RESERVE

MONTANA ADMINISTRATIVE REGISTER

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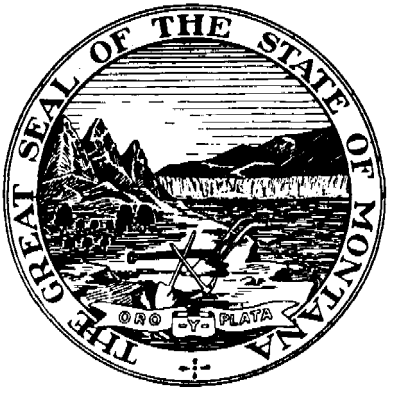

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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 Joint Resolution directing an agency to adopt, amend or repeal 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 existing or proposed rules. The address is Room 138, 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 loose-leaf 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 statute 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 General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.
Department	2.	Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.
	3.	Locate volume and title.
Subject Matter and Title	4.	Refer to topical index, end of title, to locate rule number and catchphrase.
Title Number and Department	5.	Refer to table of contents, page 1 of title. Locate page number of chapter.
Title Number and Chapter	6.	Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.)
Statute Number and Department	7.	Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.
Rule in ARM	8.	Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1981. This table will include those rules adopted during the period July 1, 1981 through September 30, 1981, 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 June 30, 1981, this table and the table of contents for 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.

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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INTERPRETATION SECTION

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF A RULE concerning bank investment and agriculture credit corporations	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE Agriculture Credit Corporations

TO: All Interested Persons

1. On August 31, 1981, at 1:30 p.m., a public hearing will be held in the conference room of the Montana Department of Commerce, 1430 9th Avenue, Helena, Montana to consider the adoption of a rule which will specify conditions for bank investments in agriculture credit corporations.

2. The proposed rule does not modify or replace any currently found in the Montana Administrative Code.

3. The proposed rule provides as follows:

RULE I - CONDITIONS OF INVESTMENT (1) A bank organized under the laws of Montana may invest in a wholly-owned agriculture credit corporation under the following conditions:

(a) The investment shall be limited to two (2) times the legal lending limit of the bank, i.e., 40 percent (40%) of the bank's unimpaired capital and surplus plus 40 percent (40%) of the outstanding debentures or capital notes issued under the authority of Section 32-1-413, MCA.

(b) Any loan or series of loans made to one borrower by the agriculture credit corporation (corporation) shall not exceed the lending limit of the bank.

(c) The directors of the corporation shall execute a resolution or adopt a by-law which makes available all of the records of the corporation to the Commissioner of Financial Institutions of Montana and his examining personnel without restriction.

(2) A bank operating under the laws of Montana may invest in a agriculture credit corporation owned by two or more investors under the same conditions listed in (1) if the bank owns 80 percent (80%) or more of the outstanding stock of the corporation. A bank owning less than 80 percent (80%) of the stock of the corporation must limit its investment to its statutory lending limit under the Montana Code Annotated and must follow the conditions in (b) (c) above.

(3) Any bank operating under the laws of Montana shall notify the Commissioner of Financial Institutions of its intentions to invest in an agriculture credit corporation. If the bank does not receive from the Commissioner within thirty (30) days after he has received the above notice, a statement disapproving the investment for stated reasons, the bank may proceed with the investment in the agriculture credit corporation.

4. The Department of Commerce is proposing this rule to establish guidelines for investment by state-chartered banks in agriculture credit corporations. Its intent is to provide a reasonable basis for such investments while at the same time offering to banks and borrowers the benefits of agriculture credit corporations.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Leslie W. Alke, Commissioner of Financial Institutions, 1430 9th Avenue, Helena, Montana 59620 no later than August 31, 1981.

6. Robert J. Wood, 1424 9th Avenue, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority to make the proposed rule is Section 32-1-362 implementing the same section.

GARY BUCHANAN, Director
Department of Commerce

Certified to the Secretary of State July 20, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

IN THE MATTER of the Proposed Amendment of ARM 40.28.402 concerning applications) NOTICE OF PROPOSED AMENDMENT OF ARM 40.28.402 APPLICATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 29, 1981, the Board of Morticians proposes to amend ARM 40.28.402 concerning applications.

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

"40.28.402 APPLICATIONS (1) All applications for examinations must be in the hands of the department at least 30 days prior to the date set for the examination and accompanied by the $50.00 application fee.

(2) Any person applying to the board for permission to take the examination shall present to the board evidence in the form of:

(a) Certified copy of the transcript of his completion of 60 semester credit hours or 90 quarter hours with a "C" average from an accredited college or university.

(i) For those individuals who apply for equivalent experience in lieu of the above college requirement, 5 years accumlative active licensed practice will be considered equivalent to the 2 years of college.

(ii) Three years of accumlative active licensed practice will be considered equivalent to 1 year of college for those individuals who have completed 1 year of college with a "C" average.

(b) Certificate of graduation from an accredited college of mortuary science approved by the board.

(c) Properly completed application form furnished by the board.

(3) For those individuals applying for equivalent experience in lieu of college, the individual must complete all of the additional requirements of this rule and section 37-19-302, MCA."

3. The board is proposing the amendment to implement the changes in section 37-19-302, MCA enacted by the 1981 legislature in Chapter 378, which provide for equivalent experience in lieu of the college requirement.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Morticians, Lalonde Building, Helena, Montana 59620 no later than August 27, 1981.

5. If a person who is directly affected by the proposed amendment 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 written comments he has to the Board of Morticians, Lalonde Building,

Helena, Montana 59620 no later than August 27, 1981.

6. If the board receives requests for a public hearing on the proposed amendment from 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 agency or subdivision; 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.

7. The authority of the board to make the proposed amendment is based on section 37-19-202 MCA and implements section 37-19-302, MCA.

BOARD OF MORTICIANS
J. EVERETT BULLIS, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 20, 1981.

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

In the matter of the amendment of rules 16.2.501, 16.2.502 and 16.2.503 relating to procedures for public comment on applications for permits under the Major Facility Siting Act	) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.2.501, 16.2.502 and 16.2.503 (Major Facility Siting Act)

TO: All Interested Persons

1. On September 11, 1981 at 9:00 a.m. a public hearing will be held in Room C209, Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.2.501, 16.2.502 and 16.2.503.

2. The proposed amendments replace present rules 16.2.501, 16.2.502 and 16.2.503 found in the Administrative Rules of Montana. The proposed amendments would make the public comment procedures applicable to all licenses and permits issued by the department for a facility for which a certificate of public need and environmental compatibility is required under the Major Facility Siting Act. As presently written, these procedural rules apply only to air and water quality permits.

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

16.2.501 DEFINITIONS

(1) "Department of health" means the department of health and environmental sciences.

(2) "Application" means a written request for a certificate of environmental compatibility and public need from the board of natural resources and conservation and for any ~~air or MPDES~~ permits necessary under ~~Title 75, Chapter 2 and 5, MCA~~ laws administered by the department of health for a facility defined in section 75-20-104(10), MCA.

4. The authority of the board and department to make the proposed amendment is based on sections 50-50-103, 50-52-102, 50-70-106, 75-2-111, 75-3-202, 75-5-201, 75-6-103, 75-10-106, 75-10-204, 75-20-216(3), and 76-4-104, MCA, and the rule implements section 75-20-216(3), MCA.

16.2.502 OPPORTUNITY FOR PUBLIC COMMENT AFTER APPLICATION COMPLETE (1) Within one month after an application is declared complete pursuant to section 75-20-216, MCA, the department of health shall public notice of the following:

(a) the name and address of the applicant; a general description of the size, purpose and pollutants discharged from the proposed facility; solid or hazardous wastes generated; any other aspects of the proposed facility which require a permit or license from the department of health; and the location of the alternative sites;

(b) if an MPDES permit must be obtained, the name of the state water receiving the discharge, a brief description of the discharge's location, and whether the discharge is new or existing.

(c) that the department of health will accept written public comment on the application;

(d) the deadlines by which the above comments must be submitted, which must be no less than 30 days after the date the notice is first published in a legal advertisement pursuant to (2)(a) below;

(e) the name, address and phone number of the department of health and the person within each bureau from whom information on the application may be obtained;

(f) the name and address of the person to whom comments may be submitted;

(b) the fact that a public hearing will be held after a preliminary decision to grant or deny the relevant ~~air or MPDES~~ permits is made.

(2) Notice of the opportunity for public comment described in (1) above must be published as follows:

(a) publishing legal notice 2 times within 2 weeks in a newspaper of general circulation in Butte, Missoula, Helena, Great Falls, Miles City, Kalispell, and Billings, and in a newspaper of general circulation published within 50 miles of the site of the proposed facility and any alternative site;

(b) submitting the notice to a state-wide wire service;

(c) mailing to any person, group, or agency upon written request, and to the following state agencies:

(i) environmental quality council
(ii) department of public service regulation
(iii) department of fish, wildlife and parks
(iv) department of state lands
(v) department of ~~community affairs~~ commerce
(vi) department of highways
(vii) department of revenue.

5. The authority of the board and department to make the proposed amendment is based on sections 50-50-103, 50-52-102, 50-70-106, 75-2-111, 75-3-202, 75-5-201, 75-6-103, 75-10-106, 75-10-204, 75-20-216(3), and 76-4-104, MCA, and the rule implements section 75-20-216(3), MCA.

16.2.503 PUBLIC HEARING AFTER PRELIMINARY DECISION

(1) Within 7 months after an application is accepted as complete, the department of health shall:

(a) make a preliminary decision whether to grant or deny ~~air or MPDES~~ relevant permits for the primary site and each alternative site for which approval is sought; and

(b) hold a hearing to receive public comments on those decisions.

(2) The notice of public hearing shall be published as follows:

(a) publishing legal notice 2 times within 2 weeks in a newspaper of general circulation in Butte, Missoula, Helena, Great Falls, Miles City, Kalispell, and Billings, and in a newspaper of general circulation published within 50 miles of the site of the proposed facility and any alternative site;

(b) submitting the notice to a state-wide wire service;

(c) at least 30 days prior to the date of hearing, mailing to any person or group upon written request, the environmental quality council; the state departments of public service regulation; fish, wildlife and parks, state lands, ~~community affairs~~ commerce, highways, and revenue; and, in the case of an application for an MPDES permit, those listed in ARM 16.20.913(1)(a).

(3) The notice of public hearing shall contain the following:

(a) the name and address of the applicant, a general description of the size, purpose, and pollutants discharged from the proposed facility, solid or hazardous wastes generated, any other aspects of the proposed facility which require a permit or license from the department of health; the location of the alternative sites, the preliminary decision for each site to grant or deny ~~an air or MPDES~~ any relevant permit, and the fact that only one site will be approved by the board of natural resources and conservation;

(b) if an MPDES permit is applied for, the name and address of the discharger, if different from the applicant;

(c) if an MPDES permit must be obtained, the name of the state water receiving the discharge and a brief description of the discharge's location;

(d) the name, address and phone number of the department of health;

(e) the time, date and location of the public hearing, the date to be at least 30 days after the notice is first published; and the fact that written comments may be submitted until that date;

(f) the name and address of the presiding officer and the fact that written comments should be submitted to him;

(g) the name, address and phone number of the person from whom information concerning each relevant permit may be obtained, including, if an MPDES permit is applied for, a draft permit, a fact sheet as required by ARM 16.20.905(5), and copies of MPDES forms and related documents;

(h) a brief description of the nature and purpose of the hearing, including the rules and procedures to be followed.

(4) The presiding officer shall accept information, comments and data from members of the public relevant to ~~air or water quality~~ all aspects of the proposed facility which require a license or permit from the department of health at

the primary and alternative sites orally or in writing at the hearing and in writing prior to the hearing. The hearing is not subject to the contested case procedure of the Montana Administrative Procedure Act, and no cross-examination will be allowed. The presiding officer has the discretion to limit repetitive testimony and prescribe rules to ensure orderly submission of statements.

(5) All written and oral comments submitted to the department of health from the date the above notice is issued until the termination of the public hearing must be retained by the department of health and considered in the formation of its final decision on relevant ~~air or MPDES~~ permits. The department of health shall issue a response to all significant comments.

6. The authority of the board and department to make the proposed amendments is based on sections 50-50-103, 50-52-102, 50-70-106, 75-2-111, 75-3-202, 75-5-201, 75-6-103, 75-10-106, 75-10-204, 75-20-216(3), and 76-4-104, MCA, and the rule implements section 75-20-216(3), MCA.

7. The Board is proposing this amendment to the rule to make the procedures consistent with amendments to the Major Facility Siting Act adopted by the 1981 legislative session (SB 376, Ch. 539, L. 1981) Those amendments make the consolidated review procedures applicable to all laws administered by the department and board, rather than to air and water laws only.

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 to C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, 59601, no later than September 9, 1981.

9. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, has been designated to preside over and conduct the hearing.

JOHN F. McGREGOR, M.D., Chairman
Board of Health and Environmental Sciences

JOHN J. DRYNAN, M.D., Director
Department of Health and Environmental Sciences

Certified to the Secretary of State July 20, 1981

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

In the matter of the amendment of rule 16.8.1405 relating to open burning restrictions	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.8.1405 (Open Burning Restrictions)

TO: All Interested Persons

1. On November 13, 1981, at 9:00 o'clock a.m, or as soon thereafter as the matter may be heard, a public hearing will be held in Room C-209, Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.8.1405.

2. The proposed amendment replaces present rule 16.8.1405 (4)(c) found in the Administrative Rules of Montana. The proposed amendment clearly removes wood product wastes such as scrap lumber, board ends or bark slabs from the prohibition on open burning of trade wastes contained in rule 16.8.1405(4)(c).

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.8.1405 OPEN BURNING RESTRICTIONS (1) Except as specified in subsection (2), no person shall cause, suffer or allow an open outdoor fire unless an air quality permit has been obtained, and further provided that the fire authority for the area of the burn shall be notified of intent to burn giving location, time and material to be burned and that proper fire safety directions given by the fire authority be complied with. A burning permit is required from the responsible fire control agency during the closed or extended fire season (May 1 -- September 30 or as extended pursuant to Sections 76-13-102, 76-13-203, 7-33-2205 to 7-33-2209, MCA). Reasonable precautions shall be taken to keep the area of the burn within the confines for which the permit was given. Reasonable measures shall be taken to eliminate smoke when the purpose for which the fire was set has been accomplished. A permit shall be allowed only under the following conditions:

(a) When such fire is set or permission for such fire is given in the performance of the official duty of the responsible fire control officer:

(i) for the purpose of the elimination of a fire hazard which cannot be eliminated by any other means;

(ii) for instruction in methods of fighting fires, provided the material burned shall not be allowed to smolder after the initial burn has been completed. Facilities to put the fire completely out shall be on hand and used by the responsible fire control officer until all smoldering has ceased. The responsible fire control officer shall not leave the scene of the burn until all smoking debris has been clearly extinguished and no smoking or smoldering occurs.

(b) When such fire is set in the course of an essential agricultural operation in the growing of crops or in the course of accepted forestry practices, provided no public nuisance is created.

(c) When fires are set for a clearing of land for new roads, power lines, subdivisions, dams and other similar projects and no public nuisance is created.

(d) When materials to be burned originate on an individual's premises, excluding commercial, industrial and institutional establishments, where no provision is available by private hauler providing a public service or a tax supported service for collection of the material to be burned and no public nuisance is created.

(2) An air quality permit is not required under the following conditions:

(a) When small fires are used for outdoor cooking and other recreational purposes and no public nuisance is created.

(b) When salamanders or other devices are used for heating by construction or other workers and no public nuisance is created and provided no tires, or oily rags, or other materials producing dense smoke are burned.

(c) When in a county without a local air pollution control program pursuant to Section 75-2-301, MCA, an open burning control officer designated by the county commissioners of any county publicly announces that, on a given day and time approved by the department, open burning will be permitted without an air quality permit. All other provisions of the open burning rule shall remain in effect.

(3) For purposes of essential agricultural or forestry burning:

(a) Reasonable precautions shall be taken to initiate and complete all burning under this rule during periods of good ventilation.

(b) Materials to be burned should be in a dirt-free condition.

(c) All reasonable measures shall be taken to extinguish any burning under this rule which is creating a public nuisance.

(4) For the purpose of disposing of nonagricultural nonforestry related wastes:

(a) An air quality control officer may require that alternate methods to open burning be practiced. The alternate method may be specified in the permit.

(b) No person shall cause, suffer, allow, or permit an open fire for the purpose of conducting a salvage operation.

(i) Persons conducting salvage operations when cutting torches or other procedures are employed that may cause a fire shall provide adequate fire control facilities at the site.

(c) No person shall cause, suffer, allow, or permit the disposal of trade waste by open burning, except that the department may permit such burning in a device or devices equivalent to an air curtain destructor, air swift pit incinerator or a similar device which can be demonstrated to emit smoke not darker than one Ringelmann or of equivalent opacity. The operator of such devices or system must show adequate knowledge of the procedure to assure correct starting, operation,

and ending of the burn; not create a public nuisance or fire hazard; and must have applied for and received a permit from the department to construct and operate the destructor or pit. However, nothing in this rule shall be construed to prevent the open burning of wood product wastes such as scrap lumber, board ends, or bark slabs.

(d) Reasonable precautions shall be taken to prevent ashes, soot, cinders, dust, or other particulate matter or odors incidental to burning from extending beyond the property line of the person allowed to burn under this rule.

(e) Chicken litter, animal droppings, garbage, dead animals or parts of dead animals, tires, pathogenic wastes, explosives, oil, railroad ties, tarpaper, or toxic wastes shall not be disposed of by open burning.

(f) Reasonable precautions shall be taken to initiate and complete all burning under this rule during periods of good ventilation.

(g) All reasonable measures shall be taken to extinguish any burning under this rule which is creating a public nuisance.

(h) Reasonable precautions shall be taken to prepare and store all material to be burned under this rule in a clean, dry condition.

(5) Emergency open burning permits.

(a) The department may issue an emergency open burning permit to allow burning of substances not otherwise approved for burning under this rule if certain conditions exist. Before the department shall issue such a permit it must be satisfied that the applicant has demonstrated that the substance sought to be burned poses an immediate threat to public health and safety, or plant and animal life for which no other alternative is reasonably available.

(b) Application for such a permit may be made to the department by telephone. Upon completion of the burn, the recipient of the emergency open burning permit shall provide the department with a written report of the burn. It shall discuss why alternative methods of disposing of the substance were not reasonably available; why the substance posed an immediate threat to human health and safety or plant and animal life; the legal description of where the burn occurred; the amount of material burned; and the date and time of the burn.

(c) The department will issue emergency open burning permits for disposing of oil from oil field sludge pits under subsection (5) if the above procedures are met. After July 1, 1980, such burning will be prohibited. Owners and operators of oil fields with sludge pits shall submit to the department by January 1, 1979, a plan which provides for their disposing of oil wastes from sludge pits by alternative methods other than burning not later than July 1, 1980.

4. The Board is proposing this amendment to the rule at the request of Representative Chris Stobie of Thompson Falls, Montana, and in accordance with the provisions of 2-4-315, MCA. In his petition which was approved by the board on May 22, 1981, Representative Stobie offered the following explanation for this proposed amendment:

The method chosen to control emissions from these types of wastes has proved to be a burden on some operators in that it precludes an efficient and inexpensive method of disposal. The methods condoned by the department in the cited rule are more time-consuming and generally require more expense to comply with than would open burning. Moreover, it is clear that there are certain types of trade wastes, old automobile tires for example, from which the emissions would be much greater than from other types of wastes, such as paper or board ends, which burn in a relatively clean manner. However, the regulation makes no distinction between the types of wastes for which burning is prohibited. In fact, there may be certain types of wastes which, when burned openly, would emit no more smoke or even less smoke than other types of wastes burned in the manner approved by the regulation. If the purpose of the regulation is to reduce or eliminate emissions over a certain level, a distinction between types of trade wastes that could or could not be burned openly should be made in the regulation.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, Jr., 1 North Last Chance Gulch, Suite #6, Helena, MT, 59601, no later than September 30, 1981.

6. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on sections 75-2-111 and 75-2-203, MCA, and the rule implements section 75-2-203, MCA.

JOHN F. McGREGOR, M.D., Chairman
Board of Health and Environmental Sciences

Certified to the Secretary of State July 20, 1981

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

In the matter of the amendment of rule 16.28.1005 requiring tuberculin testing for employees of public or private schools or day care facilities	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE ARM 16.28.1005 (Tuberculin Testing; Schools, Day Care Facilities) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 31, 1981, the department proposes to amend rule 16.28.1005 regarding tuberculin testing requirements for employees of schools and day care facilities.

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

16.28.1005 EMPLOYEE -- SCHOOLS -- DAY CARE FACILITY

(1) A person employed in a public or private institution for the teaching of individuals, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12, or in a day care facility as defined in section 53-4-401, MCA, must receive tuberculin testing within ~~2 weeks~~ 30 days of commencing employment unless the person is a known tuberculin reactor.

(2) If the employee's tuberculin test is negative, ~~he must receive another test within no less than 2 nor more than 3 months following the initial tuberculin test. If both tuberculin tests are negative,~~ the employee need not receive further routine tuberculin testing unless he has frequent or close exposure to a person with a communicable pulmonary tuberculosis.

(3) (a) If the tuberculin test is positive or if the employee is a known positive tuberculin reactor and has not had adequate chemotherapy, he must have a chest X-ray and an evaluation within 4 weeks of commencing employment to ascertain whether or not he has any of the following conditions:

(i) evidence of current or inadequately treated healed tuberculosis disease,

(ii) history of close exposure to a case of communicable pulmonary tuberculosis within the previous 2 years,

(iii) history of a negative tuberculin test within the previous 2 years,

(iv) severe or poorly controlled diabetes mellitus,

(v) disease associated with severe immunologic deficiencies (i.e., cancer, Reticuloendothelial disease),

(vi) immunosuppressive therapy (i.e., corticosteroids, ACTH, cytotoxins),

(vii) silicosis, gastrectomy or heavy alcohol intake.

(b) If any of the conditions listed in subsection (3)(a) of this rule except current disease are present, the employee must be counseled that he is at relatively high risk of developing tuberculosis disease and that he should complete

one year of isoniazid chemoprophylaxis if he has not already done so, unless medically contraindicated. If the employee has current tuberculosis disease, he must complete a course of chemotherapy with at least 2 anti-tuberculosis drugs as prescribed by a physician.

(c) Further surveillance is not required of a tuberculin positive employee with any condition listed in subsection (3)(a) of this rule who completes one year of isoniazid chemoprophylaxis or adequate anti-tuberculosis chemotherapy if indicated.

(d) A tuberculin positive employee with any of the conditions listed in subsection (3)(a) of this rule who does not complete one year of isoniazid chemoprophylaxis, with the exceptions mentioned in subsection(3)(c) of this rule, must have a chest X-ray annually during this period of employment.

(e) A tuberculin positive employee with none of the conditions listed in subsection (3)(a) of this rule or with a history of close exposure to a case of communicable pulmonary tuberculosis within the previous 2 years or a history of a negative tuberculin test within the previous 2 years may be released from further routine tuberculosis surveillance activities following completion of one year of isoniazid chemoprophylaxis or following 3 negative yearly chest X-rays.

(4) An employee subject to the provisions of this rule with a positive tuberculin test should be referred to his physician immediately if he develops symptoms of pulmonary tuberculosis.

(5) A contact investigation must be conducted by a local health officer of employees of an institution or day care facility as defined in subsection (1) of this rule if such employees have been exposed to a case of communicable tuberculosis.

3. The changes are proposed to lengthen the period of time an employee has to arrange for testing before commencement of employment and to eliminate the need for a second tuberculin test in cases where the initial test is negative. These changes will simplify the tuberculin screening process for employees of schools and day care facilities without any appreciable reduction in the protection afforded by such screening.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, 59620, no later than August 28, 1981.

5. If a person who is directly affected by the proposed action 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 Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, no later than August 28, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or form 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. The percent of those persons directly affected has been determined to be in excess of 25, based on the large number of persons employed by or attending schools or day care facilities.

7. The authority of the department to make the proposed amendment is based on sections 50-1-202, 50-17-103, 50-17-105, MCA, and implements sections 50-1-202, 50-17-103, and 50-17-105, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State July 20, 1981

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

In the matter of the amendment of rule 16.14.101 relating to definitions for solid waste management grants and loans to local governments	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.14.101 (Definitions)

TO: All Interested Persons

1. On September 11, 1981, at 9:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.14.101.

2. The proposed amendment replaces present rule 16.14.101 found in the Administrative Rules of Montana. The proposed amendment strikes the definition of grants in order to implement another grant program established by section 75-10-125, MCA (effective October 1, 1981).

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.14.101 DEFINITIONS

~~(1)--"Grants" means front-end planning funds as defined in section 75-10-103, MCA.~~

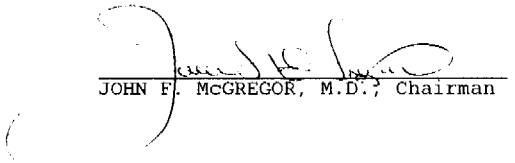
(2) "Loans" means front-end organizational funds as defined in section 75-10-103, MCA.

4. The Board is proposing this amendment to the rule because the Legislature of the State of Montana in 1981 establtablished a new grant program for local governments to utilize in solid waste management. Chapter 482, Laws of Montana (1981) codified as 75-10-125, MCA, effective October 1, 1981. This grant program makes funds available to local governments for the purchase of capital equipment for use in their solid waste management systems. This notice contains the regulatory amendments necessary to accommodate and implement this new grant program.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, 59601, no later than September 1, 1981.

6. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on section 75-10-106, MCA, and the rule implements section 75-10-106, MCA. If adopted, this amendment becomes effective on October 1, 1981.



JOHN F. McGREGOR, M.D., Chairman

Certified to the Secretary of State July 20, 1981

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

In the matter of the amendment of rule 16.14.103 relating to general application requirements for solid waste management grants and loans to local governments	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.14.103 (General Application Requirements)

TO: All Interested Persons

1. On September 11, 1981, at 9:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.14.103.

2. The proposed amendment replaces present rule 16.14.103 found in the Administrative Rules of Montana. The proposed amendment makes editorial changes and deletes subsection (5) which contains obsolete material.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.14.103 GENERAL APPLICATION REQUIREMENTS (1) No application form will be provided. However, to facilitate uniformity, the application ~~shall~~ must:

(a) be typed, printed, or otherwise legibly reproduced on 8 1/2 x 11 inch paper. Maps, drawings, charts, or other documents bound in an application should be cut or folded to 8 1/2 x 11 inch size. Maps, drawings, or charts may accompany an application as separate exhibits;

(b) be consecutively numbered. Maps, drawings, or charts accompanying the application as exhibits should be identified as "Exhibit ___," and if comprising more than one sheet should be numbered "Sheet ___ of ___";

(c) state the name, title, telephone number, and post office address of the person to whom communication in regard to the application should be made;

(d) contain a statement agreeing that all materials submitted by the applicant to the department are subject to public scrutiny; and

(e) contain a statement agreeing to keep and maintain adequate financial records for the project in accordance with department accounting procedures.

(2) The department will review the application to determine whether it is in compliance with the act and rules. If the department determines that the application is not in compliance with the act and rules, the department will return the application and notify the applicant in writing, listing the deficiencies. The application may be resubmitted after corrections are made.

(3) At the request of the department, the applicant shall provide any additional documentation or information as the department may deem necessary to insure compliance with the provisions of the act and rules.

(4) If an applicant desires to change or add to an application after it is formally filed, the applicant shall inform the department in writing as soon as possible of the change or addition. If the change or addition will result in a substantial change in the amount of funding requested or the goals and objectives stated in the original application, the department will consider the change or addition to constitute a new application.

~~(5) Applications for grants or loans must be submitted to the department no later than October 31, 1978 in order to receive funding for the 1977-1978 biennium. The department may extend the deadline if a potential applicant shows good cause why the extension is necessary.~~

~~(6)~~ (5) If two or more local governments make application for a joint solid waste management system, a single application ~~shall~~ must be executed by all participating local governments. In addition, such application ~~shall~~ must be accompanied by a resolution of each local government setting forth their respective responsibilities and commitments.

~~(7)~~ (6) If the solid waste management system includes the processing or disposal of solid waste generated by any local government other than the applicant, documentation acceptable to the department ~~shall~~ must be submitted to the department setting forth the respective responsibilities and commitments of all parties involved in the project.

~~(8)~~ (7) Only local governments are eligible to apply for loans or grants under the act.

4. The Board is proposing this amendment to the rule because the deadline requirements contained in subsection (5) having expired, the subsection is no longer necessary.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, 59601, no later than September 1, 1981.

6. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on section 75-10-106, MCA, and the rule implements section 75-10-106, MCA. If adopted, this amendment shall become effective October 1, 1981.

JOHN F. McGREGOR, M.D., Chairman

Certified to the Secretary of State July 20, 1981

MAR Notice No. 16-2-182 14-7/30/81

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

In the matter of the amendment of rule 16.14.104 relating to front-end planning funds grant applications	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.14.104 (Front-End Planning Funds Grant Applications)

TO: All Interested Persons

1. On September 11, 1981, at 9:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.14.104.

2. The proposed amendment replaces present rule 16.14.104 found in the Administrative Rules of Montana. The proposed amendment consolidates the provisions of ARM 16.14.104 and ARM 16.14.105.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.14.104 FRONT-END PLANNING FUNDS -- GRANT APPLICATION AND CRITERIA FOR REVIEW (1) ~~Grant applications shall~~ In addition to the requirements of ARM 16.14.103, an application for a grant of front-end planning funds must include a statement of project intent and scope. A proposed budget must be submitted showing how grant monies are to be expended.

(2) A statement of intent to implement the solid waste management system investigated ~~shall~~ must be included if such planning shows the solid waste management system to be economically feasible.

(3) The department will review applications on a first-come, first-served basis, taking into consideration the plan that:

(a) includes the largest population;

(b) encompasses the largest number of local governments;

(c) to the fullest extent possible utilizes private enterprise for planning purposes; and

(d) addresses the most pressing environmental and public health concerns.

4. The Board is proposing this amendment to the rule because the Legislature of the State of Montana in 1981 estabtablished a new grant program for local governments to utilize in solid waste management. Chapter 482, Laws of Montana (1981) codified as 75-10-125, MCA, effective October 1, 1981. This grant program makes funds available to local governments for the purchase of capital equipment for use in their solid waste management systems. This notice contains the regulatory amendments necessary to accommodate and implement this new grant program.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, 59601, no later than September 1, 1981.

6. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on section 75-10-106, MCA, and the rule implements section 75-10-106, MCA. If adopted, this amendment becomes effective on October 1, 1981.

JOHN F. McGREGOR, M.D., Chairman

Certified to the Secretary of State July 20, 1981

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

In the matter of the amendment of rule 16.14.105 relating to criteria for review of front-end planning applications	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.14.105 (Review of Front-End Planning Applications)

TO: All Interested Persons

1. On September 11, 1981, at 9:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.14.105.

2. The proposed amendment replaces present rule 16.14.105 found in the Administrative Rules of Montana. The proposed amendment establishes the application requirements for grants of front-end implementation funds.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.14.105 ~~CRITERIA FOR REVIEW OF FRONT-END PLANNING APPLICATIONS~~ FRONT-END IMPLEMENTATION FUNDS -- GRANT APPLICATION (1) In addition to the requirements of ARM 16.14.103, an application for a grant of front-end implementation funds must include:

(a) the amount in dollars of the grant being requested;

(b) documentation showing the local government has complied with bidding procedures required by law for purchase of capital equipment including a summary of the bid results;

(c) the solid waste management system plan complete with fiscal data and an analysis of alternative waste management systems which were considered when developing the final plan;

(d) a complete explanation of the method of permanent financing for the solid waste management system;

(e) institutional arrangements relating to ownership, operational participation, legal authority by which the system is developed, acknowledgement letter from the governing pollution control agencies, contractual arrangements listing performance bonds, damages, termination of agreements, and all other contractual arrangements;

(f) system coordination of participants, noting collection and transport systems, pre-processing requirements, final disposal responsibility, and any other systems necessary for the systematic control of the waste processing; and

(g) management systems delineating an organizational structure, establishing necessary technical services for

operation, creating a project monitoring and evaluation system, and any other management requirements for the control of the complete system.

~~(1) The department will review applications on a first-come, first-served basis, taking into consideration the plan that:~~

~~(a) includes the largest population;~~

~~(b) encompasses the largest number of local governments;~~

~~(c) to the fullest extent possible utilizes private enterprise for planning purposes; and~~

~~(d) addresses the most pressing environmental and public health concerns.~~

4. The Board is proposing this amendment to the rule because the Legislature of the State of Montana in 1981 established a new grant program for local governments to utilize in solid waste management. Chapter 482, Laws of Montana (1981), codified as 75-10-125, MCA, effective October 1, 1981. This grant program makes funds available to local governments for the purchase of capital equipment for use in their solid waste management systems. This notice contains the regulatory amendments necessary to accommodate and implement this new grant program.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, 59601, no later than September 1, 1981.

6. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on section 75-10-106, MCA, and the rule implements sections 75-10-106 and 75-10-125, MCA. Section 75-10-125, MCA, and this amendment, if adopted, become effective October 1, 1981.

JOHN F. McGREGOR, M.D., Chairman

Certified to the Secretary of State July 20, 1981

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

In the matter of the amendment of rule 16.14.109 relating to the order of funding grants	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.14.109 (Order of Funding Grants)

TO: All Interested Persons

1. On September 11, 1981, at 9:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.14.109.

2. The proposed amendment replaces present rule 16.14.109 found in the Administrative Rules of Montana. The proposed amendment extends coverage of the rule to grants of front-end implementation funds.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.14.109 ORDER OF FUNDING GRANTS The department will apply the criteria and guidelines set forth in the act and rules and will rank those ~~grant~~ applications for grants of front-end planning funds and grants of front-end implementation funds which it has determined to merit funding on a priority list.

4. The Board is proposing this amendment to the rule because the Legislature of the State of Montana in 1981 established a new grant program for local governments to utilize in solid waste management. Chapter 482, Laws of Montana (1981) codified as 75-10-125, MCA, effective October 1, 1981. This grant program makes funds available to local governments for the purchase of capital equipment for use in their solid waste management systems. This notice contains the regulatory amendments necessary to accommodate and implement this new grant program.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, 59601, no later than September 1, 1981.

6. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on section 75-10-106, MCA, and the rule implements sections 75-10-106 and 75-10-125, MCA. Section 75-10-125, MCA, and this amendment, if adopted, become effective on October 1, 1981.

JOHN F. McGREGOR, M.D., Chairman

Certified to the Secretary of State July 20, 1981

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

In the matter of the amendment of rule 16.14.111 relating to noncompliance	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.14.111 (Noncompliance)

TO: All Interested Persons

1. On September 11, 1981, at 9:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.14.111.

2. The proposed amendment replaces present rule 16.14.111 found in the Administrative Rules of Montana. The proposed amendment extends coverage of the rule to grants of front-end implementation funds.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.14.111 NONCOMPLIANCE If the local government, prior to receipt of the total disbursement for a loan, ~~or~~ a grant of front-end planning funds or a grant of front-end implementation funds, fails to comply with the act, rules, or any other law of the state applicable to the development project, the department may, after giving reasonable notice to the local government and contractor, withhold all or any portion of further disbursements to the local government pending compliance. However, payments to the contractor shall be authorized for all work approved by the local government and performed by the contractor prior to the date of such notice.

4. The Board is proposing this amendment to the rule because the Legislature of the State of Montana in 1981 estabtablished a new grant program for local governments to utilize in solid waste management. Chapter 482, Laws of Montana (1981) codified as 75-10-125, MCA, effective October 1, 1981. This grant program makes funds available to local governments for the purchase of capital equipment for use in their solid waste management systems. This notice contains the regulatory amendments necessary to accommodate and implement this new grant program.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, 59601, no later than September 1, 1981.

6. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on section 75-10-106, MCA, and the rule implements section 75-10-106 and 75-10-105, MCA. Section 75-10-105, MCA, and this amendment, if adopted, become effective October 1, 1981.

JOHN F. McGREGOR, M.D., Chairman

Certified to the Secretary of State July 20, 1981

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amendments of Rules 20.3.101 through 20.3.216 (Approval Procedures and Standards for Alcohol Programs.)	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF RULES 20.3.101 through 20.3.216 AS PROPOSED NEW RULES (Approval of Alcohol Programs)

TO: All Interested Persons.

1. On August 26, 1981, at 9:00 a.m. a public hearing will be held in the conference room of the central office of the Department of Institutions, at 1539 11th Avenue, Helena, Montana to consider the amendment of rules 20.3.101 through 20.3.216.

2. The proposed amendments replace present rules 20.3.101 through 20.3.216 found in the Administrative Rules of Montana. The proposed amendments would revise, clarify and update standards for the approval of Alcohol Treatment Programs.

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

20.3.101 STATE PLAN (1) The plan is for state participation under ~~P.L. 92-6-6 (Hughes Bill)~~ 42 U.S.C. Section 4573 et seq. and is necessary for application for a grant under this law. The department has been designated as the sole agency for supervision of the administration of the plan. The plan sets forth a survey of the need for the prevention and treatment of alcohol abuse and alcoholism, the facilities needed to provide services, and it serves as a guide for the development and distribution of facilities and programs throughout the state.

(2) The state plan of the alcohol and drug abuse division is adopted as a rule. The state plan is voluminous, and its inclusion in full in this rule would be cumbersome. It is not deemed ~~not~~ expedient to include the entire context of the plan, and a summary of the plan is therefore given in section (1) of this rule. Copy of the plan is available for inspection, or copies thereof may be obtained at the expense of the person requesting the same at prices fixed to cover the cost of duplicating and mailing. Inquiries should be made of the director of the department for inspection of the plan or requesting a copy of the plan.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-207 MCA

20.3.201 ALCOHOL TREATMENT PROGRAMS (1) Purpose. The purpose of this rule is to establish treatment standards for the approval of programs extending treatment services to alcoholics, intoxicated persons, ~~and~~ persons incapacitated

by alcohol and family members pursuant to Section 53-24-208 MCA, standards for acceptance of persons into the treatment program and standards by which the administrator may determine which persons may be admitted to an approved public treatment program as an alcoholic or family members pursuant to Section 53-24-209 MCA. ~~Prior to approval for treatment, such facility shall be licensed in accordance with Section 50-5-201 MCA.~~

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.202 DEFINITIONS (1) In addition to the terms defined in Section 53-24-103 MCA.

(a) ~~"Administrator" means the person in charge, care or control of the treatment program and responsible for the operation of the program.~~ "ADAD"" means alcohol and drug abuse division of the department of institutions.

(b) ~~"Care" means services provided by training personnel such as nurses, aides, alcoholism helpers or counselors.~~ "Administrator" means the person in charge, care or control of the treatment program and responsible for the operation of the program.

(c) ~~"Department" means the department of institutions.~~ "Alcohol information course" (Montana court school) functions in two capacities: the first is to provide education about alcohol (and other drugs) and driving, and the second is to screen out those persons who are alcoholic from those who are not. The school's recommendations for treatment are forwarded to the court as part of the completion report. Treatment, if considered necessary, is included as part of the alcohol information course.

(d) ~~"Emergency treatment program" (non-hospital) means a program which is advertised, announced or maintained for the expressed or implied purpose of providing individuals admitted there with short term residence, nursing, convalescent or rehabilitative care, supervision and care incidental to withdrawal from alcohol.~~ "Client" means a person being treated for an alcohol related problem who is formally admitted to the program within the admission criteria set by the program.

(e) ~~"Intermediate treatment program" means a community based residential program providing therapeutic services including supervision and an opportunity for relearning social skills to assist clients to return to the community. Services are provided for the individual who needs less direct supervision than emergency treatment and more services than available through an outpatient program.~~ "Certified counselor" means an individual meeting standards pursuant to 53-24-204 MCA, and corresponding rules and regulations described in Section 20.3.401-405 ARM.

(f) ~~"Inpatient treatment program" means a program providing a residential setting for clients who require continuous care and treatment with specific therapeutic functions~~

~~beyond those offered by emergency, intermediate, or outpatient programs.~~ "Counseling"

(i) "Family" means face-to-face interaction between an alcoholism counselor and family member or members for a specific therapeutic purpose.

(ii) "Group" means face-to-face interaction between two or more clients and an alcoholism counselor for a specific therapeutic purpose.

(iii) "Individual" means a face-to-face interaction between an alcoholism counselor and an individual client for a specific therapeutic purpose.

(g) ~~"Outpatient treatment program" means a program providing counselling and outreach services for individuals who are able to function without the structure of emergency, intermediate or inpatient treatment programs.~~ "Detoxification (emergency care) component" means the services required for the treatment of persons intoxicated or incapacitated by alcohol and/or drugs. Detoxification involves clearing the system of alcohol and/or drugs and enabling individual recovery from the effects of intoxication. These services include screening of intoxicated persons, counseling of clients to obtain further treatment, and referral of detoxified persons to other appropriate treatment programs. Medical detoxification refers to short term treatment in a licensed medical hospital. Non-medical detoxification refers to short term treatment in a social setting with 24 hour supervison.

(h) ~~"Physician" means a physician licensed by the state of Montana.~~ "Facility" means the physical area (grounds, buildings or portions thereof) where program functions take place under the direct administrative control of a program administrator.

(i) ~~"Outpatient", when used to modify a person, facility or service, means a person who is not a resident of a treatment program.~~ "Follow-up" means the process of providing continued contact with a discharged client to support and increase gains made to date in the recovery process and to gather relevant data.

(j) ~~"Patient" means a person who is formally diagnosed as in need of and admitted to a treatment program.~~ "Governing body" means the individual or group which is legally responsible for the conduct of the program.

(k) ~~"Person" means an individual or group of individuals, association, partnership or corporation.~~ "Inpatient care component" means treatment for persons requiring 24-hour supervision in a licensed hospital. Services include medical evaluation and health supervision; alcoholism education; organized individual, group and family counseling; discharge referral to necessary sup-

portive services; and a client follow-up program after discharge.

(l) ~~"Resident"-means-any-person-assigned,-living-or-residing-in-a-dwelling-or-rooming-unit-of-a-treatment program.~~ "Intermediate long term care (transitional living) component" means a non-medical residential facility in a community-based setting. These facilities provide a transitional phase for individuals who have recently received alcoholism inpatient or intermediate care services and require a moderately structured living arrangement. Services provided include counselling services (individual and group), alcoholism education, and social and recreational activities. These individuals are encouraged to seek vocational rehabilitation, occupational training, education and/or employment as soon as possible.

(m) ~~"Treatment-facility"-means-any-public-or-private place,-establishment,-building,-rooming-house,-boarding house,-lodging-house,-dwelling,-home,-farm,-camp-or-other facility-by-whatever-name-known-used-to-provide-treatment services-as-an-emergency-and-receiving-facility,-halfway-and-rehabilitation-facility-or-comprehensive-treatment center-providing-any-or-all-of-the-following-services-to-alcoholics,-intoxicated-persons,-or-persons-incapacitated by-alcohol:-emergency-inpatient,-intermediate-or-outpatient-treatment.--Nonmedical-facilities-of-eight-(8)-beds-or less-are-not-subject-to-facility-licensure-rules.~~ "Intermediate care component" means treatment for persons requiring 24 hour supervision in a community based residential setting. Services include a limited medical evaluation; alcoholism education; organized individual, group and family counseling; discharge referral to necessary supportive services and a client follow-up program after discharge.

(n) "Limited approval" means a status of state approval granted to alcoholism treatment programs which are requesting approval for the first time and who have not attained substantial compliance specified in these rules. Limited approval is granted to provide them with time to comply with standards. Limited approval shall not be issued for more than a six month period.

(o) "Outpatient care component" means services provided on a regularly scheduled basis to clients residing outside a program. Services include crisis intervention; counseling; alcohol education; referral services; and a client follow-up program after discharge.

(p) "Outreach" means the process of reaching into a community systematically for the purpose of identifying persons in need of services, alerting persons and their families to the availability of services, locating other

needed services, and enabling persons to enter and accept those services.

(q) "Person(s) means an individual or a group of individuals, association, partnership or corporation.

(r) "Physician" means a medical doctor licensed by the state of Montana.

(s) "Program" means the general term for an organized system of services designed to address the treatment needs of clients.

(t) "Residential" means a facility providing 24 hour care, room and board.

(u) "Restricted approval" means a status of state approval granted to an approved alcohol treatment program, which has failed to maintain substantial compliance. Restricted status is issued for a maximum of 90 days in order to allow programs to meet substantial compliance. This approval cannot be renewed.

(v) "Revoke" means invalidation of approval of an alcoholism treatment program.

(w) "Substantial compliance" means conformity with at least 70% of the rules and regulations for each applicable service component as described in this chapter.

(x) "Suspension" means invalidation of approval of an alcohol treatment program for any period less than one year or until the department has determined substantial compliance and notifies the program of reinstatement.

(y) "Volunteers" means a person or persons who offer their services free of charge.

AUTH: Sec. 53-24-209 MCA IMP: Sec.53-24-208 MCA

20.3.203 ~~REQUIREMENTS-FOR-APPROVAL-OF-ALCOHOL-TREATMENT-PROGRAMS--(1)--Each-public-or-private-program-providing services-for-alcohol-treatment-shall-be-subject-to-approval by-the-department.--A-certificate-of-approval-shall-be obtained-annually.--The-certificate-issued-shall-be-conditional-to-establishing-and-operating-programs-in-compliance with-this-rule.~~

~~(a)---If-a-treatment-program-is-determined-to-be-in-compliance-with-state-requirements-and-applicable-federal requirements,-the-department-shall-issue-the-certificate-of-approval-to-the-program.--This-certificate-shall-be displayed-in-a-conspicuous-place-of-the-program-for-which it-is-issued.~~

~~(b)---Each-certificate-of-approval-shall-be-valid-only in-the-possession-of-the-person-to-which-it-is-issued-and-shall-not-be-subject-to-sale,-assignment-or-other-transfer, voluntary-or-involuntary,-nor-shall-a-certificate-be-valid-for-any-location-other-than-that-for-which-it-is-issued.~~

~~(c)---Each-certificate-of-approval-shall-be-for-a period-of-one-year-from-the-date-of-issue-unless-revoked-or-suspended.~~

~~(a)---Each-certificate-of-approval-shall-be-renewed-annually.--Each-application-for-removal-shall-be-submitted-on-the-form-provided-by-the-department-not-less-than-thirty-(30)-days-prior-to-expiration.~~

~~(e)---Programs-in-existence-as-of-January-1,-1975-will-be-fully-approved-but-must-meet-the-standards-of-these-rules-by-December-15,-1976.--A-contract/agreement-shall-be-written-between-the-department-and-the-program-in-question-stipulating-specified-objectives-to-be-met-within-a-definite-time-period-for-continuing-approval.--An-orderly-progression-shall-be-set-forth-with-the-limits-for-the-program-to-meet-acceptable-standards.~~

~~(f)---Additional-data,-statistics,-schedules-and/or-information-shall-be-filed-by-the-applicant-as-may-be-reasonably-required-by-the-department-for-the-purpose-of-determining-the-applicant's-conformance-with-this-rule.~~ DEPARTMENT PROCEDURES FOR APPROVAL OF ALCOHOL TREATMENT PROGRAMS. (1) Each public or private program providing services for alcohol treatment and receiving alcohol earmarked revenue funds under 53-24-108 MCA, shall be subject to approval, by the department. The department will issue approval for the following service components: detoxifi- (emergency care), intermediate, intermediate long-term (transitional living), and outpatient. A program may be approved for more than one service if the program complies with the specific requirements for approval of each service provided. The certificate of approval shall be obtained annually. Issuance of the certificate of approval shall be conditional to establishing and operating programs in compliance with this rule.

(2) Alcohol treatment programs seeking departmental approval of one or more of the services shall submit written application to the ADAD of the department on a form provided by ADAD.

(a) Such application shall include a detailed description of the facility, personnel and services to be provided.

(3) The application shall be completed as per instructions.

(a) A letter from the applicant, including supporting information and statistics, showing that there is a need in the community for the type of services requested in the application and does not duplicate existing services.

(b) If applicable, evidence that the program has met the certificate of need rules and regulations as required by the Montana Certificate of Need Law.

(c) Evidence that the need for the requested services are included in the county plan as required by 53-24-211 MCA.

(4) Within 30 days of receiving the application, the department will notify the applicant in writing of accept-

ance or denial of the application.

(5) If the department denies the application for approval, the applicant has 30 days to request a formal hearing as provided for in the Montana Administrative Procedures Act. If a response is not received at the end of 30 days, the department may refuse to grant approval and shall notify the applicant agency.

(6) If the application is approved the department will notify the agency in writing and copies of all written documents required by these rules and regulations shall be requested.

(7) If written documents submitted to the department do not meet the requirements of these rules and regulations, ADAD shall notify the applicant in writing. The applicant shall have 30 days from date of ADAD notification to respond in writing to the content of the notice. If a response is not received within 30 days, the department may refuse to grant approval and shall notify the applicant in writing of the action taken. If written documents submitted to the department do meet the requirements of these rules and regulations, the department shall have the program inspected to ensure compliance with the requirements of these rules and regulations. After inspection, the ADAD shall either approve the program to provide one or more of the services listed in this section, or refuse to grant approval. The ADAD shall send in written notification of department approval of the program as an approved alcohol treatment program or shall send written notification of the deficiencies which resulted in the refusal to grant approval.

(8) The department may grant limited approval to alcohol treatment programs when department staff are unable to determine, without a period of operation, whether the program will comply with these rules and regulations. Limited approval shall expire automatically after six months and may not be renewed. Such expiration shall not be considered a suspension or revocation pursuant to 20.3.205 ARM.

(9) The department shall issue an annual certificate of approval to those approved alcohol treatment programs which remain in substantial compliance with these rules and regulations

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.204 ~~ACCEPTANCE OF PERSONS INTO THE TREATMENT PROGRAM~~

~~(1) Voluntary treatment shall be encouraged and maintained when possible.~~

~~(2) Programs shall admit and care for only those persons for whom they can provide care and services appropriate to a person's physical, emotional and social needs.~~

~~(3) If an alcoholic is not admitted to an approved~~

~~public-treatment-program-for-the-reason-that-adequate-and appropriate-treatment-is-not-available-at-that-program-or facility, the-administrator-shall-refer-the-person-to another-public-treatment-program-at-which-adequate-and appropriate-treatment-is-available.~~

~~(4) Any-restrictions,-priorities-or-special-admission criteria-used-during-initial-screening-shall-be-applied equally-to-all-potential-admissions-regardless-of-source-of-referral,-source-of-payment,-race,-creed,-ethnic-origin-or sex.~~

~~(5) A-person-who,-by-evaluation,-is-found-to-require outpatient-or-intermediate-treatment-shall-be-initially assigned-to-a-program-providing-such-treatment-or-transferred-to-a-program-providing-the-appropriate-treatment. If-a person-is-found-to-require-inpatient-treatment,-such-treatment-shall-be-made-available-to-him.~~

~~(6) A-program-shall-not-prohibit-a-person-from-subsequent-participation-where-the-person-has-withdrawn-from-prior-treatment-or-has-relapsed-after-earlier-treatment.~~

~~(7) An-individualized-treatment-plan-specifically tailored-to-meet-the-needs-of-the-individual-patient/client shall-be-prepared-and-maintained-on-a-current-basis-for-each patient/client.~~

~~(8) The-staff-of-a-program-shall-develop-an-appropriate referral-plan-for-the-resident-deemed-necessary-to-effect-total-and-complete-recovery-and-rehabilitation. Staff-shall actively-assist-residents-to-make-contact-with-clinics, alcoholics-anonymous,-social-and-welfare-agencies,-and-other approved-treatment-programs-suitable-for-follow-up-care-upon-discharge-from-the-program.~~ APPROVAL INSPECTIONS AND RENEWALS (1) All approved alcohol treatment programs must receive at least one on-site inspection per fiscal year.

(2) If an alcohol treatment program is determined to be in substantial compliance with state requirements and applicable federal requirements, the department shall issue or renew a certificate of approval to the program. This certificate shall be displayed in a conspicuous place in the program for which it was issued.

(3) Each certificate of approval shall be valid only in the possession of the program to which it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a certificate be valid for any program, facility or location other than that for which it was issued.

(4) Any approved alcohol treatment program and/or any agency seeking departmental approval shall be open to departmental inspection. The program; its services, including all records of operation, shall be open for inspec-

tion upon request by the department in accordance with federal and state confidentiality laws. Such records shall include all policy and procedure documents required herein, personnel records, clinical records, fiscal and accounting records, meeting minutes and such other documents as may be needed to certify the provision of services and compliance with these regulations. Department inspections may be made during any time in which the facility is serving clients, provided that such inspection shall not unduly disrupt client activity. Inspections shall be reasonably calculated to check substantial compliance with these rules and regulations.

(5) Any approved alcohol treatment program that fails to meet substantial compliance may be issued a restricted approval. Prior to the expiration of the restricted approval, ADAD will conduct another inspection to determine if substantial compliance has been obtained. In the event a program has attained substantial compliance, approval status will be granted. If a program has failed to meet substantial compliance, action to revoke or suspend approval will be initiated by ADAD.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.205 ~~ADMINISTRATIVE-MANAGEMENT---GOVERNING-BODY~~ ~~(1)--A-program-shall-have-a-governing-body-which-is-legally-responsible-for-the-conduct-of-the-program.~~

~~(2)---The-governing-body-shall-establish-a-philosophy-of policies-and-goals.~~

~~(3)---Policies-shall-be-in-writing-governing-admissions, discharges,-length-of-stay,-diagnostic-groups-to-be-served, scope-of-services,-treatment-regimens,-staffing-patterns, recommendations-for-continued-treatment-by-referral-or-otherwise,-and-provision-for-a-continuing-evaluation-of-the program.~~

~~(4)---The-governing-body-shall-be-responsible-for providing-personnel,-facilities,-and-equipment-needed-to carry-out-the-goals-and-objectives-of-the-program-and-meet the-needs-of-the-residents.~~

~~(5)---The-governing-body-shall-appoint-an-administrator. Policies-shall-be-in-writing-governing-the-qualifications-and-responsibilities-of-the-administrator.~~ SUSPENSION OR REVOCATION OF APPROVAL (1) Failure to be in substantial compliance with these rules and regulations shall constitute grounds for the suspension of revocation of approval in accordance with 53-24-208(6) MCA.

(2) The department may revoke or suspend any service component defined in 20.3.203(1) if a program ceases to provide those services for which it has been approved.

(3) When the department intends to suspend or revoke

approval, the department shall have served upon the approved treatment program a notice of intent to suspend or revoke its approval. Such notice shall provide for an administrative hearing and meet the requirements of 53-24-208(6) MCA. A subsequent hearing and judicial review shall follow administrative procedures as specified in the Administrative Procedures Act, and the rules promulgated thereunder.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.206 ~~OPERATIONAL-REQUIREMENTS-FOR-RESIDENT PROGRAMS~~

~~(1)---Food-service.~~

~~(a)---Food-shall-be-provided-and-shall-be-wholesome-and nutritionally-balanced.--Three-meals-or-equivalent-shall-be-served-daily-at-regular-times.--Snacks-shall-be-available-to residents-at-all-times.~~

~~(b)---Food-not-prepared-on-site-shall-be-obtained-from-approved-sources-and-shall-be-transported-and-served-in-an approved-manner.~~

~~(2)---Personal-hygiene.~~

~~(a)---Clean-clothing,-drinking-cups,-towels,-soap,-toothbrushes,-combs,-toothpaste-or-toothpowder,-shaving-equipment and-other-personal-articles-as-required-shall-be-available to-each-resident-for-his-individual-use.~~

~~(3)---Medical.~~

~~(a)---Medical-services-shall-be-available-under-the supervision-of-a-physician,-and-any-resident-at-his-own expense-shall-have-the-right-to-consult-with-the-physician-or-dentist-of-his-choice.~~

~~(b)---Written-medical-policies-and-procedures-shall-be readily-available-to-staff.--Written-medical-policies-and procedures-as-to-the-course-of-action-to-be-followed-in-the care-of-occupants-having-minor-acute-illnesses-and-in-the event-of-medical-emergencies-including-dangerous-behavior-shall-be-developed-with-the-assistance-and-written-approval of-a-physician-or-a-representative-of-the-medical-board.~~

~~(c)---Arrangements-for-access-to-medical-and-surgical care-shall-be-made-with-a-general-hospital-for-residents when-it-is-needed.--The-program-is-not-required-to-assume responsibility-for-the-cost-of-such-care.~~

~~(d)---Personal-observation-and-inquiry-shall-be-made-of each-person-upon-admission-as-to-chronic-illness-or-physical disability-or-vermin-infestation-or-possible-contagious disease-that-may-require-medical-attention.--Such-medical attention-shall-be-immediately-made-available-when necessary-and-no-person-shall-be-admitted-who-is-in-need-of medical-services-for-a-severe-physical-or-emotional-illness including-services-for-a-severe-alcohol-intoxication-or-its withdrawal-symptoms-except-in-a-program-capable-of-providing the-necessary-services.--The-program-is-not-responsible-for

~~the cost of such care.~~

~~(e) First aid equipment and supplies shall be provided and shall be available for emergency and routine use conforming to written procedures.~~

~~(f) Arrangements for access to dental care shall be made available for the relief of pain and control of infection. The program is not required to assume responsibility for the cost of such care.~~

~~(g) Mental health consultation shall be made available for emergencies. The program is not required to assume responsibility for the cost of such services.~~

~~(h) Medications shall be handled in accordance with provisions of applicable state and federal laws and regulations.~~

~~(i) Medications purchased independently by a resident or supplied by his physician or medicines used by the resident shall be stored in such a manner that the use of such materials can be restricted to self administration by the resident.~~

~~(j) Methods for cleaning, handling, and storing of all medical supplies and equipment shall be such as to prevent the transmission of infection through their use.~~

~~(4) Responsibility.~~

~~(a) Policies and procedures shall be established by each program to insure proper environmental and personal health conditions for protection of the health of the residents.~~ ALL PROGRAMS - ACCEPTANCE OF PERSONS INTO THE TREATMENT PROGRAM (1) The program shall ensure compliance with 53-24-209 MCA.

(2) The program shall admit and care for only those persons for whom they can provide care and services appropriate to the person's physical, emotional and social needs.

(3) If an alcoholic is not admitted to an approved treatment program for the reason that adequate and appropriate treatment is not available at that program or facility, the administrator shall refer that person to another treatment program at which adequate and appropriate treatment is available.

(4) Approved alcohol treatment programs shall provide services to persons with alcohol and alcohol related problems, or to their families, without regard to source of referral, race, color, creed, national origin, religion, sex, age or handicap.

(5) An individualized treatment plan specifically tailored to meet the needs of the individual client shall be prepared and maintained on a current basis for each client.

(6) The staff of a program shall develop an appropriate referral plan for the client to effect total and

complete recovery and rehabilitation. Staff shall actively assist clients to make contact with alcoholics anonymous, social and welfare agencies, and other treatment programs suitable for follow-up care upon discharge from the program.
AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.207 ~~RECORDS AND REPORTS (1) Residents' records. Residents' records shall be handled and stored in such a manner as to properly safeguard the confidentiality of their contents. Each resident's records shall include at least the following:~~

~~(a) identifying information including either name or identifying number, age, sex, and marital status.~~

~~(b) social history.~~

~~(c) dates of admission and discharge.~~

~~(d) records of medical care, including physical examination and medications taken.~~

~~(e) records of illnesses.~~

~~(f) at least semi-monthly written progress reports on each resident as applicable by program staff, plus a termination report.~~

~~(g) an individualized treatment plan containing both short term and long term goals.~~

~~(2) Other records and reports. The following other records and reports shall be made available for review by the department:~~

~~(a) resident admission register.~~

~~(b) articles, by laws, rules and regulations, minutes of meetings of the governing body, and operational policies established by the governing body of the treatment program.~~

~~(c) written job descriptions for personnel.~~

~~(d) formal written agreements for contracted services.~~

~~(e) record of menus served during the previous 30 day period.~~

~~(f) records or reports reasonably required by the department.~~

~~(3) Confidentiality. Patient record information may be maintained or disseminated by compulsory process or otherwise outside the patient's treatment program which collected such information only as provided in accordance with Section 333 of P.L. 91-616, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (84 Stat. 1953, 42 U.S.C. 4582), as amended by Section 122(a) of P.L. 93-282, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974.)~~ ALL PROGRAMS - CLIENTS RIGHTS (1) All approved alcohol treatment programs shall make reasonable efforts to assure the right of each client to:

(a) Be treated without regard to physical or mer

disability unless such disability makes treatment afforded by the facility nonbeneficial or hazardous.

(b) Be protected from invasion of privacy; provided that reasonable searches may be conducted to detect and prevent contraband from being brought in or possessed on the premises.

(c) Have all clincial and personal information treated confidentially in communications with individuals not directly associated with the approved alcohol treatment program.

(d) Review his or her own treatment record with a treatment staff person upon request.

(e) Be fully informed regarding fees to be charged and methods of payment available.

(f) Be provided reasonable opportunity to practice the religion of his or her choice, alone and in private, insofar as such religious practice does not infringe on the rights and treatment of others, or the treatment of others, or the treatment program. The client also has the right to be excused from any religious practice.

(g) Not be denied communication with family in emergency situations.

(h) Not be subjected by program staff to physical abuse, corporal punishment, or other forms of abuse administered against their will including being denied food, clothing or other basic necessities.

(i) Have services for men and women which reflect on awareness of the special needs of each gender. All residential facilities shall provide equivalent, clearly defined, and well supervised sleeping quarters and bath accomodations for male and female clients.

AUTH: Sec. 53-24-209 MCA. IMP: Sec. 53-24-208 MCA

20.3.208 ~~REQUIREMENTS-SPECIFIC-TO-EMERGENCY-TREATMENT PROVIDED-BY-A-PROGRAM-AFFILIATED-WITH-OR-PART-OF-THE MEDICAL-SERVICE-OF-A-GENERAL-HOSPITAL--(1)--An-emergency treatment-program-may-be-provided-in-a-non-hospital-or-hospital-based-setting.--That-program-shall-provide-residents-with-short-term-supervised-care-incidental-to-alcoholism-or-alcohol-abuse.--An-emergency-program-shall-be-in a-place-where-an-alcoholic,-intoxicated-person-or-person incapacitated-by-alcohol-can-be:~~

~~(a)---Sobered-up-in-a-safe-environment-and-protected from-the-dangers-of-his-drunken-behavior-to-himself-and-others;~~

~~(b)---Protected-from-developing-the-sometimes-life-threatening-mental-and-physical-symptoms-that-ensue-when-a habitual-excessive-drinker-abruptly-terminates-his-drinking.~~

~~(c)---Screened-for-the-presence-of-the-diversity-of~~

~~medical-and-surgical-conditions-that-are-often-the-consequences-of-drunkenness,-alcoholism-or-both,-and-be-referred-expeditiously-to-a-hospital-for-definitive-diagnosis and-treatment.~~

~~(d)---Provided-with-encouragement,-advice,-counselling and-referral-to-other-treatment-and-service-facilities-and agencies-for-help-in-controlling-his-alcohol-problem-if-he has-one.~~

~~(2)---Program.---An-emergency-treatment-program-shall-be available-on-a-24-hour-day,-7-day-week-basis.---The-program shall-have-a-written-plan-for-the-admission,-care,-treatment-and-discharge-of-all-clients.~~

~~(a)---A-record-shall-be-made-of-the-residents'-clothing and-valuables-and-signed-by-the-resident-or-sponsor-and-a-staff-member-of-the-program.~~

~~(b)---Counselling-staff-shall-be-available-to-provide appropriate-evaluation,-counselling-and-referral.~~

~~(c)---An-individualised-treatment-plan-shall-be-prepared-and-maintained-on-a-current-basis-for-each-client.~~

~~(d)---A-minimum-of-one-staff-member-shall-be-on-duty for-admitting,-treatment-and-discharging-purposes. Adequate-staff-shall-be-provided-to-guarantee-care-as-defined-in-this-section.~~ ALL PROGRAMS - ORGANIZATION, MANAGEMENT AND GOVERNING BODY (1) The administrative organization of all approved alcohol treatment programs shall ensure that:

(a) Lines and delegations of authority, responsibilities, structure and reporting relationships are explicitly stated in writing and delineate all staff positions and functions.

(b) Development and implementation of a policies and procedures manual describing in detail the program services and personnel services and includes all policies and procedures required by these rules.

(c) The policy and procedure manual is reviewed and revised as necessary to keep it current.

(d) The program administrator reports to the governing body at least quarterly on progress toward goals and objectives.

(e) The program will develop and conduct program self evaluations and report results to the governing body.

(f) Adequate staff to meet client requests for services and professional counseling staff/client ratios are at an acceptable level as determined by ADAD.

(g) All clients have individualized treatment plans. These treatment plans shall:

(i) Be designed to help the client understand and overcome his or her illness.

disability unless such disability makes treatment afforded by the facility nonbeneficial or hazardous.

(b) Be protected from invasion of privacy; provided that reasonable searches may be conducted to detect and prevent contraband from being brought in or possessed on the premises.

(c) Have all clinical and personal information treated confidentially in communications with individuals not directly associated with the approved alcohol treatment program.

(d) Review his or her own treatment record with a treatment staff person upon request.

(e) Be fully informed regarding fees to be charged and methods of payment available.

(f) Be provided reasonable opportunity to practice the religion of his or her choice, alone and in private, insofar as such religious practice does not infringe on the rights and treatment of others, or the treatment of others, or the treatment program. The client also has the right to be excused from any religious practice.

(g) Not be denied communication with family in emergency situations.

(h) Not be subjected by program staff to physical abuse, corporal punishment, or other forms of abuse administered against their will including being denied food, clothing or other basic necessities.

(i) Have services for men and women which reflect on awareness of the special needs of each gender. All residential facilities shall provide equivalent, clearly defined, and well supervised sleeping quarters and bath accomodations for male and female clients.

AUTH: Sec. 53-24-209 MCA. IMP: Sec. 53-24-208 MCA

20.3.208 ~~REQUIREMENTS SPECIFIC TO EMERGENCY TREATMENT PROVIDED BY A PROGRAM AFFILIATED WITH OR PART OF THE MEDICAL SERVICE OF A GENERAL HOSPITAL (1) An emergency treatment program may be provided in a non-hospital or hospital-based setting. That program shall provide residents with short-term supervised care incidental to alcoholism or alcohol abuse. An emergency program shall be in a place where an alcoholic, intoxicated person or person incapacitated by alcohol can be:~~

~~(a) Sobered up in a safe environment and protected from the dangers of his drunken behavior to himself and others.~~

~~(b) Protected from developing the sometimes life-threatening mental and physical symptoms that ensue when a habitual excessive drinker abruptly terminates his drinking.~~

~~(c) Screened for the presence of the diversity of~~

~~medical-and-surgical-conditions-that-are-often-the-consequences-of-drunkenness,-alcoholism-or-both,-and-be-referred-expeditiously-to-a-hospital-for-definitive-diagnosis-and-treatment.~~

~~(d)---Provided-with-encouragement,-advice,-counselling-and-referral-to-other-treatment-and-service-facilities-and-agencies-for-help-in-controlling-his-alcohol-problem-if-he-has-one.~~

~~(2)---Program.--An-emergency-treatment-program-shall-be-available-on-a-24-hour-day,-7-day-week-basis.--The-program-shall-have-a-written-plan-for-the-admission,-care,-treatment-and-discharge-of-all-clients.~~

~~(a)---A-record-shall-be-made-of-the-residents'-clothing-and-valuables-and-signed-by-the-resident-or-sponsor-and-a-staff-member-of-the-program.~~

~~(b)---Counselling-staff-shall-be-available-to-provide-appropriate-evaluation,-counselling-and-referral.~~

~~(c)---An-individualized-treatment-plan-shall-be-prepared-and-maintained-on-a-current-basis-for-each-client.~~

~~(d)---A-minimum-of-one-staff-member-shall-be-on-duty-for-admitting,-treatment-and-discharging-purposes.~~ ~~Adequate-staff-shall-be-provided-to-guarantee-care-as-defined-in-this-section.~~ ALL PROGRAMS - ORGANIZATION, MANAGEMENT AND GOVERNING BODY (1) The administrative organization of all approved alcohol treatment programs shall ensure that:

(a) Lines and delegations of authority, responsibilities, structure and reporting relationships are explicitly stated in writing and delineate all staff positions and functions.

(b) Development and implementation of a policies and procedures manual describing in detail the program services and personnel services and includes all policies and procedures required by these rules.

(c) The policy and procedure manual is reviewed and revised as necessary to keep it current.

(d) The program administrator reports to the governing body at least quarterly on progress toward goals and objectives.

(e) The program will develop and conduct program self evaluations and report results to the governing body.

(f) Adequate staff to meet client requests for services and professional counseling staff/client ratios are at an acceptable level as determined by ADAD.

(g) All clients have individualized treatment plans. These treatment plans shall:

(i) Be designed to help the client understand and overcome his or her illness.

ments include a description of services; basis for payment; total amount of contract; duration of contract; and appropriate signatures of program administrator and a representative of the governing body.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.209 ~~REQUIREMENTS-SPECIFIC-TO-INPATIENT-TREATMENT PROGRAMS--(1)--An-inpatient-treatment-program-is-defined-as a-setting-for-clients-who-require-continuous-care-and-treatment-with-specific-therapeutic-functions-beyond-those-offered-by-emergency-or-short-term-programs.~~

~~(2)---Program.--Inpatient-treatment-services-shall-be provided-on-a-24-hour,-7-day-a-week-basis.--The-program shall-have-a-written-plan-for-the-admission,-care,-treatment and-discharge-of-all-clients.--The-following-services-and-programs-shall-be-provided.~~

~~(a)---Personnel,-facilities-and-equipment-sufficient-to carry-out-a-program-which-will-assist-the-client-to-regain-physical,-mental,-social-and-vocational-abilities-to-function-in-society-on-a-productive-basis.~~

~~(b)---An-individualized-treatment-plan-shall-be-written to-include:--evaluation-and-diagnosis-(medical-and-psychological-if-required);-intensive-counseling-(individual, group);-alcoholism-education;-referral-to-specialized-resources-in-the-community-upon-release-(or-prior-to-release if-appropriate);-and-a-written-post-discharge-plan-focusing-on-a-continuum-of-alcoholism-services.--There-shall-be-a referral-to-a-community-based-resource-such-as-a-local alcoholism-program-of-alcoholics-anonymous.~~

~~(3)---Staff.~~

~~(a)---The-minimum-staff-shall-be-determined-by-the-governing-body.~~

~~(b)---A-staff-member-who-is-qualified-to-supervise-the-residents-and-the-center-shall-be-on-duty-at-all-times.--In addition,-the-administrator-shall-be-on-call-and-available-for-emergencies.~~

~~(c)---There-shall-be-an-adequate-number-of-qualified staff-members-in-the-specialties-required-by-the-treatment regimen-or-regimens-of-an-inpatient-treatment-program-such as-alcoholism-counselors,-psychologists,-social-workers, psychiatrists,-clergymen,-etc.--Their-qualifications-shall conform-to-the-prevailing-standards-of-these-specialties-with-specific-training-and/or-experience-in-the-treatment of-alcoholism.--This-does-not-preclude-the-use-of-residents for-work-assignments-when-it-is-part-of-the-individual's written-treatment-plan.~~ ALL PROGRAMS - PERSONNEL, STAFF DEVELOPMENT AND CERTIFICATION (1) There shall be sufficient qualified and certified alcoholism counselors, clerical and other support staff, who are not of the present

client population, to ensure the attainment of program service objectives and properly maintain the alcoholism treatment facility. This shall not preclude the assignment of work to a client when the assignment is part of the client's treatment program, the client's work assignment has therapeutic value, and the client works under the immediate supervision of a certified staff member.

(2) There shall be written and current job descriptions for each position within the program which details duties, responsibilities and minimum qualifications.

(3) Certification:

(a) Pursuant to Section 53-24-204 MCA programs may hire uncertified personnel after July 1, 1983. These uncertified employees must become certified within 1 year of the date of employment. Any program hiring such uncertified persons shall monitor the certification point accumulation to ensure compliance within the stated time period.

(b) All programs shall ensure that all persons hired submit a certification registry form within 30 days of the employment date, and all supporting documents within 90 days.

(c) Before July 1, 1983, programs must have all personnel certified. These employees may work across endorsement areas until July 1, 1985, after which job titles must match endorsements. Programs must monitor all employees for compliance and document certification status.

(d) Failure to adhere to any of the above regulations could result in the suspension or revocation of program approval.

(4) The alcohol treatment program shall maintain personnel files on each employee which contains a job description; resume and/or application; payroll records; performance evaluation and documentation of certification and training.

(5) A planned, supervised orientation shall be provided to each new employee to acquaint him or her with the organization of the program, physical plant layout, his or her particular duties and responsibilities, the policies, procedures, and equipment which are pertinent to his or her work and the disaster plan for the facility.

(6) Each employee shall have a tuberculin test upon employment.

(7) Employees with a communicable disease in an infectious stage shall not be on duty.

(8) Volunteers may be used in an alcohol treatment program as a staff supplement. The program shall develop the following in utilizing volunteers:

(a) Selection and evaluation criteria.

(b) A definition of the service areas in which volunteers will be utilized.

(c) A written plan which describes how volunteers will be utilized and a written job description.

(d) A brief but comprehensive orientation, including a signed confidentiality statement, and ongoing training program for all volunteers.

(e) Direct supervision by a certified alcoholism counselor.

(f) Documentation of volunteer hours in accordance with ADAD reporting procedures.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.210 ~~REQUIREMENTS SPECIFIC TO INTERMEDIATE TREATMENT PROGRAMS (E.G. HALFWAY HOUSE). (1) Program. Supervision and services shall be available on a 24 hour, 7 day a week basis. The program shall have a written plan for the admission, care, treatment and discharge of all clients. The following services and programs shall be provided:~~

~~(a) Counselling staff shall be available to provide evaluation, counselling and referral.~~

~~(b) Recreational and rehabilitation activities shall be planned for therapeutic purposes and shall be under guidance of program staff. All residents shall be encouraged to participate in appropriate activities, both in the residential program and in the community. The program shall place priority on these activities which will help residents resume normal social life in the community.~~

~~(2) A resident shall be required to pay for services rendered within the treatment plan, consistent with his ability to pay or capacity to maintain employment.~~

~~(3) In order to maintain residency and be qualified for funding for services, a resident must be formally admitted, there must be a treatment plan and client must participate in the program.~~

~~(4) An individualized treatment plan shall be prepared and maintained on a current basis for each client.~~

~~(5) Staff.~~

~~(a) A house manager (staffed to provide 24 hour coverage of service.) The house manager need not be on duty if the administrator or counselor is available. The house manager position may include salaried resident employees.~~

~~(b) A minimum of one staff member shall be on duty for admitting, treating and discharging purposes. Adequate staff shall be provided to guarantee care as defined in this section.~~ COMMUNITY CONSULTATION, EDUCATION AND PREVENTION ACTIVITIES (1) Programs may provide consultation and education services to the community or communities which they serve.

(2) The program may provide a priority list of

services to be provided in the community(ies). The following list of services may be considered when developing these priorities.

(a) Provision of alcohol consultations and education to school districts and their personnel.

(b) Assistance in the development and implementation of alcohol education curriculum for schools.

(c) Speakers bureau for community groups and organizations.

(d) News releases and articles for media publication.

(e) Workshops for professionals in social services and related fields.

(f) Education programs on alcohol, alcohol abuse and alcoholism to the community. Educational programs may take the form of workshops, television and radio programs, newspaper publicity, lecture series, movie presentations, etc.

(g) Assistance to industry for development of industrial alcoholism programs.

(h) Training for professional personnel and the public regarding effective techniques of assisting the problem drinker and the alcoholic with his/her illness.

(i) Consultation to community agencies concerning services available to problem drinkers, alcoholics and their families.

(j) Development of working relationships with the probation department and the courts including the following:

(i) providing courts with recommendations on persons charged with alcohol-related offenses;

(ii) providing court involved clients with referral necessary for treatment and follow-up.

(k) Development of working relationships with social service and related agencies within the community.

(3) All programs providing prevention services will document such activities.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.211 ~~REQUIREMENTS-SPECIFIC-TO-OUTPATIENT-TREATMENT-PROGRAMS--(1)--An-outpatient-program-shall-provide alcoholism-counselling-services-to-those-in-need-and-shall include-an-active-outreach-philosophy-for-early-identification-of-individuals-showing-signs-of-reduced-social-vocational-functioning-due-to-excessive-drinking.~~

~~(2)--Program.--An-outpatient-treatment-program-shall-be-available-on-a-24-hour-a-day,-7-day-a-week-basis.--A-revolving-schedule-of-counsellors-may-be-used-to-insure-a staff-member-on-call-at-any-time.--The-program-shall-have a-written-plan-for-acceptance-to-the-program,-resources-available--(program-or-community),-referral-procedures-for-more-intensive-services-if-needed.~~

~~(a)---Services-shall-include-appropriate-counselling, and-referral.~~

~~(b)---An-individualized-treatment-plan-shall-be-written and-maintained-on-a-current-basis-for-each-client-and-shall-include-follow-up-plans.~~

~~(3)---Staff.~~

~~(a)---Counselling-staff-shall-be-trained-in-the-field of-alcoholism-counselling-and-education-and-shall-demonstrate-an-ability-to-work-with-clients-and-a-knowledge-of the-etiology-of-alcoholism.~~

~~(b)---Sufficient-staff-shall-be-available-to-provide 24-hour-services-on-call.~~

~~(c)---Staff-shall-be-familiar-with-community-resources for-referral,-if-needed-(e.g.-medical,-social,-vocational, mental-health,-A.A.,-etc.).~~

~~(d)---Continuing-education-in-counselling-skills-shall be-made-available-for-staff.~~ ALCOHOL INFORMATION COURSE (MONTANA COURT SCHOOL) REQUIREMENTS (1) Alcohol information course - the purpose of this rule is to establish alcohol information course standards for the approval of programs extending treatment services to alcoholics, intoxicated persons and persons incapacitated by alcohol pursuant to Section 53-24-208 MCA.

(a) The alcohol program staff member teaching the alcohol information course shall have completed a training course for instructors and, when appropriate, have ADAD certification with endorsement areas of alcohol counselor and prevention education.

(b) The alcohol information course shall follow the guidelines established by ADAD and consist of an entrance interview, an exit interview and 5 educational sessions of 2 hours each using curriculum developed by Montana ADAD.

(c) The Alcohol Information Course participant file shall be completed as recommended by ADAD.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.212 DETOXIFICATION (EMERGENCY CARE) COMPONENT REQUIREMENTS (1) Admission of clients to an alcoholism detoxification component shall be limited to persons who need detoxification services and do not manifest signs and symptoms of a condition which warrants acute care and treatment in a hospital.

(2) Detoxification services shall be provided by approved alcohol treatment programs and/or licensed hospitals providing detoxification services to all intoxicated and/or incapacitated persons unless uncontrollable because of violent behavior.

(3) Detoxification services shall include:

(a) Admission and screening services in accordance with admission criteria.

(b) A safe and protective environment.

(c) Protection from the development of life threatening mental and physical symptoms that may ensue when a habitual and excessive drinker abruptly terminates his drinking.

(d) 24-hour, 7-day a week supervision.

(e) Medical screening which includes medical history, vital signs, screening for a diversity of medical/surgical conditions, emotional problems, contagious disease, vermin infestation, observation of client's emotional behavior and physical discomfort. If the client is found to be totally incapacitated by alcohol he/she shall be examined by a licensed physician.

(f) Counselling services designed to facilitate motivation of the person to accept referral into a continuum of care.

(g) Transportation services as appropriate.

(g) Transportation services as appropriate.

(h) Referral, discharge and follow-up services that ensure continuity of care after discharge.

(4) Staff requirements:

(a) At least one registered nurse for supervision of medical screening.

(b) All detoxification staff shall be knowledgeable about medical conditions, skilled in observation and eliciting information pertinent to assessment of a health problem and competent to recognize significant signs and symptoms of illness or trauma. In addition, staff shall possess a valid and current red cross card or certificate for first aid and cardiopulmonary resuscitation or the equivalent.

(c) A minimum of one staff member on duty for admitting, treatment and discharging purposes.

(d) Adequate staff to guarantee care as defined in this section.

(5) The program shall develop policies and procedures to address the previously listed services, staff requirements and the criteria in 20.3.206 ARM.

(6) Residential requirements for detoxification (emergency care) component shall include:

(a) A facility license from the department of health and environmental sciences or, if under 8 beds, an acceptable Fire, life and safety inspection by appropriate officials.

(b) Adequate food service which includes a 30 day menu and a week's food supply. Also juice and snacks must be available at all times.

(c) Availability of articles necessary for personal hygiene.

(d) Documented availability of a licensed physician for referral, emergencies and consultation with the staff nurse.

(e) An affiliation agreement with a licensed hospital Access to dental and psychiatric care.

(f) Medical policies and procedures including: approval by a licensed physician, medical screening, care of residents with minor acute illnesses, medical emergencies, first aid, dangerous behavior, cardio-pulmonary resuscitation, and care of residents having convulsions.

(g) Policies and procedures on medication control which address the handling, storing and administration of medications within the facility according to federal and state regulations. Note: Only a registered nurse or a licensed practical nurse may administer medications, otherwise the self-administration system must be utilized.

(h) Client admission register which designates date of admission, date of discharge, discharge and referral note.

(7) Client recordkeeping and reporting requirements specific to the detoxification component shall include:

(a) ADAD admission/discharge forms.

(b) Date of admission.

(c) Social history.

(d) Documentation of a medical screening which includes vital signs.

(e) Documentation of all supportive services contacts.

(f) Individualized treatment plan which is reviewed and updated daily and includes an aftercare plan. The plan shall meet the requirements of 20.3.208(h) ARM.

(g) Progress notes written for every 8-hour shift and meeting the requirements of 20.3.208(h) ARM.

(h) A discharge summary that includes a description of the client's physical condition and status of recommended referral.

(8) Quality assurance including individual case review and utilization reviews.

(a) Individual case review is a procedure for monitoring a client's progress and is designed to ensure the adequacy and appropriateness of the services provided to that client and shall:

(i) Be designed to ensure that the care provided for clients is evaluated and updated according to the needs of each individual.

(ii) Be accomplished through daily staffings. All involved treatment staff must participate.

(iii) Ensure a staffing note is developed at the staffing meeting and inserted in the progress notes. An aftercare plan shall be formulated, reviewed and documented.

(b) Utilization and effectiveness review is a process of using predefined criteria to evaluate the necessity and appropriateness of allocated services and resources t ensure that the program's services are necessary, co efficient and effectively utilized. Utilization and effectiveness reviews shall:

(i) Be designed to achieve cost efficiency, increase effective utilization of the program's services, and ensure the necessity of services provided.

(ii) Address under-utilization and inefficient scheduling as well as over-utilization of the program's resources.

(iii) Ensure methods for identifying utilization related problems which include analysis of the appropriateness and necessity of admission, continued stays, recidivism, supportive services, effectiveness of an aftercare plan based on verification of referrals and results of follow-up, as well as utilization of the findings of related quality assurance activities and all relevant documentation.

(iv) Be conducted at least quarterly.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.213 INPATIENT COMPONENT REQUIREMENTS (1) Persons requiring intensive residential care for the treatment of alcoholism in a hospital shall be admitted to this component. Persons needing detoxification shall not be admitted or retained but shall be referred or transferred to an approved alcohol detoxification program or a unit within a licensed hospital which provides detoxification. (Persons manifesting signs and symptoms of a condition that warrants acute medical care shall not be admitted but shall be transferred to a unit within the licensed hospital which provides acute medical services.)

(2) Inpatient services shall include:

(a) Admission and screening services in accordance with admission criteria.

(b) 24 hour, 7 day a week supervision in a hospital.

(c) A medical evaluation performed by a licensed physician and conducted upon admission. This shall include a medical history, physical examination and laboratory work-up.

(d) Structured educational presentations.

(e) Between 10 and 20 hours of group therapy per week, consistent with the client's individual treatment plan. Group therapy hours may include structured group dynamics, group educational experiences, group step work or other interpersonal group processes. Regular alcoholics anonymous meetings are not counted as group therapy hours.

(f) 1 session of documented individual counselling per week, with certified counseling staff.

(g) Social and recreational activities.

(h) Other supportive services as deemed necessary by the program.

(i) Periodic assessment by treatment staff.

(j) Provision of a family counseling program. Preferably a structured four to seven days of residential treatment.

(k) Referral, discharge and follow-up services that ensure continuity of care after discharge.

(l) Transportation services as appropriate.

(3) Staff requirements:

(a) There shall be qualified staff and supporting personnel necessary for the provision of inpatient care including registered nurse, licensed practical nurse, and certified counseling staff.

(b) A licensed physician or a list of rotating physicians responsible for admissions and on-call services.

(4) The program shall develop policies and procedures to address the previously listed services, staffing requirements and the criteria in 20.3.206 ARM.

(5) Residential requirements for the inpatient care component shall include:

(a) A facility in a hospital licensed in accord with 50-5-201 MCA.

(b) Adequate food service which includes a 30 day menu and a weeks food supply.

(c) Availability of articles necessary for personal hygiene.

(d) Access to medical/surgical/dental and psychiatric care.

(e) A medical evaluation performed by a licensed physician shall be conducted upon admission. This shall include a medical history, physical examination and laboratory work-up.

(f) Adequate life support systems within the unit.

(g) Availability of general care, emergency care and medication control in accordance with hospital standards.

(h) Client Admission Register which designates date of admission, date of discharge, discharge and referral notes.

(6) Client record keeping requirements specific to the inpatient care component shall include:

(a) ADAD admission and discharge forms.

(b) Date of admission.

(c) Social History

(d) Results of physical examination conducted by a licensed physician, medical history and lab work-up.

(e) Documentation of all supportive service contacts.

(f) Individualized treatment plan which is reviewed and updated weekly and responds to 20.3.208 (g) ARM.

(g) Progress notes written a minimum of 3 times a week and meeting the requirements of 20.3.208 (h) ARM.

(h) Nurses' notes which summarize the clients' activities, response and physical condition and any medical treatment during an 8-hour period. They shall be written each shift and document the client's presence in the inpatient unit.

(i) Discharge summary that includes an account of the client's response to treatment which reviews the treatment plan, and documents the client's progress in accomplishing treatment goals and an aftercare plan.

(7) Quality assurance which includes individual case review, client audits and utilization review.

(a) Individual case review is a procedure for monitoring a client's progress and is designed to ensure the adequacy and appropriateness of services provided to that client and shall:

(i) Be designed to ensure that the care provided for the client is evaluated and updated weekly, according to the needs of each individual client.

(ii) Be accomplished through weekly staff meetings and/or reviews. All involved treatment staff must participate.

(iii)Ensure a staffing or review note is developed at the review and inserted in the progress notes. Corresponding updates and/or revisions to the treatment plan shall be documented on the plan.

(b) Client care audits are designed to identify problems and to initiate corrections in provider performance or to demonstrate that services provided are of optimal achievable quality and shall:

(i) Utilize, but not be limited to, identifying specific problems, then analyzing the treatment process, developing measurable criteria of successful outcomes; comparing terminated files with treatment outcomes; comparing specific treatment process in successful vs unsuccessful treatment outcomes; and determining corrective actions which may include training for identified counselors, or entire staff, or amending policies, procedures, or schedule of activities.

(c) Utilization and effectiveness review is a process of using predefined criteria to evaluate the necessity and appropriateness of allocated services and resources to ensure that the program's services are necessary, cost efficient and effectively utilized. Utilization and effectiveness reviews shall:

(i) Be designed to achieve cost efficiency, increase effective utilization of the program's services, and ensure

the necessity of services provided.

(ii) Address under-utilization and inefficient scheduling as well as over-utilization of the program's resources.

(iii) Ensure methods for identifying utilization related problems including analysis of the appropriateness and necessity of admission, continued stays, recidivism, supportive services and delays in the provision of supportive services, effectiveness of an aftercare plan based on verification of referrals and results of follow-up as well as utilization of the findings of related quality assurance activities and all relevant documentation.

(iv) Be conducted at least quarterly.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.214 INTERMEDIATE CARE COMPONENT REQUIREMENTS (1) Persons requiring intensive residential care outside a hospital for the treatment of alcoholism shall be admitted to this component. Persons needing detoxification shall not be admitted or retained, but shall be referred or transferred to an approved alcoholism detoxification program or licensed hospital. Persons manifesting signs and symptoms of a condition that warrants acute medical care shall not be admitted but shall be referred to a licensed hospital.

(2) Intermediate care services shall include:

(a) Admission and screening services in accordance with admission criteria.

(b) 24-hour, 7-day a week supervision in a community based residential setting.

(c) A limited medical evaluation performed by a registered nurse or licensed practical nurse which includes a medical history, vital signs, screening for severe physical or emotional problems, contagious disease and vermin infestation, observation of the client's general condition, motor and sensory abilities, mental and emotional behavior and physical discomfort.

(d) Documented availability of a physician for referral and consultation with the staff nurse.

(e) Structured educational presentations.

(f) Between 10 and 20 hours of group therapy per week, consistent with the client's individual treatment plan. Group therapy hours may include structured group dynamics, group educational experiences, group step work or other interpersonal group processes. Regular Alcoholics Anonymous meetings are not considered as group therapy hours.

(g) 1 session of documented individual counseling per week with certified counseling staff.

(h) Other supportive services as deemed neccessary by the program.

(i) Periodic assessment by certified staff.

(j) Social and recreation activities.

(k) Family counseling services, as appropriate.

(l) Referral, discharge and follow-up services that ensure continuity of care after discharge.

(m) Transportation services as appropriate.

(3) Staff requirements:

(a) Staff shall consist of a director, certified alcohol counselor(s), house manager(s), support staff and a registered nurse or licensed practical nurse on staff for at least 4 hours per week for limited medical evaluations.

(b) A minimum of one staff member shall be on duty for admitting, treating and discharging purposes on a 24-hour, 7-day a week basis. House manager may be utilized for nights.

(4) The program shall develop policies and procedures to address the previously listed services, staff requirements and the criteria in 20.3.206 ARM.

(5) Residential requirements for the intermediate care component shall include:

(a) A facility license from the department of health and environmental sciences, or if under 8 beds, an acceptable life and safety inspection by appropriate officials.

(b) Adequate food service which includes a 30 day menu and a week's food supply.

(c) Availability of articles necessary for personal hygiene.

(d) Documented availability of a licensed physician for referral, emergencies and consultation with the staff nurse.

(e) Access to medical/surgical, dental and psychiatric care.

(f) Medical policies and procedures which include: limited medical evaluation screening, care of residents with minor acute illnesses, medical emergencies, dangerous behavior, cardiopulmonary resuscitation care of residents having convulsions, and first aid.

(g) Medication control which ensures the handling, storing and administration of medications within the program according to federal and state regulations. Note: Only a registered nurse or licensed practical nurse may administer medications, otherwise the self-administration system must be utilized.

(h) A safe, protective environment.

(i) Client admission register which designates date of admission, date of discharge, discharge and referral notes.

(6) Client recordkeeping and reporting requirements specific to the short term intermediate care component shall include:

(a) ADAD admission/discharge forms.

(b) Date of admission.
(c) Social history.
(d) Documentation of a limited medical evaluation.
(e) Documentation of all supportive service contacts.
(f) Individualized treatment plan which is reviewed and updated weekly and responds to 20.3.208 (g) ARM.
(g) Progress notes shall be written at a minimum of two (2) times a week and respond to 20.3.208 (h) ARM.
(h) Discharge summary that includes an account of the client's response to treatment which reviews the treatment plan and documents the client's progress in accomplishing treatment goals and an aftercare plan.
(7) Quality assurance which includes individual case review and utilization review.
(a) Individual case review is a procedure for monitoring a client's progress and is designed to ensure the adequacy and appropriateness of services provided to that client and shall:
(i) Be accomplished through weekly staff meetings and/or staff reviews. All involved treatment staff must participate.
(ii) Ensure that a staffing or review note is developed at the review and inserted in the progress notes. Corresponding updates and/or revisions to the treatment plan shall be documented on the plan.
(b) Utilization and effectiveness review is a process of using predefined criteria to evaluate the necessity and appropriateness of allocated services and resources to ensure that the program's services are necessary, cost efficient and effectively utilized. Utilization and effectiveness reviews shall:
(i) Be designed to achieve cost efficiency, increase effective utilization of the program's services, and ensure the necessity of services provided.
(ii) Address under-utilization and inefficient scheduling as well as over-utilization of the program's resources.
(iii) Ensure methods for identifying utilization related problems including analysis of the appropriateness and necessity of admission, continued stays, recidivism, supportive services and delays in the provision of supportive services, effectiveness of an aftercare plan based on verification of referrals and results of follow-up, as well as utilization of the findings of related quality assurance activities and all current relevant documentation.
(iv) Be conducted at least quarterly.
AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.215 LONG TERM INTERMEDIATE CARE (TRANSITIONAL LIVING) COMPONENT REQUIREMENTS (1) Persons who have recently received alcoholism inpatient or intermediate short

term care services and require a moderately structured living arrangement shall be admitted to this component. Persons needing detoxification shall not be admitted or retained but shall be referred or transferred to an approved alcohol detoxification program or licensed hospital. Persons manifesting signs and symptoms of a condition that warrants acute medical care shall not be admitted but shall be referred to a licensed hospital.

(2) Long term intermediate care service shall include:

(a) Admission and screening services in accordance with admission criteria.

(b) 24-hour, 7-day a week supervision in a non-medical community-based residential treatment program.

(c) Medical history and personal observation. Since clients are only accepted from inpatient or intermediate care, it is assumed that an adequate medical evaluation has been performed and the results have been forwarded and included in the client's file.

(d) 2 sessions of group therapy per week consistent with the client's individual treatment plan. Group therapy hours may include structured group dynamics, group educational experiences, group step work or other interpersonal group processes. Regular alcoholics anonymous meetings are not considered as group therapy hours.

(e) 2 sessions per month of documented individual counseling with certified counseling staff.

(f) Other supportive services as deemed necessary by the program.

(g) Periodic assessment by certified staff.

(h) Encouragement to participate in alcoholics anonymous or with support groups.

(i) Efforts toward vocational rehabilitation, occupational training, education and/or job placement.

(j) Social and recreational activities.

(k) Family counseling services, as appropriate.

(l) Referral, discharge and follow-up services that ensure continuity of care after discharge.

(m) Transportation services as appropriate.

(3) Staff requirements:

(a) Staff shall consist of a director, certified alcohol counselor(s) and house manager(s).

(b) A minimum of one staff member shall be on duty for admitting, treating and discharging purposes on a 24-hour, 7-day a week basis. A senior resident may be utilized for relief coverage if definite criteria for senior resident status has been established. Criteria must include a minimum of 3 months sobriety, record of progress, evidence of increased responsibility, and training.

(4) The program shall develop policies and procedures

to address the previously listed services, staffing requirements and the criteria in 20.3.206 ARM.

(5) Residential requirements for the long term intermediate component shall include:

(a) Facility license from the department of health and environmental sciences or, if under 8 beds, an acceptable fire, life and safety inspection by appropriate officials.

(b) Adequate food service which includes a 30 day menu and a week's food supply.

(c) Availability of articles necessary for personal hygiene.

(d) Documented availability of a licensed physician for referral and emergencies.

(e) Access to medical/surgical, dental and psychiatric care.

(f) Medical policies and procedures which include: care of residents with minor acute illnesses, medical emergencies, dangerous behavior, cardiopulmonary resuscitation (CPR), care of residents having convulsions, and first aid. Since clients are only accepted from inpatient or intermediate care components, it is assumed they will have received an adequate medical evaluation and the results forwarded and included in the client's file. Therefore, this component will only be required to take a medical history, make personal observations and check for medications.

(g) Medication control which ensures the handling, storing and administration of medications within the facility according to federal and state regulations. Note: Only a registered nurse or licensed practical nurse may administer medications, otherwise the self-administration system must be utilized.

(h) A safe, protective environment.

(i) Client admission register which designates the date of admission, date of discharge and discharge and referral notes.

(6) Client recordkeeping and reporting requirements specific to the long term intermediate component shall include:

(a) ADAD admission/discharge form.

(b) Date of admission.

(c) Social history.

(d) Medical history and documentation that a medical evaluation occurred at the inpatient or intermediate care program.

(e) Documentation of all supportive service contacts.

(f) Individualized treatment plan which is reviewed and updated monthly and responds to 20.3.208 (g) ARM.

(g) Progress notes shall be written at a minumum of once per week and respond to 20.3.208 (h) ARM.

(h) Discharge summary that includes an account of the client's response to treatment which reviews the treatment plan and documents the client's progress in accomplishing the treatment goals and an aftercare plan.

(7) Quality assurance which includes individual case review and program effectiveness review.

(a) Individual case review is a procedure for monitoring a client's progress and is designed to ensure the adequacy and appropriateness of services provided to that client and shall:

(i) Be designed to ensure that the care provided for clients is evaluated and updated monthly, according to the needs of each client.

(ii) Be accomplished through weekly staff meetings and/or staff reviews. All involved treatment staff must participate.

(iii) Ensure that a staffing or review note is developed at the staff review and inserted in the progress notes. Corresponding updates and/or revisions to the treatment plan shall be documented on the plan a minimum of once per month.

(b) Program effectiveness:

(i) Shall ensure the collection, development and utilization of information which demonstrates program effectiveness. This can include but not be limited to completion of goals and objectives, average monthly caseloads, completion ratios, employment and/or vocational/educational placements and follow-up data.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

20.3.216 OUTPATIENT COMPONENT REQUIREMENTS (1) Persons able to receive services on a non-residential basis shall be admitted to this component. Persons needing detoxification, inpatient or intermediate care services shall be referred to an appropriate treatment program. Persons manifesting signs symptoms of a condition that warrants acute medical care shall not be admitted but shall be referred to a hospital.

(2) Outpatient services shall include:

(a) Admission and screening services in accordance with admission criteria. Services which are provided on a regularly scheduled basis to clients residing outside the programs.

(b) Crisis intervention, screening evaluation, individual, group and family counseling, intervention services; structured educational presentations; referral and transportation services, discharge and follow-up services.

(c) A plan for outreach activities which includes: target groups, methodology, and special emphasis programs.

(d) Availability of 24-hour, 7-day a week coverage.

(3) Staff requirements:

(a) Counseling staff shall be certified and trained in the field of alcoholism counseling and education and shall demonstrate an abillity to work with clients and a knowledge of the etiology of alcoholism.

(b) Sufficient staff shall be available to provide 24-hour on-call services.

(c) Staff shall be familiar with community resources for referral, including medical, social, vocational, mental health, alcoholics anonymous, etc.

(4) The program shall develop policies and procedures to address the above listed services, staff requirements and criteria in 20.3.206 ARM.

(5) Client recordkeeping and reporting requirements specific to the outpatient care component.

(a) ADAD admission/discharge forms.

(b) Date of admission.

(c) Social history.

(d) Medical history.

(e) Documentation of all supportive service contacts.

(f) Individualized treatment plan which is reviewed and updated at least every 90 days and responds to 20.3.208 (g) ARM.

(g) Progress notes shall be written following each contact (a minimum of once a month) and respond to 20.3.208 (h) ARM.

(h) Discharge summary that includes an account of the client's response to treatment which reviews the treatment plan and documents the client's progress in accomplishing treatment goals and a follow-up plan.

(6) Quality assurance which includes individual case review and program effectiveness.

(a) Individual case review is a procedure for monitoring a client's progress and is designed to ensure the adequacy and appropriateness of the services provided to that client and shall:

(i) Be designed to ensure that the care provided to clients is evaluated and updated every 90 days, according to the needs of each client.

(ii) Be accomplished through staff meetings and/or quarterly staff reviews. All involved treatment staff must participate. In small rural programs with only one staff member, files shall be reviewed by that staff member.

(b) Program effectiveness:

(i) Shall ensure the collection, development and utilization of information which demonstates program effectiveness. This can include, but not be limited to, completion of goals and objectives, average monthly caseloads, average contacts per client per month, completion

ratios, employment and/or vocational placements and follow-up data.

AUTH: Sec. 53-24-209 MCA IMP: Sec. 53-24-208 MCA

4. The purpose of the department's proposed changes is to effectively spell out the total criteria for all alcohol programs. Further, it is the desire of the department to indicate to all programs which particular requirements they are responsible for and then, dependent upon the type of service rendered, i.e., inpatient care component or detoxification.

5. Interested parties may submit their data, views arguments either orally or in writing at the hearing Written data, views or arguments may be submitted to Nick A. Rotering, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than September 4, 1981.

6. Nick A. Rotering has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendments is based on Section 53-24-209 MCA and implements Section 53-24-208 MCA.

CARROLL V. SOUTH, Director
Department of Institutions

BY: _____

Certified to the Secretary of State this 17th day of July, 1981.

BEFORE THE DEPARTMENT OF STATE LANDS
AND BOARD OF LAND COMMISSIONERS OF
THE STATE OF MONTANA

In the matter of the AMENDMENT OF ARM 26.3.108 and 26.3.121 relating to the preferential right of lessees of state land under Title 77, Chapter 6 of Montana Codes Annotated	)	NOTICE OF PROPOSED AMENDMENT OF ARM 26.3.108 and 26.3.121 RELATING TO PREFERENTIAL RIGHT OF LESSEES OF STATE LAND NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 21, 1981, the board of land commissioners and department of state lands proposes to amend ARM 26.3.108 and 26.3.121 which establish procedures for subleasing of state owned land and what happens to the preferential right of the lessee.

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

26.3.108 RENEWAL OF LEASE (1) A current lessee shall be sent an application to renew his lease. The application shall be accepted under the same conditions as specified in ARM 26.3.105(1); however, application for renewal will only be accepted from December 1 of the year preceding the expiration of the lease until February 28, the date of expiration.

(2) A surface lessee who has paid all rentals and complied with the terms of the previous lease is entitled to exercise a preference right if he has not allowed more than 1/3 of the land under lease to be operated by a person other than himself, either through sublease or other arrangement, for more than 30% of the lease term.

(3)~~(2)~~ ~~A surface lessee has a preference right to renew his lease provided all rentals have been paid and the terms of the previous lease have not been violated.~~ The lease shall be renewed at the rental rate provided by law, provided no other applications for the lease have been received by the department 30 days prior to the expiration of the lease.

(4)~~(3)~~ If other applications are received by January 28 of the year the lease expires the lessee shall have a preference right to renew his lease provided he meets the bid of the high bidder for such lease. Such bid is deemed to be met if, prior to the expiration of the lease, the department received from the lessee 20% of the bid for grazing land and $1.00 per acre for agricultural land. ~~the amount of the high bid is received by the department prior to the expiration of the lease or in the case of agricultural land, leased solely on a crop share rental basis, if the lessee agrees in writing to meet the high bid prior to the expiration of the lease.~~ A lessee may request

a hearing before the commissoner after he meets the high bid if he considers the bid too high to be in the best interests of the state. The lessee shall submit evidence of rental rates in the area for similar land with his request. The commissioner may grant or deny a request for a hearing and if the request is granted the commissioner may recommend to the board that the bid be lowered only if he feels that it is in the best interests of the state to do so. The board may accept or reject the commissioner's recommendation. The lessee is obligated to lease the property at the rate determined by the board. The lease of such land shall be such as to return to the state revenue commensurate with the highest and best use of the land or portions thereof, as determined by the department.

(5)~~(4)~~ Regardless of any provision to the contrary in these rules, the board, at renewal time, may withdraw any land, or portion of land from further leasing for an indefinite period. The department may provide in any lease at the time of execution or renewal that the land may be withdrawn from further leasing after reasonable notice, if the department considers such action to be in the best interests of the state.

(6)~~(5)~~ When land, under lease has previously been sold and the certificate of purchase has been cancelled, any later reinstatement of the certificate of purchase shall not have the effect of cancelling any lease except that the current lessee shall lose his right to renew the lease. (History: Sec. 77-6-104 MCA; IMP, Sec. 77-6-205 MCA; NEW, 1979 MAR p. 439, Eff. 5/10/79.)

AUTH: 77-6-104 MCA IMP: 77-6-101, MCA

26.3.121 TRANSFER OF LEASES; ASSIGNMENTS AND SUBLEASES

(1) All assignments and subleases shall be made on blanks prescribed by the department and available at no cost. An assignment in order to be binding on the state and a sublease in order to be legal must be approved by the department. A copy must be filed with the department and a fee as specified in ARM 26.2.401, must be paid. An assignment or sublease will not be approved if all rentals or other payments due have not been paid or the terms of the lease have been violated. If a sublease or assignment is made in terms less advantageous to the sublessee than terms given by the state, or without filing a copy of the sublease and receiving the department's approval, the commissioner shall cancel the lease subject to the appeal procedures provided in ARM 26.3.125. However, if a lessee has entered into a verbal agreement concerning management or use of state land without knowledge that such agreement constituted a sublease pursuant to rule 26.3.101(7) and reports such sublease to the department on or before February 28, 1982, the lease shall not be canceled by the commissioner. The lessee shall, however, lose the preference right if he has allowed

more than 1/3 of the land under lease to be operated by a person other than himself for more than 30% of the term of the lease.

AUTH: 77-6-104 MCA; IMP: 77-6-101 MCA

3. **The rules are** proposed to be amended to conform with the Montana Supreme Court Decisions in Jerke v. State Department of Lands ___MT.___ 597 P2d 49 (1979) and Skillman v. Department of State Lands, ___MT.___, 613 P2d 1389 (1981) and an attorney general opinion, Vol. 39, opinion 1, January 9, 1981, interpreting the meaning of these cases as relates to subleasing state lands by the lessee and what happens to the lessee's preferential right of renewal of the lease at the end of the term of the lease.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to Gareth C. Moon, commissioner, department of state lands, capitol station, Helena, Montana, 59620, no later than August 29, 1981.

5. If a person who is directly affected by the proposed amendments 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 Gareth C. Moon, commissioner, department of state lands, capitol station, Helena, Montana 59620, no later than August 29, 1981.

6. If the agency receives requests for a public leasing on the proposed amendments 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 based upon approximately 9,000 agricultural and grazing lessees.

7. The authority of the board and department to make the proposed amendments is contained in section 77-6-104 MCA and implement section 77-6-101 MCA.

Gareth C. Moon, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE July 20, 1981.

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

In the matter of the amendment of Rule 46.9.205 pertaining to standards of assistance in regards to supplemental payment to recipients of supplemental security income	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46.9.205 PERTAINING TO SUPPLEMENTAL PAYMENTS TO RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME

To: All Interested Persons:

1. On August 20, 1981, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.9.205 pertaining to standards of assistance in regards to supplemental payments to recipients of supplemental security income.

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

46.9.205 STANDARDS OF ASSISTANCE (1) A monthly supplemental payment will be paid to the recipient to raise his monthly income to the following standards.

(a) A standard monthly payment consisting of the current SSI payment and the standard state supplemental payment for meals, shelter, laundry, minimal supervision, and personal needs.

(i) A minimum of ~~$25.00~~ $40.00 a month of the standard must be retained by the recipient.

(b) A standard of $13.75 a month for transportation.

(i) The standard payment shall be allowed to the recipient only if his needs require consistent transportation for local medical and dental appointments, local training programs, local therapeutic activities, and local church services. Consistent need means a need of three or more trips per week.

(ii) The standard payment is not allowed when other means of transportation are available such as family, volunteers, senior citizens volunteer programs, and dial-a-ride programs.

(c) A standard of $13.75 a month for behavior-supervision.

(i) The standard payment is allowed when the social worker certifies that the recipient requires those services as outlined in rule 46.9.202(1)(f).

(d) A standard of $13.75 a month for special diets.

(i) The foregoing standard payment shall be allowed only upon written order of recipient's physician.

(e) A standard of $13.75 per month for personal care activities.

(i) The foregoing standard payment shall be allowed only where the certifying social worker certifies that the recipient requires those services as outlined in rule 46.9.202.

3. Despite yearly cost-of-living increases to the supplement payment, there has been no increase to the amount retained for personal needs since the programs inception. The department proposes the rule amendment to increase the amount of the supplement check retained by the client for personal needs to $40.00 per month. This increase is being recommended to enable the clients to better meet their needs for personal items while in residence at a personal care, group or foster home.

Standards for special diets and for personal care have been added because these standards were inadvertently removed during recodification.

4. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59604, no later than August 28, 1981.

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

6. The authority of the agency to amend the rule is based on Section 53-2-204, MCA, and the rule implements Section 53-2-204, MCA.

Director, Social and Rehabilitation Services

Certified to the Secretary of State July 20, 1981.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the adoption) of Model Procedural Rules)	NOTICE OF THE ADOPTION OF RULE 10.121.101

TO: All Interested Persons.

1. On May 28, 1981. the montana historical society published notice of a proposed adoption of a rule, concerning model procedural rules at page 482 of the 1981 Montana Administrative Register, issue number 10.

2. The agency has adopted the rule with the following changes:

RULE I - MODEL PROCEDURAL RULES. (1) The montana historical society ~~adopts the Attorney General's model proceedural rules one thru 28 and all subsequent amendments to the model proceedural rules, and incorporates herein those rules by reference.~~ hereby adopts and incorporates by reference ARM 1.3.102 through ARM 1.3.232, which sets forth the Attorney General's model procedural rules. A copy of the model procedural rules may be obtained from the montana historical society.

3. No comments or testimony were received.

By: Warren P. Hall
Warren P. Hall, Chairman
Board of Trustees

Certified to the Secretary of State July 13, 1981.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the adoption of rules concening an Acquisitions Policy	NOTICE OF THE ADOPTION OF RULES 10.121.501, 10.121.502, 10.121.503 and 10.121.504

TO: All Interested Persons.

1. On May 28, 1981, the montana historical society published notice of a proposed adoption of rules, concerning acquisitions policy at pages 486 through 491 of the 1981 Montana Administrative Register, issue number 10.
2. The agency has adopted the rules as proposed.
3. No comments or testimony were received.

By: Warren P. Hall
Warren P. Hall, Chairman
Board of Trustees

Certified to the Secretary of State July 13, 1981.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the Matter of the Adoption of rules concerning a collections Loan Policy	NOTICE OF THE ADOPTION OF RULES 10.121.701, 10.121.702 and 10.121.703

TO: All Interested Persons.

1. On May 28, 1981, the montana historical society published notice of a proposed adoption of rules concerning colloctions loan policy at pages 492 through 496 of the 1981 Montana Administrative Register, issue number 10.

2. The agency has adopted the rules with minor editorial changes but substantially as proposed.

3. No comments or testimony were received.

By Warren P. Hall
Warren P. Hall, Chairman
Board of Trustees

Certified to the Secretary of State July 13, 1981.

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

In the matter of the repeal of Rules 46.4.201, 46.4.202, 46.4.203 and 46.4.204 pertaining to project funds; child and youth development bureau	))))	NOTICE OF THE REPEAL OF RULES 46.4.201, 46.4.202, 46.4.203 AND 46.4.204 PERTAINING TO PROJECT FUNDS

TO: All Interested Persons

1. On June 11, 1981, the Department of Social and Rehabilitation Services published notice of a proposed repeal to Rules 46.4.201, 46.4.202, 46.4.203 and 46.4 204 pertaining to project funds, child and youth development bureau, at page 552 of the Montana Administrative Register, issue number 11.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received.

In the matter of the amendment of Rule 46.5.1001, pertaining to services provided by contract, community services division.	))))	NOTICE OF THE AMENDMENT OF RULE 46.5.1001 PERTAINING TO SERVICES PROVIDED BY CONTRACT

TO: All Interested Persons

1. On June 11, 1981, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46.5.1001 pertaining to services provided by contract, community services division, at page 553 of the Montana Administrative Register, issue number 11.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the repeal of Rules 46.9.101 and 46.9.102 pertaining to the description and purpose of the organization of the economic assistance division	))))))	NOTICE OF THE REPEAL OF RULES 46.9.101 AND 46.9.102 PERTAINING TO ORGANIZATION OF THE ECONOMIC ASSISTANCE DIVISION

TO: All Interested Persons

1. On June 11, 1981, the Department of Social and Rehabilitation Services published notice of a proposed repeal to Rules 46.9.101 and 46.9.102 pertaining to the description and purpose of the organization of the economic assistance division at page 554 of the Montana Administrative Register, issue number 11.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received.

In the matter of the amendment of Rule 46.10.403 pertaining to AFDC table of assistance standards.	)))))	NOTICE OF THE AMENDMENT OF RULE 46.10.403 PERTAINING TO AFDC TABLE OF ASSISTANCE STANDARDS

TO: All Interested Persons

1. On June 11, 1981, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46.10.403 pertaining to AFDC table of assistance standards at page 537 of the Montana Administrative Register, issue number 11.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the adoption of Rule 46.12.3803 and the amendment of Rules 46.12.102 and 46.12.201 pertaining to medical assistance, medically needy income standards and definition of family size	)))))	NOTICE OF THE ADOPTION OF RULE 46.12.3803 AND THE AMENDMENT OF RULES 46.12.102 AND 46.12.201 PERTAINING TO MEDICAL SERVICES

TO: All Interested Persons

1. On June 11, 1981, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule 46.12.3803 and the amendment of Rules 46.12.102 and 46.12.201 pertaining to medical assistance, medically needy income standards and definition of family size at page 544 of the Montana Administrative Register, issue number 11.

2. The agency has amended the Rules 46.12.102 and 46.12.201 as proposed.

3. The agency has adopted Rule 46.12.3803 as proposed with the following changes:

46.12.3803 ~~RULE I~~ MEDICALLY NEEDY INCOME STANDARDS

(1) The following table contains the amount of net income protected for maintenance by family size in compliance with the following federal regulations which are hereby incorporated by reference. The federal regulations incorporated by reference are 42 CFR 435.811, "general requirements"; 42 CFR 435.812 (a) (1) and (2), and (b) (1) and (2), "medically needy income standard for one-person, non-institutionalized"; 42 CFR 435.814 (a) (1) and (2), and (b) (1) and (2), "medically needy income standard for two-persons, non-institutionalized"; 42 CFR 435.816, "medically needy income standards for three or more persons"; and 42 CFR 435.1007, "medically needy." A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59601.

MEDICALLY NEEDY INCOME LEVELS

FAMILY SIZE		INCOME LIMIT
1	~~$242.00~~	$265.00
2		317.00
3		375.00
4		475.00
5		567.00
6		633.00
7		700.00
8		767.00
9		833.00
Each Additional Person		75.00

(2) All families are assumed to have a shelter obligation, and no urban or rural differentials are recognized in establishing those amounts of net income protected for maintenance.

4. No written comments or testimony were received other than the following comment submitted by the agency:

Comment:

The Denver Regional Office of the United States Department of Health and Human Services has determined the medically needy level for a one person family as proposed by this amendment to be out of compliance with federal regulations. The appropriate level for a one person family should be $265.

Response:

The medically needy level for a one person family has been increased to $265 in the final rule.

In the matter of the amendment of Rule 46.12.303 pertaining to medical services; billing, reimbursement, claims processing and payment	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.303 PERTAINING TO MEDICAL SERVICES

TO: All Interested Persons

1. On June 11, 1981, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.303 pertaining to medical services; billing, reimbursement, claims processing, and payment at page 541 of the Montana Administrative Register, issue number 11.

2. The agency has amended the rule as proposed.

3. No testimony was received at the public hearing. The written comment received is as follows:

Comment:

The amended portion of this rule does not specifically indicate that a government agency may bill Medicaid for medical services provided by county medical personnel.

Response:

This amendment is not intended to change the method of reimbursement for payments to counties for services rendered by county medical personnel that are provided prior to eligibility determination. Reimbursement for services is provided to any provider, including counties, for services to eligible recipients, whenever eligibility is determined, pursuant to the department's rules. Counties should continue to bill the department for appropriate services using the provider number assigned to both the county and the individually licensed medical personnel. This reimbursement will not be reflected in the county personnel's income for tax purposes if the county's tax number is used.

Director, Social and Rehabilitation Services

Certified to the Secretary of State July 20, 1981.

VOLUME NO. 39 OPINION NO. 23

INSURANCE - Taxation of employee contributions to insurance provided by employer-insurer;
STATE AUDITOR - Duty to interpret statutes relating to insurance;
STATUTORY CONSTRUCTION - Deference to administrative interpretation;
TAXATION AND REVENUE - Premium tax on employee contributions to insurance provided by employer-insurer;
WORDS AND PHRASES- "Direct premium income";
MONTANA CODE ANNOTATED - Sections 2-15-1903, 33-2-705.

Held: Contributions made by employees of an insurer to life and disability insurance plans provided by the employer-insurer are taxable as premium income under section 33-2-705, MCA.

8 July 1981

E. V. "Sonny" Omholt
State Auditor
Sam W. Mitchell Building
Helena, Montana 59601

Dear Mr. Omholt:

You have requested my opinion on the following question:

> Are employee contributions to life and disability insurance plans provided by an employer-insurer taxable?

Montana law imposes an annual tax on premiums received by insurance companies. §33-2-705(2), MCA. The tax is based on "direct premium income, including...all...consideration for insurance from all kinds and classes of insurance whether designated as a premium or otherwise, received by [an insurer]...on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana... ." §33-2-705(1), MCA. You have interpreted "direct premium income" to include the contributions that an insurance company receives from its own employees for insurance provided by the company as an employee benefit.

As insurance commissioner, you are charged with the interpretation and enforcement of section 33-2-705. §2-15-1903, MCA. Your interpretation, therefore, is entitled to great deference. See e.g., Montana Power Co. v. Cremer, ___ Mont. ___, 596 P.2d 483, 485 (1979); In re Fligman's Estate, 113 Mont. 505, 510, 129 P.2d 627, 629 (1942).

I find no basis for overruling your interpretation. The insurance industry has submitted a memorandum citing five cases from other jurisdictions that it believes are contrary to your interpretation. However, each of those cases is distinguishable. California-Western States Life Insurance Co. v. State Board of Equalization, 151 Cal. App.2d 559, 312 P.2d 19 (1957), and State Tax Commission v. John Hancock Mutual Life Insurance Co., 341 Mass. 555, 170 N.E.2d 711 (1960) deal with retirement annuity plans for employees, not with life and disability insurance. State Tax Commission, supra, and Williams v. Massachusetts Mutual Life Insurance Co., 221 Tenn. 508, 427 S.W.2d 845 (1968) deal only with an employer's contributions to employee benefits. In each of those cases, it was conceded that the employee contributions were taxable. 170 N.E.2d at 717, n.5; 427 S.W.2d at 848. In both Danna v. Commissioner of Insurance, 228 So.2d 708 (La. Ct. App. 1969) and Mutual Life Insurance Co. v. New York State Tax Commission, 32 N.Y.2d 348, 345 N.Y.S.2d 475, 298 N.E.2d 632 (1973), the courts relied on the insurance commissioners' interpretations of the particular statutory language in their jurisdictions.

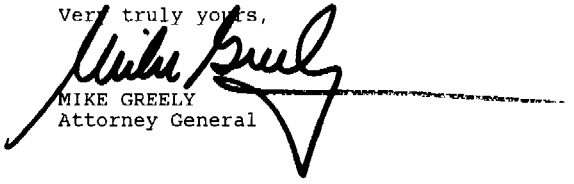
In all of the cases cited, the courts distinguished between premiums for commercial insurance, which is sold to the public for a profit motive, and premiums for non-commercial insurance, which is provided to employees to further the employer-employee relationship. You have correctly stated that Montana's statute provides no basis for such a distinction. Direct premium income includes "consideration for insurance from all kinds and classes of insurance." §33-2-705 (1), MCA. (Emphasis added.) By the plain meaning of Montana's statute, employee contributions are compensation received by an insurer for insurance. See Mutual Life Insurance Co. v. New York State Tax Commission, supra, 298 N.E.2d at 636-37 (Gabrielli, J., dissenting in part).

THEREFORE, IT IS MY OPINION:

Contributions made by employees of an insurer to life and disability insurance plans provided by the employer-

insurer are taxable as premium income under section 33-2-705, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 24

JUDGES - Involuntary retirement allowances;
RETIREMENT SYSTEMS - Judges: Involuntary retirement allowances;
MONTANA CONSTITUTION - Article VII, section 10;
MONTANA CODE ANNOTATED - Sections 3-1-67, 3-1-1107, 3-1-1110, 19-5-101, 19-5-403, 19-5-503.

Held: A district court judge or supreme court justice who runs for an elective public office other than a judicial position is not entitled to receive an involuntary retirement allowance under section 19-5-503, MCA. A district court judge or supreme court justice who runs for another judicial position that would entitle him to membership in the Judges' Retirement System and loses the election is entitled to receive an involuntary retirement allowance under section 19-5-503, MCA.

10 July 1981

J. Michael Young, Administrator
Insurance and Legal Division
Department of Administration
Sam W. Mitchell Building
Helena, Montana 59601

Dear Mr. Young:

You have requested my opinion on the following question:

> Whether a district court judge or supreme court justice who runs for elective public office and loses the election is entitled to receive an involuntary retirement allowance under section 19-5-503, MCA.

Specifically you have asked whether a district judge or supreme court justice who is a member of the Judges' Retirement System is "involuntarily discontinued from service" if he seeks election to another office outside the judicial system, such as an office within the executive branch of

state government, and subsequently loses the election. You have also asked, as a corollary, whether a sitting judge who chooses not to run for reelection, but runs for a different judicial office, such as a district judge running for election to the supreme court, is "involuntarily discontinued from service" if he loses the election.

Section 19-5-503, MCA, generally provides that contributors to the Judges' Retirement System (district court judges and supreme court justices) are entitled to receive involuntary retirement allowances if they are "involuntarily discontinued from service" after having completed five or more years of service. The term "involuntary retirement" is defined as an early retirement not for cause. §19-5-101(8), MCA. The type of service referred to in section 19-5-503 is not statutorily defined. However, when the term is read according to its plain meaning and in the context of the statutory scheme in which it appears, it must logically be interpreted as referring to the holding of a position that entitles the holder to membership in the Judges' Retirement System.

Under the Constitution and statutes of Montana, a district judge or supreme court justice who runs for an elective public office of an executive or legislative nature, whether he or she wins or loses the election, must be viewed as having discontinued service in the judicial branch. Article VII, section 10, of the Montana Constitution explicitly states: "Any holder of a judicial position forfeits that position by . . . filing for an elective public office other than a judicial position . . . . " See § 3-1-607, MCA. The decision to run for elective office, however, can hardly be termed "involuntary" as that term is commonly used, and the candidate therefore would not fall within the purview of section 19-5-503. He or she would instead be entitled to a refund of contributions made to the Judges' Retirement System under section 19-5-403, MCA.

A member of the Judges' Retirement System who runs for another judicial position is not necessarily "discontinued from service" by statute or the Constitution merely by filing for election. Mont. Const. art. VII, §10; cf. §3-1-607(3), MCA (requirement of resignation inapplicable to judge running for reelection or election to another judicial office "the term of which does not commence earlier than the end of the term of the office then occupied by him"). Therefore, if the member won the election and thereby

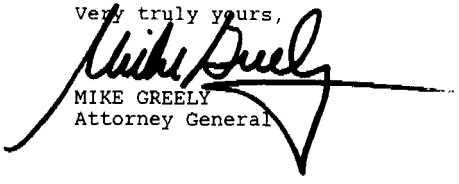
continued to serve as either a district judge or supreme court justice or moved from one position to the other, he would retain his status of membership in the retirement system.

On the other hand, if a member of the system ran for another qualifying position and lost the election, it is my opinion that he or she should be considered as having been "involuntarily discontinued from service." Clearly such a discontinuance would not be of the member's own volition and would not constitute a discharge for cause, either of which events would preclude coverage under section 19-5-503. See §§ 19-5-101(8), 19-5-403. See also §§3-1-1107, 3-1-1110. The judge or justice losing such an election would therefore be eligible to receive an involuntary retirement allowance, provided the requisite number of years of total service had been performed.

THEREFORE IT IS MY OPINION:

> A district court judge or supreme court justice who runs for an elective public office other than a judicial position is not entitled to receive an involuntary retirement allowance under section 19-5-503, MCA. A district court judge or supreme court justice who runs for another judicial position that would entitle him to membership in the Judges' Retirement System and loses the election is entitled to receive an involuntary retirement allowance under section 19-5-503, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 25

APPROPRIATIONS - Control of expenditures;
APPROPRIATIONS - Conflicts with substantive; statutory provisions; repeal by implication not favored;
COUNTIES - Eligibility for financial assistance for district court expenses;
DEPARTMENT OF ADMINISTRATION - Duty to provide financial assistance to counties for district court expenses;
DISTRICT COURTS - Eligibility for financial assistance from Department of Administration;
LEGISLATIVE BILLS - Title to clearly express subject;
LEGISLATURE - Control of expenditures through appropriations bills;
LEGISLATURE - Restrictions in appropriation bills; conflict with substantive statutes;
MONTANA CODE ANNOTATED - Section 7-6-2352;
CONSTITUTION OF MONTANA - Article V, section 11.

HELD: The Department of Administration should follow the provisions of section 7-6-2352, MCA, in providing financial assistance to counties for district court expenses.

14 July 1981

Morris L. Brusett, Director
Department of Administration
Sam W. Mitchell Building
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion as to the Department of Administration's responsibility to make financial assistance grants to counties for district court costs pursuant to section 7-6-2352, MCA.

Section 7-6-2352, MCA, was amended by the 47th Legislature through the passage of Senate Bill 300, which has been designated Chapter 465, Laws of Montana, 1981. Chapter 465 had an effective date of July 1 of this year. The statute requires the Department of Administration to make financial

assistance grants to counties for the operation of the district courts. Section 7-6-2352(1), MCA, now provides:

> State grants to district courts. (1) The department of administration shall make grants to the governing body of a county for the district courts for assistance, as provided in this section. The grants are to be made from funds appropriated to the department for that purpose. If the department of administration approves grants in excess of the amount appropriated, each grant shall be reduced an equal percentage so the appropriation will not be exceeded.

Formerly the section allowed the department, on a discretionary basis, to award grants only for emergency assistance. The amendments this year require the department to provide assistance on a broader basis.

Subsection (2) of section 7-6-2352, MCA, as amended by Chapter 465, specifically establishes the criteria for financial assistance grants:

> ... (2) The governing body of a county may apply to the department of administration for a grant by filing a written report by July 31, for the previous fiscal year stating that the following conditions have occurred or will occur:
>
> (a) that the court will not be able to meet its statutory obligations with the funds authorized under the county budget, because of expenses exceeding the sum derived from the mill levy provided for in 7-6-2511 arising from litigation in either civil or criminal matters, not including building, capital, and library maintenance, replacement, and acquisition, but including the costs associated with:
>
> (i) the impaneling and maintenance of juries;
>
> (ii) the appearance of witnesses;
>
> (iii)the fees and litigation related expenses of attorneys appointed by a district court;
>
> (iv) transcripts prepared at the direction of a district court at county expense;
>
> (v) salaries and fees of court reporters;
>
> (vi) psychological and medical treatment or evaluations ordered by a district court at county expense;

(vii)the actual and necessary expenses of travel as limited by law for:
(a) jurors;
(b) witnesses;
(c) court reporters;
(d) defendants in criminal cases who are in custody;
(e) juveniles under the supervision of a district court; or
(f) law enforcement or probation officers acting in furtherance of a district court order; and
(viii) other, similar expenses created by and required for the conduct of and preparation for a trial in district court;
(b) that all expenditures from the district court fund have been lawfully made;
(c) that no transfers from the district court fund have been or will be made to any other fund;
(d) that no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351; and
(e) any other information required by the department of administration.

It is clear that the Legislature intended financial assistance grants under section 7-6-2352, MCA, to be made for the purpose of offsetting virtually all excess costs associated with the operation of a district court except those for building, capital, and library maintenance, replacement, and acquisition.

The problem is that subsection (1) of section 7-6-2352, MCA, requires the financial assistance grants to be made from funds appropriated to the Department of Administration for that purpose. The 47th Legislature did appropriate funds to the Department for that purpose in the general appropriation bill for state agencies, House Bill 500 (see page 25, lines 23-25 thereof). However, restrictive language on the use of the funds was also added by the Legislature in House Bill 500 which conflicts with the clear intent of section 7-6-2352, MCA, as amended. The restrictive language is found in House Bill 500 on page 28 at lines 16-24. It provides:

Item 9 provides for emergency funding of the district courts in those instances when a court

> incurs extraordinary expenses due to an extended criminal case or state government related suits in Lewis and Clark county. These funds shall not be used for usual court operations or additional social service programs.
>
> Emergency funds to Lewis and Clark county for state government related suits will not exceed 10% above the revenue collected through the 6 mill levy.

The restrictions limit the appropriation to emergency funding and only when extraordinary expenses are incurred. The restriction thus expressly conflicts with the provisions of section 7-6-2352, MCA, as amended by Chapter 465. It is my opinion that the department should follow the provisions in section 7-6-2352, MCA.

The Courts have considered such restrictions with disfavor. In City of Helena v. Omholt, 155 Mont. 212, 222, 468 P.2d 764 (1970), the Montana Supreme Court commented on this legislative practice:

> * * *
>
> Appropriation bills should not be held to amend substantive statutes by implication. Even under the federal system where Congress, unlike our state legislature, has the unquestioned power to permanently change existing law in appropriation bills, such tactics are recognized as exceedingly bad legislative practice. Tayloe v. Kjer, 84 U.S. App.D.C. 183, 171 F.2d 343.

The Court has also expressed concern with legislative restrictions in appropriation bills that tend to excessively interfere with the management obligations of the other branches of government. See Board of Regents v. Judge, 168 Mont. 433, 543 P.2d 1323 (1975). Thus we must carefully review the restrictive language of appropriations bills.

Nothing in the title to HB 500 makes reference to the restrictions placed on the appropriation. The title provides:

> AN ACT TO APPROPRIATE MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1983.

Article 5, section 11, Montana Constitution, provides in pertinent part:

> (3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.
>
> (4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject. (Emphasis supplied.)

Although these provisions have never been judicially construed, they are virtually identical to sections of the 1889 Constitution construed in City of Helena v. Omholt, 155 Mont. 212, 468 P.2d 764 (1970). In Omholt an action was brought challenging a provision of a special appropriation bill which resulted in a substantive change in the Metropolitan Police Law. Pursuant to the substantive law, municipalities were authorized to establish a police reserve fund, supported in part by a three percent deduction in police officers' wages. These funds were to be used for police retirement benefits. Contributions were also made from other state and local government sources. Another section required the State Auditor to pay to each city with such a retirement system money for the police reserve fund based on a stated formula.

A special appropriation bill for the State Auditor contained a proviso prohibiting the State Auditor from paying that money to municipalities that did not deduct 5% of their policemen's wages. The effect of the proviso was to raise by 2% the contribution required of the police officers to establish an eligible reserve fund, and repeal by implication the requirement that cities only deduct 3% from the officers' salaries. The court struck down the restrictive proviso based on a finding that the appropriation bill contained a "false and deceptive" title, and thus violated the constitutional provision above. Omholt at 220.

The purpose of the constitutional provision was explained by the court:

> ... [The] purposes are to restrict the Legislature to the enactment of laws the subjects of which are made known to lawmakers and to the public, to the end that anyone interested may follow intelligently the course of pending bills to prevent the Legislators and the people generally being misled by false or deceptive titles, and to guard against the fraud which might result from incorporating in the body of a bill provisions foreign to its general purpose and concerning which no information is given by the title. (Citations omitted.) Omholt at 220.

The Court expressly struck down the restrictive language:

> Where, as here, the title to the appropriation bill expresses an appropriation to carry out the provisions of the specific statutory law and then proceeds to nullify and defeat the mandatory and all inclusive character of that specific statutory law without reference thereto in the title of the appropriation bill, we hold the latter to be deceptive and misleading in violation of the constitutional proscription. Omholt at 221.

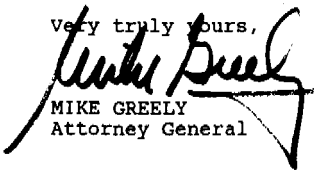
The restrictions in the appropriation bill clearly conflict with the substantive statutory obligations of the department. For the department to follow the requirements set out in House Bill 500, a legal conclusion would have to be made that those provisos have repealed, by implication, the substantive statutory requirements of section 7-6-2352, MCA. It is impossible for the department to comply with both provisions. Repeal by implication is not a concept that is favored in questions of statutory construction. See State ex rel. Jenkins v. Carish Theatres, ____ Mont. ____, 564 P.2d 1316 (1977); State v. Langan, 151 Mont. 558, 445 P.2d 565 (1968).

Considering the potential Constitutional infirmities contained in the House Bill 500 provisions, it is my opinion that the department should follow the substantive provisions of section 7-6-2352, MCA, as amended by Chapter 465, Laws of Montana, 1981.

THEREFORE, IT IS MY OPINION:

The Department of Administration should follow the provisions of section 7-6-2352, MCA, in providing financial assistance to counties for district court expenses.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 26

AGRICULTURAL PRODUCTS - Inspection and viral indexing of nursery stock by state agencies;
DEPARTMENT OF AGRICULTURE - Responsibility for viral indexing of nursery stock;
SEED - Inspection and viral indexing of nursery stock by state agencies;
UNIVERSITY SYSTEM - Responsibility of Montana State University for inspection and viral indexing of nursery stock;
MONTANA CODE ANNOTATED - Title 80, Chapter 7, Part 1; Title 80, Chapter 5, Part 3;
ADMINISTRATIVE RULES OF MONTANA - Section 4.12.1406.

HELD:1. Neither the Department of Agriculture nor Montana State University is required to conduct viral indexing of nursery stock.

2. The Department of Agriculture is authorized to provide viral indexing services to nurserymen under sections 80-7-132, MCA.

16 July 1981

Mr. W. Gordon McOmber, Director
Department of Agriculture
Capitol Station
Helena, Montana 59620

Dear Mr. McOmber:

You have requested my opinion on the following question:

> Which agency--Montana State University or the Department of Agriculture--has the duty to inspect nursery stock intended for export and issue a document certifying its genetic purity and freedom from pests and diseases, including viral diseases?

Nurserymen in Montana are attempting to enter the market for export to Canada of "nursery stock", which is statutorily defined to include "botanically classified hardy perennial

or biennial plants, trees, shrubs, vines, either domesticated or wild plants, cuttings, grafts, scions, buds, bulbs, rhizomes, or roots of them, and other plants and plant parts for or capable of propagation," but not including "vegetable, field, or flower seed or corms and tubers." Section 80-7-101(1), MCA, see also section 4.12.1406(2), ARM. Canadian authorities prohibit the importation into Canada of nursery stock which is not "virally indexed," i.e., which is not certified by a state agency to be free of significant viral infection. No Montana agency currently issues such a certificate, and Montana nurserymen therefore find themselves excluded from the Canadian market. Montana law establishes the Department of Agriculture ("the Department") as the agency responsible for inspection of nursery stock for "diseases and pests". Title 80, Chapter 7, Part 1, MCA. However, the responsibility for "seed certification" is vested in Montana State University ("the University"). Title 80, Chapter 5, Part 3, MCA. Your question is whether the authority granted to these agencies extends to require issuance of the viral indexing certification demanded by the Canadian authorities.

A review of Title 80, Chapter 5, MCA, leads to the conclusion that the University's seed certification responsibilities do not extend to certification of freedom from viral infection in nursery stock. Title 80, Chapter 5, MCA, pertains to certification of "Agricultural seed," "Vegetable seed," and "Flower seed," all of which appear to be excluded from the statutory definition of the term "nursery stock" in section 80-7-101(1), MCA. More significantly, the definitions of "certifying agency" in section 80-5-102(12), MCA and "Montana certified seed grower" in section 80-5-201(3), MCA, strongly suggest that the "certification" performed by the University under Title 80, Chapter 5, Part 3, MCA, pertains to maintenance of "genetic purity and variety identity," and not to freedom from disease. This conclusion is buttressed by the pertinent administrative regulations, which refer to tests for "purity" and "germination," and to the University's responsibility under "Plant Variety Protection Acts," but make no mention of inspection for freedom from disease. I therefore conclude that the University's seed certification responsibilities do not obligate the University to conduct viral indexing and issue a certificate of freedom from viral infection in nursery stock.

Title 80, Chapter 7, Part 1, MCA, relates explicitly to "Control of Diseases and Insects in Nurseries." The De-

partment has construed the reach of the statutes broadly in section 4.12.1406(1), ARM, by defining insect pests and diseases to include "[i]nsect pets [sic] and diseases injurious to plants and plant products of this state, including any of the stages of development of such insect pests and diseases." However, your letter informs me that the Department has never construed the definition to reach viral diseases, and that the Department lacks the facilities and expertise to inspect for such diseases. An administrative agency's construction of its authorizing statute is entitled to substantial weight. Montana Power Co. v. Cremer, ___ Mont. ___, 596 P.2d 483 (1979). This statutory scheme is not without ambiguity. Section 80-7-111(1), MCA, requires the Department to certify nursery stock which is sold or delivered and which is "free from diseases and pests." Section 80-7-119(1), MCA, on the other hand, requires the Department to certify nursery stock "before it is packed for delivery" if it is "clean and free from insects and fungi pests." (Emphasis added.) While the Department's duty under section 80-7-111(1), MCA, may arguably be said to reach viral diseases, the term "insects and fungi pests" in section 80-7-119(1), MCA, would seem to exclude such diseases. In resolving such ambiguity, I defer to the expertise of the Department and conclude that its statutory duty does not require inspection of nursery stock for viral infection.

Although neither the University nor the Department is statutorily required to conduct viral indexing on nursery stock, it does not follow that Montana nurserymen may not secure a certificate from the State that nursery stock exported to Canada is free from viral disease. Section 80-7-112, MCA, provides:

> Any person may request, upon the payment of actual costs to the department, the services of a horticultural inspector to inspect and certify plant products. Subsequent to inspection such horticultural inspector may issue to the person a certificate of inspection signed by him covering any plant product in compliance with rules of the department.

This section authorizes the department to promulgate rules governing viral indexing and to provide viral indexing services for nursery stock upon request from a nurseryman at the nurseryman's expense. If expertise and facilities are

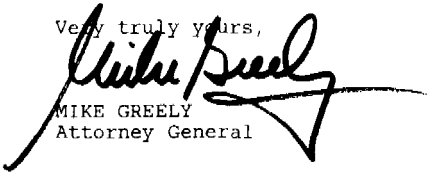
lacking in Montana, section 80-7-132, MCA, authorizes the director of the Department to enter into agreements with agencies of other States or the federal government to effectuate this goal.

THEREFORE IT IS MY OPINION:

1. Neither the Department of Agriculture nor Montana State University is required to conduct viral indexing of nursery stock.

2. The Department of Agriculture is authorized to provide viral indexing services to nurserymen under sections 80-7-132, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 27

CONTRACTS - County purchases: bidding requirements;
COUNTY GOVERNMENT - Purchase contracts: competitive bidding requirements;
PURCHASING - County contracts: competitive bidding requirements;
SESSION LAWS OF 1981 - House Bill 256, Chapter 134;
MONTANA CODE ANNOTATED - Sections 7-5-2301, 7-5-2302, 7-5-2303, 7-5-2304.

HELD: The 1981 amendments to the statutes on county purchase contracts will have the following effect after October 1, 1981:

1. Purchases for amounts of $10,000 or less may be accomplished without competitive bidding.

2. Purchases for amounts between $10,000 and $25,000 may, at the discretion of the county governing body, be accomplished through competitive advertised bidding, competitive nonadvertised bidding, or public auction.

3. Purchases for amounts exceeding $25,000 must be accomplished through competitive advertised bidding only.

17 July 1981

Donald A. Ranstrom, Esq.
Blaine County Attorney
Blaine County Courthouse
Chinook, Montana 59523

Dear Mr. Ranstrom:

You have requested my opinion on the following question:

> Under House Bill 256 (Chapt. 134, L. Mont. 1981), relating to county purchase contracts, what are the proper limits for which advertised, as opposed to nonadvertised, competitive bidding is required?

In 1981 the Montana legislature amended existing statutes on competitive bidding for certain purchases by county

governing bodies. Chapt. 134, L. Mont. 1981 (HB 256). Those amendments, which will become effective on October 1, 1981, basically relate to the permissible methods by which counties may purchase vehicles, machinery, equipment, and materials costing between $4,000 and $25,000.

Under currently applicable Montana law, county purchase contracts calling for expenditures of $4,000 or less are not subject to the requirement of competitive bidding. §§7-5-2301(1), 7-5-2302(1) MCA. Purchases in amounts between $4,000 and $10,000 must be undertaken either through competitive nonadvertised bidding pursuant to section 7-5-2302(1), or at public auction pursuant to section 7-5-2303. When the amount of the purchase exceeds $10,000, competitive advertised bidding is required by section 7-5-2301(1). None of the general competitive bidding provisions is applicable to county printing contracts or to emergency purchases as defined in section 7-5-2304, MCA.

House Bill 256 essentially broadens the discretion of county governing bodies in the area of purchase contracts. After October 1, 1981, the minimum purchase amount subject to competitive bidding requirements will increase from $4,000 to $10,000. HB 256, §2. Section 7-5-2301(1), as it pertains to purchase contracts, was not amended and will therefore retain its requirement of competitive advertised bidding for purchases in excess of $10,000. Section 7-5-2302(1), on the other hand was amended to change the purchase amounts subject to nonadvertised bidding to sums between $10,000 and $25,000. Likewise, section 7-5-2303, as amended, will allow purchases at public auction of vehicles, machinery, and materials costing less than $25,000. HB 256, §3.

The language in both section 7-5-2301(1) and section 7-5-2302(1) is mandatory in nature and thus creates an apparent conflict as to the proper method of competitive bidding after October 1, 1981, on purchase contracts for amounts between $10,000 and $25,000. The amendment to section 7-5-2303, raising the permissible purchase price at public auction, also seems to be incompatible with the requirement for advertised bidding in section 7-5-2301(1). Both section 7-5-2302 and section 7-5-2303, however, contain specific provisions stating that compliance with their requirements on nonadvertised bidding and public auctions is to be considered the equivalent of meeting the requirements of section 7-5-2301. When all the statutory provisions are read

together in such a manner as to reconcile potential conflicts and to give effect to both the amended and unamended sections of the statutes, they must be interpreted as giving county governing bodies the option of following either section 7-5-2301, section 7-5-2302, or section 7-5-2303 when undertaking purchase contracts for amounts between $10,000 and $25,000.

THEREFORE, IT IS MY OPINION:

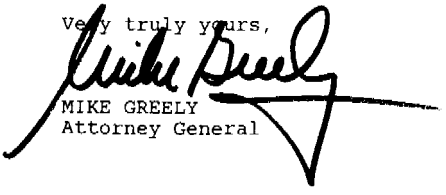
The 1981 amendments to the statutes on county purchase contracts will have the following effect after October 1, 1981:

1. Purchases for amounts of $10,000 or less, may be accomplished without competitive bidding.

2. Purchases for amounts between $10,000 and $25,000 may, at the discretion of the county governing body, be accomplished through competitive advertised bidding, competitive nonadvertised bidding, or public auction.

3. Purchases for amounts exceeding $25,000 must be accomplished through competitive advertised bidding only.

Very truly yours,



MIKE GREELY
Attorney General