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ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

RULE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to the regulation of noxious weed seeds	NOTICE OF PROPOSED AMENDMENT OF RULE 4.12.3011 RELATING TO THE REGULATION OF NOXIOUS WEED SEEDS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 13, 1989 the Montana Department of Agriculture proposes to amend the rule stated in the above entitled matter.

2. The proposed amendment of 4.12.3011 will read as follows:
(new matter underlined, deleted matter interlined).

4.12.3011 RESTRICTED NOXIOUS WEED SEEDS (1) Seeds offered for sale or sold shall not contain the following restricted noxious weed seeds in quantities in excess of those listed below:

	Common Name	Species	No of Seeds Per Pound	
(a)	Dyers Woad	(Isatis tinctoria)	0	
(b)	Spotted Knapweed	(Centaurea maculosa)	0	
(c)	Wild Oats	(Avena fatua)	45 of grass seed	
			9 of cereal seed	
(d)	Dodder	(Cuscuta spp.)	18	
(e)	Common Crupina	(Crupina vulgaris)	~~9~~	0
(f)	St. Johnswort	(Hypericum perforatum)	18	
~~(g)~~	~~Tansy Ragwort~~	~~(Senecio jacobaea)~~	~~9~~	
~~(h)~~	(g) Curly Dock	(Rumex crispus)	45	
~~(i)~~	(h) Jointed Goatgrass	(Aegilops cylindrica)	18	
~~(j)~~	(i) Persian Darnel	(Lolium persicum)	18	
~~(k)~~	(j) Diffuse Knapweed	(Centaurea diffusa)	0	
~~(l)~~	(k) Yellow Starthistle	(Centaurea solstitialis)	~~9~~	0
~~(m)~~	(l) Rush Skeletonweed	(Chondrilla juncea)	~~9~~	0
~~(n)~~	(m) Yellow Toadflax	(Linaria vulgaris)	9	

AUTH: 80-5-112, IMP: 80-5-105, and 80-5-120

REASON: These changes are being made to help in the struggle to prevent the spread of these economically harmful noxious weeds in the state of Montana. Considerable review of the three species dropped to zero has revealed that at this time any allowance for them may create an idea of acceptance when in fact they must not be allowed to establish in Montana.

The statute definition places these species and others in the restricted class but their severity has caused them to be placed in a zero tolerance.

Tansy Ragwort is being removed as it is not the threat which it was once feared and will likely have no effect on Montana.

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, MT 59620, no later than March 10, 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, MT 59620, no later than March 10, 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 January 30, 1989

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MILK CONTROL

In the matter of the amendment of rule 8.79.301 regarding assessments	)	NOTICE OF PROPOSED AMENDMENT OF RULE 8.79.301 LICENSEE ASSESSMENTS - NO PUBLIC HEARING CONTEMPLATED
	)	DOCKET #90-89

TO: All Interested Persons:

1. On March 31, 1989 the department of commerce proposes to amend rule 8.79.301 relating to an assessment to be levied upon licensees subject to 81-23-202, MCA. The proposed amendment will become effective July 1, 1989.

2. The purpose of the amendment is to change the effective date of the rule as it applies to the assessments. The rule as proposed to be amended would read as follows:

"8.79.301 LICENSEE ASSESSMENTS (1) Pursuant to section 81-23-202, MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the current fiscal year beginning July 1, ~~1988~~ and ending June 30, ~~1989~~, are hereby levied upon the Milk Control Act licensees of this department.

(a) A fee of eight cents ($0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

(b) A fee of eight cents ($0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of four cents ($0.04) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of four cents ($0.04) per hundredweight on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor."

3. Interested persons are asked to note that the amount of the assessments proposed for the current fiscal year will continue to be $0.08 per c.w.t. The amendment is required by statute.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Department of Commerce, 1520 East Sixth Avenue - Rm 50, Helena, Montana, 59620 no later than March 11, 1989.

5. 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 along with any written comments he has to the above address no later than March 11, 1989.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty-five (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 (10%) of those persons directly affected has been determined to be 27 persons based on an estimate of 267 resident and nonresident producers and distributors, and producer-distributors subject to this assessment.

7. The authority of the agency to make the proposed amendment is based on section 81-23-104 and 81-23-202, MCA, and implements section 81-23-202, MCA.

MICHAEL LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

By: William E. Ross
William E. Ross, Bureau Chief
Montana Milk Control Bureau

Certified to the Secretary of State January 30, 1989.

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

In the matter of the proposed repeal of existing rules and 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 PUBLIC HEARING ON PROPOSED REPEAL OF EXISTING RULES AND 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 March 14, 1989, at 1:30 p.m., a public hearing will be held in the conference room at the office of the Board of Investments, 555 Fuller Avenue, Helena, Montana, to consider the proposed repeal, adoption and amendment of rules pertaining to the Economic Development Bond Program and to investments by the Montana Board of Investments.

2. Rules proposed for repeal and the pages in the Administrative Rules of Montana (ARM) where the text can be found are set forth below:

ARM 8.97.501 through and including ARM 8.97.512 appear on pages 8-3497 through and including 8-3505.

3. REASON: The Board is proposing to repeal these rules because the proposed new rules more comprehensively address the requirements, procedures and policies applicable to the bond programs.

4. The proposed new rules will read as follows:

"I. DEFINITIONS (1) In addition to the definitions contained in ARM 8.97.1301, and 17-5-1503, MCA, the following definitions shall apply for purposes of these rules:

(a) "Act" means the "Montana Economic Development Bond Act of 1983."

(b) "Board" means the board of investments as created in 2-15-1808, MCA.

(c) "Conditional commitment" means a commitment to provide financing by the board to an applicant subject to such terms, requirements, conditions, financial or otherwise as deemed appropriate and consistent with the Act.

(d) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board.

(e) "Inducement resolution" means the resolution adopted by the board demonstrating its intention to issue its revenue bonds or notes for a specified project and making appropriate findings with respect thereto. This resolution is adopted

by the board only after a public hearing has been conducted pursuant to 17-5-1526 and 17-5-1527, MCA.

(f) "MOBP" means the moral obligation economic development bond program.

(g) "Notice" means the announcement of the public hearing on a proposed project given pursuant to the provisions of 17-5-1526 and 17-5-1527, MCA, and these rules.

(h) "Preliminary inducement resolution" means the resolution adopted by the board demonstrating its intention to issue its revenue bonds or notes for a specified project and making appropriate findings with respect thereto. This resolution is adopted by the board before a public hearing has been conducted and must be subsequently validated by an inducement resolution pursuant to 17-5-1526 and 17-5-1527, MCA. A preliminary inducement resolution will be considered only with the issuance of bonds whose interest is not subject to federal income taxes.

(i) "Project" means any land, any building or other improvement and any 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; multi-family housing; hospital, long-term care facilities or medical facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; or any combination of these projects.

(j) "Public hearing" means the hearing conducted by the board or local government as required by 17-5-1526 and 17-5-1527, MCA, for the purpose of determining whether the project is in the public interest.

(k) "SABP" means the stand-alone economic development bond program.

(2) As required by 2-4-305, MCA, notice is hereby provided that definitions contained in subsections (a), (b), and (g) 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

"II. DESCRIPTION OF ECONOMIC DEVELOPMENT BOND PROGRAMS

(1) The board is authorized to issue economic development bonds under its MOBP program and to:

(a) use the proceeds to purchase loans from approved financial institutions for projects located in the state;

(b) acquire projects located in the state from financial institutions;

(c) make loans to financial institutions, requiring the proceeds to be used by the financial institution for the purpose of financing projects located in the state;

(d) finance projects located in the state upon such terms and conditions as determined by the board.

(2) The board is authorized to issue economic development bonds under its SABP program and to:

(a) finance projects located in the state upon such terms and conditions as determined by the board as set forth in these rules; and

(b) repay the bonds solely from loan repayments and one or more reserve funds or such other security pledged thereto.

(3) For both the SABP and MOBP programs, the board may issue bonds that do or do not qualify for tax exemption under the Federal Tax Reform Act of 1986.

(4) As required by 2-4-305, MCA, notice is given that the descriptions contained in subsections (1) and (3) above repeat 17-5-1505, MCA, in order to assist in fully describing the board's bond programs."

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

"III. CONFIDENTIALITY OF INFORMATION (1) Unless otherwise required by law, information submitted by a financial institution and borrower will be treated as confidential, except the following:

(a) name and address of financial institution;

(b) name and address of borrower;

(c) short description of proposed project, including location of project;

(d) amount of proposed loan;

(e) the program(s) under which the financial institution or borrower is applying;

(f) any other information in which the demand of individual privacy does not clearly exceed the merits of public disclosure; and

(g) any information in which the demand of individual privacy clearly exceeds the merits of public disclosure when the borrower has expressly waived his right to privacy.

(2) The board shall maintain public files on each completed application received containing the following information:

(a) items (1)(a) through (g) of this rule;

(b) all written documents received or prepared concerning items (1)(a) through (g) of this rule;

(c) the investment officer's or his designee's recommendation to the board regarding items (1)(a) through (g) and his recommendation for approval or denial of the application; and

(d) a summary of board action regarding the application including the board's approval or disapproval of the application, the terms and interest rate of the financing, and the loan repayment record.

(3) This rule is based on the board's finding that except for the information described in items (1)(a) through (g), the demands of individual privacy clearly exceed the merits of public disclosure of the personal, financial and business information that is contained in applications to the board."

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

"IV. ALLOCATION OF CAPACITY (1) If the bond capacity of the board is not sufficient to finance all eligible projects, the board, in determining which projects to fund, shall consider the following:

(a) the order in which the applications are submitted;

(b) the availability of financing through one of its other programs;

(c) the availability of tax-exempt financing through another issuer; and

(d) the degree to which the project meets the policies set forth in 17-5-1502, MCA, of the Act."

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

"V. FALSE OR MISLEADING STATEMENTS (1) Any person who purposely or knowingly makes a false or deceptive statement in an application or purposely or knowingly omits information necessary to prevent the statements in an application from being misleading may be prosecuted under 45-6-317 and 45-7-203, MCA, or other applicable provisions of law.

(2) The submission of false, misleading, or deceptive information in an application shall be grounds for rejection of the application and denial of further consideration."

Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMP: Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA; The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section.

"VI. APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES (1) Applicants for participation in either the MOBP or the SABP program shall submit a non-refundable application fee of $500 at the time the application is submitted.

(2) An application for consideration under the MOBP or the SABP program shall require the submission of:

(a) the names, addresses and titles of the applicants;

(b) a history of the project and organization;

(c) a resume of the applicant's principals;

(d) financial statement of the applicant;

(e) other information including, but not limited to, feasibility studies, appraisals, market studies, personal financial statements, and tax returns deemed necessary by the board to evaluate the applicant's request.

(3) An applicant for consideration under the MOBP program shall also submit a written acknowledgement from a financial institution of its intention to commit to the financing of the project as fully described in new rule XI.

(4) At the time revenue bonds are issued by the board under the MOBP or the SABP program to provide financing for a project, the borrower shall pay a financing fee to the board based on the principal amount of the revenue bonds issued on behalf of that borrower. The financing fee is to reimburse the board for a proportionate share of its administrative costs associated with the making and servicing of its financial undertakings and its general operative and administrative expenses.

(a) The financing fee for the MOBP program will be as follows:

(i) one percent (1%) of the first $1,000,000, plus

(ii) one-half percent (.5%) of the next $4,000,000, plus

(iii) one-quarter percent (.25%) of any amount over $5,000,000.

(iv) borrowers under the MOBP program shall remit to the board or its designee a monthly administrative and guarantee fee equal to one-half percent per annum of the outstanding loan balance.

(b) The financing fee for the SABP program will be as follows:

(i) one percent (1%) of the first $500,000, plus

(ii) one-half percent (.5%) of the next $500,000, plus

(iii) one-tenth percent (.1%) of any amount over $1,000,000.

(5) Borrowers under either the MOBP or SABP program shall pay the costs of issuance of the bonds. The costs of the bond issue may include, but are not limited to, fees of the underwriter, financial advisor, and bond counsel; and the costs of printing, advertising, executing and delivering the bonds.

(6) Financial institutions participating in the board's bond programs shall be entitled to charge borrowers a fee for services provided to borrowers as set forth herein. Allowable fees may include, but are not limited to: loan origination fee, loan servicing fee, inspection fee, disbursement fee, and letter of credit fee."

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

"VII. APPLICATION PROCEDURES AND PUBLIC HEARING REQUIREMENTS (1) A business enterprise may apply for financing under the economic development bond programs by submitting a loan application to the board which will review project eligibility and the proposed use of the money.

(2) For moral obligation bonds, the financial institution shall submit a complete loan application in a form provided by the board. The application shall be properly signed and certified by the borrower and the financial institution. An application signed by the financial institution shall constitute a commitment by the financial institution to originate the loan or participate in the financing (if such participation is required), in the manner set forth in the application. The board shall review the complete application with bond counsel to determine whether the project meets the requirements of these rules and the regulations of the Internal Revenue Code.

(3) If the applicant has applied for bond financing which is subject to federal tax exemption and the project appears eligible, the board shall notify the governing body of the local government in which the project is located of the pending application for financing and of the local government's right to conduct a public hearing on the project

for the purpose of determining whether the project is in the public interest. The local government shall notify the board within fourteen days after receipt of notification of the pending application of whether the local government intends to conduct the public hearing.

(4) If the local government elects to conduct the public hearing, the board and local government shall determine the date for the public hearing and the board shall publish notice of the public hearing pursuant to the requirements of 17-5-1526(4) and 17-5-1527(4), MCA. If the local government, after the public hearing, determines that the project is in the public interest it shall adopt a resolution which makes appropriate findings of public interest with respect thereto. The local government must notify the board within fourteen days of the public hearing of its findings and provide the board with a copy of the resolution. The board, upon notification that the local government has determined that the project is in the public interest, may issue an inducement resolution.

(5) If the local government declines to conduct the public hearing or fails to notify the board of its intention to conduct the hearing within fourteen days, the board shall hold a public hearing on the project for the purpose of determining whether the project is in the public interest. If the local government fails to notify the board of its determination of public interest within fourteen days of the hearing, the board may hold a public hearing on the project for the purpose of determining whether the project is in the public interest. At the conclusion of the public hearing, the board may issue its inducement resolution for the project.

(6) If the board determines that time is of the essence to an applicant applying for financing from federally tax-exempt bonds, the board may adopt a preliminary inducement resolution after an application has been submitted in accordance with new rule VI and upon such other terms and conditions deemed necessary.

(7) Upon receipt of the local government's determination or upon its own determination that the project is in the public interest, the board may adopt an inducement resolution. This inducement resolution shall only constitute an expression of present intention of the board with respect to the project and shall not constitute a binding commitment on the part of the board that its bonds or notes will be issued for the project. This resolution expires one year from its date of adoption.

(8) After the board has approved an application for financing with federally tax-exempt bonds, but before the board issues such bonds, a project description shall be submitted to the governor. The governor shall, in writing, approve the project and certify that the required public hearing was conducted in compliance with the Internal Revenue Code.

(9) After an application has been approved by the board, the board may issue a conditional commitment."

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

"VIII. PUBLIC INTEREST CRITERIA (1) In determining whether a project is in the public interest, the local government or the board shall consider whether the proposed project:

(a) increases job opportunities;

(b) retains existing jobs;

(c) diversifies the economy of the state and locality in which the project is located;

(d) is consistent with 17-5-1502, MCA; and

(e) complies with the local government's ordinances, resolutions, or regulations pertaining to the issuance of industrial development revenue bonds, if any."

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

"IX. THIRTY DAY REVIEW REQUIREMENT (1) Except for the consideration of a preliminary inducement resolution, no action will be taken by the board unless an application has been deemed complete and has been submitted at least 30 days prior to a public meeting of the board."

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

"X. DESCRIPTION OF MOBP PROGRAM (1) For 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."

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

"XI. ELIGIBILITY REQUIREMENTS OF MOBP PROGRAM (1) In order to qualify for financing under the MOBP program, the project must meet the criteria set forth in 17-5-1526 and 17-5-1727, MCA, in addition to the following eligibility requirements:

(a) the project is in the public interest as determined at the public hearing conducted by the board pursuant to new rule VII or by the governing body of the local government unit in which the project is located. The public hearing requirement applies only to projects financed by federally tax-exempt bonds;

(b) the project will not only provide sufficient revenues to pay debt service on the bonds and related service and administrative costs, but also shall meet the board's reasonable expectations regarding cash flow and profitability to meet long-term viability;

(c) the project, upon completion, will have complied with all applicable local, state and federal laws and regulations; and

(d) as required by 17-5-1526(1)(e) and 17-5-1527(1)(e), MCA, the project applicant must submit the required statements concerning the employment preference for Montana residents.

(2) An approved financial institution intending to participate in a board financing under the MOBP program must certify at the time an application for such financing is submitted that the institution's participation in, including the letter of credit proposed to be issued for the financing being requested, together with its participation (including the amounts of letters of credit outstanding for other financings under the board's MOBP program) does not exceed twenty-five percent (25%) of its capital and surplus.

(3) Eligible projects may consist of the acquisition of land and the rights and interests in the land, including the acquisition or construction of buildings, improvements or structures on the land; or the acquisition of fixtures, machinery, equipment and other tangible property so long as the following conditions are satisfied:

(a) the maximum loan-to-value ratio shall be ninety percent (90%), using the lower of appraised value or cost/purchase to determine value;

(b) the financing shall be secured by a mortgage on the property being financed and on any additional collateral deemed necessary by the board, and shall be subject to any other terms and covenants the board deems necessary; and

(c) working capital is not financed.

(4) The board may finance projects for which the sole purpose is to provide residential housing as defined in ARM 8.97.1301(29) through the MOBP program only upon the following terms and conditions:

(a) the project must consist of at least eight units;

(b) a complete appraisal acceptable to the board and the financial institution and in a format approved by the board indicating cost, market, and income values must be submitted with the application;

(c) the applicant and the project must comply with requirements contained in section 142(d) of the Internal Revenue Code, including the requirement that at least twenty percent (20%) of the units be reserved for persons of low or moderate income as defined therein;

(d) such other terms and conditions as may be required by the board."

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

"XII. CRITERIA FOR EVALUATING APPLICATIONS FOR PROJECT FINANCING UNDER THE MOBP PROGRAM (1) In evaluating applications for financing under the MOBP program and the requirements of new rule XI, the board will consider the following factors:

(a) the applicant's net worth;

(b) the applicant's training and experience in the industry involved in the project;
(c) the applicant's prospect for succeeding in the proposed project;
(d) all materials submitted by the applicant and the financial institution as part of the application;
(e) the financial condition of the financial institution issuing a letter of credit for the proposed financing; and
(f) other information deemed necessary to protect the board's investment.
(2) The board reserves the right to require a borrower or a financial institution to provide such additional security as the board deems appropriate, including but not limited to a pledge of tangible or intangible assets."
Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMP: Sec. 17-5-1504, 17-5-1521, MCA

"XIII. INTEREST RATES (1) The rate of interest on the financing provided by the board will be determined by the board after the sale of its bonds."
Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMP: Sec. 17-5-1504, 17-5-1521, MCA

"XIV. CLOSING OF LOANS (1) The board will issue its bonds or notes in amounts sufficient to fund the loans approved by the board. Upon certification by the financial institution that all provisions of the loan commitment have been complied with, the loan will be scheduled for closing and payment of money to the financial institution."
Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMP: Sec. 17-5-1504, 17-5-1521, MCA

"XV. DESCRIPTION OF THE SABP PROGRAM (1) Projects under the SABP program may be financed in the state upon such terms and conditions as determined by the board as set forth in these rules.
(2) The bonds are payable solely from loan payments and one or more reserve funds, however, no common reserve funds under the MOBP program may secure a SABP loan.
(3) The bonds may be sold to a purchaser selected by the applicant."
Auth: Sec. 17-5-1504, 17-5-1521, MCA; IMP: Sec. 17-5-1505, 17-5-1526, 17-5-1527, MCA

"XVI. ELIGIBILITY REQUIREMENTS OF SABP PROGRAM (1) In order to qualify for financing under the SABP program, the board shall determine that a project meets the following criteria:
(a) the project is in the public interest as determined at the public hearing conducted pursuant to new rule VII by the board or by the governing body of the local government unit in which the project is located. The public hearing requirement applies only to projects financed by federally tax-exempt bonds;

(b) the project, upon completion, will have complied with all applicable local, state and federal laws and regulations; and

(c) as required in 17-5-1526(1)(e) and 17-5-1527(1)(e), MCA, the project applicant has submitted statements concerning the employment preference for Montana residents.

(2) For projects eligible to obtain financing from federally tax-exempt bonds, the following requirements must be met:

(a) eligible projects may consist of the acquisition of land and rights and interests in the land including the acquisition or construction of buildings, improvements or structures on the land; or the acquisition of fixtures, machinery, equipment and other tangible property so long as working capital is not financed.

(3) The board may finance projects for which the sole purpose is to provide residential housing as defined in ARM 8.97.1301(29), through the SABP program only upon the following terms and conditions:

(a) the project must consist of at least eight units;

(b) a complete appraisal acceptable to the board and the financial institution, and in a format approved by the board indicating cost, market, and income values must be submitted with the application;

(c) the borrower and the project must comply with requirements contained in section 103(b)(4)(a) of the Internal Revenue Code, including the requirement that at least twenty percent (20%) of the units will be reserved for persons of low or moderate income as defined therein; and

(d) such other terms and conditions as may be required by the board."

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

"XVII. CRITERIA FOR EVALUATING APPLICATIONS FOR PROJECT FINANCING UNDER THE SABP PROGRAM (1) In evaluating applications for project financing under the SABP program and the requirements of new rule XVI, the board shall consider the following factors:

(a) that the project's purpose is consistent with 17-5-1502, MCA;

(b) that the application is deemed complete and accurate; and

(c) that all materials and information have been submitted as required in new rule XII."

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

5. REASON: The Board is proposing to adopt the new rules in order to update and more fully implement its existing authority and duties pertaining to its Economic Development Bond Program.

6. The rules proposed for amendment will read as follows: (new matter underlined, deleted matter interlined)

(full text of the rules is located at pages 8-3572 through 8-3575, Administrative Rules of Montana)

"8.97.1411 COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS - TERMS AND LOAN LIMITS (1) will remain the same.

(2) The maximum loan-to-value ratio ~~to~~ will be ~~established will be 75 percent using~~ the lower of the appraised value, market value or cost/purchase amount. Interim interest, closing costs and other soft costs will not be considered as part of the cost/purchase amount when calculating the loan-to-value ratio. The maximum loan-to-value ratio applies to the following types of collateral:

(a) real property up to 75 percent;
(b) machinery and equipment up to 75 percent;
(c) contracts and contract rights up to 80 percent;
(d) accounts receivable up to 80 percent;
(e) inventory up to 50 percent;
(f) letters of credit up to 100 percent;
(g) marketable securities up to 70 percent;
(h) cash value of life insurance up to 90 percent; and
(i) work in progress up to 50 percent.

(3) will remain the same."

Auth: Sec. 17-5-1503, 17-5-1521, 17-6-324, MCA; IMP: Sec. 17-5-1504, 17-5-1521, 17-6-211, 17-6-324, MCA

"8.97.1412 COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS - OFFERING CHECKLIST (1) through (2)(f) will remain the same.

(g) a copy of the note and loan agreement with terms, conditions, representations, warranties, conditions, covenants, and events of default acceptable to the board including addendum under ARM 8.97.~~1603(3)~~1411(3);

(h) through (n) will remain the same."

Auth: Sec. 17-5-1504, 17-5-1521, 17-6-324, MCA; IMP: Sec. 17-5-1504, 17-5-1521, 17-6-324, MCA

"8.97.1413 ECONOMIC DEVELOPMENT LINKED DEPOSIT PROGRAM - GENERAL REQUIREMENTS (1) The board may place economic development linked deposits at an interest rate determined in accordance with ARM 8.97.1303, with approved financial institutions that contract with the board to utilize the receipts to finance long-term fixed-rate loans ~~to small and medium-sized businesses~~. The amount of linked deposit shall be limited to 100 percent of the amount of the loan linked to the deposit. The financial institution retains all risk on any loans financed with the proceeds of an economic development linked deposit. This program may not be used to fund or support a loan that is guaranteed in whole or in part by an agency or instrumentality of the United States government.

(2) through (4) will remain the same."

Auth: Sec. 17-6-324; IMP: Sec. 17-6-324, MCA

7. REASON: The Board is proposing to amend the above rules to investments in order to more clearly define the

acceptable types of collateral and loan-to-value assigned; to allow for a broader category of long-term fixed-rate loans, and to correct an internal citation.

8. 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 by mail to Mr. David Lewis, Executive Director, Board of Investments, 555 Fuller Avenue, Helena, Montana, no later than March 14, 1989.

9. Mona Jamison has been designated to preside over and conduct the hearing.

MONTANA BOARD OF INVESTMENTS
MR. W. E. SCHREIBER, CHAIRMAN

By: Geoffrey L. Brazier
Geoffrey L. Brazier, Attorney
Department of Commerce

Certified to the Secretary of State, January 30, 1989.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 regarding scheduled dates for the Montana Administrative Register	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION FOR THE MONTANA ADMINISTRATIVE REGISTER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On March 11, 1989, the office of the Secretary of State proposes to amend ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER

(1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

1989 Schedule

Filing	Compiling	Printer Pickup	Publication
January 3	January 4	January 5	January 12
January 16	January 17	January 18	January 26
January 30	January 31	February 1	February 9
February 13	February 14	February 15	February 23
March 6	March 7	March 8	March 16
March 20	March 21	March 22	March 30
April 3	April 4	April 5	April 13
April 17	April 18	April 19	April 27
May 1	May 2	May 3	May 11
May 15	May 16	May 17	May 25
June 5	June 6	June 7	June 15
June 19	June 20	June 21	June 29
~~July 3~~			
June 30	July 5	July 6	July 13
~~July 17~~	July 18	July 19	July 27
August 7	August 8	August 9	August 17
August 21	August 22	August 23	August 31
September 5	September 6	September 7	September 14
September 18	September 19	September 20	September 28
October 2	October 3	October 4	October 12
October 16	October 17	October 18	October 26
October 30	October 31	November 1	November 9
November 13	November 14	November 15	November 22

November 27	November 28	November 29	December 7
December 11	December 12	December 13	December 21

(2) remains the same.

AUTH: 2-4-312, MCA IMP: 2-4-312, MCA

3. The rule is proposed to be amended to change the filing date that falls on July 3, 1989 to Friday June 30, 1989 because Governor Stephens has designated Monday July 3, 1989 as the Heritage Day holiday.

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 March 9, 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 March 11, 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 35 persons based on the subscribers to the MAR and ARM.

MIKE COONEY
Secretary of State

Dated this 30th day of January, 1989.

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

In the matter of the amendment of Rule 8.111.305 qualified lending institutions and adoption of a rule establishing qualified loan servicer guidelines	)))))	NOTICE OF AMENDMENT OF RULE 8.111.305 QUALIFIED LENDING INSTITUTIONS and ADOPTION OF A RULE FOR QUALIFIED LOAN SERVICERS

TO: All Interested Persons.

1. On December 22, 1988, the Montana Board of Housing published notice of a proposed amendment to Rule 8.111.305, which provides the guidelines used by the board in selecting qualified lending institutions and the proposed adoption of a rule specifying the guidelines for selecting qualified servicers of mortgage loans, on page 2625 of MAR, issue no. 24.

2. The board has amended Rule 8.111.305 as proposed, and Rule I, as proposed, is being adopted as Rule 8.111.305A.

3. No comments or testimony has been received.

4. The authority for the rules is 90-6-104, MCA, and the rules implement 90-6-108, MCA.

MONTANA BOARD OF HOUSING

By: Richard A. Kain
Richard A. Kain, Administrator

Certified to the Secretary of State, January 30, 1989.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12.6.701	)))	NOTICE OF THE AMENDMENT OF RULE 12.6.701 REGARDING PERSONAL FLOTATION DEVICES AND LIFE PRESERVERS

TO: All interested persons

1. On September 8, 1988, the Montana Department of Fish, Wildlife, and Parks gave notice of the proposed amendment of Rule 12.6.701 regarding personal flotation devices and life preservers on page 1960 of the Montana Administrative Register, issue number 17.

2. Written and oral comments were received at public hearings set for September 28, 1988 in Bozeman; September 29, 1988 in Helena; and October 4, 1988 in Kalispell. Other comments written were received through October 6, 1988.

3. A report summarizing the public comment was prepared and submitted to the Commission by the Hearing Examiner, Robert N. Lane.

4. The Department recommended to the Commission that the proposed rule be adopted with some modifications in the personal flotation devices (PFDs) required in the proposed rule. The recommendation was made in the interest of safety. The public comment, both oral testimony and written comments, was unanimously opposed to requiring PFDs for sailboard users, except for younger persons. Generally, the public felt that the sailboard itself provided any needed flotation, that PFDs could be hazardous in some circumstances, that water and weather conditions dictated to the prudent greater safety equipment as needed, and that PFDs interfered with the performance of the sport. Public comment favored requiring children under 12 to wear a PFD.

5. After considering the public comment and the Department's recommendation, the Commission has amended the rule with the following changes to the rule as proposed:

12.6.701 PERSONAL FLOTATION DEVICES AND LIFE PRESERVERS Section (1) through (1)(d) remain the same.

(2) The following are requirements for sailboards used on waters of this state:

~~(a) A person operating a sailboard (windsurfer) must have on his person a personal flotation device that may include Coast Guard approved life preserver, Coast Guard approved buoyant vest, wet suit, dry suit or ski belt.~~

(a) IF TWO OR MORE PERSONS ARE OCCUPYING A SAILBOARD, EACH OCCUPANT MUST HAVE A COAST GUARD APPROVED LIFE PRESERVER SECURELY FASTENED TO HIS PERSON.

(b) A person operating a sailboard (windsurfer), who has not reached his ~~12th~~ 15TH birthday, must have a Coast Guard approved life preserver securely fastened to his person.

AUTH: 87-1-301 MCA, 87-1-303 MCA, and 23-2-521 MCA
IMP: 23-2-521 MCA

6. The rule is adopted in conformance with public comment. The age, under which a PFD is required, was raised from 12 to 15 years of age. The Commission determined that the maturity and experience needed to safely handle a sailboard without a PFD was not generally reached prior to 15 years of age.

Richard L. Johnson
Acting Secretary
Montana Fish and
Game Commission

Certified to the Secretary of State January 30, 1989.

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

In the matter of the amendment of Rule 12.6.707 pertaining to the definition of "vessel"	NOTICE OF THE AMENDMENT OF RULE 12.6.707 PERTAINING TO THE DEFINITION OF "VESSEL"

TO: All interested persons

1. On September 8, 1988, the Montana Department of Fish, Wildlife, and Parks gave notice of the proposed amendment of Rule 12.6.707 pertaining to the definition of "vessel", on page 1959 of the Montana Administrative Register, issue number 17.

2. Written and oral comments were received at public hearings set for September 28, 1988 in Bozeman; September 29, 1988 in Helena; and October 4, 1988 in Kalispell. Other comments were received through October 6, 1988.

All comments received favored excluding sailboards from the definition of vessel.

3. Based on the foregoing, the department hereby adopts the amendment as proposed.

4. The authority of the department to amend ARM 12.6.707 is based on Section 23-2-502(18), MCA, and the amendment implements Section 23-2-502(18, MCA. These authorities were incorrectly given as Section 23-2-502(13), MCA, in the original notice of the proposed amendment.

Richard L. Johnson
Deputy Director
Montana Department of
Fish, Wildlife and Parks

Certified to the Secretary of State January 30, 1989.

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

In the matter of the amendment of rules 16.8.1407, 16.8.1501 and 16.8.1503 regarding combustion in wood-waste burners, definitions for emission standards for existing aluminum plants and standards for visible emissions in aluminum plants.	NOTICE OF THE ADOPTION AND AMENDMENT OF RULES (Air Quality)

To: All Interested Persons

1. On November 23, 1988, at pages 2471-2474 of issue number 22 of the Montana Administrative Register, the Department of Health and Environmental Sciences published notice of public hearing on the proposed adoption of amendments to the above-captioned rules which pertain to changes in standards for wood-waste burners, definition of potroom and potroom group and, minor changes in the rule regarding standards for visible emissions.

2. The proposed amendments effect changes petitioned by the Montana Wood Products Association and the Columbia Falls Aluminum Company. Upon discussion and compromise, the Air Quality Bureau of the Montana Department of Health and Environmental Sciences (Department) endorses the amendments and the Bureau considers the amendments important for implementation of the air quality program.

3. The Board has adopted the amendments to the above-referenced rules as noticed with the exception of various substantive changes to 16.8.1407 and one typo-related change to 16.8.1505 as follows (new material is underlined and capitalized; material to be deleted is interlined):

16.8.1407 WOOD-WASTE BURNERS (1)-(5) Same as proposed.

(6) EXCEPT AS PROVIDED IN SECTION (7) A ~~a~~ minimum temperature of 700° F shall be maintained during normal operation of all wood-waste burners. A normal start-up period of one (1) hour is allowed during which the 700° F minimum temperature does not apply. The burner shall maintain 700° F operating temperature until the fuel feed is stopped for the day.

(7) ~~--Existing--wood-waste--burners-which-cannot-maintain 700o-F-during-normal-operation-will-be-exempt--from-section-(4) and-section--(6)-of--this-rule--for-a--period-of-five-(5)-years from-the-adoption-date-of-this--rule.----After--that--time,-all wood-waste--burners--must--comply-with-this-requirement,-except existing-wood-waste-burners-in-Group-III-areas-or--burners-that contribute-to--Group-I--or-II--areas-as-defined-in-52-FR-24680, July-1,-1987-which-will-be--exempt--from--section--(6)--of-this rule.---~~WOOD-WASTE BURNERS IN EXISTENCE ON THE DATE OF ADOPTION OF THIS RULE:

(a) HAVE UNTIL JUNE 30, 1992 TO TAKE CORRECTIVE ACTIONS AS NECESSARY TO COMPLY WITH SECTION (4) AND SECTION (6) OF THIS RULE.

(b) DO NOT HAVE TO COMPLY WITH THE REQUIREMENTS OF SECTION (6) IF THEY ARE LOCATED OUTSIDE OF TEN-MICRON PARTICULATE (PM-10) IMPACT AREAS DEFINED BY THE DEPARTMENT.

(c) MUST OBTAIN A NEW AIR QUALITY PERMIT AS APPLICABLE FROM THE DEPARTMENT IN ACCORDANCE WITH THE PROVISIONS OF SUBCHAPTER 11 AND SUBCHAPTER 9, PRIOR TO REACTIVATION OF A WOOD-WASTE BURNER WHICH DOES NOT COMBUST WOOD-WASTE FOR A PERIOD OF TWO CONTINUOUS YEARS OR MORE AFTER THE DATE OF ADOPTION OF THIS RULE.

(8) and (9) Same as proposed.

(10) Rubber products, asphaltic materials, or other prohibited materials ~~which cause dense smoke discharge~~ specified in ARM 16.8.1302 (2)(b) THROUGH (d), (f) THROUGH (r), (t) AND (u) shall not be burned or disposed of in wood-waste burners.

(11) Same as proposed.

(12) and (13) were stricken.

16.8.1501 DEFINITIONS Same as proposed.

16.8.1503 STANDARD FOR VISIBLE EMISSIONS

~~(2)~~ (1) No owner or operator subject to the provisions of this rule may cause the emission into the atmosphere from any potroom group of any gasses or particles which exhibit 10% opacity or greater as determined by EPA Reference Method 9 in Appendix A of ~~Title~~ 40 CFR, Part 60, (July 1, 1987 edition) ~~of the Code of Federal Regulations~~.

(2) Same as proposed.

4. Comments were provided by the Environmental Protection Agency (EPA) to the effect that the former 0.1 grs/scf emission standard for wood-waste burners could be attainable, that the impact on PM-10 areas should be clarified and that relaxation of the daily log requirement could be problematic. Most of the EPA comments were addressed through the changes made prior to the final adoption. Under the new rule the maintenance of a daily log is discretionary with the Department. Other comments of the EPA will be addressed when a revised State Implementation Plan (SIP) is submitted to the EPA.

HOWARD TOOLE, Chairman,
Board of Health and
Environmental Sciences

William J. Opitz

WILLIAM J. OPITZ, Deputy Director

Certified to the Secretary of State January 30, 1989.

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

In the matter of the amendment of Rules 46.12.204, 46.12.901, 46.12.902, 46.12.905, 46.12.911, 46.12.912 and 46.12.915 pertaining to co-payments and fees for optometric services	)))))))	NOTICE OF THE AMENDMENT OF RULES 46.12.204, 46.12.901, 46.12.902, 46.12.905, 46.12.911, 46.12.912 AND 46.12.915 PERTAINING TO CO-PAYMENTS AND FEES FOR OPTOMETRIC SERVICES

TO: All Interested Persons

1. On October 27, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.204, 46.12.901, 46.12.902, 46.12.905, 46.12.911, 46.12.912 and 46.12.915 pertaining to co-payments and fees for optometric services at page 2274 of the 1988 Montana Administrative Register, issue number 20.

2. The Department has amended Rules 46.12.204 and 46.12.902 as proposed.

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

46.12.901 OPTOMETRIC SERVICES, DEFINITION

Subsections (1) through (2)(b)(i) remain as proposed.

(c) "Minimal ~~medical~~ OPTOMETRIC service" means a level of service supervised by an optometrist but not necessarily requiring his presence. This includes, for example, a visual acuity check or verification of lenses.

(d) "Brief ~~medical~~ OPTOMETRIC service" means a level of service pertaining to the evaluation and treatment of a condition OF THE EYE OR RELATED STRUCTURE requiring only an abbreviated history and examination. This includes, for example, follow-up for conjunctivitis or removal of sutures from laceration (when not a post-operative part of total surgical service).

(e) "Limited ~~medical~~ OPTOMETRIC service" means a level of service pertaining to the evaluation of a circumscribed acute illness OF THE EYE AND RELATED STRUCTURE or to the periodic re-evaluation of a problem including an interval history and examination, the review of effectiveness of past medical management, the ordering and evaluation of appropriate diagnostic tests, the adjustment of therapeutic management as indicated, and the discussion of findings and/or medical management. This includes, for example, review of history, external examination of eye, initiation of treatment for acute conjunctivitis, or review of interval history, and physical and sensory status.

(f) "Intermediate optometric services" means a level of service pertaining to the evaluation of a new or existing condition OF THE EYE AND RELATED STRUCTURES complicated with a new diagnostic or management problem not necessarily relating to the primary diagnosis, including history, general medical observation, external ocular and adnexal examination and other diagnostic procedures as indicated. These services may include the use of mydriasis. Intermediate services do not usually include determination of the refractive state but may do so in an established patient (procedure 92012) who is under continuing active treatment. This includes, for example, review of history, external examination, ophthalmoscopy, biomicroscopy for an acute complicated condition (e.g., iritis) not requiring comprehensive ophthalmological services or review of interval history, external examination, ophthalmoscopy, biomicroscopy and tonometry in established patient with known cataract not requiring comprehensive optometric services.

Subsection (2)(g) remains as proposed.

(h) "Initiation of diagnostic and treatment program" includes the prescription of medication, lenses and other therapy and arranging for special optometric diagnostic or treatment services, consultations, laboratory procedures and radiological services as may be indicated. Prescription of lenses may be deferred to a subsequent visit, but in any circumstance is not reported separately. ("Prescription of lenses" does not include anatomical facial measurements ~~for~~ or writing of laboratory specifications for spectacles. ~~For spectacle services, see procedure 92340 et seq.~~ THESE SERVICES ARE COVERED UNDER "DISPENSING SERVICES" IN ARM 46.12.905.)

Subsections (2)(i) and (2)(j) remain as proposed.

(k) "CONSULTATION" MEANS SERVICES RENDERED BY AN OPTOMETRIST WITH A HIGH LEVEL OF EXPERTISE WHOSE OPINION OR ADVICE IS REQUESTED BY ANOTHER PRACTITIONER FOR THE FURTHER EVALUATION AND/OR MANAGEMENT OF THE PATIENT. WHEN THE CONSULTING OPTOMETRIST ASSUMES RESPONSIBILITY FOR THE CONTINUING CARE OF THE PATIENT, ANY SUBSEQUENT SERVICE RENDERED BY HIM WILL CEASE TO BE A CONSULTATION. TWO LEVELS OF CONSULTATION ARE RECOGNIZED:

(i) IN A LIMITED CONSULTATION (90600) THE OPTOMETRIST CONFINES HIS SERVICE TO THE EXAMINATION OR EVALUATION OF A SINGLE ORGAN SYSTEM. THIS PROCEDURE INCLUDES DOCUMENTATION OF THE COMPLAINT(S), PRESENT ILLNESS, PERTINENT EXAMINATION, REVIEW OF MEDICAL DATA AND ESTABLISHMENT OF A PLAN OF MANAGEMENT RELATING TO THE SPECIFIC PROBLEM.

(ii) AN INTERMEDIATE CONSULTATION (90605) INVOLVES EXAMINATION OR EVALUATION OF AN ORGAN SYSTEM, A PARTIAL REVIEW OF THE GENERAL HISTORY, RECOMMENDATIONS AND PREPARATION OF A REPORT.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.905 OPTOMETRIC SERVICES, REIMBURSEMENT
Subsections (1) through (1)(c) remain as proposed.
(2) Professional services are provided as follows:

(Procedures marked with an "*" shall be allowed only when eyeglasses are allowed.)

(Procedures LISTED IN THIS RULE, EXCEPT THOSE marked with an "**", shall be subject to the limits on routine eye examinations when the diagnosis is refractive error.)

OPTOMETRISTS WHO BILL FOR THESE SERVICES ARE CERTIFYING THAT THEY MEET ALL LICENSING REQUIREMENTS TO PROVIDE THESE SERVICES.

		Fee
OFFICE MEDICAL SERVICES, NEW PATIENT		
Procedures 90000 through 90620 remain the same except that the double asterisks ("**") will be removed.		
~~90630**~~	~~complex~~	~~68.91~~
FOLLOW-UP CONSULTATION		
90640**	Follow-up consultation, brief	28.24
90641**	limited	37.66
90642**	intermediate	41.03
~~90643**~~	~~complex~~	~~65.91~~
GENERAL OPTOMETRIC SERVICES		
Procedures 92002 and 92004 remain the same except that the double asterisks ("**") will be removed.		
92012**	~~comprehensive, established patient, one or more visits~~ Medical examination and evaluation, with initiation or continuation of diagnostic and treatment program; intermediate, established patient	23.54 ~~25.54~~
Procedures 92014 and 92060 remain the same except that the double asterisks ("**") will be removed.		
92065	Orthoptic and/or pleoptic training, with continuing medical direction and evaluation - visual training. (The 24 hour per 12 month limit as provided for in ARM 46.12.902 applies. The limit on eye examinations does not apply.)	21.78 per hour in the office

Procedures 92081 through 92140 remain the same except that the double asterisks ("**") will be removed.

OPHTHALMOSCOPY

92225**	Ophthalmoscopy, extended as for retinal detachment (may include use of contact lens, drawing or sketch, and/or fundus biomicroscopy), with medical diagnostic evaluation; initial. NOT TO BE BILLED IF BILLED BY SURGEON	20.64
92226**	subsequent; NOT TO BE BILLED IF BILLED BY SURGEON	10.75
~~92230**~~	~~Ophthalmoscopy, with medical diagnostic evaluation; with fluorescein angioscopy (observation only)~~	~~47.08~~
~~92235**~~	~~with fluorescein angiography (includes multiframe photography)~~	~~64.80~~
92250**	OPHTHALMOSCOPY with fundus photography; NOT TO BE BILLED IN ADDITION TO GENERAL OPTOMETRIC SERVICES	32.96
92260**	OPHTHALMOSCOPY with ophthalmodynamometry; NOT TO BE BILLED IN ADDITION TO GENERAL OPTOMETRIC SERVICES	37.66

OTHER SPECIALIZED SERVICES

Procedures 92265 through 92285 remain the same except that the double asterisks ("**") will be removed.

92286**	Special anterior segment photography with medical diagnostic evaluation; with specular endothelial microscopy and cell count; NOT TO BE BILLED BY OPTOMETRIST IF BILLED BY SURGEON	37.51

CONTACT LENS SERVICES

92310**	Prescription of optical and physical characteristics of and fitting of contact lens, with medical supervision of adaptation; corneal lens, both eyes, except for aphakia; NOT IN ADDITION TO CODES 92002-92014.	106.00 ~~281.33~~ 106.00
92311**	corneal lens for aphakia, one eye	~~281.33~~ 150.00
92312**	corneal lens for aphakia, both eyes	~~328.21~~

The following codes are to be used by an optician dispensing contacts prescribed by an optometrist OR OPHTHALMOLOGIST. The prescribing optometrist should bill using the appropriate general Optometric Service Code (92002-92014)

92314*	~~Prescription of optical and physical characteristics of contact lens, with medical supervision of adaptation and direction of~~ fitting by independent technician; corneal lens, both eyes, except for aphakia	63.00 ~~238.53~~

		63.00
92315*	corneal lens for aphakia, one eye	~~238.53~~
		107.00
92316*	corneal lens for aphakia, both eyes	~~285.41~~
92325*	MODIFICATION OF CONTACT LENS (SEPARATE PROCEDURE), WITH MEDICAL SUPERVISION OF ADAPTATION	9.37

DISPENSING SERVICES

Procedures 92340 through Z9560 remain as proposed.

SPECIAL SERVICES AND REPORTS

99000**	Handling and/or conveyance of specimen for transfer from the optometrist's office to a laboratory	5.64 ~~3.00~~
99050**	Services requested after office hours in addition to basic service (day time)	11.32 ~~9.37~~
99052**	Services requested between 10:00 PM and 8:00 AM in addition to basic service	11.73 ~~15.00~~
99054**	Services requested on Sundays and holidays in addition to basic service	11.26
99056**	Services provided at request of patient in a location other than ~~physician's~~ OPTOMETRIST'S office which are normally provided in the office	13.61
99080**	Special reports such as insurance forms, or the review of medical data to clarify a patient's status - more than the information conveyed in the usual medical communications or standard reporting form	13.61

REMOVAL OF OCULAR FOREIGN BODY

65205**	Removal of foreign body, external eye; conjunctival superficial	15.56
65210**	conjunctival embedded (includes concretions, sub-conjunctival, or scleral nonperforating	15.56 ~~15.54~~
		17.26
65220**	corneal, without slit lamp	~~17.24~~
65222**	corneal, with slit lamp	21.66
67938**	REMOVAL OF EMBEDDED FOREIGN BODY, EYELID	15.56
68530**	REMOVAL OF FOREIGN BODY OR DACRYOLITH, LACRIMAL PASSAGES	15.56

DIAGNOSTIC ULTRASOUND

A-MODE: IMPLIES A ONE-DIMENSIONAL ULTRASONIC MEASUREMENT PROCEDURE.
B-SCAN: IMPLIES A TWO-DIMENSIONAL ULTRASONIC SCANNING PROCEDURE WITH A TWO-DIMENSIONAL DISPLAY.

76516**	OPHTHALMIC BIOMETRY BY ULTRASOUND ECHOGRAPHY, A-MODE;	98.61
76517**	B-SCAN	92.58
76519**	WITH INTRAOCULAR LENS POWER CALCULATION, NOT TO BE BILLED IF BILLED BY SURGEON	91.90

MICROBIOLOGY

LABORATORY SERVICES DONE IN AN OPTOMETRIST'S OFFICE

87081**	CULTURE, BACTERIAL, SCREENING ONLY, FOR SINGLE ORGANISMS	6.38
87205**	SMEAR, PRIMARY SOURCE, WITH INTERPRETATION: ROUTINE STAIN FOR BACTERIA, FUNGI, OR CELL TYPES	7.87

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

46.12.911 EYEGLASSES, DEFINITION (1) Eyeglasses ~~are~~ INCLUDE lens(es) and/or frames prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the patient may select, to aid and improve vision.

(2) Coverage of eyeglasses is limited to those items specified in ARM 46.12.915.

(3) ~~The date of service for eyeglasses is the date they are received by the recipient.~~ THE DATE OF SERVICE FOR MEASURING, VERIFYING AND FITTING OF EYEGLASSES IS THE DATE THE PATIENT IS SEEN FOR THE FITTING AND ORDERING OF GLASSES.

(a) THE CONTACTS ON AND AFTER THE DATE THE GLASSES ARE DISPENSED ARE CONSIDERED FOLLOW-UP CONTACTS AND ARE COVERED BY THE MEASURING, VERIFYING, AND FITTING FEE.

(b) THE DATE OF SERVICE FOR THE EYEGLASSES IS THE DATE THE RECIPIENT RECEIVES THE EYEGLASSES.

(c) IF THE RECIPIENT FAILS TO KEEP AN APPOINTMENT TO RECEIVE GLASSES, THE DATE OF SERVICE IS EITHER THE DATE THE OPTOMETRIST, OPHTHALMOLOGIST OR OPTICIAN SENDS A LETTER NOTIFYING THE RECIPIENT THAT THE GLASSES ARE AVAILABLE AND WILL BE PROVIDED TO THE RECIPIENT WHEN HE COMES IN FOR THEM OR THE DATE THE GLASSES ARE MAILED TO THE RECIPIENT. THE OPTOMETRIST, OPTHALMOLOGIST OR OPTICIAN WILL STILL BE RESPONSIBLE FOR ADJUSTING THE GLASSES. THE OPTOMETRIST, OPHTHALMOLOGIST OR OPTICIAN MUST DOCUMENT IN THE RECIPIENT'S RECORD THAT THE LETTER OR THE GLASSES WERE SENT TO THE RECIPIENT.

(d) IF GLASSES ARE SUPPLIED THROUGH A VOLUME PURCHASING CONTRACT, THE DATE OF SERVICE IS THE DATE SPECIFIED IN THE CONTRACT WITH THE SUPPLIER.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.912 EYEGLASSES, REQUIREMENTS Subsections (1) through (3) remain as proposed.

~~(4) The date of service for eyeglasses is no earlier than the date the recipient receives the eyeglasses. The recipient must be eligible for medicaid services on the date the recipient receives the eyeglasses.~~

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.915 EYEGLASSES, REIMBURSEMENT Subsections (1) through (4)(a)(ii) remain as proposed.

(iii) Z9582; add on for cylinder powers OR ADD POWER 4.00 to 12.00 diopters, add per lens for each full diopter over 4.00 diopters 2.00

Subsection (4)(b) "V0130 Frames, purchase (metal) 19.00" through "V2218 Aniseikonic, per lens, bifocal 18.15" remain as proposed.

V2220 ADD ONS FOR BIFOCAL LENSES BIFOCAL ADD OVER 3.25D (MAXIMUM OF ONE UNIT PER LENS) 2.00

Subsection (4)(b) "TRIFOCAL, GLASS OR PLASTIC" through "V2318 Aniseikonic lens, trifocal 21.97" remain as proposed.

V2320 ADD ONS FOR TRIFOCAL LENSES TRIFOCAL ADD OVER 3.25D (MAXIMUM OF ONE UNIT PER LENS) 2.00

Subsection (4)(b) "V2410 Variable asphericity lens, single vision, full field, glass or plastic, per lens 99.83" through end remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: Several comments were received concerning the date of service. Recommendations were made to set the date of service for eyeglasses to be the date of the examination or the date they are ordered. It was also indicated that 90% of dispensing services are complete when the glasses are ordered. The major problem faced by providers is the fact that recipients do not always come back within a reasonable time to get their glasses. In addition, recipient's eligibility frequently ends before glasses are actually received.

RESPONSE: The date of service for the dispensing service has been changed to the date glasses are ordered. However, the date of service for eyeglasses remains the date they are received by the recipient. Currently, the Department requires the date of service for other items, e.g. dentures and hearing

aids, to be the date the items are received by the recipient. Also, since the provider must sign a statement that the service has been provided when he bills Medicaid, the recipient must have the product before Medicaid is billed. The department believes that this insures that the recipient receives satisfactory products. The date of service under a volume purchasing contract may be reevaluated by the department.

COMMENT: There should be an indication on Medicaid recipients' cards that would let providers know that a recipient is eligible for eyeglasses.

RESPONSE: The department is exploring the possibility of using a system of telephone prior authorization as a means of certifying that a recipient is eligible for eyeglasses. This will be a major change to the claims processing system. Funding for the change will be an issue.

COMMENT: The fees for frames are too low.

RESPONSE: The fees for frames were set after consultation with the provider groups involved with dispensing and review of catalogs they provided. They are part of the departments cost containment effort.

COMMENT: Some fees for contact dispensing are too high.

RESPONSE: Based on department data on Medicaid payments and the Medicare prevailing rate of billed charges, certain fees have been reduced.

COMMENT: Procedure codes used by ophthalmologists, optometrists, or opticians should clearly identify the practitioner performing the service.

RESPONSE: The department has changed the proposed rule to indicate all procedure codes for professional services are for services performed by optometrists. The only exceptions are codes for dispensing services for eyeglasses and contact lens services which can be provided by more than one practitioner group.

COMMENT: Certain procedure codes should be added to these rules because they are allowed under the optometric practice act. Other codes should be deleted because they are either beyond the scope of the optometric practice act or of the practice of opticians.

RESPONSE: The department has negotiated with representatives of the Optometric Association and the Ophthalmology Association concerning contested optometric procedure codes.

Where agreement could not be reached, the written position of the Board of Optometry has been accepted. The rules generally follow the mandate of a state district court decision where opticians' services are concerned.

COMMENT: Practitioner's consultation should be clearly defined and comport to the scope of expertise.

RESPONSE: The department has added definitions of two levels of consultation and guidelines on their use. Certain levels of consultation were deleted from the proposed list of covered services because the definitions of these services indicate they go beyond consultation concerning one bodily system.

COMMENT: The codes for general office medical visits should be added because optometrists use these codes to bill other insurers. The pricing for general office medical codes should be adjusted to the same level the general office eye care codes.

RESPONSE: The general office eye care codes more accurately describe the services provided by optometrists and their use is consistent with Medicare's policy.

5. These rule changes will be effective March 1, 1989.

Benjamin F. Hall
Interim Director, Social and Rehabilitation Services

Certified to the Secretary of State January 30, 1989.

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

In the matter of the amendment of Rule 46.12.504 pertaining to requirements for inpatient hospital services	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.504 PERTAINING TO REQUIREMENTS FOR INPATIENT HOSPITAL SERVICES

TO: All Interested Persons

1. On December 22, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.504 pertaining to requirements for inpatient hospital services at page 2688 of the 1988 Montana Administrative Register, issue number 24.

2. The Department has amended Rule 46.12.504 as proposed.

3. Only supportive comments were received.

Benjamin J. Johns
Interim Director, Social and
Rehabilitation Services

Certified to the Secretary of State January 30, 1989.

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

In the matter of the amendment of Rules 46.12.802 and 46.12.805 pertaining to oxygen services reimbursement	))))	NOTICE OF THE AMENDMENT OF RULES 46.12.802 AND 46.12.805 PERTAINING TO OXYGEN SERVICES REIMBURSEMENT

TO: All Interested Persons

1. On December 22, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.802 and 46.12.805 pertaining to oxygen services reimbursement at page 2690 of the 1988 Montana Administrative Register, issue number 24.

2. The Department has amended Rule 46.12.802 as proposed.

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

46.12.805 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

Subsections (1) through (2) remain as proposed.

(a) (Original terms remain deleted as proposed.) Oxygen supplies OR OXYGEN EQUIPMENT need not be prior approved.

Subsection (3) remains as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: The department should clarify which oxygen items need not be prior approved in ARM 46.12.805 by including the term "equipment".

RESPONSE: The department agrees and has inserted "or oxygen equipment".

Interim Director, Social and
Rehabilitation Services

Certified to the Secretary of State January 30, 1989.

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

In the matter of the emergency amendment of ARM 46.12.1205 and 46.12.1301, emergency repeal of ARM 46.12.1101, 46.12.1302, 46.12.1303, and 46.12.1304 and the emergency adoption of Rules I through IV pertaining to preadmission screening for persons entering long term care services.	)))))))))	NOTICE OF EMERGENCY AMENDMENT OF ARM 46.12.1205 AND 46.12.1301, EMERGENCY REPEAL OF ARM 46.12.1101, 46.12.1302 through 46.12.1304, AND THE EMERGENCY ADOPTION OF RULES I THROUGH IV PERTAINING TO PREADMISSION SCREENING FOR PERSONS ENTERING LONG TERM CARE SERVICES.

TO: All Interested Persons

1. Statement of Reason for Emergency. The Omnibus Budget Reconciliation Act of 1987 requires that by January 1, 1989, states must have in effect a preadmission screening and resident review program. The purposes of the new requirements are to perform identification screenings for all nursing facility applicants and residents to determine if there is a diagnosis of mental illness or mental retardation and, if so, to conduct assessments which determine the applicant's need for active treatment. The penalties for failing to implement these requirements are loss of medicaid funds for recipient care and loss of certification for medicaid payment for nursing facilities. This loss would create immediate peril to persons who require care. Availability of medicaid funds is contingent on implementation of these requirements of the federal law. These emergency amendments and rules are implementing the necessary elements of a preadmission screening and resident review program.

2. RULE I through IV are to be adopted on an emergency basis as follows:

RULE I PREADMISSION SCREENING, GENERAL REQUIREMENTS

(1) This rule provides the preadmission screening requirements required by the Montana medicaid program for applicants to a nursing facility participating in the Montana medicaid program.

(2) Nursing facility applicants admitted to a nursing facility participating in the Montana Medicaid program, must undergo prior to that admission a level I screening for mental retardation and for mental illness.

(a) A level I screening may result in the following determinations which will apply as indicated:

(i) a nursing facility applicant who has no diagnosis or any indications of mental retardation or mental illness will

undergo a screening to determine the need for nursing facility services.

(ii) a nursing facility applicant who has a diagnosis or indications of mental retardation or mental illness will be referred to the state mental health or mental retardation authority for a level II screening unless determined by the level I screening to be within one of the exceptions provided for in (3)(a) of this rule.

(3) A nursing facility applicant who has a diagnosis or indications of mental retardation or mental illness may enter a nursing facility only if the applicant is determined to be in need of nursing facility services and is allowed to enter as provided for in (3)(a) or (b) of this rule;

(a) A person with a diagnosis or indications of mental retardation or mental illness who is in need of nursing facility services may enter a nursing facility without a level II screening or a determination of appropriate active treatment, if either:

(i) the person is being discharged from an acute care facility and admitted to a nursing facility for recovery from an illness or surgery for a period not to exceed 120 days and is not a danger to self or others;

(ii) the person is certified by a physician to be terminally ill (prognosis of a life expectancy of six months or less) and is not a danger to self or others;

(iii) the person is comatose, ventilator dependent, functioning at the brain stem level or diagnosed as having chronic obstructive pulmonary disease, severe Parkinson's disease, Huntington's Chorea, amyotrophic lateral schlerosis, congestive heart failure or other similar diagnosis which prohibits the person from participating in active treatment; or

(iv) the person has a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, based on a neurological examination.

(b) A level II screening may result in the following determinations which will apply as indicated:

(i) Any person with mental retardation or mental illness determined not to be in need of nursing facility services, whether or not active treatment services are required, shall be considered inappropriate for placement or continued residence in a nursing facility;

(ii) Any person with mental retardation or mental illness determined to be in need of active treatment services shall be considered inappropriate for placement or continued residence in a nursing facility;

(iii) Any person with mental retardation or mental illness determined to be in need of nursing facility services but not to be in need of active treatment services shall be considered appropriate for placement or continued residence in a nursing facility;

(iv) Any person with mental retardation or mental illness, determined to be in need of both nursing facility services and active treatment, who is of advanced years, competent to make an independent decision and who is not a danger to self or others shall be considered appropriate for placement or continued residence in a nursing facility if the person so chooses.

(4) Medicaid recipients must be determined by a preadmission screening team to require nursing facility services before medicaid payment for services in a nursing facility or the home and community services program will be authorized.

(a) If a person is medicaid eligible prior to admission to a nursing facility, a nursing facility screening must be done prior to admission. Payment for nursing facility care shall be effective on the date of entry to the nursing facility if the applicant meets all eligibility requirements.

(b) If the person applies for medicaid while a resident of a nursing facility, the nursing facility screening must be done prior to initial medicaid payment. Payment shall be effective on the date of the nursing facility screening or the date of referral to the preadmission screening team, whichever is earlier.

(5) Retroactive medicaid payments for nursing facility care are not allowable.

(6) A nursing facility applicant who is not a medicaid or medicare recipient may request that a nursing facility screening be conducted for the applicant. This screening will be performed by the preadmission screening team.

(7) Preadmission screening will be performed by persons the department determines are qualified to conduct the various elements of the screening.

(8) A nursing facility admitting a nursing facility applicant for whom a level I screening or a nursing facility screening has not been conducted may be subject to the sanctions provided at ARM 46.12.402 and to any other measures that federal or state authorities deem appropriate and necessary for the purposes of the federal Social Security Act.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.
IMP: Sec. 53-2-201, 53-6-101, 53-6-141, 53-6-402 MCA

RULE II PREADMISSION SCREENING, NURSING FACILITY SERVICES (1) For elderly persons and physically disabled persons, the need for nursing facility services will be determined based upon the following criteria:

(a) The services of a skilled nursing facility (SNF) are needed when a person:

(i) requires 180 management minutes or more of nursing care per 24 hours;

(ii) requires one of the specified skilled services;
(iii) requires 40 management minutes of licensed nursing time per 24 hours; or
(iv) meets any two of the following criteria:
(A) the medical status is unstable, deteriorating, critical or terminal;
(B) 150 minutes or more of nursing care per 24 hours are required;
(C) there are five or more problems determined to be high-level by the department or its designee.
(b) The services of an intermediate care facility (ICF) are needed when a person:
(i) does not qualify for skilled nursing facility level of care; and
(ii) is determined by the department or its designee to need care at a level higher than personal care;
(c) In order to receive home and community services, a person must be determined based upon a functional rating to be, in the absence of the home and community services and related resources, in need of the services of an intermediate care facility. The need for such care, arising from this absence, is indicated when the person:
(i) is able to ambulate (walk or wheel) to a dining room or equivalent;
(ii) is capable of self care with minimal assistance;
(iii) has four or fewer problems determined to be low level by the department or its designee; and
(iv) requires no more than one-hour of nursing care per 24 hours.
(d) A candidate for discharge is a person who has two or less problems. This criteria does not apply to persons with a diagnosis of mental illness or mental retardation.
(2) For mentally retarded persons applying for the home and community services program, the appropriate nursing facility services will be determined based upon the following criteria:
(a) The services of an intermediate care facility for the mentally retarded (ICF/MR) are needed when a mentally retarded person:
(i) has severe medical problems requiring substantial care, but not to the extent that habilitation is impossible;
(ii) has extreme deficits in self-care and daily living skills which require intensive training; or
(iii) has significant maladaptive social and/or interpersonal behavior patterns which require an on-going, supervised program of intervention.
(b) Skilled nursing facility (SNF) level of care is needed when a person with mental retardation meets the requirements for skilled nursing facility (SNF) services as found in subsection (1)(a) of this rule.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

RULE III PREADMISSION SCREENING, REDETERMINATION OF NEED FOR NURSING FACILITY SERVICES (1) For a person who is identified as in need of nursing facility services and is enrolled in the home and community services program a redetermination of the need for nursing facility services will take place 90 days after enrollment and every 180 days thereafter.

(2) For a person who is identified as in need of nursing facility services in an intermediate care facility for the mentally retarded (ICF/MR) and is enrolled in the home and community services program a re-evaluation will be conducted annually.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

RULE IV PREADMISSION SCREENING, QUALIFIED MENTAL RETARDATION PROFESSIONAL (1) The department will approve persons as qualified mental retardation professionals for purposes of providing preadmission screening and medicaid related case management services.

(2) Qualified mental retardation professional means a person who has specialized training or one year of work experience in habilitation or related services with mentally retarded or other developmentally disabled individuals.

(3) The department will accept as evidence of specialized training the following factors:

(a) licensure or certification in a profession which involves direct care to developmentally disabled persons;

(b) documentation of training, such as certification as a developmental disabilities client programming technician; or

(c) certification as a developmental disabilities professional person.

(4) The department will accept as evidence of work experience documentation of supervised employment in direct care to developmentally disabled persons.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

3. The following rules are to be amended on an emergency basis:

46.12.1205 PAYMENT PROCEDURES (1) The department pays providers amounts determined under these rules on a monthly basis upon receipt of an appropriate billing which represents the number of patient days of long-term care facility services provided to authorized medicaid recipients times the payment rate minus the amount each medicaid recipient pays toward the cost of care. Authorized medicaid recipients are those residents who have been determined eligible for medicaid and have been authorized for either skilled or intermediate ~~level of care~~ nursing services as a result of the screening process described in ~~ARM 46.12.1101~~ Rules I through V.

Subsections (1)(a) through (7) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-141 MCA

46.12.1301 PREADMISSION SCREENING, DEFINITIONS

(1) ~~Definitions as used in this rule:~~ "Active treatment" means:

(a) for persons with mental retardation or a related condition, a continuous program which includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed toward:

(i) the acquisition of the behaviors necessary for the person to function with as much self-determination and independence as possible; and

(ii) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain a generally independent client who is able to function with little supervision or in the absence of a continuous treatment program.

(b) for persons with mental illness, the implementation of an individualized plan of care developed under and supervised by a physician and provided by physicians and other qualified mental health professionals, that prescribes specific therapies and activities under the supervision of trained mental health personnel for the treatment of a person who is experiencing an acute episode of severe mental illness.

(2) "Home and community services program" means the provision of services described in ARM 46.12.1401 through 46.12.1482 to a person in a community setting, who meets the nursing facility level of care requirements.

(3) "Level I screening" means a review of a nursing facility applicant to identify whether the applicant has a primary or secondary diagnosis or indications of mental retardation and of mental illness.

(4) "Level II screening" means an assessment applied to persons identified as having a primary or secondary diagnosis of mental retardation or mental illness which determines whether the person as a nursing facility applicant has need for the level of services provided by the nursing facility or by another type of facility and, if so, whether the individual requires active treatment.

(5) "Management minutes" mean the amount of direct nursing time, including licensed nursing time, required by the recipient, as determined by the department or its designee. Direct nursing time, as used in determining management minutes, does not include nursing administrative time, special demands, and other activities or tasks not directly related to the medical care of the recipient.

~~(a)~~ (6) "Medicaid recipient" means a person who is currently medicaid eligible or who has applied for medicaid.

(7) "Medical status" means the medical condition of the recipient as determined by objective medical criteria. A recipient may be medically unstable, deteriorating, critical or terminal.

(8) "Mental illness" means an applicant has or has had a primary or secondary diagnosis of a major mental disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, third edition (DSMIIIR), limited to schizophrenic, paranoid, major affective, schizoaffective disorders and atypical psychosis, and does not have a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, which is based on a neurological assessment.

(9) "Mental retardation" means:

(a) An applicant has or has had a primary or secondary diagnosis of mild, moderate, severe or profound retardation as described in the American Association on Mental Deficiency's Manual on Classification in Mental Retardation (1983); or

(b) An applicant has, or has had a primary or secondary diagnosis of a condition related to mental retardation, which is a severe, chronic disability that:

(i) is attributable to:

(A) autism, cerebral palsy or epilepsy; or

(B) any other condition, other than mental illness found to be closely related to mental retardation due to an impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons requiring treatment or services similar to those required for these persons;

(ii) is manifested before the person reaches age 22;

(iii) is likely to continue indefinitely; and

(iv) results in substantial functional limitations in three or more of the following areas of major life activity:

(A) self-care;

(B) understanding and use of language;

(C) learning;

(D) mobility;

(E) self-direction or;

(F) capacity for independent living.

(10) "Nursing facility" means an institution or a distinct part of an institution which is not primarily for the care and treatment of mental diseases, and is primarily engaged in providing either:

(a) skilled nursing care and related services for residents who require medical or nursing care;

(b) rehabilitation services for the rehabilitation of injured, disabled or sick persons, or

(c) on a regular basis, health-related care and services to persons who because of their mental or physical condition require care and services above the level of room and board which can be made available to them only through institutional facilities.

(11) "Nursing facility applicant" means a medicaid or medicare eligible person who has been referred for or is applying for admission to a nursing facility or the home and community services program.

~~(c)~~ (12) "Preadmission screening" means a medical, psychological and social evaluation of a nursing facility applicant which: ~~medicaid recipient which yields a level of care determination by the preadmission screening team. For elderly persons and physically disabled persons, the medical component of the evaluation will be accomplished through the use of the long term care patient evaluation abstract and the psychological/social component of the evaluation will be accomplished through the use of the geriatric functional rating scale. For developmentally disabled persons, the medical component of the evaluation will be accomplished through the use of the long term care patient evaluation abstract or other tool approved by the department, and the psychological/social component of the evaluation will be accomplished through the use of the individual behavior assessment or other tool approved by the department.~~

(a) is performed prior to entry to a nursing facility or the home and community services program and includes:

(i) a level I screening to determine if an applicant has a diagnosis or indication of mental illness or mental retardation;

(ii) a level II screening if an applicant is found by the level I screening to need further assessment; and

(iii) a screening which determines an applicant's need for nursing facility services;

~~(c)~~ (13) "Preadmission screening team" means ~~an interdisciplinary group of professionals who are qualified as approved by the department to assess the recipient's medical, psychological and social needs in order to determine the level of care required by the recipient. The team includes at least a licensed registered nurse, a person qualified to assess the social and psychological needs of the recipients and a~~

~~physician advisor. When developmentally disabled persons undergo preadmission screening, the person qualified to assess the social and psychological needs of the recipient is to be a qualified mental retardation professional. When physically disabled persons undergo preadmission screening, the physician advisor must be a physiatrist if the recipient's condition requires such expertise.~~

(a) for a nursing facility services determination, a licensed registered nurse and a department long term care specialist;

(b) for a level I screening, a long term care specialist or other professional approved by the department; and

(c) for a level II screening, employees or contractors of the state mental retardation authority or the state mental health authority.

(14) "Problems" means functional impairments, including those involving walking, bathing, grooming, dressing, toileting, transferring, feeding, bladder incontinence, bowel incontinence, special sense impairments (such as speech or hearing), mental and behavioral dysfunctions.

(15) "Specified skilled services" means the following 20 skilled services when they require an equivalent of 40 management minutes of licensed nursing time per 24 hours:

(a) special skin care;
(b) decubitus care;
(c) IV (intravenous);
(d) oxygen therapy;
(e) tracheotomy care;
(f) special colostomy and ileostomy care;
(g) intake and output;
(h) sterile dressing;
(i) suctioning;
(j) drug regulation;
(k) multiple injections;
(l) irrigation/special catheter care;
(m) inhalation therapy;
(n) behavior observation;
(o) patient/family education;
(p) isolation;
(q) vital signs evaluation;
(r) overall management and evaluation of care plan;
(s) observation and assessment; and
(t) tube feeding.

~~(2) A medicaid recipient must undergo preadmission screening by the department or its designee and must be determined by the preadmission screening team to require the level of care of a skilled nursing facility (SNF), an intermediate care facility (ICF), or an intermediate care facility for the mentally retarded (ICF/MR) before medicaid payment for placement in a SNF, ICF, or ICF/MR or for placement through~~

~~the home and community based services program will be authorized.~~

~~(a) Criteria for level of care in preadmission screenings are as found in ARM 46.12.1303.~~

(16) "State mental health authority" means the Montana department of institutions.

(17) "State mental retardation authority" means the developmental disabilities division of the Montana department of social and rehabilitation services.

~~(b) If the person is medicaid eligible prior to admission to a SNF, ICF, or ICF/MR, preadmission screening must be done prior to admission.~~

~~(c) If the person applies for medicaid while a resident of a SNF, ICF, or ICF/MR, preadmission screening must be done prior to initial medicaid payment.~~

~~(d) Private pay (non-medicaid) persons may volunteer for preadmission screening.~~

~~(3) Referrals for preadmission screening may be made by:~~

~~(a) hospital medical social workers;~~

~~(b) the recipient's family;~~

~~(c) the recipient's attending physician; and~~

AUTH: Sec. 53-2-201, 53-5-205, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and 53-6-402 MCA

4. Rule 46.12.1101 is to be repealed on an emergency basis on pages 46-1505, 46-1506 and 46-1525 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-6-101, 53-6-141 and 53-6-402 MCA

5. Rules 46.12.1302, 46.12.1303 and 46.12.1304 are to be repealed on an emergency basis on pages 46-1885, 46-1891, 46-1897 and 46-1903 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87.

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

6. This emergency change will become effective January 20, 1989.

Interim Director, Social and Rehabilitation Services

Certified to the Secretary of State January 20, 1989.

VOLUME NO. 43 OPINION NO. 1

COUNTIES - Obligation to provide waste disposal and landfill services;
COUNTY GOVERNMENT - Obligation to provide waste disposal and landfill services;
SOLID WASTE - County's obligation to provide waste disposal and landfill services;
MONTANA CODE ANNOTATED - Sections 7-11-101 to 7-11-108, 7-11-104, 7-13-201 to 7-13-243, 7-13-203.

HELD: A county has no legal obligation to provide solid waste disposal and landfill services to towns that have used the county's landfill on a charge-per-load basis where there is no refuse disposal district or interlocal agreement between the towns and county to provide such services.

January 25, 1989

Gary L. Spaeth
P.O. Box 1361
Red Lodge MT 59068

Dear Mr. Spaeth:

As town attorney for Joliet, Fromberg, and Bridger, you have requested my opinion on the following question:

> Does Carbon County have any legal obligation to provide solid waste disposal and landfill services to towns which have used the county's landfill on a charge-per-load basis?

You explain in your request that Carbon County has provided landfill services to the towns of Joliet, Fromberg, and Bridger for several years on a charge-per-load basis, and that the county intends to discontinue that arrangement because the landfill is closing. I further understand that the county has not created a refuse disposal district nor entered into an interlocal agreement with the towns to provide such services.

It is my opinion that the county has no statutory obligation to provide landfill services to Joliet, Fromberg, and Bridger. While it is apparent that the refuse disposal statutes (§§ 7-13-201 to 243, MCA) give the county an opportunity to enter into such an arrangement, there is no county obligation to provide

refuse disposal services under section 7-13-203, MCA, which provides:

> (1) Whenever it becomes necessary, the commissioners may create a refuse disposal district for the purpose of collection and/or disposal of refuse.
>
> (2) Cities and towns may be included in the district if approved by the city and town councils. [Emphasis supplied.]

The same conclusion may be drawn from the statutes concerning interlocal agreements, §§ 7-11-101 to 108, MCA, which provide under section 7-11-104, MCA:

> Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized and approved by the governing body of each party to said contract. Such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties. [Emphasis supplied.]

Refuse disposal districts and interlocal agreements are legal obligations, the creation of which requires that definite procedures be followed. As noted above, Carbon County did not undertake either of these legal obligations with the towns Joliet, Fromberg, or Bridger.

THEREFORE, IT IS MY OPINION:

> A county has no legal obligation to provide solid waste disposal and landfill services to towns that have used the county's landfill on a charge-per-load basis where there is no refuse disposal district or interlocal agreement between the towns and county to provide such services.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 2

CORPORATIONS - Incorporation of trustee-operated rural fire district under Montana Nonprofit Corporation Act;
COUNTIES - Trustee-operated rural fire districts as distinct political subdivisions; obligation to indemnify employees;
FIRE DISTRICTS - Trustee-operated rural fire districts as distinct political subdivisions; obligation to indemnify employees;
INSURANCE - Obligation of trustee-operated rural fire district to indemnify employees;
MONTANA TORT CLAIMS ACT - Indemnification of rural fire district employees;
MONTANA CODE ANNOTATED - Sections 1-3-225, 2-9-101(2), 2-9-305, 7-33-2101 to 7-33-2128;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 84 (1988).

HELD: 1. For the purposes of the Montana Comprehensive State Insurance Plan and Tort Claims Act, a trustee-operated rural fire district is a political subdivision separate and distinct from the county in which it is located.

2. The trustees of a rural fire district may not incorporate under the Montana Nonprofit Corporation Act.

January 26, 1989

Steven Howard
Sheridan County Attorney
Sheridan County Courthouse
Plentywood MT 59254

Dear Mr. Howard:

You have asked my opinion concerning the following questions:

1. Whether, for indemnification purposes, a trustee-operated rural fire district is a political subdivision of the county in which it is located.

2. Whether the trustees of a trustee-operated rural fire district can avoid personal liability by incorporating as a

nonprofit corporation under the Montana Nonprofit Corporation Act.

42 Op. Att'y Gen. No. 84 (1988) held that a trustee-operated rural fire district is a political subdivision distinct from a county for the purposes of the Montana Comprehensive State Insurance Plan and Tort Claims Act of 1973 (hereinafter "the Montana Tort Claims Act"). As a political subdivision distinct from the county in which it is found, a trustee-operated rural fire district therefore has an obligation to indemnify its own employees and appointed officials under the Montana Tort Claims Act. §§ 2-9-101(2), 2-9-305, MCA; 42 Op. Att'y Gen. No. 84 (1988).

Regarding your second question, the formation and operation of nonprofit corporations are controlled by the Montana Nonprofit Corporation Act, §§ 35-2-101 to 1203, MCA. However, the particular process relating to the creation and operation of fire districts is specifically mandated by Title 7, chapter 33, part 21, MCA, entitled "Rural Fire Districts."

When more than one statute can be applied to the same subject matter, the particular statutes control over the general: Whitty v. Pluid, 43 St. Rptr. 354, 356, 714 P.2d 169, 170 (1986); Ford v. Montana Dept. of Fish, Wildlife and Parks, 208 Mont. 132, 136, 676 P.2d 207, 209 (1984); Department of Revenue v. Davidson Cattle Co., 37 St. Rptr. 2074, 2077, 620 P.2d 1232, 1234 (1980). See also § 1-3-225, MCA. Because the establishment and operation of rural fire districts are specifically controlled by sections 7-33-2101 to 2128, MCA, I conclude that a rural fire district may not be established or re-established and operated under the statutes governing nonprofit corporations found in the Montana Nonprofit Corporation Act in order to avoid personal liability. This conclusion is buttressed by the fact that the Legislature has specifically provided for the indemnification of the employees and appointed officials of a rural fire district by enacting the Montana Tort Claims Act, making recourse to the Nonprofit Corporation Act unnecessary.

THEREFORE, IT IS MY OPINION:

1. For the purposes of the Montana Comprehensive State Insurance Plan and Tort Claims Act, a trustee-operated rural fire district is a political subdivision separate and distinct from the county in which it is located.

2. The trustees of a rural fire district may not incorporate under the Montana Nonprofit Corporation Act.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

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 September 30, 1988. This table includes those rules adopted during the period September 30, 1988 through December 31, 1988 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 September 30, 1988, 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 1988 Montana Administrative Register.

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