Sec. 17-5-1504, 17-5-1521; IMP, Sec. 17-5-1506, 17-5-1521, 17-5-1526, 17-5-1527, MCA

"8.97.1903 CRITERIA FOR EVALUATING APPLICATIONS FOR PROJECT FINANCING UNDER THE SABP PROGRAM (1) will remain the same as proposed."

Auth: Sec. 37-1-1504, 17-5-1521; IMP, Sec. 17-5-1504, 17-5-1506, 17-5-1521, MCA

4. The only comments received were submitted by the staff of the Administrative Code Committee (ACC). These comments have been thoroughly considered and the applicable rules have been amended accordingly.

COMMENT: Staff of the ACC commented that the definition of "Project" set forth in 8.97.1701 differed slightly from the definition of "Project" contained in 90-5-101, MCA.

RESPONSE: The Board has amended the definition in 8.97.1701 so as to completely conform to the definition contained in 90-5-101, MCA.

COMMENT: Staff of the ACC discovered typographical errors contained in ARM 8.97.1701(2) and 8.97.1802(1).

RESPONSE: The Board has corrected the errors.

COMMENT: Staff of the ACC commented that 8.97.1801 should be amended to reflect the statutory distinction between minor and major projects.

RESPONSE: The Board has amended 8.97.1801 to clearly reflect the statutory distinction between minor and major projects.

COMMENT: Staff of the ACC also proposed that section 17-5-1506(3) be included in the implementing part of the history of 8.97.1901 through 8.97.1903 since it provided clear authority for the SABP program.

RESPONSE: The Board has adopted the staff of the ACC's proposal and amended the histories accordingly.

MONTANA BOARD OF INVESTMENTS
W. E. SCHREIBER, CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 15, 1989.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

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| In the matter of the adoption of Policy Statement On Kindergarten Accreditation And Schedule Variances | NOTICE OF AMENDMENT OF ARM 10.65.201, POLICY STATEMENT ON KINDERGARTEN ACCREDITATION AND SCHEDULE VARIANCES |

TO: All Interested Persons

1. On February 23, 1989, the Board of Public Education published notice of a proposed amendment concerning ARM 10.65.201, Policy Statement on Kindergarten Accreditation and Schedule Variances on page 311 of the 1989 Montana Administrative Register, Issue number 4.

2. The Board has amended the rule as proposed.

3. There was no hearing on ARM 10.65.201. No written comments were received prior to March 23, 1989, the date on which the Board closed the hearing record.

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| In the matter of the adoption of Endorsement Information and Class 2 Standard Teaching Certification | NOTICE OF AMENDMENT OF ARM 10.57.301, ENDORSEMENT INFORMATION AND ARM 10.57.402, CLASS 2 STANDARD TEACHING CERTIFICATION |

TO: All Interested Persons

1. On February 23, 1989, the Board of Public Education published notice of a proposed amendment concerning ARM 10.57.301, Endorsement Information and ARM 10.57.402, Class 2 Standard Teaching Certification on page 312 of the 1989 Administrative Register, issue number 4.

2. The Board has amended the rules as proposed.

3. At the public hearing which was held March 16, 1989, no persons testified and no written comments were received prior to March 23, 1989, the date on which the Board closed the hearing record.

Alan Nicholson
ALAN NICHOLSON, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State May 15, 1989.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

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| In the matter of the adoption of new rules I through XV setting licensure standards for medical assistance facilities | ) ) ) ) | AMENDED NOTICE OF ADOPTION OF NEW RULES (Medical Assistance Facilities) |

To: All Interested Persons

1. On April 27, 1989, at page 479 of the 1989 Montana Administrative Register, issue number 8, the department published notice of the adoption of new rules setting licensure standards for medical assistance facilities.

2. The ARM numbers assigned to Rules IV through XV were erroneous, i.e., according to the Secretary of State's standards for rule numbers, rules with the numbers assigned to Rules IV through XV could not be in the same sub-chapter with rules with the numbers assigned to Rules I through III. Therefore, the notice of adoption is amended to show that each new rule is assigned the ARM rule number specified below:

RULE I (to be codified as 16.32.397) MEDICAL ASSISTANCE FACILITIES--DEFINITIONS

RULE II (to be codified as 16.32.398) MEDICAL ASSISTANCE FACILITIES--ORGANIZATIONAL STRUCTURE; GOVERNING BODY

RULE III (to be codified as 16.32.399) MEDICAL ASSISTANCE FACILITIES--MEDICAL STAFF

RULE IV (to be codified as 16.32.399A) MEDICAL ASSISTANCE FACILITIES--NURSING SERVICES

RULE V (to be codified as 16.32.399B) MEDICAL ASSISTANCE FACILITIES--PHARMACEUTICAL SERVICES

RULE VI (to be codified as 16.32.399C) MEDICAL ASSISTANCE FACILITIES--RADIOLOGIC SERVICES

RULE VII (to be codified as 16.32.399D) MEDICAL ASSISTANCE FACILITIES--LABORATORY SERVICES

RULE VIII (to be codified as 16.32.399E) MEDICAL ASSISTANCE FACILITIES--FOOD AND DIETETIC SERVICES

RULE IX (to be codified as 16.32.399F) MEDICAL ASSISTANCE FACILITIES--OUTPATIENT SERVICES

RULE X (to be codified as 16.32.399G) MEDICAL ASSISTANCE FACILITIES--EMERGENCY SERVICES

RULE XI (to be codified as 16.32.399H) MEDICAL ASSISTANCE FACILITIES--THIRD-PARTY SERVICES

RULE XII (to be codified as 16.32.399I) MEDICAL ASSISTANCE FACILITIES--MEDICAL RECORDS

RULE XIII (to be codified as 16.32.399J) MEDICAL ASSISTANCE FACILITIES--QUALITY ASSURANCE

RULE XIV (to be codified as 16.32.399K) MEDICAL ASSISTANCE FACILITIES--UTILIZATION REVIEW

RULE XV (to be codified as 16.32.399L) MEDICAL ASSISTANCE FACILITIES--INFECTION CONTROL

DONALD E. PIZZINI
Director

Certified to the Secretary of State May 15, 1989.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
THE STATE OF MONTANA

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| In the matter of the adoption of an amendment to ARM 24.16.9003 and certain prevailing wage rates that were effective December 1, 1988. | ) ) ) ) ) | NOTICE OF THE ADOPTION OF AN AMENDMENT TO ARM 24.16.9003 AND CERTAIN PREVAILING WAGE RATES |

TO: All Interested Persons

1. On March 30, 1989, the Department of Labor and Industry published a notice of proposed amendment to ARM 24.16.9003 and certain prevailing wage rates at page 375 of the 1989 Montana Administrative Register, Issue No. 6.

2. The department has adopted the amendment to ARM 24.16.9003 as proposed.

3. The Department also adopts the changes to the prevailing wage rates as proposed, except the Health and Welfare fringe benefit rate for Roofers in Districts 3, 6, 8, and 10, will remain 92% of the premium if the employer is a signatory to a collective bargaining agreement and be changed to $1.75 if the employer is not a signatory.

4. No comments were received on the proposed amendment to ARM 24.16.9003. The department received the following comments on the proposed changes to the prevailing wage rates:

COMMENT: Robert K. Murphy of the International Brother of Electrical Workers (IBEW) Local 185 protested the change in the hourly rate of Electrician B in District 5 because he believed that there should not be a split scale for electricians in District 5.
RESPONSE: The department does not concur in the comment. The change in the Electrician B rate was suggested by the Legislative Auditor in order to make the setting of the rates more consistent and uniform. The department will bring the split scale concern to the attention of the Prevailing Wage Advisory Council at its next meeting.

COMMENT: Don Herzog of the IBEW Local 532 suggested that the 3% of the gross payroll paid by IBEW employers should be considered in setting the pension fringe benefits. Also, he suggested that $1.00 not $.50 be used for the pension under heavy/highway rates, and that certain apprenticeship rates should be changed from 1/2% to 1%.
RESPONSE: The department concurs with the comment that the 3% gross payroll should be considered in the current rates

for pension benefits. While such deductions have not traditionally been considered fringe benefits, the rate will be considered in setting the pension fringe benefit.

The department does not concur in the comments on heavy/highway and apprenticeship rates. These rates are set by using the Federal Davis-Bacon rates because they are set on a state-wide basis and do not vary from district to district.

COMMENT: John W. Bradford, Bradford Roofing and Insulation, commented that the Electrician's Health and Welfare benefits should remain 92% of the premium paid instead of $1.75.
RESPONSE: The department concurs. As noted above, the Health and Welfare fringe benefit rate for Roofers in Districts 3, 6, 8, and 10, will remain 92% of the premium if the employer is signatory to a collective bargaining agreement and change to $1.75 if the employer is not signatory.

5. The amendment and rate changes shall be effective the day after publication of this notice.

6. The authority of the commissioner to make the proposed amendment is based on section 18-2-431, MCA and implements sections 18-2-402, 18-2-403, and 18-2-411, MCA.

Mario A. Micone, Commissioner
Department of Labor and Industry

Certified to the Secretary of State on May 15, 1989.

BEFORE THE DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

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| In the matter of the Adoption of Rules Pertaining to the Maintenance of State Lands' Ownership Records. | ) ) ) | NOTICE OF ADOPTION OF RULES PERTAINING TO THE DEPARTMENT OF STATE LANDS' RESPONSIBILITY TO MAINTAIN STATE LAND OWNERSHIP RECORDS |

TO: All Interested Persons:

1. On December 8, 1988, the Department of State Lands and the Board of Land Commissioners published notice of the proposed adoption of rules pertaining to the Department of State Lands' responsibility to maintain state land ownership records, at page 2546 of the Register, issue no. 23.

2. The agency, through the Board of Land Commissioners, has adopted, without change the following proposed rules: Rule I (26.2.901), and Rule V (26.2.905).

3. The agency, through the Board of Land Commissioners, has adopted the following proposed rules with the noted amendments:

RULE II (26.2.902) DEFINITIONS The rule remains the same, but the Authority cite is changed from 77-1-701, MCA, to 77-1-707, MCA.

RULE III (26.2.903) FILING OF OWNERSHIP RECORDS (1) As provided in 77-1-703, MCA, state agencies shall file with the department ownership records of state lands acquired, held, or disposed of by the agency. (AUTH 77-1-707, MCA; IMP 77-1-703 and 706, MCA.)

RULE IV (26.2.904) DEPARTMENT TO MAINTAIN CENTRAL RECORD REPOSITORY (1) ~~The department shall supervise a secure, and accessible central record repository for the ownership records of state lands.~~

(2) Remains the same except it is renumbered as (1).

4. The Department of State Lands only received comments from one source, the Legislative Council. The comments were carefully considered and the comments with the Department's responses are as follows:

(1) The authority section of Rule II was incorrect as published. This has been corrected herein.

(2) The words "or purchased" should be added to Rule III to make the rule complete. This suggestion has been followed, except that the term "acquired" has been added to account for all types of acquisitions, such as gifts.

(3) Part (1) of Rule IV should be deleted because it unnecessarily repeats language found in section 77-1-704, MCA. The suggestion has been accepted.

(4) The statement of reasonable necessity concerning Rule V needed to be expanded. In response, the Department has added to the statement of reasonable necessity the following:

Rule V (1) is necessary to set a time limit within which other agencies must provide the applicable information. The records must be current in order to be accurate. The remainder of the rule repeats, to some extent, section 77-1-705, MCA, but this is necessary to provide continuity and context for the rest of the rules. Part (2) is necessary because computer storage of such records is the most likely procedure in the near future. Part (3) is necessary to clearly state which party has the responsibility to properly record the lands with the proper county. Part (4) is necessary to fulfill the requirements of section 77-1-705(2), MCA, because the Department does not have the resources at this time to make an independent evaluation of the accuracy of the information.

5. The authority for the rules 77-1-707, MCA, and the rules implement 77-1-701, 703, 704, and 705, MCA.

DENNIS CASEY, Commissioner
Department of State Lands

CERTIFIED to the Secretary of State May 15, 1989.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

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| In the matter of the adoption of Rules I through X pertaining to the AFDC Work Supplementation Program | ) ) ) ) | NOTICE OF THE ADOPTION OF RULES I THROUGH X PERTAINING TO THE AFDC WORK SUPPLEMENTATION PROGRAM |

TO: All Interested Persons

1. On January 12, 1989, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules I through X pertaining to the AFDC Work Supplementation Program at page 5 of the 1989 Montana Administrative Register, issue number 1.

2. The Department has adopted Rules (I) 46.10.701, AFDC WORK SUPPLEMENTATION PROGRAM, GENERAL; (II) 46.10.702, AFDC WORK SUPPLEMENTATION PROGRAM, DEFINITIONS; (III) 46.10.704, AFDC WORK SUPPLEMENTATION PROGRAM, PARTICIPANT ELIGIBILITY; (IV) 46.10.705, AFDC WORK SUPPLEMENTATION PROGRAM, APPLICATION AND PLACEMENT, EMPLOYER REQUIREMENTS; (V) 46.10.707, AFDC WORK SUPPLEMENTATION PROGRAM, TERMINATION AND REASSIGNMENT; (VI) 46.10.708, AFDC WORK SUPPLEMENTATION PROGRAM, AFDC ELIGIBILITY, RESIDUAL GRANT; (VII) 46.10.710, AFDC WORK SUPPLEMENTATION PROGRAM, MEDICAL ASSISTANCE BENEFITS; (VIII) 46.10.711, AFDC WORK SUPPLEMENTATION PROGRAM, CHILD SUPPORT ASSIGNMENT AND EXCLUSION; (IX) 46.10.713, AFDC WORK SUPPLEMENTATION PROGRAM, WIN AND TITLE IV-A WORK REQUIREMENTS; and (X) 46.10.714, AFDC WORK SUPPLEMENTATION PROGRAM, ADMINISTRATIVE REVIEW AND FAIR HEARING, as proposed.

3. No written comments or testimony were received.

Julia E. Roberts
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1989.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

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| In the matter of the amendment of Rules 46.12.511, 46.12.512 and 46.12.513 pertaining to swing-bed hospitals | ) ) ) ) | NOTICE OF THE AMENDMENT OF RULES 46.12.511, 46.12.512 AND 46.12.513 PERTAINING TO SWING-BED HOSPITALS |

TO: All Interested Persons

1. On December 8, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.511, 46.12.512 and 46.12.513 pertaining to swing-bed hospitals at page 2556 of the 1988 Montana Administrative Register, issue number 23.

2. The Department has amended Rule 46.12.511 as proposed.

AUTH: Sec. 53-6-113 and 53-2-201(h) MCA
IMP: Sec. 53-6-111, 53-6-141 and 53-2-201 MCA

3. The Department has amended the following rules as proposed with the following changes:

46.12.512 SWING-BED HOSPITALS, PROCEDURES (1) The swing-bed hospital will have the responsibility of determining whether a skilled or intermediate nursing care bed is available to the medicaid patient within a ~~one-hundred-(100)~~ **seventy-(70)** TWENTY-FIVE (25) mile radius of the hospital before admitting a medicaid patient to a swing-bed. The hospital will be required to maintain written documentation consisting of written inquiries to nursing homes inquiring as to the present and future availability of a nursing home bed and indicating that if a bed is not available, the hospital will provide swing-bed services to the patient.

(2) A medicaid patient admitted to a swing-bed must be discharged to an appropriate nursing home bed within a ~~one hundred-(100)~~ **seventy-(70)** TWENTY-FIVE (25) mile radius of the swing-bed hospital within 72 hours of an appropriate nursing home bed becoming available.

(3) The department may retrospectively review the use of swing-bed services provided to medicaid patients and may deny payments when it is determined that a nursing home bed was available within ~~one-hundred-(100)~~ **seventy-(70)** TWENTY-FIVE (25) miles of the hospital that provided the swing-bed service.

(4) Medicaid applicants and recipients must be prescreened and meet the level of care requirements (skilled or intermediate) in order for the provider to be reimbursed by medicaid. The level of care requirements are contained in ARM ~~46.12.1101 through 46.12.1106~~ 46.12.1301. It is the swing-bed

hospital's responsibility to make the referral for prescreening prior to placement in the swing-bed and to ensure that a form SRS-EA-61 "screening notification" is completed by the prescreening team to document the level of care determination.

(5) A waiver of the ~~seventy-(70)~~ TWENTY-FIVE (25) mile requirement may be obtained by submitting written verification from the recipient's attending physician that either:

(a) The recipient's condition will be endangered by a transfer to ~~another facility outside of the community;~~ A NURSING FACILITY WITHIN A TWENTY-FIVE (25) MILE RADIUS; or

(b) The recipient's condition is terminal.

(i) The request for waiver and the written verification may MUST be sent to the Medicaid Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

AUTH: Sec. 53-6-113 and 53-2-201 MCA
IMP: Sec. 53-6-111, 53-6-141 and 53-2-201 MCA

46.12.513 SWING-BED HOSPITALS, REIMBURSEMENT Subsection (1) remains as proposed.

(2) Reimbursement to swing-bed hospitals will only be made for medicaid patients when appropriate skilled or intermediate nursing care is not available within a ~~one-hundred (100) seventy-(70)~~ TWENTY-FIVE (25) mile radius of the swing-bed hospital. ~~from which the patient is discharged.~~

Subsections (3) through (5) remain the same.

AUTH: Sec. 53-6-113 and 53-2-201 MCA
IMP: Sec. 53-6-111, 53-6-141 and 53-2-201 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: Swing beds provide the same quality of care as nursing homes and are subject to the same conditions and standards of participation. Therefore, they should be considered appropriate nursing home beds.

RESPONSE: The survey process for medicaid certification is substantially the same for swing beds as for nursing homes. Swing-bed hospitals must meet the safety and health conditions for skilled and intermediate care providers as set forth in federal regulations. The term "appropriate nursing home bed" refers to level of care provided in a skilled or intermediate care facility. A bed certified as intermediate care in a nursing home is not an appropriate nursing home bed for a recipient in need of skilled nursing care. However, a bed certified as skilled care is appropriate for a recipient requiring skilled level services. Swing beds may be considered

skilled or intermediate beds when that level of care is being provided, but they are not nursing home beds.

COMMENT: The mileage requirement transfer is inconsistent with the congressional intent of swing bed legislation. Congress intended to increase access to rural health care in the patient's community. There is now an increased need for nursing home beds because the hospital DRG payment system encourages early discharge. The proposed seventy (70) mile transfer rule decreases access to health care within the patient's community.

RESPONSE: The preamble to regulations implementing the swing bed concept adopted on July 20, 1987 suggests clear congressional intent to utilize excess hospital capacity and increase the supply of long-term care beds in rural areas. The department is adopting the rule with a twenty-five (25) mile radius rather than a seventy (70) mile radius. The rule as adopted is consistent with congressional intent.

However, current medicare statutes applicable to hospitals with more than 49 beds require transfer within five days after availability of a nursing bed within the same geographic region. Geographic region has been defined to include an area which includes the SNFs with which a hospital has traditionally arranged transfers and all other SNFs within the same proximity. A geographic region of 50 miles could be determined for a hospital without existing transfer practices. The department believes the twenty-five (25) mile radius rule is reasonable and allows for increased access to long-term care beds within the patient's community.

COMMENT: Neither the one hundred (100) mile or seventy (70) mile transfer rule is authorized by federal or state law. The only similar transfer rule adopted by Congress applies only to hospitals participating in medicare not medicaid. The Montana Administrative Procedure Act provides that no rule is valid or effective unless reasonably necessary to effectuate the purpose of the statute.

RESPONSE: The mileage transfer rule is neither specifically authorized nor prohibited by federal and state law. State law does direct the department to adopt appropriate rules necessary for the administration of the Montana medicaid program. The rules may establish the amount, scope, and duration of services provided under the program, including the terms and components constituting the services. The department finds that the transfer requirement as adopted is reasonably necessary to protect against potential abuse of swing beds to increase inappropriately overall hospital reimbursement or to unfairly increase the utilization of nursing facilities associated with the swing-bed hospital at the expense of

other local area nursing facilities. For example, without the transfer requirement, under the hospital DRG reimbursement system, a hospital might be encouraged to inappropriately discharge patients early from a hospital bed to a swing bed so as to begin collecting swing-bed reimbursement in addition to the DRG payment for such patients. Also, without a transfer requirement, combined or associated hospital and nursing facilities might be encouraged to keep patients in swing beds until a bed is available in its own nursing facility, even though a nursing facility bed is available within the local area. The department will study these issues further in light of further findings.

COMMENT: The one hundred (100) mile transfer rule violates federal resident's rights provisions. Specifically, the conditions of participation for skilled facilities require that a patient is to be transferred or discharged after reasonable advance notice and only for certain reasons, including medical reasons. The transfer rule requires transfer for reasons not allowed by federal law.

RESPONSE: The federal resident rights provisions do not prohibit the adoption by state medicaid agencies of reasonable restrictions upon swing bed utilization. Congress has adopted a similar transfer requirement for medicare swing-bed hospitals with more than 49 beds, which indicates that such a rule is not inconsistent with resident rights provisions. The swing bed program was not intended to allow hospitals to replace nursing facilities as providers of SNF or ICF services. Where nursing facility services are available in the local area, it is reasonable to require that SNF or ICF services be provided by the nursing facility rather than in hospital swing beds. The rule does not ignore the needs or rights of patients, however. The transfer rule may be waived for medical reasons verified by a physician.

COMMENT: The transfer rule has a serious negative impact upon medicaid recipients who are required to transfer to a nursing facility outside of their communities. Distance prevents family and friends from visiting the recipient, which slows recuperation. In some cases, the patient is traumatized by the transfer.

RESPONSE: Section 46.12.512(5) contains a provision for obtaining a waiver of the mileage transfer requirements when the recipient's condition will be endangered by a transfer outside the twenty-five (25) mile radius area. The reduction of the transfer requirement to twenty-five (25) miles should significantly reduce the travel burden on family and friends.

COMMENT: Elimination of the one hundred (100) mile transfer rule would not have a negative fiscal impact upon the medicaid program. Swing bed services are reimbursed at the previous year's statewide average nursing facility rate, and medicaid pays for transportation to transfer the patient from the swing-bed hospital to the available nursing home. It would be more cost effective to use excess hospital capacity to provide long-term care services than to encourage construction of new nursing home beds.

RESPONSE: At this time, the department is without sufficient information to conclude that total elimination of the transfer rule would not have a negative fiscal impact upon the medicaid program. Reduction of the mileage radius is not projected to have a negative fiscal impact and should reduce transportation expenditures. However, the department believes that efficient utilization of all existing hospital and nursing home beds is the most cost effective approach for the medicaid program.

COMMENT: This rule duplicates and contradicts the existing certificate of need requirements for swing-bed hospitals. Department of Health regulations already require transfer to a nursing home when a bed becomes available within the "service area".

RESPONSE: The Department of Health and Environmental Sciences applies the "service area" concept as meaning "within the county". Because of the vast size of many counties in Montana, a twenty-five (25) mile radius is considered more reasonable for medicaid purposes. Further, the department must adopt this requirement in its own rules to enforce it for medicaid program purposes.

COMMENT: The policy of forcing transfers is not cost effective for the department due to the additional expense of transportion to transfer the patient to a nursing home. Medicaid will pay for transportation to move the patient to an available nursing home bed out of the community; however, when a bed becomes available in the patient's home town, the patient must pay for transportation back into the community.

RESPONSE: Medicaid will pay the cost of transportation to a nursing bed at the appropriate level of care when it becomes available within twenty-five (25) miles. As noted above, transfer is required for reasons other than cost effectiveness. Once the patient is placed in an appropriate nursing bed, medicaid will not pay for further transportation unless the patient requires services which cannot be provided in the facility, for example, where the patient again requires hospital services. Reduction of the transfer radius from one

hundred (100) to twenty-five (25) miles should reduce or eliminate the need for transfers back to the community, and should reduce the cost of transportation services to the department and the recipient.

COMMENT: The swing bed requirements are discriminatory, as they apply only to medicaid patients, not to private pay or medicare patients.

RESPONSE: The medicaid program is not required to provide the same array of health care options as may be available to private pay patients with unlimited resources or to follow the same rules applied to other payment sources such as insurance. In fact, a similar requirement does apply to swing-bed hospitals with more than 49 beds participating in the medicare program. The medicaid program equally applies the transfer requirement to all eligible recipients.

COMMENT: The transportion requirement disregards the patient's well-being because the transfer will often mandate a change in physician. Continuity of care is assured when the swing bed patient remains in the same bed.

RESPONSE: It is the responsibility of providers to assure quality of care in any facility. Continuity of care should not be disrupted merely by a transfer from a swing bed to a nursing home bed. Moreover, the significantly lower mileage radius should reduce the necessity for changes in attending physicians.

COMMENT: Abolishing the mileage radius rule will decrease costs for all parties involved, including families, and administrative costs for facilities and SRS.

RESPONSE: Reduction of the mileage radius is expected to decrease travel costs incurred by family and friends and should reduce administrative costs of contacting other facilities and obtaining waivers of the transfer requirement.

COMMENT: Required documentation must consist of written inquiries to nursing homes as to the present and future availability of beds. This documentation could be limited to verbal inquiries.

RESPONSE: Verbal inquiries provide no basis for documentation of compliance with the rule, whereas written inquiries provide documentation. It is expected that verbal inquiries will be made and followed up by the written inquiries.

COMMENT: Who will do the prescreening prior to placement in the swing bed? Who is the prescreening team? What is the cost to each facility to have a prescreening done?

RESPONSE: The level of care prescreening team generally consists of a long-term care specialist from the department and a nurse coordinator. A list of these representatives may be obtained from the department's medicaid bureau. The cost of the prescreen is borne by the department.

COMMENT: The waiver of transfer requirements should include "The recipient's psycho-social needs would be disturbed."

RESPONSE: Assessment of the potential endangerment to the condition of the recipient under section 46.12.512(5)(a) may include assessment of psycho-social needs, as may be medically appropriate in the physician's professional judgment.

COMMENT: Who decided to hold this hearing at such an inopportune time, during holidays and just before a legislative session?

RESPONSE: Department rule hearings are scheduled to correspond to a rule filing timetable issued annually by the Secretary of State. Department staff had requested that this rule change be effective by February 1, 1989. Based upon the timetable, the first notice had to be filed no later than November 28, 1988 to guarantee the requested effective date. The Montana Administrative Procedure Act (MAPA) requires rule hearings to be held no earlier than twenty (20) days after publication of the first notice. In this case, the hearing was held on the earliest date possible. Delay until the next week would have run the hearing date into the legislative session, an inadvisable delay due to the increased work load generated by the session.

COMMENT: How is the Administrative Rule Committee for the Department of Social and Rehabilitation Services selected and who makes these decisions?

RESPONSE: There is no such committee. Need for rule changes is first noted by program or legal staff, generally after consulting with affected persons or groups. A department checklist is then drafted by appropriate program staff addressing items such as "summary of policy change", "estimated financial and budgetary impacts", "work program to initiate policy change", etc. The checklist is then circulated for approval signatures by all interested staff up to and including the director. Then, the formal rulemaking process is begun.

5. This rule change will be applied retroactively to February 1, 1989.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1989.

VOLUME NO. 43 OPINION NO. 11

HIGHWAYS - Duty to yield right-of-way to police or authorized emergency vehicle;
MOTOR VEHICLES - Duty to yield right-of-way to police or authorized emergency vehicle;
TRAFFIC - Duty to yield right-of-way to police or authorized emergency vehicle;
MONTANA CODE ANNOTATED - Sections 61-8-107, 61-8-346, 61-9-402.

HELD: Upon the immediate approach of an authorized emergency vehicle making use of only visual signals pursuant to section 61-9-402, MCA, other drivers must yield the right-of-way and/or stop. They may then proceed past such signal with caution and at a speed no greater than is reasonable and proper under the existing conditions.

May 3, 1989

Keith D. Haker
Custer County Attorney
Custer County Courthouse
Miles City MT 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

> Upon the immediate approach of an authorized emergency vehicle making use of only visual signals pursuant to section 61-9-402, MCA, must other drivers yield the right-of-way, drive their vehicles to the right-hand edge of the roadway, and stop?

You have informed me that there is confusion concerning whether the use of visual signals (lights) alone by police vehicles and authorized emergency vehicles mandates that other drivers yield the right-of-way and stop, or whether use of both audible and visual signals (or a police vehicle using an audible signal only) are required before other drivers must yield the right-of-way and stop.

Three sections of Montana law, sections 61-8-107, 61-8-346, and 61-9-402, MCA, are relevant. These statutes were all enacted in 1955 as part of a lengthy

act regulating traffic and operation of vehicles. 1955 Mont. Laws, ch. 263.

Section 61-8-346, MCA, provides:

> Operation of vehicles on approach of police vehicles or authorized emergency vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the police vehicle or authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrolman.
>
> (2) This section shall not operate to relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

This section expressly requires use of audible and visual signals by authorized emergency vehicles, or proper use of audible signals only by a police vehicle, before the drivers of other vehicles must comply with the mandates of the statute.

Sections 61-8-107 and 61-9-402, MCA, were originally consistent with the stopping requirements of section 61-8-346, MCA. However, in 1975, section 61-9-402, MCA, was amended creating an apparent inconsistency in the statutes. See Senate Highways and Transportation Committee Meeting Minutes on House Bill 508, March 11, 1975. Section 61-9-402, MCA, now provides, in part:

> Audible and visual signals on police and emergency vehicles and on-scene command vehicles. (1) A police vehicle shall be equipped with a siren capable of giving an audible signal and may, but need not, be equipped with alternately flashing or rotating red or blue lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to

stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren and an alternately flashing or rotating red light as specified herein.

(3) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at 500 feet in normal sunlight.

....

(5) Police vehicles and authorized emergency vehicles may, and emergency service vehicles shall, in addition to any other equipment and distinctive markings required by this chapter be equipped with alternately flashing or rotating amber lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

Thus, section 61-8-346, MCA, requires other drivers to yield the right-of-way, pull to the side of the roadway and stop when a police or authorized emergency vehicle is making use of audible and visual signals or when a police vehicle is properly making use of only an audible signal. Section 61-9-402, MCA, requires other drivers to yield the right-of-way and/or stop when a police or authorized emergency vehicle is making use of visual or audible signals, or both.

Finally, section 61-8-107, MCA, which authorizes the driver of a police or authorized emergency vehicle to disregard many traffic signals and regulations under certain conditions, was amended in 1981 to specifically allow the exemptions of the section to apply when a police or authorized emergency vehicle is making use of an audible or visual signal, or both, meeting the requirements of section 61-9-402, MCA. This statute is relevant because, logically, drivers of emergency vehicles may ignore traffic signals and regulations only if other drivers are required to yield the right-of-way to them.

In construing legislation, an attempt is made to harmonize related statutes, giving effect to all. Matter of W.J.H., 44 St. Rptr. 817, 821, 736 P.2d 484, 486-87 (1987). In my opinion the statutes at issue may be harmoniously interpreted to reach the following conclusions: Upon immediately approaching a police vehicle or an authorized emergency vehicle making use of audible and visual signals or of a police vehicle lawfully and properly using only an audible signal, a driver must yield the right-of-way and immediately drive to a position parallel to, and as close as possible to, the right-hand edge of the roadway clear of any intersection and must stop and remain in such position until the emergency vehicle has passed. § 61-8-346, MCA. If a police or authorized emergency vehicle is using only its lights, as allowed in section 61-9-402, MCA, a driver has more discretion as to whether to pull over to the curb and stop or to yield the right-of-way and/or stop and proceed past such signal or light with caution and only at an appropriate speed. § 61-9-402, MCA.

THEREFORE, IT IS MY OPINION:

> Upon the immediate approach of an authorized emergency vehicle making use of only visual signals pursuant to section 61-9-402, MCA, other drivers must yield the right-of-way and/or stop. They may then proceed past such signal with caution and at a speed no greater than is reasonable and proper under the existing conditions.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| IN THE MATTER of Yellowstone County's Proposed Transfer of Certain Reservations of Water in the Yellowstone River Basin Under Section 85-2-316(10), MCA and ARM 36.16.118. | ) ) ) ) ) | NOTICE OF DECLARATORY RULING AND OPPORTUNITY FOR JUDICIAL REVIEW |

1. On November 30, 1988 the Board of Natural Resources and Conservation (BNRC) received a Petition for Declaratory Ruling from Yellowstone County, Montana. The issues raised by Yellowstone County are as follows:

(a) Is Yellowstone County a qualified applicant for a water reservation under section 85-2-316(1), MCA?

(b) Does section 85-2-316(10), MCA, authorize the Board to transfer or reallocate any portion of a municipal water reservation to another qualified applicant?

(c) Does section 85-2-316(10), MCA, authorize the Board to transfer or reallocate the water reservations being relinquished by the Bureau of Land Management (Applications 12334-01r and 02r) to another qualified applicant?

2. On January 12, 1989 the BNRC issued a Notice of Hearing and Opportunity to File Briefs. The cities of Billings, Columbus and Livingston filed briefs opposing Yellowstone County's Petition for Declaratory Ruling, and oral arguments were presented on February 10, 1989. Subsequent to hearing oral arguments, the BNRC found as follows:

Yellowstone County is a qualified applicant for a water reservation under section 85-2-316, MCA. Section 85-2-316(1), MCA, declares that:

> The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

It is clear that Yellowstone County is a political subdivision of the state of Montana. Even the city of Billings concedes this point (see p.5 of Billings' January 26, 1989 brief). However, Billings then argues that Yellowstone County can never

be a qualified applicant for a water reservation because Yellowstone County "does not appropriate water". Section 85-2-316(1), MCA, imposes no such condition on a political subdivision seeking a water reservation. Any political subdivision of the state of Montana may apply for a water reservation for existing or future beneficial uses. The statute imposes no requirement that a political subdivision must be diverting water or possess the statutory authority to divert water. Section 85-2-316(10), MCA, only requires that the applicant be a political subdivision of the state of Montana.

The board does not have the authority to involuntarily transfer a municipal water reservation to another qualified applicant under section 85-2-316 (10), MCA. Section 85-2-316(10), MCA, reads as follows:

> The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

Subsection 11 of section 85-2-316, MCA, declares that:

> The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. Reallocation of reservation water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

This petition involves a proposed "involuntary" transfer. Yellowstone County is a willing transferee but the city of

Billings is an unwilling transferor. It is clear that the board has the authority to transfer or reallocate instream reservations granted for the purpose of maintaining minimum flow or quality of water. For all other reservations, the board is only granted the authority to "extend, revoke or modify" those reservations if the objectives of the reservation are not being met. The city of Billings has correctly pointed out that the word "modify" does not encompass the power to transfer or reallocate any portion of Billings' reservation absent Billings' consent to such a transfer.

This declaratory ruling is limited to the involuntary transfer facts discussed in this order. The board makes no ruling on voluntary transfers between a willing transferee and a willing transferor.

Based on the declaratory ruling set forth in this section, the board directs the Department of Natural Resources and Conservation to prepare an amendment to ARM 36.16.118(2) that is consistent with this ruling.

The board declines to issue a declaratory ruling on whether a reservation that has been relinquished may be transferred or reallocated.

By letter dated February 2, 1989, the U.S. Bureau of Land Management advised the board that it intended to relinquish two irrigation reservations in O'Fallon Creek. Section 85-2-316, MCA, does not address the relinquishment of reservations. Accordingly, the board respectfully declines to issue a declaratory ruling regarding its authority to transfer or reallocate relinquished reservations.

DATED this 11th day of April, 1989.

William A. Shields

William A. Shields, Chairman
Board of Natural Resources
and Conservation

CERTIFIED TO THE SECRETARY
OF STATE MAY 5, 1989.

## NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The 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 Subject Matter

1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which list MCA section numbers and 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 Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1989. This table includes those rules adopted during the period April 1, 1989 through June 30, 1989 and any proposed rule action that is 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, 1989, 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 1989 Montana Administrative Register.

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