RESERVE

MONTANA ADMINISTRATIVE REGISTER

1977 ISSUE NO. 7

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2-3.36(6)-S3620 changing the membership, meeting dates and record requirements of the county tax appeal boards.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 2-3.36(6)-S3620 (ORGANIZATION) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1977, the State Tax Appeal Board proposes to amend rule 2-3.36(6)-S3620 which now provides for the organization, membership, meetings and records - minutes of county tax appeal boards.

2. The proposed amendment would provide as follows (matter to be stricken is interlined, new matter is underlined):

'Rule 2-3.36(6)-S3620 ORGANIZATION ((2), (3), (4), (7) & (8) remain the same) (1) Membership. A county tax appeal board shall consist of three members appointed by the board of county commissioners. Appointed members shall be residents of the county in which they serve. The term of each appointed member shall be for ~~four~~ three years~~, the first term to run from July 1, 1973, to December 31, 1976~~. As of December 31, 1980, one member of the county board shall be appointed for a 1-year term, one member shall be appointed for a 2-year term, and the third and all succeeding members shall be appointed for 3-year terms.

'(5) Meetings. The county tax appeal board shall ~~only meet beginning~~ begin meeting on the third Monday of ~~June~~ April of each year and continue in session from time to time until all the business of hearing taxpayer applications is disposed of, but not later than the ~~second~~ last Monday in ~~August~~ June; provided, however, that the State Tax Appeal Board may, for good cause, grant additional time for the county tax appeal board to continue in session. Additional time will be granted only if it appears that the county tax appeal board after acting with due diligence will have insufficient time to hear all of the applications before it on or before the last Monday in June.

'(6) Records - minutes. A record of all proceedings including applications, testimony and orders of the board shall be kept and shall include the dates the board was in session and that a quorum of members was in attendance. A copy of the minutes ~~and the transcript~~ of all hearings in those cases that are appealed to the State Tax Appeal Board must be

transmitted to the State Tax Appeal Board no later than ~~three (3)~~ days after the ~~third~~ second Monday in ~~August~~ July.'

3. This modification is necessary to comply with the provisions of Senate Bill 118, 1977 Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Helen M. Peterson, Chairman, State Tax Appeal Board, 1400 Eleventh Avenue, Helena, Montana 59601. Written comments in order to be considered must be received not later than August 4.

5. If the Chairman receives requests for a public hearing on the proposed rule from more than ten percent (10%), or twenty-five or more persons directly affected, a public hearing will be held at a later date.

6. The authority of the board to make the proposed rule is based on sections 84-601 and 84-604, R.C.M. 1947 and Senate Bill 118, 1977 Legislature.

Helen M. Peterson, Chairman
State Tax Appeal Board

Certified to the Secretary of State June 27, 19 77.

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2-3.36(6)-S3630 to change the last date for filing applications to county tax appeal boards.	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 2-3.36(6)-S3630 (APPLICATION FOR HEARING) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1977, the State Tax Appeal Board proposes to amend rule 2-3.36(6)-S3630 which now provides for the application for hearing of county tax appeal boards.

2. The proposed amendment would provide as follows (matter to be stricken is interlined, new matter is underlined):

'Rule 2-3.36(6)-S3630 APPLICATION FOR HEARING ((1), (2) & (3) remain the same) (4) The application must be filed with the board on or before the ~~third~~ first Monday in ~~July~~ June. Applications received by the board after this date shall be denied on the grounds of not being timely filed.

'(5) Each applicant must file an individual appeal and must appear in person or be represented by agent at a hearing before the county tax appeal board. The board may not grant relief to any applicant who does not appear in person or is not represented by an authorized agent at the time of the county board hearing.'

3. This modification is necessary to comply with the provisions of Senate Bill 118, 1977 Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Helen M. Peterson, Chairman, State Tax Appeal Board, 1400 Eleventh Avenue, Helena, Montana 59601. Written comments in order to be considered must be received not later than August 4.

5. If the Chairman receives requests for a public hearing on the proposed rule from more than ten percent (10%), or twenty-five or more persons directly affected, a public hearing will be held at a later date.

6. The authority of the board to make the proposed rule is based on sections 84-603, R.C.M. 1947 and Senate Bill 118, 1977 Legislature.

Helen M. Peterson, Chairman
State Tax Appeal Board

Certified to the Secretary of State June 22, 19 77.

7-7/25/77

MAC Notice No. 2-3-36-9

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2-3.36(6)-S3680 to change the mailing and effectiveness of county tax appeal board orders	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 2-3.36(6)-S3680 (ORDERS OF THE BOARD) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1977, the State Tax Appeal Board proposes to amend rule 2-3.36(6)-S3680 which now provides for the orders issued by county tax appeal boards.

2. The proposed amendment would provide as follows (matter to be stricken is interlined, new matter is underlined):

'Rule 2-3.36(6)-S3680 ORDERS OF THE BOARD ((1) remains the same) (2) A signed copy of a board's order shall be sent by <u>certified</u> mail to the applicant and to the ~~authorized agent (assessor)~~ property assessment division of the Department of Revenue and to the county clerk ~~immediately~~ <u>within three days</u> following the signing of the order.

<u>'(3) The decision of the county tax appeal board shall be final and binding on all interested parties for the tax year in question unless reversed or modified by State Tax Appeal Board review. If not reviewed by the State Tax Appeal Board, the decision of the county tax appeal board shall also be final and binding on all interested parties for all subsequent tax years unless there is a change in the property itself or circumstances surrounding the property which affect its value.'</u>

3. This modification is necessary to comply with the provisions of House Bill 108, 1977 Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Helen M. Peterson, Chairman, State Tax Appeal Board, 1400 Eleventh Avenue, Helena, Montana 59601. Written comments in order to be considered must be received not later than August 4.

5. If the Chairman receives requests for a public hearing on the proposed rule from more than ten percent (10%), or twenty-five or more persons directly affected, a public hearing will be held at a later date.

6. The authority of the board to make the proposed rule is based on sections 84-601, 84-604 and 84-4004, R.C.M. 1947 and House Bill 108, 1977 Legislature.

Helen M. Peterson, Chairman
State Tax Appeal Board

Certified to the Secretary of State June 27, 1977.

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2-3.36(6)-S3690 to change the time for notice of appeal to the State Tax Appeal Board	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 2-3.36(6)-S3690 (APPEALS) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1977, the State Tax Appeal Board proposes to amend rule 2-3.36(6)-S3690 which now provides for appeals to the State Tax Appeal Board from decisions of the county tax appeal boards.

2. The proposed amendment would provide as follows (matter to be stricken is interlined, new matter is underlined):

'Rule 2-3.36(6)-S3690 APPEALS ((1) & (3) remain the same) (2) Notice of appeal to the State Tax Appeal Board must be filed with a the State Board and the appropriate county tax appeal board no later than ~~ten (10)~~ 20 days of the receipt of the decision of the county tax appeal board.'

3. This modification is necessary to comply with the provisions of House Bill 108, 1977 Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Helen M. Peterson, Chairman, State Tax Appeal Board, 1400 Eleventh Avenue, Helena, Montana 59601. Written comments in order to be considered must be received not later than August 4.

5. If the Chairman receives requests for a public hearing on the proposed rule from more than ten percent (10%), or twenty-five or more persons directly affected, a public hearing will be held at a later date.

6. The authority of the board to make the proposed rule is based on section 84-709, R.C.M. 1947, and House Bill 108, 1977 Legislature.

Helen M. Peterson, Chairman
State Tax Appeal Board

Certified to the Secretary of State June 22, 1977.

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 2-3.36(10)-S36000 regarding the setting and noticing of hearings	))))	NOTICE OF PROPOSED ADOPTION OF RULE 2-3.36(10)-S36000 (APPEALS - NOTICES) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1977, the State Tax Appeal Board proposes to adopt rule 2-3.36(10)-S36000 setting hearings of appeals to the State Tax Appeal Board and changing the time for notice of such hearings.

2. The proposed rule provides as follows:

Rule 2-3.36(10)-S36000 APPEALS - NOTICES (1) The State Tax Appeal Board shall set appeals to it from decisions of the county tax appeal boards and decisions of the Department of Revenue for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accommodate parties in interest.

(2) The board shall give to the appellant, the respondent, and the county board, if applicable, at least 15 calendar days notice of the time and place of such hearing.

3. The adoption of this rule is necessary to comply with the provisions of House Bill 108, 1977 Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Helen M. Peterson, Chairman, State Tax Appeal Board, 1400 Eleventh Avenue, Helena, Montana 59601. Written comments in order to be considered must be received not later than August 4.

5. If the Chairman receives requests for a public hearing on the proposed rule from more than ten percent (10%) or twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

6. The authority of the board to make the proposed rule is based on section 84-709, R.C.M. 1947 and House Bill 108, 1977 Legislature.

Helen M. Peterson
Helen M. Peterson, Chairman
State Tax Appeal Board

Certified to the Secretary of State June 22, 1977.

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 2-3.36(10)-S36010 regarding orders of the State Tax Appeal Board	)))	NOTICE OF PROPOSED ADOPTION OF RULE 2-3.36(10)-S36010 (ORDERS OF THE BOARD) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1977, the State Tax Appeal Board proposes to adopt rule 2-3.36(10)-S36010 requiring that the orders of the State Tax Appeal Board be final and binding.

2. The proposed rule provides as follows:

Rule 2-3.36(10)-S36010 ORDERS OF THE BOARD (1) The decision of the State Tax Appeal Board shall be final and binding upon all interested parties for the taxable year in question unless reversed or modified by judicial review. The decision of the State Tax Appeal Board shall also be final and binding on all interested parties for all subsequent tax years unless there is a change in the property itself or circumstances surrounding the property which affect its value.

3. The adoption of this rule is necessary to comply with the provisions of section 84-709, R.C.M. 1947.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Helen M. Peterson, Chairman, State Tax Appeal Board, 1400 Eleventh Avenue, Helena, Montana 59601. Written comments in order to be considered must be received not later than August 4.

5. If the Chairman receives requests for a public hearing on the proposed rule from more than ten percent (10%) or twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

6. The authority of the board to make the proposed rule is based on section 84-709, R.C.M. 1947.

Helen M. Peterson

Helen M. Peterson, Chairman
State Tax Appeal Board

Certified to the Secretary of State June 22, 1977.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA
MILK CONTROL DIVISION

In the Matter of the Adoption of Rule 8-2.12(6)-S1230 Levying Additional Producer Assessments to Fund a Raw Milk Testing Program	)))))	NOTICE OF PROPOSED ADOPTION OF RULE 8-2.12(6)-S1230 (Additional Producer Assessment) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

(1) On September 1, 1977, the Department of Business Regulation proposes to adopt Rule 8-2.12(6)-S1230, levying additional producer assessments to fund a raw milk testing program.

(2) The proposed rule provides as follows:
"8-2.12(6)-S1230 ADDITIONAL PRODUCER ASSESSMENT- For the purpose of securing the necessary funds to conduct a program of testing raw milk, as required by Section 27-430, R.C.M. 1947, an assessment is hereby levied on licensed producers in the amount of two cents ($0.02) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer."

(3) The assessment established by this rule results from the enactment of Section 27-430, R.C.M. 1947, by the 45th Legislature (Section 1, Chapter 245, Laws of Montana 1977). The amount of two cents ($0.02) per hundredweight is the figure calculated by the Department to produce sufficient revenue to fund the program.

(4) Projected budget data demonstrating the necessity for levying an assessment in the amount specified by the proposed rule is available for inspection during regular business hours at the offices of the Department of Business Regulation, 805 North Main Street, Helena, Montana 59601.

(5) Interested persons may submit their data, views or arguments concerning the proposed rule in writing to Kent Kleinkopf, Director, or Ken Kelly, Administrator of the Milk Control Division, Department of Business Regulation, 805 North Main Street, Helena, Montana 59601. Comments, to be considered, must be received not later than August 26, 1977.

(6) If a person directly affected wishes to express his data, views and arguments orally at a public hearing, he must make written request for a public hearing and submit that request along with any written comments he may have to Kent Kleinkopf, Director, Department of Business Regulation, 805 North Main Street, Helena, Montana 59601.

(7) If the Department receives requests for a public hearing on the proposed Rule from more than 10% or 25 or more of the persons directly affected, a public hearing will be held at a later date. The Department has determined that 10% of those persons directly affected is 30 persons based on the 300 producers licensed by the Department.

(8) The authority of the Department to adopt the proposed rule is based on Sections 27-413 and 27-430, R.C.M. 1947.

KENT KLEINKOPF, DIRECTOR
DEPARTMENT OF BUSINESS REGULATION

By K. M. Kelly
K. M. Kelly, Administrator
Milk Control Division

Certified to the Secretary of State on July 6, 1977.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 12-2.10(14)-S10190 Relating to Water Safety Regulations	NOTICE OF CANCELLATION OF PUBLIC HEARING

The public hearings, as stated in MAC Notice 12-2-39, on the proposed amendments to the subject Montana Administrative Code rule, numbered 12-2.10(14) -S10190, scheduled for June 15 and 16 in Billings and Hardin, Montana, respectively, have been cancelled until further notice.

Dated this 23rd day of June, 1977.

Robert F. Wambach
Secretary

BEFORE THE DEPARTMENT OF FISH AND GAME
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 12-2.10(22)-S10220 Relating to Regulations for Issuance of Falconer's Licenses	))))	NOTICE OF AMENDMENT OF RULE 12-2.10(22)-S10220 NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 24th day of August, 1977, the Department of Fish and Game proposes to amend Rule 12-2.10(22)-S10220 as follows: (underlined is additions, interlined is deletions)

Rule 12-2.10(22)-S10220 REGULATIONS FOR ISSUANCE OF FALCONER'S LICENSES (1) Regulations and Records.

(a) same.

(b) The word "raptors" shall mean all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls. The following raptors shall not be used for falconry:

(i) Those raptors listed in 26-501.1(4).

(ii) Those raptors listed in 50 CFR Part 17 as endangered or threatened.

(iii) Those raptors of the order strigiformes except for the great-horned owl (Bubo virginianus).

(c) same.

(d) Application forms are provided by the ~~Montana Fish and Game Commission~~ department for persons wishing to apply for a falconer's license.

(e) same.

(2) through (5) same.

~~(6) Penalty for Violation of the Order: Violation of this order and regulation is punishable by fine, imprisonment, and/or forfeiture of privileges to hunt, fish, or trap in Montana, as provided in Section 26-324, R.C.M. 1947, as amended or replaced.~~

2. The proposed Rule modifies Rule 12-2.6(1)-S610 currently found on page 12-11.1 in the Montana Administrative Code.

3. The rationale for this rule is as follows: The proposed amendments are to bring Montana in compliance with federal rules for falconry and, thereby, qualify Montana as a falconry state.

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 23rd day of August, 1977.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Mr. Wambach at the above stated address prior to the 23rd day of August, 1977.

6. If the Director receives requests for a public hearing on the amendment of the foregoing rule from 25 or more of the persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

7. Ten percent (10%) of those persons directly affected have been determined to be in excess of 25.

8. The authority of the Department of Fish and Game to make the proposed rule is based upon Section 26-501.1, R.C.M. 1947.

Dated this 23rd day of June, 1977.

Robert F. Wambach, Director
Department of Fish and Game

BEFORE THE STATE DEPARTMENT OF FISH AND GAME
OF THE STATE OF MONTANA

In the matter of the Adoption of Rule 12-2.26(1)-S2601 Relating to Montana State Golden Year's Pass	))))	NOTICE OF ADOPTION OF RULE 12-2.26(1)-S2601 NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 24th day of August, 1977, the Department of Fish and Game proposes to adopt Rule 12-2.26(1)-S2601 as follows:

Rule 12-2.26(1)-S2601 MONTANA STATE GOLDEN YEAR'S PASS

(1) Use of pass by someone other than the recipient:

(a) The Montana State Golden Year's Pass may be used only by the person to whom the pass is issued.

(b) Any person who camps overnight in a state-administered fee camping recreation area, state park, or fishing access site after having entered in a vehicle bearing a Montana State Golden Year's Pass shall obtain an overnight camping permit if the recipient of the Golden Year's Pass is not a passenger or driver of that vehicle.

(2) Replacement of pass and additional purchase:

(a) Any person who has been issued a Montana State Golden Year's Pass for display on a vehicle which is subsequently sold or disposed of, or where the decal is otherwise required to be replaced, may be issued a substitute decal upon surrendering the remainder of the original decal to the department or its authorized representative.

(b) Any person who qualifies for a Montana State Golden Year's Pass may purchase such a pass for each motor vehicle of which he is the legal or registered owner.

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

3. The rationale for this rule is as follows: To implement and clarify legislation for a Golden Year's Pass.

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th

Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 23rd day of August, 1977.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Mr. Wambach at the above stated address prior to the 23rd day of August, 1977.

6. If the Director receives requests for a public hearing on the adoption of the foregoing rule from 25 or more of the persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

7. Ten percent (10%) of those persons directly affected have been determined to be in excess of 25.

8. The authority of the State Department of Fish and Game to make the proposed rule is based upon Section 62-306, R.C.M. 1947.

Dated this 24th day of June, 1977.

Robert F. Wambach, Director
Department of Fish and Game

BEFORE THE DEPARTMENT OF FISH AND GAME
OF THE STATE OF MONTANA

In the matter of the Adoption of Rules 12-2.6(2)-S6100 through 12-2.6(2)-S6160 Relating to License Agents	))))	NOTICE OF ADOPTION OF RULES NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 24th day of August, 1977, the Department of Fish and Game proposes to adopt Rules 12-2.6(2)-S6100 through 12-2.6(2)-S6160 as follows:

Rule 12-2.6(2)-S6100. Purpose. The purpose of the rules for appointing license agents is to provide the guidelines for distribution of licenses throughout the state in order that any person may purchase a hunting or fishing license without having to travel unreasonable distances to do so, bearing in mind that a resident need purchase a license but once during a license year. It is a further purpose to provide a fair and equitable manner of appointment of license agents taking into account such things as population of the area served, distance to other populated areas, hours of availability to the public, economy of administration, and public convenience.

Rule 12-2.6(2)-S6110. Classes of License Agents. There are two classes of license agents, general and limited. The general license agent is authorized upon certification by the director to sell all hunting and fishing licenses and such other certificates or permits as provided by law. The limited license agent is authorized upon certification by the director to sell those licenses, permits, or certificates as designated upon the certificate of appointment of that agent.

Rule 12-2.6(2)-S6120. Appointment of General License Agent. (1) A person who desires to receive appointment as a general license agent with the department of fish and game should apply to the nearest fish and game regional office on a form provided by the department.

(2) In considering these applications the director will follow the criteria listed below to determine the public convenience of the applicant's appointment as an agent. These criteria in order of preference are:

a. Location of business. The location of the business of the applicant should be centrally located for the area to be served and not in close proximity to another general license agent.

b. Sporting goods dealers preference. Sporting goods dealers receive preference over other businesses.
c. Hours open for business. Those applicants which have or offer the longest hours for which they are open for business should receive priority over other businesses if all things are equal.
d. Priority by time. First in time, first in consideration should be considered where all other factors are equal. The application of the person who desires appointment should receive recommendation by the regional supervisor prior to forwarding to the director. The director makes the appointment of the license agent.

Rule 12-2.6(2)-S6130. Appointment of Limited License Agent. (1) A person who desires to receive appointment as a limited license agent with the department of fish and game should apply to the nearest fish and game regional office on a form provided by the department.

(2) In considering these applications, the director will follow the following criteria:

a. Seasonal demand. In those areas of the state where the demand for the type license, permit, or certificate to be issued by the agent fluctuates on a seasonal basis, the director shall grant preference in consideration.
b. Availability of general license agents. Where general license agents are not available and there is a seasonal need for provision of licenses to the public, the director shall consider those applicants that are available and meet the need.

Rule 12-2.6(2)-S6140. Review of Appointments. (1) A license agent's appointment shall be reviewed annually. In considering review, the director will evaluate the following:

a. Compliance of the agent to the procedures of the department and requirements of law for remittance and handling of the licenses assigned to him.
b. Complaints about the license agent that have remained unexplained or unsatisfactorily explained.
c. The public convenience of continuation of a license agency at the location of this applicant's business.
d. Whether or not it was necessary to go against the bond of the agent.
e. The overall performance of this agent.

(2) When a general license agent sells less than 500 licenses or when the total license sales is less than $1,000 during a license year in an area where there are other license agents, then the agency will not be renewed.

(3) Upon determination by the director that performance of an agent is unsatisfactory, revocation of an agent's certificate shall be initiated.

(4) An agent whose certificate is revoked or whose bond was used may not be considered as a license agent for three years from date of revocation. Then the director must be satisfied the ex-license agent has removed the cause of revocation.

Rule 12-2.6(2)-S6150. Other Criteria for Appointment of Agents. There are other criteria for appointment of agents as follows: (1) An applicant shall have conducted business for at least one year at the location for which the agency is requested, unless a waiver is approved by the director. Applicants from isolated, small, rural areas are not subject to this subsection.

(2) The applicant shall furnish satisfactory credit ratings to the director at the request of the director. A satisfactory showing that the applicant can meet bonding requirements of the law regarding license agents shall be submitted with the application.

Rule 12-2.6(2)-S6160. Department Procedures. Each application for a license agent shall follow the following procedures before submittal to the director. (1) The application will be forwarded to the appropriate warden for investigation and recommendation.

(2) The warden captain shall review the investigation and recommendation and attach comments thereto.

(3) The regional supervisor shall review all information, make such other inquiry as necessary, make final recommendation, and forward the application to the director for formal action.

(4) The director reviews the application and attached information, makes such other inquiry as necessary, and appoints or does not appoint the applicant.

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

3. The rationale for this rule is as follows: to clarify the present procedures and to provide more opportunity for public acquisition of hunting and fishing licenses and other department certificates.

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 E. 6th Avenue, Helena, Montana 59601. Written comments in order

to be considered must be received by not later than the 23rd day of August, 1977.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Dr. Wambach at the above stated address prior to the 23rd day of August, 1977.

6. If the director receives requests for a public hearing on the adoption of the foregoing rule from 25 or more persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of hearing.

7. Ten percent (10%) of those persons directly affected have been determined to be in excess of 25.

8. The authority of the Department of Fish and Game to make the proposed rule is based upon Section 26-220, R.C.M. 1947.

Dated this 13th day of July, 1977.

Fletcher E. Newby, Acting Director
Montana Department of Fish & Game

BEFORE THE DEPARTMENT OF
COMMUNITY AFFAIRS OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 22-2.4B(1)-S400 through 22-2.4B(30)-S4100 prescribing minimum requirements for subdivision regulations and regulating the form, accuracy, and descriptive content of records of Survey	NOTICE OF PUBLIC HEARING FOR ADOPTION OF AMENDMENTS FOR RULES (Montana Subdivision and Platting Act)

TO: All Interested Persons

1. On Wednesday, August 17, 1977, at 1:30 p.m. a public hearing will be held in the Highway Auditorium, Highway Building, Sixth and Roberts, Helena, Montana to consider adoption of amendments to rules relating to the administration of the Montana Subdivision and Platting Act (sections 11-3859 through 11-3876, R.C.M. 1947).

2. The following revisions to the Department of Community Affairs administrative rules are proposed because (1) the 1977 legislature made amendments to the Subdivision and Platting Act which necessitate rule revisions, (2) the Department has received a number of requests for changes, and (3) the Department believes changes are needed to facilitate the operation of the law. A more detailed explanation of each proposed rule change is shown in italics following the proposal.

3. The following are proposed amendments to the Minimum Requirements for Local Subdivision Regulations, adopted as administrative regulations MAC 22-2.4B(1)-S400 through MAC 22-2.4B(26)-S4070 pursuant to Section 11-3863(2), R.C.M. 1947 (material to be deleted is interlined, new material is underlined. Only those subsections proposed for revision or deletion are included):

Sub-Chapter 6

22-2.4B(6)-S420 PROCEDURAL REQUIREMENT FOR LOCAL REGULATIONS

(1)(f)(xvi) An environmental assessment complying with the provisions of Sub-Chapter 22 of these rules, unless the subdivider has been exempted from the assessment requirement pursuant to sections ~~11-3863~~ 11-3862(8), 11-3863(3.1) or 11-3866(6), R.C.M. 1947 or to local regulations relating to minor subdivisions.

Comment: The 1977 Legislature provided additional exemptions from the environmental assessment requirement.

(1)(g) Provide for review of the preliminary plat and supplements to it by appropriate local, state or federal agencies and affected public utilities. For any subdivision not exempted from all or any portion of the environmental assessment, require that ~~seven (7)~~ six (6) copies be sent to the Department of Community Affairs within five (5) days after submission to initiate review by state agencies. Provided, however, that if a proposed subdivision is to be located within the boundaries of an incorporated city or town, the governing body may waive state agency review and reduce the number of plats required accordingly.

Comment: Only six state agencies now review preliminary plats.

(1)(i) Require that when a designated agent holds a hearing the agent recommend in writing to the governing body the approval, conditional approval or disapproval of the plat within ten (10) days after the public hearing; that the recommendation be made upon consideration of all relevant information and upon the determination that the plat conforms ~~to the development standards and policies of the comprehensive plan (if one has been adopted),~~ to the Montana Subdivision and Platting Act and to local regulations. A copy of this recommendation shall also be mailed to the subdivider.

Comment: Two sections of Montana law (11-3842 and 11-3866(2)) address the issue of requiring a plat to conform to an adopted comprehensive plan. The above language is not necessary to enforce those statutes.

(1)(o) Require that every final subdivision plat be filed with the county clerk and recorder before title to the subdivided land can be sold, or transferred in any manner ~~or offered for sale or transfer,~~ except as provided in section 11-3867(4), R.C.M. 1947.

Comment: Senate Bill 225, enacted by the 1977 Legislature deleted from the law any reference to offers for sale or transfer. Section 11-3867(4) authorizes sales by contract for deed under certain circumstances before final plat approval.

(1)(p)(iv) ~~Certification by the State Department of Health and Environmental Sciences that it has approved the plans and specifications for sanitary facilities when applicable;~~

Certification by the State Department of Health and Environmental Sciences or local officials, when applicable,

under Title 69, Chapter 50, that the plans and specifications for sanitary facilities have been approved.

Comment: The 1977 legislature authorized local approval of sanitary facilities where municipal services would serve a subdivision.

(1)(t) Provide that if illegal transfers or offers of any manner are made, the county attorney shall commence action to enjoin further sales, or transfers, ~~or offers of sale or transfer~~ and to compel compliance with all provisions of the Montana Subdivision and Platting Act, the cost of such action being imposed against the person transferring ~~or offering to transfer~~ the property.

(1)(u) Provide that any person who violates any provisions of the local regulations or the Montana Subdivision and Platting Act is guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in jail for not more than three (3) months or by both fine and imprisonment, and further provide that each sale, lease or transfers, ~~or offer for sale, lease or transfer~~ of a parcel of land in violation of any provision of local regulations or the Act shall be deemed a separate and distinct offense.

Comment: Again, these deletions would reflect S.B. 225 which deletes any reference to offers for sale.

~~(4) Procedures for divisions of land exempted from public review as subdivisions----use of exemptions for the purpose of evading the act.--Unless the method of disposition is adopted for the purpose of evading the Montana Subdivision and Platting Act, divisions of land meeting the criteria set out in section 11-3862(6), R.C.M. 1947, are not subdivisions subject to review under the Act.--To assure that the method of disposition is not used to evade the act the following requirements must be met in the use of exemptions:~~

~~(a) The exemptions contained in section 11-3862(6), R.C.M. 1947, do not apply to the resubdivision or redesign of subdivsisions platted and filed with the clerk and recorder.--Any such resubdivision or redesign must be reviewed and approved by the governing body and an approved amended plat thereof must be filed with the clerk and recorder.~~

~~(b) A certificate of survey of a division of land which would otherwise be a subdivision but which is exempt from public review under section 11-3862(6), R.C.M. 1947, may not be filed by the county clerk and recorder unless it bears an acknowledged certificate of the property owner stating that~~

~~the division of land in question is exempt from review as a subdivision and citing the applicable exemption.~~

~~(c) Where the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged copy of the covenant.~~

~~(d) Exemption for "occasional sales." Only one occasional sale may be made within any 12 month period from any tract or from contiguous tracts of land created of public record on or after July 1, 1973, and held in single or undivided ownership. No portion of a tract or parcel of land may be the subject of an occasional sale more than once within any 12 month period. A certificate of survey for an occasional sale may not be filed unless it bears a acknowledged certificate of the property owner that the above criteria are met.~~

~~(f) Certificates of survey showing the creation of new parcels of land pursuant to exemptions for gift or sale to a member of the grantor's immediate family or for "occasional sales" may not be filed by the clerk and recorder unless they are accompanied by an instrument of conveyance of the parcel being created.~~

~~(g) Divisions of land which are exempted from treatment as subdivisions under section 11 3862(b) and (d) of the Subdivision and Platting Act are not thereby exempted from review and approval of the state Department of Health and Environmental Sciences pursuant to sections 69 5001 through 69 5009 (5), R.C.M. 1947.~~

Comment: *This section was adopted in 1974 to provide consistent direction to local officials in defining when use of an exemption "...is adopted for the purpose of evading this action (section 11-3862(6)." The Montana Supreme Court recently held that provision (4)(a) above is invalid. That ruling places in doubt the validity of any state administrative rule which defines when evasion of the act occurs. The 1977 legislature considered and rejected several proposals which would have set forth specific situations for using the exemptions.*

The department proposes to repeal provisions (4)(d) and (4)(e) which define when use of the exemptions for an occasional sale and transfer to a member of the immediate family constitutes evasion. This repeal is proposed because of the questionable validity of defining "evasion," the expression of the 1977 legislature that further clarification of the present statute is unnecessary, and because the rules have not been effective. (Although the rules have been in effect since 1974, 70-80% of the land

divided into parcels of less than 20 acres did not receive local review.)

One effect of repealing these rules would be that a landowner could transfer without review an unlimited number of parcels to any member of the immediate family. Use of the occasional sale exemption will undoubtedly vary from county to county, depending on how local officials interpret the statutory definition of "occasional sale."

Appropriate drafting and filing requirements from these rules are proposed to be retained in the Uniform Standards for Certificates of Survey, under Sub-chapter 30 of these administrative rules.

Sub-Chapter 10

~~22-2.4B(10)-S430---COMPLIANCE-WITH-OTHER-REGULATIONS-OR PLANNING--(1)--Local-subdivision-regulations-shall-require-that land-divisions-conform-to-the-development-standards-and-policies of-any-adopted-comprehensive-plan-and-all-applicable-regulations.~~

Comment: *This rule is not necessary because section 11-3844 and 11-3866(4) address the issue of requiring a subdivision to comply with a comprehensive plan.*

Sub-Chapter 18

22-2.4B(18)-S4030 MOBILE HOME PARKS

~~(1)(i)--Require-compliance-with-the-development-standards and-policies-of-adopted-local-comprehensive-plans-and-with zoning-regulations.~~

Comment: *This requirement is not necessary to enforce local zoning regulations nor sections 11-3844 and 11-3866(4) which provide authority for requiring compliance with a comprehensive plan.*

Sub-Chapter 22

22-2.4B(22)-S4060 ENVIRONMENTAL ASSESSMENT (1) Local regulations shall require that, except where exempted pursuant to sections 11-3862(8), 11-3863(3.1), or 11-3866(6), R.C.M. 1947, or to rule 22-2.4B(6)-S420(1)(n) contained herein, the subdivider provide an environmental assessment containing at least the following information:

Comment: *The 1977 Legislature provided additional exemptions from the environmental assessment requirement.*

4. The following are proposed amendments to the Uniform Standards for Monumentation, Certificates of Survey and Final Subdivision Plats, adopted as adminstrative rules MAC 22-2.4B (30)-S4080 through 22-2.4B(30)-S4100 pursuant to Section 11-3862(10), R.C.M. 1947, (material to be deleted is interlined, new material is underlined. Only those provisions proposed to be amended or deleted are included):

22-2.4B(30)-S4080 UNIFORM STANDARDS FOR MONUMENTATION (1) The following standards shall govern monumentation of land surveys:

(a) ~~All permanent control monuments or monuments set to control or mark the boundaries of any division shall be of not less than one half inch (1/2") diameter by twenty four inches (24") in length with a cap of not less than one and one quarter inch (1 1/4") diameter marked in a permanent manner with the name and/or registration number of the registered land surveyor in charge of the survey. A cap of the above dimensions may be set firmly in concrete.~~

A substantial monument of metal, stone, or concrete, as in the judgment of the surveyor is satisfactory, shall be used. The name and number of the surveyor shall be permanently affixed to all monuments.

(1)(e) Monuments ~~not less than three eights inch (3/8") in diameter and eighteen inches (18") in length and~~ permanently marked with the name and registration number of the registered land surveyor in charge of the survey shall be set at the following locations:

Comment: The above proposed language was suggested by a number of petitioning surveyors. This proposal would allow each surveyor to select his own size and type of monuments. The proposal would preclude any uniformity and consistency in the size and type of monuments. The current rule is intended to achieve uniformity in order to facilitate future identification and use of monuments.

22-2.4B(30)-S4090 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY (1) A certificate of survey may not be filed by the county clerk and recorder unless it complies with the following requirements:

(a) Certificates of survey shall be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and shall be 8 1/2 inches by 14 inches, 18 inches by 24 inches, or 24 inches by 36 inches. The decision on which of these sizes will be used shall rest with the surveyor.

Comment: The size(s) of certificates of survey have been the subject of a continual and intense controversy since the enactment of the Subdivision and Platting Act. The above proposal to allow the surveyor a choice from three standard sizes is presented in response to a petition received by the department. The proposal would allow a surveyor the flexibility to select a sheet size that is appropriate for the size or configuration of the survey. Small surveys could be drawn on smaller sheets which would be less expensive to prepare and be less costly to reproduce. Opponents argue that a uniform size reduces problems for those persons who work in a number of different counties. Documents of different sizes may create some filing difficulties for clerks and recorders.

(b) One signed cloth-backed copy and one reproducible copy on a stable base polyester film or equivalent shall be submitted. Where a certificate of survey is used to amend a filed subdivision plat pursuant to section 11-3862(6) one additional copy must be submitted to be filed with the subdivision plat.

Comment: The 1977 Legislature amended the subdivision law to allow use of certificates of survey in certain instances to change filed subdivision plats. Certificates of survey are usually filed separately from subdivision plats, and filing a copy of the certificates of survey with the original plat is the most convenient and certain method of maintaining records of changes to the plat.

(3) Procedures for divisions of land exempted from public review as subdivision -- ~~use of exemptions for the purpose of evading the act.--Unless the method of disposition is adopted for the purpose of evading the Montana Subdivision and Platting Act,~~ certificates of survey for divisions of land meeting the criteria set out in section 11-3862(6), R.C.M. 1947, ~~are not subdivisions subject to review under the Act.--To assure that the method of disposition is not used to evade the act~~ must meet the following requirements: ~~must be met in the use of exemptions:~~

~~(a) The exemptions contained in section 11-3862(6), R.C.M. 1947, do not apply to the resubdivision or redesign of subdivisions platted and filed with the county clerk and recorder. Any such resubdivision or redesign must be reviewed and approved by the governing body and an approved amended plat thereof must be filed with the county clerk and recorder.~~

Comment: The Montana Supreme Court held that this rule is invalid because it conflicts with statutory provisions which exempt certain divisions of land from local review and approval

requirements.

(b) Certificates of survey of a division of land which would otherwise be a subdivision but which is exempted from public review under section 11-3862(6), R.C.M. 1947, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision and citing the applicable exemption.

(c) Where the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged copy of the covenant.

~~(d) Exemption for "occasional sales." Only one occasional sale may be made within any 12 month period from any tract or from contiguous tracts of land created of public record on or after July 1, 1973, and held in single or undivided ownership. No portion of a tract or parcel of land may be the subject of an occasional sale more than once within any 12 month period. A certificate of survey for an occasional sale may not be filed unless it bears an acknowledged certificate of the property owner that the above criteria are met.~~

~~(e) Gifts of sales to members of the landowner's immediate family. Only one conveyance of a parcel of land to any one member of the grantor's immediate family is eligible for exemption from review and approval of the governing body under section 11-3862(6)(b), R.C.M. 1947. A certificate of survey for a gift or sale to a member of the grantor's immediate family may not be filed by the clerk and recorder unless it bears an acknowledged certificate of the property owner that this criterion is met.~~

Comment: Because the department proposes to repeal MAC 22-2.4B (6)-S420(4) in the Minimum Requirements for Subdivision Regulations, these requirements should also be deleted from the Uniform Standards.

~~(f) Certificates of survey showing the creation of new parcels of land pursuant to exemptions for gifts or sales to a member of the grantor's immediate family or for occasional sales may not be filed by the clerk and recorder unless they are accompanied by an instrument of conveyance of the parcel being created.~~

Comment: The Montana Association of Registered Land Surveyors requested that this rule be deleted. They believe that this requirement is unnecessary and creates a hardship for landowners by requiring a buyer prior to exercising an exemption.

The purpose of the rule was to ensure that a sale would take when using the occasional sale exemption and that an immediate family member actually receives the parcel when the family transfer exemption is used.

~~(g) Division of land which are exempted from treatment as subdivisions under section 11-3862(b) and (d) of the Subdivision and Platting Act are not thereby exempted from the review and approval of the State Department of Health and Environmental Sciences pursuant to sections 69-5001 through 69-5009, R.C.M. 1947.~~

Comment: This provision is unnecessary because Title 69, Chapter 50, clearly specifies the jurisdiction of the Department of Health and Environmental Sciences.

(4) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in section 11-3862(4), (5), and (8), R.C.M. 1947, are not required to be surveyed nor must a certificate of survey or subdivision plat thereof be filed with the clerk and recorder. A certificate of survey of such a division may, however, be filed with the clerk if it meets the requirements for form and content for certificates contained in this section and bears a certificate of the surveyor performing the survey stating the applicable exemption from the Act.

22-2.4B(30)-S4100 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS (1) A final subdivision plat may not be approved by the governing body nor filed by the county clerk and recorder unless it complies with the following requirements:

(a) Final subdivision plats shall be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and shall be 18 inches by 24 inches or 24 inches by 36 inches overall. ~~to include a 1 1/2 inch margin on the binding side.~~ The decision on which size will be used shall rest with the surveyor.

Comment: This proposed change was requested through petitions by a number of surveyors. The reasons, both for and against, are the same as for allowing more than one size for certificates of survey.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing or may submit written comments to the Planning Division before August 25, 1977.

6. Richard M. Weddle, has been designated by the Department to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoption is based on Sections 11-3862(11) and 11-3863(2), R.C.M. 1947.

Harold A. Fryslie, Director
Department of Community Affairs

Certified to the Secretary of State July 14, 1977.

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

In the matter of the proposed adoption of Rules to implement Title 41, Chapter 26, R.C.M. 1947.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (MATERNITY LEAVE)

TO: To all interested persons

1. On August 23, 1977, at 9:00 a.m. a public hearing will be held at 1331 Helena Avenue, Helena, Montana to consider adoption of Rules providing maternity leave to public and private employees.

2. The proposed rules do not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rules read as follows:

Rule I. DEFINITIONS. (a) "Commissioner" means the Commissioner of Labor and Industry.

(b) "Disability" includes any physical condition certifiable by a licensed physician as disabling, whether the condition arises as a result of the normal course of pregnancy, childbirth, miscarriage, abortion, or recovery therefrom or as a result of complications or abnormal medical conditions which occur in the course of a pregnancy, childbirth, miscarriage, abortion, or recovery therefrom.

(c) "Employee" means any individual employed by an employer.

(d) "Employer" means an employer of one (1) or more persons.

(e) "Maternity Leave" means any leave of absence granted to or required of an employee because of such employee's pregnancy, childbirth, miscarriage, abortion, or recovery therefrom.

Rule II. COMPLAINT-HOW FILED. (a) Section 41-2603 provides that a person claiming to be aggrieved by a violation of Section 41-2602 may file a verified complaint with the Commissioner of Labor and Industry which shall state the circumstances of the violation. In addition, the commissioner whenever he has reason to believe that section 41-2602 has been or is being violated, may issue a complaint. Within 60 days of receipt of a complaint the commissioner shall state his findings of fact and decision. If the commissioner finds that a respondent has engaged in a violation of Section 41-2602, he shall state his findings of fact and decision. If the commissioner finds that a respondent has engaged in a violation of Section 41-2602,

he shall state his findings of fact and shall order the respondent to reinstate the complainant if she so desires and to pay the complainant the damages resulting from the violation. If the commissioner finds the respondent has not engaged in a violation of Section 41-2602 he shall state his findings of fact and dismiss the complaint.

Rule III. CONTESTED CASES-PROCEDURE. (a) Contested cases will be governed by MAC 24-2.2(1)-P200.

Rule IV. ENFORCEMENT. (a) Section 41-2604 provides that the commissioner or his authorized representatives may enter and inspect such places, question such employees, and investigate such facts, conditions or matters as they consider appropriate to determine whether any person has violated any provision of the act or any regulation issued thereunder, or which may aid in the enforcement of the act and regulations. The commissioner or his authorized representatives may administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the commissioner.

Rule V. TERMINATION OF EMPLOYMENT DUE TO PREGNANCY PROHIBITED. (a) Section 41-2602(1)(a), provides that it shall be unlawful for an employer or his agent to terminate a woman's employment because of her pregnancy. In applying this section, the Commissioner shall consider "termination" to include all involuntary dismissals, all resignations in which the employee's resignation was required by the employer or permitted as the sole alternative to dismissal and those situations in which the totality of the circumstances surrounding a resignation by an employee indicate that the resignation was compelled by the conduct or policy of the employer or agent. Coercive conduct by an employer or his agent toward an employee in order to secure her resignation, when the employee's pregnancy constitutes a substantial reason for the conduct, shall be considered a violation of Section 41-2602(1)(a).

Rule VI. RIGHT TO REASONABLE LEAVE OF ABSENCE. (a) Section 41-2602(1)(b), R.C.M. 1947 provides that it shall be unlawful for an employer or his agent to refuse to grant to the employee a reasonable leave of absence for pregnancy. In determining the standards which shall apply to a request for a leave of absence for pregnancy, an employer shall apply standards at least as inclusive as those which he applies to requests for leave of absence for any other valid medical reason. In no case shall such leave be for a shorter period of time than that period both before and

after childbirth during which the physician attending the employee shall certify that valid medical reasons exist why she should not be performing her employment duties.

Rule VII. MANDATORY LEAVE FOR UNREASONABLE TIME PROHIBITED.

(a) Section 41-2602(1)(e), R.C.M. 1947 provides that no employer or agent of an employer may require that an employee take a mandatory maternity leave for an unreasonable length of time. The reasonableness of the length of time for which an employee is required to take a mandatory maternity leave shall be determined on a case by case basis. However, the employer shall have the burden of proving that a maternity leave for a longer period of time than that prescribed by the employee's personal physician is reasonable, and in no case shall an employee be required to take an uncompensated maternity leave for a longer period of time than a competent physician who has actually examined the employee shall certify that the employee is unable to perform her employment duties. Neither this section nor any other section of these regulations shall prohibit an employer and employee from mutually agreeing, in the case of the particular employee, to a longer period of maternity leave, either compensated or uncompensated than is permitted by this regulation. However, no employer may enter into a general agreement with any group or association of employees which requires a longer period of mandatory maternity leave than is permitted by this regulation.

Rule VIII. PREGNANCY-RELATED DISABILITIES TO BE TREATED AS TEMPORARY DISABILITIES. (a) Disabilities caused or contributed to by pregnancy, childbirth, miscarriage or abortion and recovery therefrom are, for all job-related purposes, temporary disabilities and shall not be treated less favorably than other temporary disabilities under any health, medical, or temporary disability insurance plan or any sick leave plan available in connection with employment. No written or unwritten employment policies or practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement or payment under any health, medical, or temporary disability insurance plan, or under any sick leave, disability leave or disability benefit plan whatsoever, whether formal or informal, shall be applied to disability due to pregnancy, childbirth, miscarriage or abortion or recovery therefrom, on terms or conditions less favorable than those applied to other temporary disabilities.

Rule IX. RETURN TO EMPLOYMENT AFTER MATERNITY LEAVE. (a) Section 41-2602(2), R.C.M. 1947 requires that an

employee who has signified her intent to return at the end of her maternity leave of absence shall be reinstated to her original job or an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it unreasonable or impossible to do so. Any private employer who claims that his circumstances have so changed as to make compliance with Section 41-2602(2) impossible or unreasonable shall have the burden of proving his claim and a standard of strict scrutiny shall be applied to all such claims of exception.

Rule X. VERIFICATION OF DISABILITY. (a) In any case where an employee makes a claim against her employer for any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, including any insurance or other disability plans referred to in section IV above of these rules, and the claim is based on a disability covered by and defined in Title 41, Chapter 26, R.C.M. 1947, and these regulations, the employer may require that the disability be verified by medical certification by the employee's physician that the employee is, or at the time for which the claim is made, was unable to perform her employment duties.

Rule XI. RETALIATION PROHIBITED. (a) Section 41-2602 (1)(d), R.C.M. 1947, provides that no employer or his agent may retaliate against any employee who files a complaint with the Commissioner of Labor and Industry alleging a violation of Title 41, Chapter 26, R.C.M. 1947. Discharge or demotion of an employee during the pendency of a complaint filed by or on behalf of that employee or during the reporting or compliance period of a conciliated agreement in regard to such complaint or within six (6) months of the resolution of a complaint on any basis shall raise a rebuttable presumption that the discharge or demotion was in retaliation for the filing of the complaint.

4. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written statements may be submitted to the Department prior to the hearing date. Such statements will be included in the hearing record.

5. Bob McCarthy has been designated by the Commissioner of Labor and Industry to preside over and conduct the hearing.

6. The reason for the proposed adoption of Rules I through XI is the requirement in Section 41-2605, R.C.M. 1947, that the Commissioner make and revise regulations to carry out the purposes of the Maternity Leave Act.

7. The authority of the commissioner to make the proposed adoption of Rules I through XI is based on Section 41-2605, R.C.M. 1947.

Commissioner of Labor and Industry

Certified to the Secretary of State
July 13, 1977.

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

In the matter of the amendment of Rule 200 modifying and adopting the Model Procedural Rules proposed by the Attorney General as stated in MAC 1-1.6-(2)-P650 through MAC 1-1.6(2)-P6320.	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 200 (Incorporation of Model Rules) NO PUBLIC HEARING CONTEMPLATED

1. On August 29, 1977, the Department of Labor and Industry proposes to amend rule 24-2.2(1)-P200 which now incorporates the Model Rules proposed by the Attorney General as stated in MAC 1-1.6(2)-P650 through MAC 1-1.6(2)-P6320 with one exception; Rule 19 (MAC 1-1.6(2)-P6130) subpoenas and depositions, has been amended to read as follows:

(i) Upon request of any party appearing, the agency shall issue subpoenas for witnesses or subpoenas duces tecum. Except as otherwise provided by statute, rule or regulation, witness fees and mileage shall be paid by the party requesting the issuance of the subpoena. Section 82-4220.

(ii) A party may request from the agency an order that the testimony of a material witness be taken by deposition. Fees and mileage are to be paid as determined by applicable statutes, rules or regulations. Section 82-4211(2).

2. The proposed amendment would change Rule 25 (MAC 1-1.6(2)-P6190) proposed orders, to read as follows:

(i) If a majority of the officials of an agency who are to render the final order were not present at the hearing of a contested case or have not read the record, a proposed order, if adverse to a party to the proceeding other than the agency, including findings of fact and conclusions of law, shall be served upon the parties. An opportunity to file exceptions, present briefs and make oral argument to the officials who are to render the decision shall be granted to all parties adversely affected. If no appeal is taken within twenty (20) days, the decision of the hearing examiner shall be final. Section 82-4212.

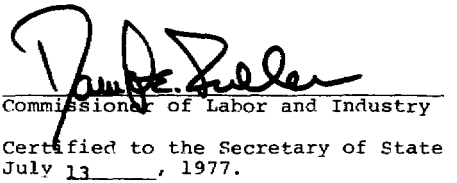
(a) Waiver of compliance with this rule may be made by stipulation of all parties. Section 82-4203.

3. The reason for the amendment of rule 200 is to limit the time within which a party may appeal a hearing order to the Commissioner of Labor and Industry, in order to encourage the speedy resolution of contested cases.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to David Fuller, Commissioner, Department of Labor and Industry,

1331 Helena Avenue, Helena, Montana, 59601. Written comments, in order to be considered, must be received no later than August 25, 1977.

5. The authority of the Department to make the proposed amendment is based on Section 41-2605, R.C.M. 1947.



Commissioner of Labor and Industry

Certified to the Secretary of State
July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(6)-P1020 relating to filing of appeals.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE (Filing of Appeals) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(6)-P1020 by changing the words "information required thereby" to "reason for the appeal" in appeal filing procedures, and to change the word "tribunal" to "referee".

2. MAC 24-3.10(6)-P1020 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(6)-P1020 FILING OF APPEALS
(1) Interested parties appealing either to an appeal ~~tribunal~~ referee from a decision of a deputy, or from a determination of classification and rate, or to the board of labor appeals from a decision of an appeal ~~tribunal~~ referee, shall file with the division, within the time provided by law, at either a local office or the central office of the division, a notice of appeal, setting forth the ~~information required thereby~~ reason for the appeal. Appeals may be filed by regular letter mail or by use of appropriate appeal forms available to the claimants and employers at all local offices of the division.

3. The reason for this change is to more clearly define information needed on an appeal, and to change the title of appeal tribunal to appeal referee.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. The authority of the division to make the proposed amendment to the rule is based on Section 87-121, R. C. M. 1947.

7-7/25/77

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(6)-P1090 relating to the definition of interested parties.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE (Interested Parties Defined) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(6)-P1090 by changing the definition of interested party under (c), removing staff member under (e), and changing chargeable employer to reimbursable employer under (f).

2. MAC 24-3.10(6)-P1090 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(6)-P1090 INTERESTED PARTIES DEFINED
(1) "Interested parties," as used in Section 87-107 and Section 87-109, shall mean:
(a) Remains the same.
(b) Remains the same.
(c) ~~The employing units involved in any separation from employment with three (3) weeks or longer at the discretion of the division prior to claimant's claim of eligibility.~~ An employing unit aggrieved.
(d) The deputy who made the determination.
(e) ~~The staff member in the local office who accepted the claim.~~
~~(f)~~ (e) ~~The employing unit~~ The base-period reimbursable employer whose account may be charged with any benefits paid to claimant.
~~(g)~~ (f) Any party other than the foregoing who shall, upon written application to the division, be found by the division to have an interest in the claim or in an appeal arising from the claim.

3. The reason for the change in item (c) is to include any aggrieved employing unit, under either Section 87-107 or Section 87-109. No decision is made by the staff member listed in item (e) and this individual has no interest in the outcome of the claim. Our law no longer has a "chargeback" provision except in the case of the base-period reimbursable employer.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. The authority of the division to make the proposed amendment to the rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(6)-P10010 relating to benefit appeal notice.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Benefit Appeal Notice) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(6)-P10010 by adding a sentence.

2. MAC 24-3.10(6)-P10010 as proposed to be amended is as follows (new matter is underlined):

MAC 24-3.10(6)-P10010 BENEFIT APPEAL NOTICE
(1) Each benefit appeal decision which is sent to the parties to an appeal, shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken. <u>Request for extension of the appeal rights for good cause shall not exceed 30 days.</u>

3. The reason for this amendment is to place some limit on the appeal time extension for good cause.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

7-7/25/77

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(10)-S10020 relating to the filing of claims.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Claim Filing) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(10)-S10020 by removing the words "in this state" from item (2).

2. MAC 24-3.10(10)-S10020 as proposed to be amended is as follows (matter to be stricken is interlined):

MAC 24-3.10(10)-S10020 CLAIM FILING
(1) Remains the same.
(2) Whenever requested by the division or its representative, a claimant must present a certificate signed by a doctor of medicine, osteopath or chiropractor, licensed to practice ~~in this state~~, to establish claimant's ability to work.
(3) Remains the same.
(4) Remains the same.
(5) Remains the same.

3. The reason for this change is to accept medical documents provided by claimants who have received care out of state.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from more than ten percent (10%) or more persons directly affected, a public hearing will be

held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(10)-S10030 relating to effective dates of initial, additional and continued claims.	) NOTICE OF PROPOSED) AMENDMENT OF RULE) (Initial, Additional,) and Continued Claims)) NO PUBLIC HEARING) CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(10)-S10030 by providing that claims filed on Thursday or Friday be effective the following week, and by adding item (2) to this section, regarding filing of continued claims.

2. MAC 24-3.10(10)-S10030 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(10)-S10030 EFFECTIVE DATE OF INITIAL ~~AND~~, ADDITIONAL, AND CONTINUED CLAIM

(1) A claim of eligibility shall be effective as of the first day of the calendar week in which claimant presents himself in person at an employment service office and files his claim, if the claim is filed Monday, Tuesday or Wednesday of that week. If the claim is filed on Thursday or later, the claim is effective beginning with the first day of the following calendar week, unless he is permitted to file his claim under the conditions outlined in Rules MAC 24-3.10(10)-S10020 and MAC 24-3.10(10)-S10040. Such filing within a period of seven (7) days following a claimant's first day of unemployment shall be deemed effective as of the first day of the calendar week in which he became unemployed, if the claimant presents to the satisfaction of the division sufficient grounds to justify or excuse the delay.

(2) With respect to claims for weeks of unemployment in which the individual was not working for his regular employer, the division shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more

than one reporting period late, an additional claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

3. The reason for the change of effective date of claims filed at the end of the week is to encourage early filing. This would ensure that the claimant is available to the local office during the full week he is unemployed in the event work is available, and will also permit earlier processing and payment of the claim. The reason for the addition of item (2) is to provide the same procedures for intrastate claims as for interstate claims (now in effect in MAC 24-3.10(14)-S10170).

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from more than ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of a rule regarding week of partial unemployment defined.	))))	NOTICE OF PROPOSED ADOPTION OF RULE (Partial Unemployment) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule _____ regarding partial unemployment.

2. The proposed rule provides as follows:

MAC _____ WEEK OF PARTIAL UNEMPLOYMENT DEFINED

(1) A partially unemployed individual is one who, during a particular week,

(a) earned less than twice his weekly benefit amount;

(b) was employed by a regular employer; and

(c) worked less than his normal customary full-time hours for such regular employer because of lack of full-time work.

3. The reason for this rule is to define partial unemployment for the purpose of payment of benefits under new law provisions.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Moody Brickett, Attorney, Employment Security Division, Department of Labor and Industry, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to make the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(10)-S10060 relating to affidavits or documented evidence to support certain claims.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Evidence to Support Certain Claims) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(10)-S10060 to accept documented evidence as proof of earnings.

2. MAC 24-3.10(10)-S10060 as proposed to be amended is as follows (new matter is underlined):

> MAC 24-3.10(10)-S10060 AFFIDAVITS OR DOCUMENTED EVIDENCE TO SUPPORT CERTAIN CLAIMS
> (1) When wage records for a claimant have not been received by the division, and the subjectivity of his employer has been determined, the claimant may support his claim by affidavits from two disinterested persons acquainted with the facts, or documented evidence, to establish his earnings in employment in his base period. Such affidavits and other pertinent data shall be used as a basis for the determination of the benefit rights of such claimant.

3. The reason for this change is to accept check stubs, W-2 forms, etc., as proof of earnings to establish a claim in the cases indicated.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of a rule regarding the determination of a claim on facts available.	)	NOTICE OF PROPOSED ADOPTION OF RULE (Determination of Claim) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule _____ regarding determination of claims for benefits.

2. The proposed rule provides as follows:

MAC _____ DETERMINATION OF CLAIM ON FACTS AVAILABLE

(1) A determination will be made on the available facts presented by either the claimant or employer if the other party has not responded to either a UI-218, Notice or Request with Respect to Claim, or UI-202A, employer copy of the Initial or Additional claim, within the five-day limitation given them.

(2) If at a later date, other information is submitted by either party, this will be considered an appeal but the determination will not be modified.

3. The reason for this rule is to encourage the prompt submission of facts by the claimant and employer in each case.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Moody Brickett, Attorney, Employment Security Division, Department of Labor and Industry, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to make the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of Rule 24-3.10(10)-S10080 pertaining to initial determinations.	)))))	NOTICE OF PROPOSED REPEAL OF RULE (Initial Determinations) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to repeal Rule 24-3.10(10)-S10080 pertaining to initial determinations.

2. The rule for consideration for repeal is found on pages 24-39 and 24-40 of the Montana Administrative Code.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received by not later than August 22, 1977.

4. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

5. If the division receives requests for a public hearing on this proposed repeal from ten percent (10%) or more persons directly affected, a public hearing will be made by publication in the Administrative Register.

6. The authority of the division to make the proposed repeal of rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of Rule 24-3.10(10)-S10090 pertaining to withdrawals from the Trust Fund.	)))))	NOTICE OF PROPOSED REPEAL OF RULE (Withdrawals from Trust Fund) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to repeal Rule 24-3.10(10)-S10090 pertaining to withdrawals from the Trust Fund.

2. The rule for consideration for repeal is found on page 24-40 of the Montana Administrative Code.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received by not later than August 22, 1977.

4. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

5. If the division receives requests for a public hearing on this proposed repeal from ten percent (10%) or more persons directly affected, a public hearing will be made by publication in the Administrative Register.

6. The authority of the division to make the proposed repeal of rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of Rule 24-3.10(10)-S10100 pertaining to disqualification upon separation.	))))))	NOTICE OF PROPOSED REPEAL OF RULE (Disqualification Upon Separation) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to repeal Rule 24-3.10(10)-S10100 pertaining to disqualification upon separation.

2. The rule for consideration for repeal is found on page 24-40 of the Montana Administrative Code.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received by not later than August 22, 1977.

4. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

5. If the division receives requests for a public hearing on this proposed repeal from ten percent (10%) or more persons directly affected, a public hearing will be made by publication in the Administrative Register.

6. The authority of the division to make the proposed repeal of rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of a rule regarding duration of weeks reduced by payment of partial benefits.	)	NOTICE OF PROPOSED ADOPTION OF RULE (Partial Benefits) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Parties

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule _____ regarding weeks duration under payment of partial benefits.

2. The proposed rule provides as follows:

Rule _____ DURATION OF WEEKS REDUCED BY PAYMENT OF PARTIAL BENEFITS

An individual who files a weekly claim which is determined under the partial-benefits provision of the law, will have his duration reduced by one week for each week he receives benefits, regardless of the amount of partial benefits paid.

3. The reason for this rule is to adequately define duration of benefits under the new partial-benefit provision of the law.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Moody Brickett, Attorney, Employment Security Division, Department of Labor and Industry, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to make the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of a rule regarding self employment of claimants.	)	NOTICE OF PROPOSED ADOPTION OF RULE (Self-Employment) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule _____ regarding self employment of claimants.

2. The proposed rule provides as follows:

Rule _____ AMOUNT OF EARNINGS CONSIDERED AS SELF EMPLOYMENT

An individual shall be disqualified under Section 87-106(g) if within the past 52 weeks at least 50 percent of his earnings have been in self employment.

3. The reason for this rule is to define what will be considered self employment in view of the new law provision where self-employed claimants will be disqualified.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Moody Brickett, Attorney, Employment Security Division, Department of Labor and Industry, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to make the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(18)-S10210 relating to first factor experience rating.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Experience Rating) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(18)-S10219 by changing the order of the factors in experience rating.

2. MAC 24-3.10(18)-S10210, the First Factor in Experience Rating will read as the Second Factor now reads:

MAC 24-3.10(18)-S10210 FIRST FACTOR IN EXPERIENCE RATING

~~(1)--"Average annual percentage declines in total payrolls for the last three (3) years prior to computation date" shall be determined as follows. The division shall list each eligible employer's payroll for the three (3) years immediately preceding the computation date in chronological order.~~

~~An eligible employer's average annual percentage decline shall be the aggregate of the annual percentage declines divided by two.--Whenever any annual total payroll of any employer is less than the annual total payroll for the next preceding year, the annual percentage decline shall be computed to the first decimal place by dividing the amount of the decline by the amount of the annual total payroll for such preceding year. After determining the average percentage decline applicable to each eligible employer, such employer shall be classified as to such factor for experience rating purposes upon the following point values.~~

~~FISCAL-YEAR-DECLINE~~

~~0.0% or more but less than 1.5% . . . . . 12~~
~~1.5% or more but less than 2.0% . . . . . 11~~
~~2.0% or more but less than 2.5% . . . . . 10~~
~~2.5% or more but less than 3.0% . . . . . 9~~
~~3.0% or more but less than 3.5% . . . . . 8~~
~~3.5% or more but less than 4.0% . . . . . 7~~
~~4.0% or more but less than 4.5% . . . . . 6~~
~~4.5% or more but less than 5.0% . . . . . 5~~
~~5.0% or more but less than 10.0% . . . . . 4~~
~~10.0% or more but less than 15.0% . . . . . 3~~
~~15.0% or more but less than 20.0% . . . . . 2~~
~~20.0% or more but less than 25.0% . . . . . 1~~
~~25.0% or more . . . . . 0~~

(1) "Number of years the employer has paid contributions" means the total number of years that an employer has been subject as an employer under the law (Section 87-148(i), has reported and paid the contributions due on wages paid for employment as defined in Section 87-148(j). Where an employer has reported "no wages paid for employment" during all four quarters immediately preceding a computation date, no credit for such year shall be given in determining the number of years such employer has paid contributions. No employer shall be granted any experience rating classification points under this regulation unless and until such employer has been an employer, as defined in Section 87-148(i), for three years prior to the computation date. Under this factor the division shall classify all employers upon the following assigned point values:

Number of years Contributions Paid	Points
8 years or more	6
7 but less than 8	5
6 but less than 7	4
5 but less than 6	3
4 but less than 5	2
3 but less than 4	1

3. The reason for the change is to place the factors for experience rating in the proper order.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O.

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MAC Notice No. 24-3-10-35

Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(18)-S10220 relating to Second Factor in Experience Rating.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Experience Rating) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(18)-S10220 by changing the order of the factors in experience rating.

2. MAC 24-3.10(18)-S10220, the Second Factor in Experience Rating will read as the Third Factor now reads:

MAC 24-3.10(18)-S10220 SECOND FACTOR IN EXPERIENCE RATING

~~(1)--"Number-of-years-the-employer-has-paid-contributions"-means-the-total-number-of-years-that-an employer-has-been-subject-as-an-employer-under-the law-(Section-87-148(i),-has-reported-and-paid-the contributions-due-on-wages-paid-for-employment-as defined-in-Section-87-148(j).--Where-an-employer has-reported-"no-wages-paid-for-employment"-during all-four-quarters-immediately-preceding-a-computation-date,-no-credit-for-such-year-shall-be-given in-determining-the-number-of-years-such-employer has-paid-contributions.--No-employer-shall-be granted-any-experience-rating-classification-points under-this-regulation-unless-and-until-such-employer-has-been-an-employer-as-defined-in-Section 87-148(i),-for-three-years-prior-to-the-computation date.--Under-this-factor-the-division-shall-classify all-employers-upon-the-following-assigned-point values:~~

~~Number of years Contributions Paid~~	~~Points~~
~~8 years or more~~	~~6~~
~~7 but less than 8~~	~~5~~
~~6 but less than 7~~	~~4~~
~~5 but less than 6~~	~~3~~
~~4 but less than 5~~	~~2~~
~~3 but less than 4~~	~~1~~

(1) "Average quarterly percentage declines in total payrolls for the last three (3) years prior to computation date" shall be determined as follows: The division shall list each eligible employer's payroll for the twelve calendar quarters immediately preceding the computation date in chronological order.

An eligible employer's average quarterly percentage decline shall be the aggregate of the quarterly percentage declines divided by eleven. Whenever any quarterly total payroll of any employer is less than the quarterly total payroll for the next preceding quarter, the quarterly percentage decline shall be computed to the first decimal place by dividing the amount of the decline by the amount of the quarterly total payroll for such preceding quarter. After determining the average percentage decline applicable to each eligible employer, such employer shall be classified as to such factor for experience rating purposes upon the following point values:

QUARTERLY DECLINE

0.0%	or more but less than	1.5%	. . .	12
1.5%	or more but less than	2.0%	. . .	11
2.0%	or more but less than	2.5%	. . .	10
2.5%	or more but less than	3.0%	. . .	9
3.0%	or more but less than	3.5%	. . .	8
3.5%	or more but less than	4.0%	. . .	7
4.0%	or more but less than	4.5%	. . .	6
4.5%	or more but less than	5.0%	. . .	5
5.0%	or more but less than	10.0%	. . .	4
10.0%	or more but less than	15.0%	. . .	3
15.0%	or more but less than	20.0%	. . .	2
20.0%	or more but less than	25.0%	. . .	1
25.0%	or more		. . . . .	0

3. The reason for the change is to place the factors for experience rating in the proper order.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

7-7/25/77

MAC Notice No. 24-3-10-36

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(18)-S10230 relating to Third Factor in Experience Rating.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Experience Rating) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(18)-S10230 by changing the order of the factors in experience rating.

2. MAC 24-3.10(18)-S10230, the Third Factor in Experience Rating will read as the First Factor now reads:

MAC 24-3.10(18)-S10230 THIRD FACTOR IN EXPERIENCE RATING

~~(1)--"Average quarterly percentage declines in total payrolls for the last three (3) years prior to computation date" shall be determined as follows:--The division shall list each eligible employer's payroll for the twelve calendar quarters immediately preceding the computation date in chronological order.~~

~~An eligible employer's average quarterly percentage decline shall be the aggregate of the quarterly percentage declines divided by eleven.--Whenever any quarterly total payroll of any employer is less than the quarterly total payroll for the next preceding quarter, the quarterly percentage decline shall be computed to the first decimal place by dividing the amount of the decline by the amount of the quarterly total payroll for such preceding quarter.--After determining the average percentage decline applicable to each eligible employer, such employer shall be classified as to such factor for experience rating purposes upon the following point values:~~

~~QUARTERLY-DECLINE~~

~~0.0% or more but less than 1.5% . . . 12~~
~~1.5% or more but less than 2.0% . . . 11~~
~~2.0% or more but less than 2.5% . . . 10~~
~~2.5% or more but less than 3.0% . . . 9~~
~~3.0% or more but less than 3.5% . . . 8~~
~~3.5% or more but less than 4.0% . . . 7~~
~~4.0% or more but less than 4.5% . . . 6~~
~~4.5% or more but less than 5.0% . . . 5~~
~~5.0% or more but less than 10.0% . . . 4~~
~~10.0% or more but less than 15.0% . . . 3~~
~~15.0% or more but less than 20.0% . . . 2~~
~~20.0% or more but less than 25.0% . . . 1~~
~~25.0% or more . . . 0~~

(1) "Average annual percentage declines in total payrolls for the last three (3) years prior to computation date" shall be determined as follows: The division shall list each eligible employer's payroll for the three (3) years immediately preceding the computation date in chronological order.

An eligible employer's average annual percentage decline shall be the aggregate of the annual percentage declines divided by two. Whenever any annual total payroll of any employer is less than the annual total payroll for the next preceding year, the annual percentage decline shall be computed to the first decimal place by dividing the amount of the decline by the amount of the annual total payroll for such preceding year. After determining the average percentage decline applicable to each eligible employer, such employer shall be classified as to such factor for experience rating purposes upon the following point values.

FISCAL YEAR DECLINE

0.0%	or more but	less than	1.5%	. . .	12
1.5%	or more but	less than	2.0%	. . .	11
2.0%	or more but	less than	2.5%	. . .	10
2.5%	or more but	less than	3.0%	. . .	9
3.0%	or more but	less than	3.5%	. . .	8
3.5%	or more but	less than	4.0%	. . .	7
4.0%	or more but	less than	4.5%	. . .	6
4.5%	or more but	less than	5.0%	. . .	5
5.0%	or more but	less than	10.0%	. . .	4
10.0%	or more but	less than	15.0%	. . .	3

15.0% or more but less than 20.0% . . .	2
20.0% or more but less than 25.0% . . .	1
25.0% or more	0

3. The reason for the change is to place the factors for experience rating in the proper order.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(18)-S10260 relating to substitution of new account for existing account.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (New Accounts) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(18)-S10260 by changing section (1) to apply when an employing unit purchases all assets of one employer, and by adding sections (2) and (3).

2. MAC 24-3.10(18)-S10260 as proposed to be amended is as follows: (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(18)-S10260 SUBSTITUTION OF NEW ACCOUNT FOR EXISTING ACCOUNT

(1) Whenever any employing unit which is not an employer, as defined in Section 87-148(i), acquires all ~~or a distinct and severable portion of the organization, trade, or business, or substantially all~~ the assets ~~thereof~~ of one ~~or more employers~~ employer, the experience of the acquired business ~~or businesses may~~ will be ~~thereupon~~ transferred to the successor and ~~such~~ the successor's rate of contributions from the date of acquisition to the end of the rate year shall be ~~based upon the resulting combined experience in accordance with applicable provisions in Rules MAC 24-3.10(18)-S10200 to MAC 24-3.10(18)-S10250, inclusive.~~ the same as the predecessor's rate for that rate year.

(2) Whenever any employing unit which is not an employer, as defined in Section 87-148(i), acquires a distinct and severable portion of the organization, trade, or business, if the portion of the business acquired has been an employing unit during each of the three fiscal years in the computation period, the rate will be the same as the parent account to the end of the rate year. If the segregated portion has not been in existance for three fiscal years, the maximum rate applicable

to a new employer will be assigned until this criteria has been met.

(3) Whenever any employing unit which is not an employer, as defined in Section 87-148(1), acquires all of the assets of more than one employer, the successor's rate of contribution from the date of acquisition to the end of the rate year shall be based upon the resulting combined experience in accordance with applicable provisions in Rules MAC 24-3.10(18)-S10200 to MAC 24-3.10(18)-S10250 inclusive.

3. The reason for this change is to more precisely show how the contribution rate will be determined when an employing unit purchases the assets of one business, a portion of the assets of a business, or assets of more than one business.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

7-7/25/77

MAC Notice No. 24-3-10-38

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(18)-S10290 relating to substitution of exemption after taxable wages paid.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Exemption After Taxable Wages Paid) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(18)-S10290 by striking the second sentence.

2. MAC 24-3.10(18)-S10290 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(18)-S10290 SUBSTITUTION OF EXEMPTION AFTER ~~$3,000 and $4,200 OF~~ TAXABLE WAGES PAID

(1) A successor employing unit may include wages paid by its predecessor in determining when taxable wages have been paid to an employee during any calendar year. ~~Such wages are $3,000 prior to December 31, 1971, and $4,200 beginning January 1, 1972.~~ See Rule MAC 24-3.10(26)-S10410.

3. The reason for this change is to remove any reference to amount of taxable wages. The amounts now listed are obsolete, and current amounts are covered in the law.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at

a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(18)-S10300 relating to payments by state and its political subdivisions.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Payments by State and its Political Subdivisions) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(18)-S10300 by changing "benefits paid and charged to the employing unit" to "the benefit cost experience of governmental entitles as a whole and individually," and include a chart.

2. MAC 24-3.10(18)-S10300 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(18)-S10300 PAYMENTS BY THE STATE AND ITS POLITICAL SUBDIVISIONS

(1) The division shall establish a rate for the state and its political subdivisions to be applied to the gross wages paid and reported each quarter. This rate will be subject to adjustment the beginning of each tax year based upon ~~benefits paid and charged to the employing unit~~ the benefit cost experience of governmental entitles as a whole and individually.

RATE FOR GOVERNMENTAL ENTITIES
EXPERIENCE RATING SYSTEM

Individual Employer's Benefit Cost Ratio	*Median Benefit Cost Ratio												
	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
.1 or less	.1	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.1	1.3	1.5
.2	.1	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.1	1.3	1.5
.3	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.3	1.5
.4	.2	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.2	1.3	1.5
.5	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.4	1.5
.6	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.3	1.4	1.5
.7	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
.8	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
.9	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
1.0	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.3	1.4	1.5
1.1	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.4	1.5
1.2	.4	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.4	1.5	1.5
1.3	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5	1.5	1.5
1.4	.5	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5	1.5	1.5	1.5
1.5 or more	.5	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5	1.5	1.5	1.5

*Total benefits charged to all governmental entities for all past periods divided by total wages paid by all governmental entes for all past periods. This percentage is used as a median rate. The column headed by that percent is used when the past experience computes to that figure.

3. The reason for this change is to make the rule applicable to new law provisions.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of a rule regarding monthly billing of reimbursable employers.	)))))	NOTICE OF PROPOSED ADOPTION OF RULE (Reimbursable Employers) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule _____ regarding billing of reimbursable employers.

2. The proposed rule provides as follows:

MAC _____ MONTHLY BILLING OF REIMBURSABLE EMPLOYERS

The division shall notify the reimbursable employer monthly of the amount of payment in lieu of contributions due. However, payment shall not become delinquent until 30 days after the completed calendar quarter.

3. The reason for this rule is to advise agencies monthly of amounts owing so the agency can pay on a monthly basis if desired.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Moody Brickett, Attorney, Employment Security Division, Department of Labor and Industry, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to make the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(22)-S10310 relating to records to be kept by employers.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE (Employers Records) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(22)-S10310 by changing numbering, and adding section (2).

2. MAC 24-3.10(22)-S10310 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(22)-S10310 RECORDS TO BE KEPT BY EMPLOYER

(1) Each employing unit shall preserve existing records with respect to employment performed in its service for a period of five years, as hereinafter set forth, and shall establish, maintain and preserve records with respect to workers engaged in employment on and after the effective date of this rule which shall show:

(a) For each pay period:
(i) The beginning and ending dates for such pay period;
(ii) The total amount of wages, as defined in Section 87-149(c) for employment in such pay period;
(iii)The number and date of weeks in which there were one or more workers in employment.

(b) For each worker:
(i) His name;
(ii) His social security account number;
(iii)His wages for each pay period, showing separately:
~~(a)~~ (A) Money wages payable including special payments or constructive payment of wages.

~~(b)~~ (B) Reasonable cash value of remuneration by the employer in any medium other than cash (Rule MAC 24-3.10(30)-S10470);
~~(c)~~ (C) Estimated or actual amount of gratuities received from persons other than employer (Rule MAC 24-3.10(30)-S10480);
~~(d)~~ (D) Special payments of any kind, including annual bonuses, gifts, prizes, etc.;
~~(4)~~ (iv) The date on which he was hired, rehired, or returned to work after temporary layoff;
~~(5)~~ (v) The date when work was terminated by layoff, quit, discharge, or death;
~~(6)~~ (vi) The cause of any termination;
~~(7)~~ (vii) If he is on a salary basis, his wage rate and the period covered by such rate;
~~(8)~~ (viii) If he is paid on a fixed hourly basis, his hourly rate and the customarily scheduled hours per week prevailing in the establishment for his occupation;
~~(9)~~ (ix) If he is paid on a fixed daily basis, his daily rate and the customarily scheduled days per week prevailing in the establishment for his occupation;
~~(10)~~ (x) The method by which his wages are computed, if he is on a piece rate or other variable pay basis.

(2) These records and reports shall be open to periodic review by an Employment Security Division authorized representative to determine whether proper records are being maintained and all wages are being correctly reported.

3. The reason for this change is to correct the numbering of the sections, and to include a written rule to provide to employers when field representatives are assigned audits.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

7-7/25/77

MAC Notice No. 24-3-10-42

5. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of a rule regarding separation notices to be completed by employers.	)))))	NOTICE OF PROPOSED ADOPTION OF RULE (Reports by Employers) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule _____ regarding separation notices to be completed by employers.

2. The proposed rule provides as follows:

MAC _____ OTHER REPORTS BY EMPLOYERS

(1) Separation notices shall be made available to each individual at the time he becomes unemployed. Such printed notices will be supplied by the Division.

3. The reason for this rule is to furnish the unemployed individual with the information he will need in order to file his claim for unemployment benefits.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Moody Brickett, Attorney, Employment Security Division, Department of Labor and Industry, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to make the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of Rule 24-3.10(22)-S10360 pertaining to employment not localized in Montana.	)))))	NOTICE OF PROPOSED REPEAL OF RULE (Employment Not Localized in Montana) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to repeal Rule 24-3.10(22)-S10360 pertaining to employment not localized in Montana.

2. The rule for consideration for repeal is found on page 24-52 of the Montana Administrative Code.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received by not later than August 22, 1977.

4. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

5. If the division receives requests for a public hearing on this proposed repeal from ten percent (10%) or more persons directly affected, a public hearing will be made by publication in the Administrative Register.

6. The authority of the division to make the proposed repeal is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of a rule regarding interest on past-due contributions.	)	NOTICE OF PROPOSED ADOPTION OF RULE (Interest on Past-Due Contributions) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule _____ regarding interest on past-due contributions.

2. The proposed rule provides as follows:

MAC _____ INTEREST ON PAST-DUE CONTRIBUTIONS

(1) Interest on overdue contributions shall accrue on and after the day following the due date of any contribution payments up to and including the day payment was made. For each period of less than one full month, interest shall be computed at the rate of one-thirtieth of one percent for each day or fraction thereof.

3. The reason for this rule is to provide for the method of computing interest under the new law provision.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Moody Brickett, Attorney, Employment Security Division, Department of Labor and Industry, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at

a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to make the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(26)-S10410 relating to reporting of remuneration in excess of taxable wage base.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Remuneration in Excess of Taxable Wage Base) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(26)-S10410 removing the reference to the amount of taxable wages.

2. MAC 24-3.10(26)-S10410 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(26)-S10410 REPORTING OF REMUNERATION IN EXCESS OF ~~$3,000.00 AND $4,200.00~~ TAXABLE WAGE BASE

(1) After wages paid in any one calendar year by any employer to any one individual employee, up to and including ~~$3,000.00 prior to December 31, 1971, and $4,200.00 beginning January 1, 1972,~~ the taxable wage for the particular calendar year have been reported, and contributions paid thereon, all further wages paid to such employee in such calendar year ~~for employment occuring in such calendar year~~ shall be reported ~~on the contribution report and wage records submitted,~~ but the amount of such wages ~~paid exceeding $3,000.00 prior to December 31, 1971, and $4,200.00 beginning January 1, 1972, with respect to employment occurring in any one calendar year,~~ in excess of the taxable wage base shall be segregated from the total wages paid for contribution payment purposes.

If an employer ~~pays contributions to another state unemployment insurance agency based upon the wages of an employee employed in that state, and later such employee is transferred to Montana by this employer and continues his employment with such employer in Montana, the contributions so paid in such other state upon the employee's first $3,000.00 prior to~~

~~December 31, 1971, and $4,200.00 beginning January 1, 1972, in wages paid during his present calendar-year will be credited to such employer in Montana and he shall pay contributions upon only the remaining wages paid to such employee up to $3,000.00 prior to December 31, 1971, and $4,200.00 beginning January 1, 1972, total in both states during such calendar year,~~ has reported wages for an employee to another state, these wages shall be used in arriving at the wages in excess of the taxable wage base in this state.

3. The reason for this change is to remove any reference to the amount of taxable wages. The amounts now listed are obsolete and the current amounts are covered in the law.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

7-7/25/77

MAC Notice No. 24-3-10-46

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(26)-S10420 relating to due date of contributions of new employers.	) NOTICE OF PROPOSED) AMENDMENT OF RULE) (Due date of Contributions of New Employers)) NO PUBLIC HEARING) CONTEMPLATED

TO: All Interested Parties

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(26)-S10420 by reducing the size of the section.

2. MAC 24-3.10(26)-S10420 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(26)-S10420 ~~,~~E DATE OF CONTRIBUTIONS OF NEW EMPLOYERS

(1) ~~The first contribution payment of any employing unit, which becomes an employer at any time during the calendar year, shall become due on and shall be paid on or before the last day of the month next following the calendar quarter in which such employing unit satisfies the conditions with respect to becoming an employer, and shall include contributions with respect to all wages, as defined in Section 87-149(c), paid for employment occurring on and after the commencement of liability for such contributions, and up to and including the calendar quarter in which the employing unit satisfied the conditions with respect to becoming an employer.~~ All quarterly reports and contributions are due 30 days following the quarter in which the employing unit satisfies the conditions of becoming an employer.

3. The reason for this change is to remove unnecessary wordage and simplify the rule.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(26)-S10430 relating to demand payment under certain conditions.	))))	NOTICE OF PROPOSED AMENDMENT OF RULE (Demand Payment) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(26)-S10430 by adding an additional sentence.

2. MAC 24-3.10(26)-S10430 as proposed to be amended is as follows (new matter is underlined):

MAC 24-3.10(26)-S10430 DEMAND PAYMENT UNDER CERTAIN CONDITIONS

(1) Where an employer ceases to do business, sells or transfers the business, or the major portion of the assets thereof, or becomes insolvent, or, in any case where the division shall deem it necessary, the division may demand immediate payment of the contributions due.

(a) If the report is not received within 30 days of demand, penalty and interest will be charged as provided in Section 87-135.

3. The reason for this change is to make this rule more effective by applying the penalty and interest provision of the law as in the case of other delinquent reports and contributions.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(26)-S10440 relating to report required although no wages paid.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Report Required Although No Wages Paid) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend Rule 24-3.10(26)-S10440 by striking the second sentence and adding a sentence.

2. MAC 24-3.10(26)-S10440 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(26)-S10440 REPORT REQUIRED ALTHOUGH NO WAGES PAID

(1) Every employer subject to the law is required to send in the regular quarterly wage report, even though no employment was given during the quarter. ~~Employers shall file reports for such periods indicating therein that no wages have been paid during such period for services performed in employment subject to the act, and shall continue to file such reports until an application properly made for termination of coverage as provided for in Section 87-1l0(b) shall have been approved by the division, or until the account has been discontinued under Rule MAC 24-3.10(22)-S10380.~~ If this report is not filed by the due date, a penalty for late filing will be assessed.

3. The reason for this change is to remove the superfluous sentence, and to provide penalty for late filing in accordance with new law provisions.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(26)-S10460 relating to the definition of wages.	)	NOTICE OF PROPOSED AMENDMENT OF RULE (Definition of Wages) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend MAC 24-3.10(26)-S10460 by moving the definition of "wages" from other sections to this section, and including additional definitions of earnings considered or not considered as wages.

2. MAC 24-3.10(26)-S10460 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

MAC 24-3.10(26)-S10460 WAGES ~~PAID-DURING-EMPLOYEE'S EARNED-SICK-LEAVE-TAXABLE~~

(1) The term "wages" as ~~defined~~ used in Section 87-149, ~~subsection~~ (c) ~~Revised-Codes-of-Montana, 1947~~ shall include: ~~continuing-wages-received-by an-employee-from-his-employer-during-the-period-of time-that-he-is-unable-to-perform-services-for-his employer-because-of-sickness-or-accident.--If such-continuing-remuneration-is-paid-from-a-fund of-sick-or-accident-benefits,-such-remuneration shall-not-be-considered-as-wage-payment.~~

(a) Holiday pay. Such payments will apply to the week in which the holiday occurred.

(b) Vacation pay. Such payments will apply to the vacation period taken.

(c) Picket duty pay. Such payments will be included when a service is performed according to union contract.

(d) Back-pay awards. Such payments or awards will apply to the period under negotiation or dispute.

(e) Gratuities or tips. If gratuities constitute partial or entire payment for service performed by a worker, the employer shall include as wages the amount of gratuities or tips actually received by each worker, or shall make reasonable valuation of the average remuneration from that source, showing in detail on a statement attached to the employer's first contribution report and thereafter as requested, the basis of such valuation. The requirements of the law and the instructions of the division relating to the reporting of wages are not to be construed as requiring, or permitting employers to require workers to report to their employers the amount of their tips.

(f) Board and Room. Board and room is considered as payment for services performed rather than a deduction from wages paid. The division shall determine or approve the cash value of board and lodging in individual cases. Where the cash value of board and lodging is agreed upon in a contract of hire and is equal to or more than the rates prescribed herein, the amount so agreed upon shall be deemed the value of such board and room.

Board and room furnished shall have not less than the following value:

Full board and room weekly	$50.00
Meals, per week	30.00
Meals, per meal	1.50
Lodging, per week	20.00

(g) Equipment Rental. When an employer-employee relationship is established in accordance with Section 87-148(j)(5)(A)(B)(C), and the remuneration for services performed is included in the gross payment for equipment, the amount to be allotted as wages shall be determined in accordance with the following formula, unless the amount has been previously agreed upon in any contract of hire, and is acceptable to this division.

(i) Wage formula: Twenty-five percent (25%) of the total remuneration paid to employees furnishing heavy equipment (such as but not limited to trucks, bulldozers, etc.) Seventy-five percent (75%) of the total remuneration paid to employees furnishing light equipment (such as but not limited to chain saws).

(2) Lum-sum payments will be prorated over the period for which the individual rendered services.

(3) The term "wages" as used in Section 87-149(c) shall not include:

(a) Jury duty.

(b) Sick pay as defined in 87-149(c)(1)(B) and (C).

(4) Retirement payments made on behalf of an employee are not included as wages for contribution purposes in 87-149 (c)(1)(A) but are included in 87-149 (a)(3)(B) to reduce a claimant's weekly benefit amount.

(a) To determine the weekly reduction of benefits by retirement received from a base-period employer, the following will apply:

Bi-weekly payments . . . . x 26 ÷ 52

Monthly payments . . . . . x 12 ÷ 52

Quarterly payments . . . . x 4 ÷ 52

Semi-annual payments . . . x 2 ÷ 52

Annual payments. . . . . ÷ 52

3. The reason for this rule is to place definition of "wages" in one section. Sick pay is not wages according to law, so this has been deleted. Gratuities, equipment, and board and room (with some increase in board and room allowances), have been moved from other sections. Other payments are included to clarify when such payments will or will not be considered wages.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

7-7/25/77

MAC Notice No. 24-3-10-50

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of Rule 24-3.10(30)-S10480 pertaining to gratuities as wages.	)))))	NOTICE OF PROPOSED REPEAL OF RULE (Gratuities as Wages) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to repeal Rule 24-3.10(30)-S10480 pertaining to gratuities as wages.

2. The rule for consideration for repeal is found on page 24-56 of the Montana Administrative Code.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received by not later than August 22, 1977.

4. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

5. If the division receives requests for a public hearing on this proposed repeal from ten percent (10%) or more persons directly affected, a public hearing will be made by publication in the Administrative Register.

6. The authority of the division to make the proposed rule is based on Section 87-121, R.C.M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of Rule 24-3.10(30)-S10490 pertaining to prorating wages and equipment rental.	))))))	NOTICE OF PROPOSED REPEAL OF RULE (Prorating Wages and Equipment Rental) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to repeal Rule 24-3.10(30)-S10490 pertaining to Prorating Wages and Equipment Rental.

2. The rule for consideration for repeal is found on page 24-56 of the Montana Administrative Code.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received by not later than August 22, 1977.

4. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

5. If the division receives requests for a public hearing on this proposed repeal from ten percent (10%) or more persons directly affected, a public hearing will be made by publication in the Administrative Register.

6. The authority of the division to make the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
LABOR AND INDUSTRY

In the matter of the adoption of a rule regarding imposition of penalties.	)	NOTICE OF PROPOSED ADOPTION OF RULE (Imposition of Penalties) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 24, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule _____ regarding the imposition of penalties.

2. The proposed rule provides as follows:

MAC _____ IMPOSITION OF PENALTIES

(1) The phrase "false statement or representation" as set forth in 87-145 (1) means something more than merely an untrue or erroneous statement, rather it implies that the statement made is designedly untrue and deceitful, and made with the intention to deceive the division.

(2) No administrative penalty may under any circumstances be imposed based upon a mistake or a statement not meeting the criteria as set forth in Rule 1 above.

(3) Prior to an administrative penalty being imposed, there first must be a determination based on evidence that a false statement or representation has been made and such determination will not become operative until the claimant has been given a reasonable opportunity for an ex-parte hearing for the purpose of affording said claimant an opportunity to refute the preliminary determination if in fact such refutation exists.

(4) Following a preliminary determination that a false statement or representation has been made, the following will apply:

(a) Criminal action. On cases being considered for a criminal action, the claimant shall be given three working days notice by the local office

by both telephone and certified mail where possible, and by certified mail alone if no telephone exists, of the time, place, and purpose of such ex-parte hearing.

(b) Administrative Action. On cases being considered for administrative penalty and overpayment only, the claimant shall be given seven working days notice by regular mail letter from the central office.

(5) Should claimant fail to appear at time and place designated for ex-parte hearing:

(a) Criminal Action. On cases being considered for criminal action, should claimant fail to appear at time and place designated for ex-parte hearing or fail to request a continuance for good cause, the preliminary determination will become effective as of original date of determination, that is three working days following notice to claimant. (See (4)).

(b) Administrative Action. On cases being considered for administrative action, should claimant fail to respond to the notice by letter from the Supervisor of Benefits or fail to request a continuance for good cause, the preliminary determination will become effective as of original date of determination, that is seven working days following notice to claimant. (See (4)).

(6) Where claimant appears at the local office and offers evidence:

(a) Criminal Action. On cases being considered for criminal action, where claimant appears at the local office and offers evidence, or submits evidence by mail or by telephone, such evidence of whatever nature, will be recorded and immediately forwarded to the Claims Investigation Section for consideration and determination. Should the Claims Investigator concur in the preliminary determination, such preliminary determination will be retroactive to the date of origin and constitute a final decision, however, should the claimant complete a form UI-404 statement, the date of determination shall then be the date such statement is completed. Should the Claims Investigator

determine that substantial and convincing evidence does not exist to sustain the preliminary determination, the Claims Investigator shall forthwith set aside the preliminary determination.

(b) Administrative Action. On cases being considered for administrative action, where claimant responds by letter, telephone, or to the local office, such evidence of whatever nature, will be recorded and immediately forwarded to the Supervisor of Benefits for consideration and determination. Should the Supervisor of Benefits concur in the preliminary determination, such preliminary determination will be retroactive to the date of origin and constitute a final decision. Should the Supervisor of Benefits determine that substantial and convincing evidence does not exist to sustain the preliminary determination, the Supervisor of Benefits shall forthwith set aside the preliminary determination.

(7) The claimant shall be notified of the decision of the central office and if dissatisfied with such decision may appeal said decision in accordance with the Unemployment Laws of this state and the Administrative Procedures Act.

(8) Where a person has been convicted of having made a false statement or representation either by guilty plea or following trail, this division will not be required to hold an ex-parte hearing prior to imposing its administrative penalty. An appeal from a conviction will require an ex-parte hearing as referred to in Rules 1 through 7 above.

3. The reason for this rule is to adequately safeguard the rights of the claimant and other interested parties, and satisfying the requirements of due process of law.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Moody Brickett, Attorney, Employment Security Division, Department of Labor and Industry, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 22, 1977.

5. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before August 22, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to make the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State July 13, 1977.

BEFORE THE BOARD OF ARCHITECTS
OF THE
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING
OF THE
STATE OF MONTANA

IN THE MATTER OF THE Proposed Amendment of MAC 40-3.10(6)-S1030 Seal; MAC 40-3.10(6)-S10000 Renewals and MAC 40-3.10(6)-S10010 Reciprocity.	NOTICE OF PROPOSED AMENDMENT of MAC 40-3.10(6)-S1030 Seal; MAC 40-3.10(6)-S10000 Renewals and MAC 40-3.10(6)-S10010 Reciprocity. No Hearing Contemplated

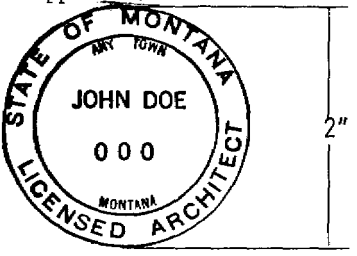
TO: ALL INTERESTED PERSONS

1. On August 24, 1977, the Board of Architects proposes to amend MAC 40-3.10(6)-S1030 Seal; MAC 40-3.10(6)-S10000 Renewals and MAC 40-3.10(6)-S10010 Reciprocity.

   These amendments were originally proposed in MAC Notice No. 40-3-10-3 published on June 24, 1977. However, because of some misunderstandings and because the Board has determined it necessary to slightly revise the original proposal this notice is proposed as an amended notice.

2. The amendment of MAC 40-3.10(6)-S1030 Individual Seal as proposed will add the following explanation and illustration to existing sub-section (1):

   "The proper seal as above described should appear as illustrated herein."



The reason for this proposed illustration of the seal is to help clarify the required appearance of the seal described in the existing rule.

3. The amendment of MAC 40-3.10(6)-S10000 Renewals as proposed will read as follows: (Deleted matter interlined, new matter underlined.)

> "(2) The annual license fee shall be Twenty Dollars ($20.00). The beginning of the fiscal year is July 1 and all licenses bear this date. ~~The license fee is due July 1 of each year.~~ The license fee shall be due beginning on July 1. However a one (1) month grace period thereafter is provided by statute. Therefore license fees must be paid no later than July 31. Any license which has not been renewed by that date will expire by operation of statute. The holder of an expired license must make reapplication to the Board."

The reason for this proposed amendment is to clarify the existing rule and bring it into conformance with Section 66-110, which makes all licenses expire on the last day of July.

4. Amendment of MAC 40-3.10(6)-S10010 Reciprocity as proposed will add the following language as sub-section (2) to the existing rule:

> "All applicants for registration by reciprocity who were licensed in their respective jurisdiction prior to 1964, shall submit evidence of having successfully completed an A.I.A. or NCARB approved seminar on seismic forces."

The reason for the proposed amendment is to provide a more efficient procedure for certifying competency in seismic forces. The proposed rule will eliminate the need for administering individual examinations testing for such competency. The amendment applies only to applicants licensed out-of-state prior to 1964 because in that year the National Examination commenced testing for competency in seismic forces.

5. Interested persons may present their data, views, or arguments concerning the proposed amendment to the Board of Architects, LaLonde Building, Helena, Montana. Written comments, in order to be considered, must be received no later than August 22, 1977.

6. If any person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Architects on or before August 22, 1977.

7. If the Board receives requests for a public hearing on this proposed amendment from twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Montana Administrative Register.

8. The authority of the Board of Architects to make this proposed amendment is based on Section 66-102,103 R.C.M. 1947.

DATED this 14th day of July, 1977.

BOARD OF ARCHITECTS
RAYMOND THON, CHAIRMAN

BY: Ed Carney
Ed Carney, Director
Department of Professional
and Occupational Licensing.

Certified to the Secretary of State 7-14, 1977.

BEFORE THE BOARD OF PHARMACISTS
OF THE
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING
OF THE
STATE OF MONTANA

IN THE MATTER OF the Proposed Amendment of MAC 40-3.78(6)-S 78040. Set and Approve Requirements and Standards - Internship Regulations.	NOTICE OF PROPOSED AMENDMENT OF MAC 40-3.78(6)-S 7840. Set and Approve Requirements and Standards-Internship Regulations. No Hearing Contemplated.

TO: ALL INTERESTED PERSONS

1. On August 24, 1977 the Board of Pharmacists proposes to amend MAC 40-3.78(6)-S78040. Set and Approve Requirements and Standards - Internship Regulations.

2. The amendment as proposed will make the following changes to Sub-Section (h); (Deleted matter interlined, new matter underlined.)

> "(h) "The Internship period " means 1500 hours of practical experience in an approved pharmacy, hospital or other facility. ~~These hours of experience may be acquired after graduation or during regular student vactions of not less than five (5) consecutive days duration.~~ The Intern must acquire a minimum of 20 hours experience per calendar week in not less than five (5) days per calendar week, and may acquire a maximum of ~~40~~ 48 hours experience per calendar week. However The student may acquire up to ~~400~~ 500 hours concurrently with school attendance in courses, clinical pharmacy programs of demonstration projects which have been approved by the Tri-Partite Committee and the State Board of Pharmacists."

3. The reason for this proposed amendment is to allow interns to fulfill their requirements in a shorter time period than is now allowed. Under the proposed change interns will be allowed to accumulate internship hours during the the school year at times other than those now allowed in

the clinical area. In addition the proposed amendment will allow accumulation up to forty-eight (48) hours per week rather than forty (40) and will accumulate towards the fifteen hundred (1500) hours in a maximum of five hundred (500) hours clinical experience rather than four hundred (400) hours.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Pharmacists, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than August 22, 1977.

5. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Pharmacists, LaLonde Building, Helena, Montana, on or before August 22, 1977.

6. If the Board of Pharmacists receives requests for a public hearing on the proposed amendment from more than twenty-five (25) persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Administrative Register.

7. The authority of the Board of Pharmacists to make the proposed amendment is based on Section 66-1504 R.C.M. 1947.

DATED THIS 14th DAY OF July, 1977.

BOARD OF PHARMACISTS
TERRY J. DONAHUE
CHAIRMAN

BY: Ed Carney
Ed Carney, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 7-14, 1977.

BEFORE THE BOARD OF REAL ESTATE
OF THE
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING
OF THE
STATE OF MONTANA

IN THE MATTER of the Proposed Adoption of New Rules Regarding a Code of Ethics.	NOTICE OF PUBLIC HEARING ON the Proposed Adoption of New Rules Regarding a Code of Ethics.

TO: ALL INTERESTED PERSONS

1. On August 19, 1977 at 2:00 o'clock p.m. in the Warbonnet Inn, Billings, Montana, a public hearing will be held to receive testimony in the matter of the adoption of new rules regarding a Code of Ethics.

2. The rules as proposed are somewhat lengthy and in the interest of economy they are not published in full in this notice. Generally, they are divided into three (3) parts with a total of 21 Articles thereunder.

Part I governs relationships to the public.
Part II governs relationships to the client.
Part III governs relationships to his fellow licensee.

If any person wishes to review the full text of the proposed rules he may obtain the same upon request from the Board of Real Estate, LaLonde Building, Helena, Montana 59601. (Ph: 449-2961)

3. The Board has found, in reviewing complaints that a Broker or Salesman may have engaged in "unethical" activities which was not directly prohibited by statute. The Board has determined that the most effective method for controlling and enforcing sanctions against unethical practice is through the adoption of a Code of Ethics. The Board has heretofore recommended that its licensees adhere to a National Standard Code of Ethics. By this proposed action the Board proposes to make ethical standards mandatory.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

Written statements may be presented to the Board prior to the date of hearing and will be made a part of the record for the Board's review.

5. The Board of Real Estate or its designee shall preside over and conduct the hearing.

6. The authority of the Board of Real Estate to make the proposed adoption is based on Section 66-1927, R.C.M. 1947.

DATED THIS 14th day of July, 1977.

BOARD OF REAL ESTATE
ROBERT C. CUMMINS,
ACTING CHAIRMAN

BY: _____
Ed Carney, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 7-14, 1977.

BEFORE THE BOARD OF REAL ESTATE
OF THE
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING
OF THE
STATE OF MONTANA

IN THE MATTER OF THE Proposed Amendment of MAC 40-3.98(6)-S 98050, Fee Schedule.	NOTICE OF PROPOSED AMENDMENT of MAC 3.98(6)-S98050, Fee Schedule.

No Hearing Comtemplated.

TO: ALL INTERESTED PERSONS

1. On August 24, 1977 the Board of Real Estate proposes to amend MAC 40-3.98(6)-S98050, Fee Schedule.

2. The amendment as proposed will make the following changes to the existing fees: (Deleted matter interlined, new matter underlined.)

(2)	a. For initial examination, a fee....~~$50.00~~	$25.00
(5)	For each annual renewal of resident broker's license issued, a fee.....~~$50.00~~	$30.00
(7)	For each annual renewal of non-resident broker's license, a fee.....~~$50.00~~	$30.00
(8)	For each original salesman's license, a fee.....~~$50.00~~	$25.00
(9)	For each annual renewal of a salesman's license, a fee.....~~$30.00~~	$15.00
(11)	For each change of place of business or change of employer or contractual associate, a fee.....~~$25.00~~	$15.00
(12)	For each duplicate license, where the original license is lost or destroyed and affidavit is made thereof, a fee..~~$-5.00~~	$10.00
(13)	For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made thereof, a fee.....~~$-5.00~~	$10.00

3. The 1977 Legislature, in adopting House Bill 610, imposed the maximum fees for which the Board may charge in the catagories listed above. This Notice proposes setting the fees reflected above in the proposed change at the maximum allowed and within the limits set by such legis-

lation. The Board has determined that the maximum fee must be assessed in order to properly absorb administrative costs.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Real Estate, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than August 22, 1977.

5. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Real Estate, LaLonde Building, Helena, Montana, on or before August 22, 1977.

6. If the Board of Real Estate receives requests for a public hearing on the proposed amendment from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Montana Administrative Register.

7. The authority of the Board of Real Estate to make the proposed amendment is based on Section 66-1927 R.C.M. 1947.

DATED THIS 14th DAY OF July, 1977.

BOARD OF REAL ESTATE
ROBERT CUMMINS
ACTING CHAIRMAN

BY: Ed Carney
Ed Carney, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 7-14, 1977.

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

In the matter of the amendment of rules MAC 46-2.10(18)-S11460 pertaining to medical assistance, and MAC 46-2.10(18)-S11490 pertaining to third party liability.

NOTICE OF PUBLIC HEARING OF AMENDMENT OF RULES PERTAINING TO THE REHABILITATIVE SERVICES DIVISION.

TO: All Interested Persons

1. On September 5, 1977, the Department of Social and Rehabilitation Services intends to amend rules MAC 46-2.10(18)-S11460 relating to medical assistance, and MAC 46-2.10(18)-S11490 relating to third party liability. On Monday, August 22, 1977, at 10:00 a.m., a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the proposed amendments to the rules. Interested persons may submit their data, views or arguments, orally or in writing, at this hearing. Written data, views or arguments may be submitted to Richard Weber, P.O. Box 4210, Helena, Montana, 59601, any time before September 1, 1977.

2. The proposed amendment to rule MAC 46-2.10(18)-S11460 will delete (2)(c) of that rule completely, as it will be covered under rule MAC 46-2.10(18)-S11490 as amended.

The proposed amendment to MAC 46-2.10(18)-S11490 would read as follows (to make reading easier, the first section illustrates the deletions; the second is the complete rule as amended):

46-2.10(18)-S11490 THIRD PARTY LIABILITY ~~(1)--Third party liability shall be treated as a current resource when found to exist, except that payment will not be withheld in behalf of an eligible individual because of liability of a third party when such liability or the amount thereof cannot be currently established or is not currently available to pay the individual's medical expense.~~

~~(a)--Third party includes an individual, institution, corporation, public or private agency who is or may be liable to pay all or part of the medical cost of injury, disease or disability of an applicant or recipient of medical assistance.~~

~~(b)--Referrals shall be made to the Legal Unit, Department of Social and Rehabilitation Services, P.O. Box 1723, Helena, Montana, 59601, for examination. --The Legal Unit shall make referrals to the Department of Revenue for recovery.~~
(History: Sec. ~~82A-107, 82A-1902, 82-4203, 71-233.1~~, 71-1511 et. seq., R.C.M. 1947; ~~45-6.F.R.-250.31-(1973);~~ NEW, MAC Not. No. 46-2-57; Order MAC No. 46-2-26; Adp. 10/15/74; Eff. 11/4/74.)

46-2.10(18)-S11490 THIRD PARTY LIABILITY AND SUBROGATION (1) Before Medicaid payments can be made to providers, all other identifiable sources of payment must be exhausted by recipients and/or providers.

(a) It is the responsibility of the provider to inquire of the Medicaid patient and/or his/her representative about other identifiable sources of payment, which includes third party liabilities, for payment of their services. The providers must bill all identifiable sources of payment prior to billing Medicaid.

(b) The Department will not withhold payment in behalf of an eligible individual because of third party liability when such liability or the amounts thereof cannot be currently established or is not currently available to pay the individual medical expense. In such cases, the Department will make payment within 180 days of receipt of billing.

(i) Billing statements delivered to recipients of medical assistance by providers who are seeking payment for said recipients' medical care or who have received payment for said recipients' medical care must clearly state on such billing statements, "Subrogation Notice -- billed to Medicaid." In the event of providers' failure to clearly state on their billing statements the foregoing information, the Department may withhold or recover from such providers such sums of money lost to the Department as a result of providers' failure.

(2) The Department is subrogated to the recipients' right to third party recoveries to the extent necessary to reimburse the Department for medical assistance paid on behalf of the recipient. The Department will seek reimbursement from a third party for assistance provided, when the third party's liability is established after assistance is granted, and in any other case in which the liability of the third party exists, but was not treated as a current source of payment.

(3) Third party includes an individual, institution, corporation, public or private agency who is or may be liable to pay all or part of the medical cost of injury, disease or disability of an applicant or recipient of medical assistance.

(4) Referrals shall be made to the Program Integrity Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601, for examination. The Program Integrity Bureau may send referrals to the Department of Revenue for recovery. (History: Sec. 71-1511 et. seq., R.C.M. 1947; NEW, MAC Not. No. 46-2-57; Order MAC No. 46-2-26; Adp. 10/15/74; Eff. 11/4/74; AMD, MAC Not. No. 46-2-117; Order MAC No. 46-2-64; Adp. 9/5/77; Eff. 10/03/77.)

3. Richard Weber, P.O. Box 4210, Helena, Montana, has

been designated by the Director of the Department of Social and Rehabilitation Services to preside over and conduct the hearing.

4. The rationale of the Department in adopting the amendments is to implement Section 71-241.1 of the Revised Codes of Montana by:

a. requiring that liable third parties be considered the primary source of payment for medical services;

b. assuring that payment will be made within a reasonable period of time, regardless of determination of third party liability;

c. assuring that third parties are notified that the Department is subrogated to the rights of the recipient of medical services; and

d. defining the circumstances under which the Department will seek reimbursement from a third party, the amount of reimbursement which may be sought, and the parties from whom reimbursement may be sought.

5. The authority of the Department of Social and Rehabilitation Services to amend these rules is based on Section 71-1511, R.C.M. 1947.

Patrick E. Mullay
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 1, 1977.

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

In the matter of the amendment of rules MAC 46-2.6(2)-S6180 and 46-2.6(2)-S6190, the repeal of rule MAC 46-2.6(2)-S6200, and the adoption of eleven new rules pertaining to voluntary institution licensing services.	))))))	NOTICE OF SECOND PUBLIC HEARING OF RULES PERTAINING TO CHILD CARE AGENCIES.

TO: All Interested Persons

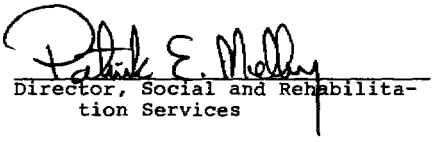
1. On August 16, 1977, at 10:00 a.m., a second public hearing on child care rules will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rules MAC 46-2.6(2)-S6180 and 46-2.6(2)-S6190, the repeal of rule MAC 46-2.6(2)-S6200, and the adoption of eleven new rules relating to licensing of child care agencies, to be amended, repealed, and adopted no sooner than August 26, 1977, and to be effective on October 4, 1977. Interested persons may submit their data, views or arguments, orally or in writing, at this hearing. Written data, views or arguments may be submitted to M. Gene McLatchy, P.O. Box 4210, Helena, Montana, 59601, any time before August 11, 1977.

2. The Department intends to amend and repeal existing rules relating to licensing of institutions (child care agencies). The adoption of the new rules for Sub-Chapter 2 of Chapter 6 pertain to child care agency licensing procedures and licensing standards including records and reports; admissions, discharge, and follow-up; child care, development, and training; staff; child/staff ratio; finances; and physical plant. Because of the length of the proposed rules, the text is not printed herein. However, a copy of the rules may be obtained by writing to the Legal Unit, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601.

3. The rationale for this request for repeal, amendment and adoption of the child care agency standards is to substantially update such standards since the previous 1967 revision. There is critical need to provide new definitions and to describe the required functions of such facilities in order to conform to Montana's progress in the area of substitute residential child care.

4. M. Gene McLatchy, P.O. Box 4210, Helena, Montana, 59601, has been designated by the Director of the Department of Social and Rehabilitation Services to preside over and conduct the hearing.

5. The authority of the Department of Social and Rehabilitation Services to adopt, amend and repeal these rules is based on Title 10 Chapter 13 of the Revised Codes of Montana, especially Section 10-1318.



Director, Social and Rehabilitation Services

Certified to the Secretary of State July 11, 1977.

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

In the matter of the amendment of rule MAC 46-2.2(2)-P2060, pertaining to contested cases, and Section I(E)(8) of the May, 1974, Manual of Reimbursement for Nursing Home Care.	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO CONTESTED CASES AND NURSING HOME CARE REIMBURSEMENT. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1977, the Department of Social and Rehabilitation Services proposes to amend rule MAC 46-2.2(2)-P2060, relating to contested cases, and Section I(E)(8) of the May, 1974, Manual of Reimbursement for Nursing Home Care.

2. The rationale for the proposed amendment to rule MAC 46-2.2(2)-P2060 is to clarify the rights of all parties affected by a hearings officer's decision in a contested case to seek review of that decision by the Montana Social and Rehabilitation Board of Appeals. The paragraphs affected by the amendment are (3), (7) and (8). The proposed amendment would read as follows:

"(3) If ~~the claimant~~ any affected party feels the evidence presented does not sustain the findings of fact, or the conclusions of law are incorrect, or if the decision is not in conformity with the law or facts he may file a written Notice of Appeal, within 10 days of receipt of the hearing officer's decision, with the county department for forwarding to the hearing officer."

"(7) ~~Claimant shall not be~~ No party shall be allowed to submit additional evidence to the Board but shall be afforded the opportunity to submit a brief and/or present his legal argument either personally or through his representative."

"(8) The Board shall reduce its decision to writing and mail a copy, by certified mail, within ten (10) days to ~~the appellant and his~~ all parties and their representatives, if any. The decision of the Board shall contain a statement notifying the ~~claimant~~ affected parties that ~~he~~ they ~~has~~ have the right to seek judicial review of the Board's action within thirty (30) days."

3. The rationale for the proposed amendment to Section I(E)(8) of the May, 1974, Manual of Reimbursement for Nursing Home Care, which is incorporated in the Codes by referral, is to conform that provision to procedures in other types of cases. The proposed amendment would read:

"8. ~~The provider~~ Any affected party may submit a Notice of Appeals within ten days of the hearings officer's decision. The Notice of Appeals should set forth the specific grounds of the complaint."

4. Interested parties may submit their data, views or arguments concerning the proposed rule changes in writing to: Legal Unit, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601. Written comments in order to be considered must be received no later than August 25, 1977.

5. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to: Legal Unit, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601, on or before August 25, 1977.

6. If the Department receives requests for a public hearing on the proposed amendments by more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the Department to make these proposed amendments is based on Sections 82-4203 and 71-1511, R.C.M. 1947.

Patrick E. Melby
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 11, 1977.

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

In the matter of the amendment of rule MAC 46-2.10(14)-S11150 pertaining to eligibility requirements for AFDC.	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE PERTAINING TO ELIGIBILITY REQUIREMENTS FOR AFDC.

TO: All Interested Persons

1. On August 17, 1977, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rule MAC 46-2.10(14)-S11150, pertaining to eligibility requirements for AFDC, to be enacted no sooner than August 20, 1977, and to be effective on October 4, 1977. Interested persons may submit their data, views or arguments, orally or in writing, at this hearing. Written data, views or arguments may be submitted to M. Gene McLatchy, P.O. Box 4210, Helena, Montana, 59601, any time before August 12, 1977.

2. The Department intends to amend rule MAC 46-2.10(14)-S11150 as follows:

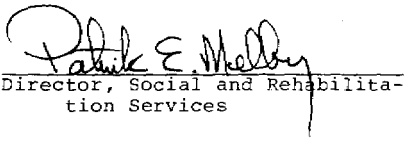
"(e) ~~An unemployed father has the option of choosing between receiving unemployment benefits or AFDC/UF payments.~~ An unemployed father must apply for and accept any unemployment compensation benefits to which he is entitled. Such unemployment benefits are to be subtracted from the AFDC assistance to which he is entitled."

3. The rationale for this request for amendment is to bring Montana Administrative Codes for the Department of Social and Rehabilitation Services in compliance with changes in the Federal regulation on Aid to Families with Dependent Children (AFDC) involving the Unemployed Father (AFDC/UF), whereby an unemployed father of dependent children must apply for and accept unemployment benefits. However, the unemployed father still qualifies for AFDC payments, but the unemployment benefits are subtracted from the AFDC payments to which he is entitled.

4. M. Gene McLatchy, P.O. Box 4210, Helena, Montana, 59601, has been designated by the Director of the Department of Social and Rehabilitation Services to preside over and conduct the hearing.

5. The authority of the Department of Social and Rehabilitation Services to amend this rule is based on Section 71-1511, R.C.M. 1947.

SOCIAL AND
REHABILITATION SERVICES



Director, Social and Rehabilitation Services

Certified to the Secretary of State July 11, 1977.

4-2.6(2)-S650 AGRICULTURE

CENTRALIZED SERVICES

NEW EMERGENCY RULE

REASONS FOR ADOPTING

On this date the amended law in Section 3-227, R.C.M. 1947 becomes effective, requiring the department to set the procedures for receiving reports from persons licensed to merchandise grain. It is of the essence that this department not have a lag period of time in which we do not receive reports, therefore it is most important that this emergency rule be put into force on this date.

Without this rule the department would not be able to require the grain, wheat and barley industries to submit forms necessary for enforcement of other laws of the State of Montana.

This rule will be made permanent during the 120 day interim period to comply with the Administrative Procedures Act and Section 3-227, R.C.M. 1947.

4-2.6(2)-S650 REPORTS. (1) Reporting forms will be provided by the Department of Agriculture to every person licensed to merchandise grain. These reports shall be completed and returned to the department after being sworn to under oath.

(a) These reports shall include but not be limited to the total weight of each kind of grain received and shipped. The amount of outstanding storage receipts on that date, and a statement of the amount of grain on hand to cover them.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within twenty (20) days after the end of a month in which he purchases a grower's wheat or barley.

(a) The information provided by the licensed grain merchandiser to the department shall comply with the requirements in Section 3-2913, R.C.M. 1947. (History: Sec. 3-227, R.C.M. 1947; NEW EMRG; Order MAC No. 4-2-30; Adp. 6/30/77; Eff. 6/30/77).

EXPIRES Sept. 27, 1977

(ix) Hail Division. The Hail Division administers and supervises the State Hail Insurance Program under the guidelines and policies developed by the State Board of Hail Insurance.

(x) Rural Development Unit. The Rural Development Unit is responsible for providing financial assistance in the form of loans and/or grants from the assets of the former Montana Rural Rehabilitation Corporation. The Department offers the following types of loans to qualified persons: Junior Livestock, Federally Insured Student Loans, Grants to Farm Organizations, Subordination Operating Loans and Real Estate Participation Loans.

(3) Information or Submission. General inquiries regarding the department may be addressed to the Director. Specific inquiries regarding the functions of each division or committee may be addressed to the administrator of the division through the department. All requests for hearings, declaratory rulings and for the participation in rule making authority may be addressed to the Director unless the notice in the Montana Administrative Register makes specific provision for submissions or requests.

(4) Personnel Roster. The addresses of the Director and each division administrator are as follows:

W. Gordon McOmber, Director, Department of Agriculture, 1300 Cedar Street, Airport Way, Bldg. West, Helena, Montana 59601.

Eldon Fastrup, Director of Programs & Operations, Department of Agriculture, 1300 Cedar Street, Airport Way, Bldg. West, Helena, Montana 59601.

W. Ralph Peck, Administrator, Department of Agriculture, Centralized Services Division, 1300 Cedar Street, Airport Way, Bldg. West, Helena, Montana 59601.

Gene J. Carroll, Administrator, Department of Agriculture, Marketing and Transportation Division, 1300 Cedar Street, Airport Way, Bldg. West, Helena, Montana 59601.

Tim H. Gill, Manager, Rural Development Unit, 1300 Cedar Street, Airport Way, Bldg. West, Helena, Montana 59601.

Willard A. Kissinger, Administrator, Department of Agriculture, Apiculture Division, 1300 Cedar Street, Airport Way, Bldg. West, Helena, Montana 59601.

Burton Ginther, Administrator, Department of Agriculture, Feed and Fertilizer Division, Montana State University, McCall Hall, Bozeman, Montana 59715.

Lawrence Vigen, Administrator, Department of Agriculture, Grain Division, 821 17th Street North, P.O. Box 1397, Great Falls, Montana 59401.

Maurice W. Smith, Administrator, Department of Agriculture, Hail Division, 1300 Cedar Street, Airport Way, Bldg. East, Helena, Montana 59601.

Roy Bjornson, Administrator, Department of Agriculture, Horticulture Division, 1300 Cedar Street, Airport Way, Bldg. West, Helena, Montana 59601.

Gary L. Gingery, Administrator, Department of Agriculture, Pesticide Division, 1300 Cedar Street, Airport Way, Bldg. West, Helena, Montana 59601.

Robert Brastrup, Administrator, Department of Agriculture, Wheat Research and Marketing Division, 600 6th Street N.W. P.O. Box 3024, Great Falls, Montana 59401.

(5) Charts of Agency Organization. Descriptive charts of the Department of Agriculture are attached on the following three pages of this rule and by this reference are herein incorporated. (History: Sections 82-4203, 82A-107, and 82A-108, R.C.M. 1947; Order MAC No. 4-1; Adp. 12/29/72; Eff. 12/31/72; AMD MAC Not. No. 4-2-1; Order MAC No. 4-2-3; Adp. 1/15/74; Eff. 2/4/74; AMD MAC Not. No. 4-2-2; MAC Order No. 4-2-4; Adp. 1/15/74; Eff. 2/4/74; Sec. 82-1501 and 82A-304, R.C.M. 1947; Order MAC No. 4-2-9; Adp. 12/16/74; Eff. 3/7/75; AMD Order MAC No. 4-2-15; Adp. 10.15.75; Eff. 11/3/75; AMD Order MAC No. 4-2-15; Adp. 2/17/76; Eff. 3/7/76; AMD Order MAC No. 4-2-21; Adp. 7/15/76; Eff. 8/4/76; AMD Order MAC No. 4-2-31; Adp. 7/14/77; Eff. 8/3/77).

REASONS FOR RULES

Every ten years all states attempt to revise the form of their vital statistics records in order to approximate as closely as possible the standard forms recommended by the National Center for Health Statistics, which in turn are to reflect changes in medical practice and the technology of records management. As a result, Montana has revised its record forms in order to facilitate sharing of statistics among states and yet recognize special requirements of Montana law.

The date set for the switch nationally to the revised forms is January 1, 1978. The following rules were amended or added in order to include copies of the revised vital statistics forms to be used after January 1, 1978.

MAC 16-2.6(6)-S650	CERTIFICATE OF BIRTH
MAC 16-2.6(6)-S6010	DEATH CERTIFICATE TO BE SPECIFIC
MAC 16-2.6(6)-S6090	DISSOLUTION OR INVALIDATION OF MARRIAGE RECORD FORM
MAC 16-2.6(6)-S6140	ABORTIONS, FACILITY REPORT TO DEPARTMENT
MAC 16-2.6(6)-S6150	FETAL DEATH CERTIFICATE

Each rule explains the major differences between the form still in effect and the one to be in effect after January 1, 1978.

16-2.6(6)-S650 HEALTH AND ENVIRONMENTAL SCIENCES

Sub-Chapter 6

Records and Statistics

16-2.6(6)-S650 CERTIFICATE OF BIRTH (1) A certificate of birth for every child born in Montana shall be made and filed by the attending physician or midwife within ten (10) days after the date of birth. If there is no attending physician or midwife, it shall be the duty of the father of the child, householder or owner of the premises, or the head of the hospital or institution in which the birth occurred to make and file the certificate within ten (10) days after birth. A copy of the form to be used after January 1, 1978, for Montana Certificate of Live Birth follows. The present birth certificate form differs slightly in placement of items on the form, does not distinguish between fetal deaths occurring before and after 20 weeks, and does not include the Apgar score. It should be noted that the lower half of the form contains confidential information primarily for statistical purposes, and is never certified as part of the birth certificate except upon request by a person or agency meeting the standards of sections 69-4404 and 69-4405, R.C.M. 1947. (History: Sec. 69-4402, R.C.M. 1947; Order MAC No. 16-1; Adp. 12/31/72; Eff. 12/31/72; IMP Sec. 69-4411, 69-4413, R.C.M. 1947; AMD, MAC Not. No. 16-2-74; Order MAC No. 16-2-32; Adp. 6/14/77; Eff. 7/26/77.)

STATE COPY
MONTANA
CERTIFICATE OF LIVE BIRTH
125
CHILD
MOTHER
FATHER
CERTIFIER
ALL SIGNATURES MUST BE IN BLACK OR DARK BLUE INK. SEE HANDBOOK FOR INSTRUCTIONS.

16-2.6(6)-S6000 RECORDS OF INSTITUTIONS (1) The records of all hospitals, almshouses, lying-in or other institutions shall contain the following information: Full name of patient; address; sex; color or race; single, married, widowed or divorced; date of birth; age; occupation; birthplace; name of father; birthplace of father; maiden name of mother; birthplace of mother; disease at entrance; and date of entrance, discharge or removal, or death.

(2) The requirements of the Uniform Vital Statistics Act shall be literally enforced; and it shall be the duty of the department or its duly authorized agents, to inspect the records of all hospitals, almshouses, lying-in or other institutions, both public and private, as often as in the judgment of the department it may be necessary so to do; and such hospitals, almshouses, lying-in or other instututions shall furnish such information or reports as the department may from time to time require.

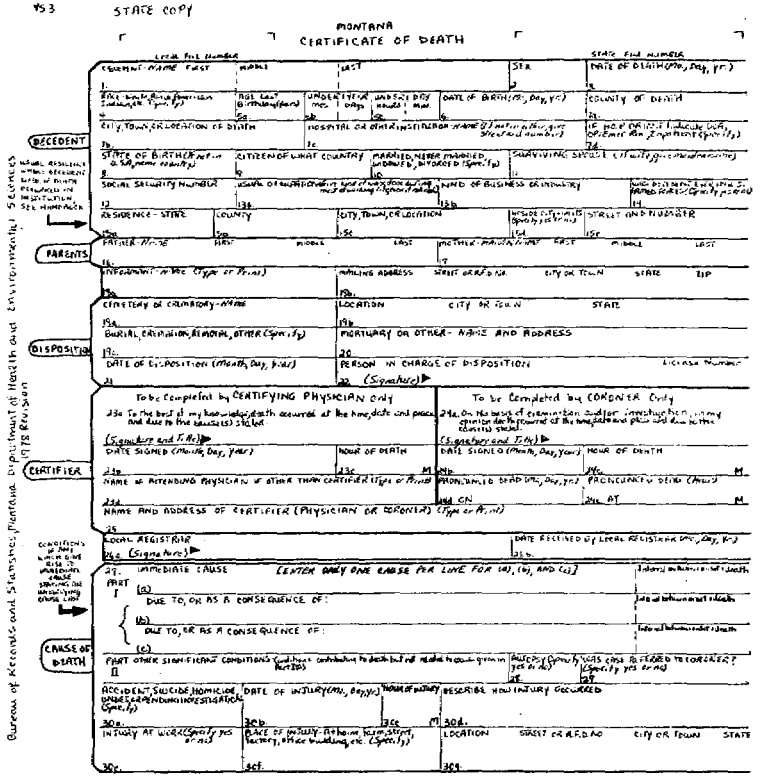
(3) It shall be the duty of the superintendent of any hospital wherein a birth occurs to present a completed birth certificate to the mother of each baby born therein before she leaves the institution for review as to the correctness of the information contained in the birth certificate. The mother must sign Item 9a after the words "I have reviewed this, my child's birth certificate, and find the information correct." (History: Sec. 69-4402, R.C.M. 1947; Order MAC No. 16-1; Adp. 12/31/72; Eff. 12/31/72; AMD, MAC Not. No. 16-2-44; Order MAC No. 16-2-15; Adp. 11/15/74; Eff. 12/5/74.)

16-2.6(6)-S6010 DEATH CERTIFICATE TO BE SPECIFIC (1) Every death certificate shall state the specific items of information as to the disease, manner and cause of death, and if from external causes or violence, it shall state whether accidental, suicidal or homicidal, and the manner in which the accident happened or the suicide or homicide was committed. The death certificate form which will be used after January 1, 1978, follows this rule. It differs from the present death certificate form in that:

(a) it adds questions whether the decedent was ever in the armed forced; whether, if death was in an institution, it occurred on arrival, during an operation, in the emergency room or as an inpatient; and whether the case was referred to a coroner;

(b) it deletes reference to whether the death occurred within or outside city limits and whether autopsy findings were considered in determining cause of death.

In addition, the cause of death section is placed at the bottom of the form where it may be easily omitted, if desired, when certified copies are issued. (History: Sec. 69-4402, R.C.M. 1947; Order MAC No. 16-1; Adp. 12/31/72; Eff. 12/31/72; AMD, MAC Not. No. 16-2-74; Order MAC No. 16-2-32; Adp. 6/14/77; Eff. 7/26/77.)


YS3 STATE COPY
MONTANA
CERTIFICATE OF DEATH
DECEDENT
PARENTS
DISPOSITION
CERTIFIER
CAUSE OF DEATH
To be Completed by CERTIFYING PHYSICIAN Only
To be Completed by CORONER Only
LOCAL REGISTRAR
IMMEDIATE CAUSE
PART I
PART II
THIS IS A PERMANENT RECORD. USE TYPEWRITER WITH FRESH BLACK RIBBON.
ALL SIGNATURES MUST BE IN BLACK OR NEAR BLACK INK. SEE HANDBOOK FOR INSTRUCTIONS.

16-2.6(6)-S6090 DISSOLUTION OR INVALIDATION OF MARRIAGE RECORD FORM (1) Information to be included on the prescribed form for record of dissolution or invalidation of marriage after January 1, 1978, is shown on the following form, a copy of which follows this rule and by reference is made a part of it. It differs from the present reporting form as follows: In recognition of recent changes in laws relating to marriage and its dissolution, the form will refer to dissolution and invalidation of marriage, rather than to divorce and annulment, as at present, and will ask for legal grounds in the case of invalidation, but not dissolution, of marriage. In addition, the new form eliminates reference to which spouse was granted the decree (both are now granted the decree under present law). The new form eliminates reference to the occupation of husband and wife, and adds questions about educational level attained, whether any prior marriages ended in death or dissolution or annulment, the name of the petitioner's attorney, the date the couple separated, how many children were born alive to the marriage and how many under 18 are still with the family. It also indicates the decree may issue from a tribal court as well as a district court. (History: Sec. 69-4402, R.C.M. 1947; Order MAC No. 16-1; Adp. 12/31/72; Eff. 12/31/72; IMP Sec. 69-4433, R.C.M. 1947; AMD, MAC Not. No. 16-2-74; Order MAC No. 16-2-32; Adp. 6/14/77; Eff. 7/26/77.)

V519

TYPE OR PRINT IN PERMANENT INK SEE HANDBOOK FOR INSTRUCTIONS

MONTANA
REPORT OF

☐ DISSOLUTION OF MARRIAGE (FORMERLY DIVORCE)

☐ INVALID MARRIAGE (FORMERLY ANNULMENT)

STATE FILE NUMBER

HUSBAND

1. HUSBAND - NAME: First, Middle, Last		2. DATE OF BIRTH (Month, Day, Year)	3. STATE OF BIRTH (If not in U.S.A., name country)
4a. USUAL RESIDENCE - CITY, TOWN OR LOCATION		4b. COUNTY	4c. STATE
5. RACE - HUSBAND (White, Black, American Indian, etc. (Specify))	6. EDUCATION - SPECIFY HIGHEST GRADE COMPLETED: Elementary or Secondary (0-12) / College (1-4 or 5+)	7. NUMBER OF THIS MARRIAGE: First, second, etc. (Specify)	8a. IF PREVIOUSLY MARRIED, HOW MANY ENDED IN DEATH? / 8b. DISSOLUTION OR INVALID MARRIAGE?

WIFE

9. WIFE - MAIDEN NAME: First, Middle, Last		10. DATE OF BIRTH (Month, Day, Year)	11. STATE OF BIRTH (If not in U.S.A., name country)
12a. USUAL RESIDENCE - CITY, TOWN OR LOCATION		12b. COUNTY	12c. STATE
13. RACE - WIFE (White, Black, American Indian, etc. (Specify))	14. EDUCATION - SPECIFY HIGHEST GRADE COMPLETED: Elementary or Secondary (0-12) / College (1-4 or 5+)	15. NUMBER OF THIS MARRIAGE: First, second, etc. (Specify)	16a. IF PREVIOUSLY MARRIED, HOW MANY ENDED IN DEATH? / 16b. DISSOLUTION OR INVALID MARRIAGE?

17a. PLACE OF THIS MARRIAGE - CITY	17b. COUNTY	17c. STATE (If not in U.S.A., name country)	17d. COUNTY WHERE LICENSE ISSUED
17e. DATE OF THIS MARRIAGE (Month, Day, Year)		18. DATE COUPLE SEPARATED (Month, Day, Year)	
19a. NUMBER OF CHILDREN EVER BORN ALIVE OF THIS MARRIAGE (Specify)	19b. CHILDREN UNDER 18 IN THIS FAMILY (Specify)	20. PETITIONER - HUSBAND, WIFE, BOTH OR OTHER (Specify)	21. LEGAL GROUNDS FOR INVALID MARRIAGE
22a. ATTORNEY FOR PETITIONER - NAME (Type or print)		22b. ADDRESS: STREET OR ROUTE / CITY OR TOWN / STATE / ZIP	

DECREE

23a. I certify that the marriage of the above named persons was dissolved on: Month, Day, Year		23b. DATE OF ENTRY: Month, Day, Year	
23c. COUNTY OF DECREE	23d. JUDICIAL DISTRICT OR TRIBAL COURT		23e. CASE NUMBER
23f. CERTIFYING COURT OFFICIAL (Signature and Title) ▶			

Records and Statistics, Montana Department of Health and Environmental Sciences
1978 Revision

16-2.6(6)-S6140 ABORTIONS, FACILITY REPORT TO DEPARTMENT (1) Definitions.

"Abortion" means the performance of, or assistance or participation in the performance of, or submission to, an act or operation intended to terminate a pregnancy without live birth.

"Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

"Facility" means a hospital, health care facility, physician's office or other place in which an abortion is performed.

"Department" means the department of health and environmental sciences.

(2) Report of induced abortion.

(a) A facility shall, within thirty (30) days after an abortion, file with the department a report upon a form prescribed by the department and certified by the custodian of the records or the physician in charge of such facility setting forth the information required in sub sections (1), (2) and (3) of section 94-5-619, R.C.M. 1947, except such information as would identify any individual involved with the abortion. The attached form entitled "Report of Induced Abortion" is by this reference incorporated herein and made a part of this rule. The report shall exclude:

(i) All information as would identify any individual involved with the abortion,

(ii) The name and address of the physician who performed the abortion,

(iii) The name and address of the spouse, or the parents, custodian or legal guardian of the woman upon whom the abortion was performed,

(iv) Copies of any reports or documents required to be filed under subsections (1), (2) or (3) of section 94-5-619, R.C.M. 1947, but the custodian of the records or the physician in charge of such facility shall certify that such documents were duly executed and are on file.

(b) The attached form will be utilized after January 1, 1978. It differs from the present reporting form in the following respects:

(i) An item on educational attainment is added,

(ii) Notation of all procedures used for termination of pregnancy is allowed, if more than one is used,

(iii) Reference to fetus weight and length is eliminated,

(iv) Reason for the abortion is eliminated,

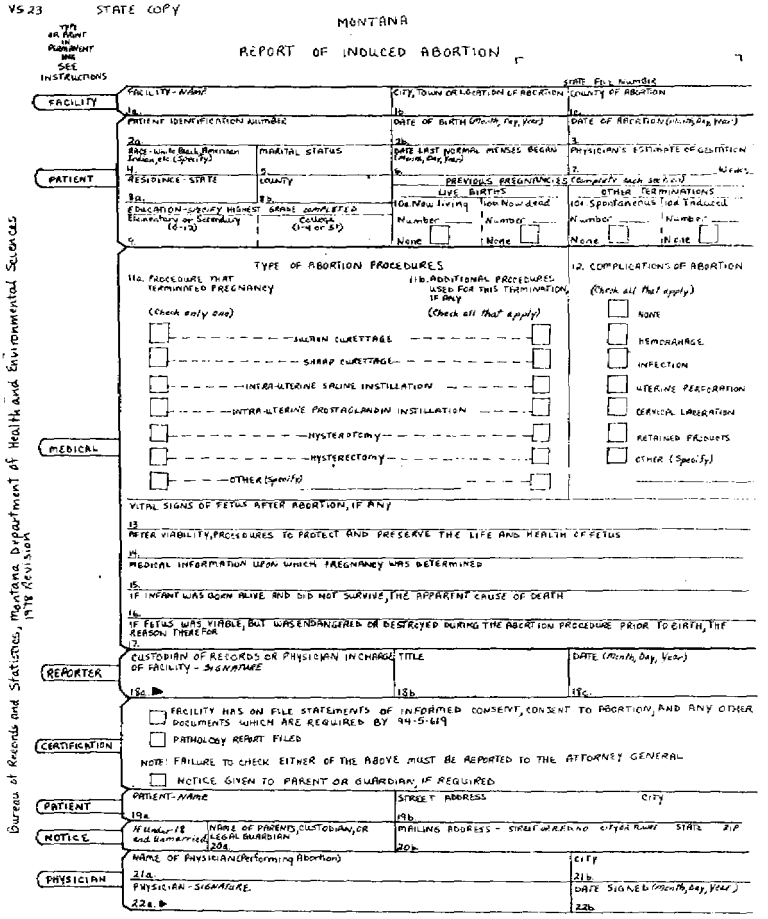
(v) References to counselling agency referred to and agency referred by are eliminated,

(vi) Certification of notice to husband is eliminated,

(vii) Names and addresses of the patient, physician, and parents, guardian or custodian are included. Those items, however, are to be retained by the facility performing the abortion, and are not to be included on the copy of the form

sent to the department.

(3) The statistical data not identifying any individual involved in an abortion shall be made public by the department annually and the report required to be filed with the department by the facility shall be available for public inspection except insofar as it identifies any individual involved in an abortion. (History: Sec. 69-4402, R.C.M. 1947; NEW; EMERG; Order MAC No. 16-2-10; Adp. 6/28/74; Eff. 7/1/74; IMP Sec. 94-5-619, R.C.M. 1947; NEW; MAC Not. No. 16-2-32; Order MAC No. 16-2-12; Adp. 8/15/74; Eff. 10/5/74; AMD; MAC Not. No. 16-2-74; Order MAC No. 16-2-32; Adp. 6/14/77; Eff. 7/26/77.)



VS 23 STATE COPY

MONTANA

REPORT OF INDUCED ABORTION

77A OR RONT IN PLACEMENT ONE SEE INSTRUCTIONS

STATE FILE NUMBER

FACILITY

1a. FACILITY - NAME | 1b. CITY, TOWN OR LOCATION OF ABORTION | COUNTY OF ABORTION

PATIENT

1c. PATIENT IDENTIFICATION NUMBER | 1d. DATE OF BIRTH (Month, Day, Year) | 1e. DATE OF ABORTION (Month, Day, Year)

2a. RACE - White, Black, American Indian, etc. (Specify) | 2b. MARITAL STATUS | 3. DATE LAST NORMAL MENSES BEGAN (Month, Day, Year) | 4. PHYSICIAN'S ESTIMATE OF GESTATION ___ Weeks

4. RESIDENCE - STATE | 5. COUNTY | 6. PREVIOUS PREGNANCIES (Complete each section)

LIVE BIRTHS: 6a. Now living — Number ___ None ☐ | 6b. Now dead — Number ___ None ☐

OTHER TERMINATIONS: 6c. Spontaneous (not induced) — Number ___ None ☐ | Number ___ None ☐

7a. EDUCATION - SPECIFY HIGHEST GRADE COMPLETED — Elementary or Secondary (0-12) | College (1-4 or 5+)

8.

TYPE OF ABORTION PROCEDURES

11a. PROCEDURE THAT TERMINATED PREGNANCY (Check only one)

11b. ADDITIONAL PROCEDURES USED FOR THIS TERMINATION, IF ANY (Check all that apply)

MEDICAL

- ☐ SUCTION CURETTAGE — ☐
- ☐ SHARP CURETTAGE — ☐
- ☐ INTRA-UTERINE SALINE INSTILLATION — ☐
- ☐ INTRA-UTERINE PROSTAGLANDIN INSTILLATION — ☐
- ☐ HYSTEROTOMY — ☐
- ☐ HYSTERECTOMY — ☐
- ☐ OTHER (Specify) _____ — ☐

12. COMPLICATIONS OF ABORTION (Check all that apply)

- ☐ NONE
- ☐ HEMORRHAGE
- ☐ INFECTION
- ☐ UTERINE PERFORATION
- ☐ CERVICAL LACERATION
- ☐ RETAINED PRODUCTS
- ☐ OTHER (Specify) _____

VITAL SIGNS OF FETUS AFTER ABORTION, IF ANY

13. AFTER VIABILITY, PROCEDURES TO PROTECT AND PRESERVE THE LIFE AND HEALTH OF FETUS

14. MEDICAL INFORMATION UPON WHICH PREGNANCY WAS DETERMINED

15. IF INFANT WAS BORN ALIVE AND DID NOT SURVIVE, THE APPARENT CAUSE OF DEATH

16. IF FETUS WAS VIABLE, BUT WAS ENDANGERED OR DESTROYED DURING THE ABORTION PROCEDURE PRIOR TO BIRTH, THE REASON THEREFOR

17.

REPORTER

17a. CUSTODIAN OF RECORDS OR PHYSICIAN IN CHARGE OF FACILITY - SIGNATURE ▶ | 17b. TITLE | 17c. DATE (Month, Day, Year)

CERTIFICATION

☐ FACILITY HAS ON FILE STATEMENTS OF INFORMED CONSENT, CONSENT TO ABORTION, AND ANY OTHER DOCUMENTS WHICH ARE REQUIRED BY 94-5-619

☐ PATHOLOGY REPORT FILED

NOTE: FAILURE TO CHECK EITHER OF THE ABOVE MUST BE REPORTED TO THE ATTORNEY GENERAL

☐ NOTICE GIVEN TO PARENT OR GUARDIAN, IF REQUIRED

PATIENT

19a. PATIENT - NAME | STREET ADDRESS | CITY

NOTICE

If Under 18 and Emancipated | NAME OF PARENT, CUSTODIAN, OR LEGAL GUARDIAN 20a. | 19b. MAILING ADDRESS - STREET OR R.F.D. NO. | CITY OR POST OFFICE | STATE | ZIP 20b.

PHYSICIAN

21a. NAME OF PHYSICIAN (Performing Abortion) | 21b. CITY

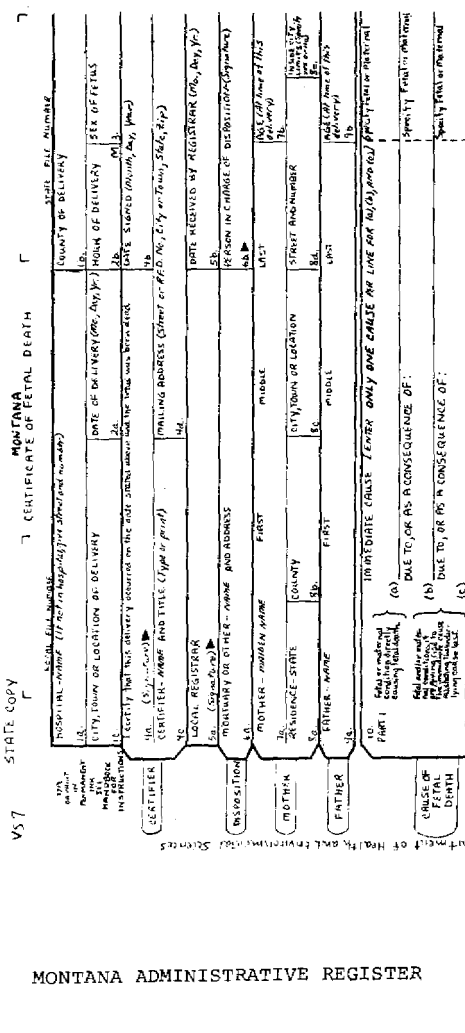
22a. PHYSICIAN - SIGNATURE ▶ | 22b. DATE SIGNED (Month, Day, Year)

Bureau of Records and Statistics, Montana Department of Health and Environmental Sciences, 1978 Revision

16-2.6(6)-S6150 FETAL DEATH CERTIFICATE (1) A copy of the fetal death certificate to be used after January 1, 1978, follows. Items 14 through 26 are for statistical and health planning purposes only and will not be included as part of any certified copy of the fetal death certificate. The certificate form to be used after January 1, 1978, differs from the one presently utilized in that the following items have been omitted:

(a) name of the fetus;
(b) state of birth of parents;
(c) whether fetus was buried, cremated or removed;
(d) name and location of cemetary or crematory;
(e) whether attendant was physician, midwife, or other;
(f) name of "authorized official" if delivery not attended by physician;
(g) name of person in attendance at delivery;
(h) whether autopsy findings were considered in determining cause of death;
(i) complications not related to pregnancy;
(j) name of informant giving confidential information.

(History: Sec. 69-4402, R.C.M. 1947; NEW, MAC Not. No. 16-2-74; Order MAC No. 16-2-32; Adp. 7/8/77; Eff. 7/26/77.)


MONTANA
CERTIFICATE OF FETAL DEATH
STATE COPY
VS7
STATE FILE NUMBER
HOSPITAL - NAME (If not in hospital, give street and number)
COUNTY OF DELIVERY
CITY, TOWN OR LOCATION OF DELIVERY
DATE OF DELIVERY (Mo., Day, Yr.)
HOUR OF DELIVERY
SEX OF FETUS
I CERTIFY THAT THIS DELIVERY occurred on the date stated above and that the fetus was [illegible] dead.
DATE STARTED (Month, Day, Year)
CERTIFIER
CERTIFIER - NAME AND TITLE (Type or print)
MAILING ADDRESS (Street or R.F.D. No., City or Town, State, Zip)
LOCAL REGISTRAR
DATE RECEIVED BY REGISTRAR (Mo., Day, Yr.)
DISPOSITION
MORTUARY OR OTHER - NAME AND ADDRESS
REASON IN CHANGE OF DISPOSITION (Specify)
MOTHER - maiden name
FIRST
MIDDLE
LAST
AGE (At time of this pregnancy)
RESIDENCE - STATE
COUNTY
CITY, TOWN OR LOCATION
STREET AND NUMBER
INSIDE CITY LIMITS? (Yes or No)
MOTHER
FATHER - NAME
FIRST
MIDDLE
LAST
AGE (At time of this pregnancy)
CAUSE OF FETAL DEATH
PART I
IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)
PART II
DUE TO, OR AS A CONSEQUENCE OF:
DUE TO, OR AS A CONSEQUENCE OF:
OTHER SIGNIFICANT CONDITIONS OF FETUS OR MOTHER
PHYSICIAN'S ESTIMATE OF GESTATION
FETUS DIED BEFORE LABOR, DURING LABOR OR DURATION UNKNOWN (Specify)
AUTOPSY (Specify yes or no)
Weeks
CONFIDENTIAL INFORMATION FOR MEDICAL AND HEALTH USE ONLY
FATHER
EDUCATION - Specify HIGHEST GRADE COMPLETED (Only or Secondary)
MOTHER
EDUCATION - Specify HIGHEST GRADE COMPLETED (Elementary or Secondary)
PREGNANCY HISTORY (Complete, Only Where Known)
LIVE BIRTHS
OTHER TERMINATIONS (Spontaneous and Induced)
DATE LAST NORMAL MENSES BEGAN (Month, Day, Year)
MONTH OF PREGNANCY PRENATAL CARE BEGAN (First, Second, etc. Specify)
PRENATAL VISITS (Total number of times seen by a doctor)
DATE OF LAST LIVE BIRTH (Mo., Day, Year)
DATE OF LAST OTHER TERMINATION (Spontaneous or Induced) (Mo., Day, Yr.)
MULTIPLE BIRTHS (Was this birth one of twins, triplets, etc.? If so, enter number for mother's previous live births)
THIS BIRTH - Single, Twin, Triplet, etc. (Specify)
IF NOT SINGLE, BIRTH - Born first, second, third, etc. (Specify)
WEIGHT OF FETUS
COMPLICATIONS OF LABOR AND/OR DELIVERY (Describe or write "none")
COMPLICATIONS OF PREGNANCY (Describe or write "none")
CONCURRENT ILLNESSES OR CONDITIONS AFFECTING THE PREGNANCY (Describe or write "none")
CONGENITAL MALFORMATIONS OR ANOMALIES OF CHILD (Describe or write "none")
FETAL DEATH(S)
Bureau of Records and Statistics, Montana Department of Health and Environmental Sciences
1978 Revision

RIGHT OF WAY

STATEMENT OF REASONS Regarding Rule 18-2.6AI(14)-S6340, Outdoor Advertising Regulations: On June 9, 1977, the Department of Highways had MAC Notice No. 18-2-18, relating to outdoor advertising regulations applicable to recently designated primary highway routes, certified to the Secretary of State. No requests for a public hearing or comments were received by the Department.

The Department and Commission's rationale for adopting the foregoing regulation is based on the fact that the Outdoor Advertising Act (Section 32-4716 through 32-4728, R.C.M. 1947) provides that the Act applies to all outdoor advertising located within 660 feet of the nearest edge of the right of way of primary and interstate highways and which is visible from any place on the main travelled way.

18-2.6AI(14)-S6340 OUTDOOR ADVERTISING REGULATIONS TO APPLY TO RECENTLY DESIGNATED PRIMARY ROUTES (1) The Montana Highway Commission has removed certain highway routes from the Federal Aid Secondary System and placed them on the Federal Aid Primary System. Outdoor advertising signs along the aforementioned routes visible from the primary system are controlled by regulations contained in MAC 18-2.6AI(14)-S6210 through MAC 18-2.6AI(14)-S6330 and the statutory restrictions contained in the Montana Outdoor Advertising Act, Sections 32-4715 through 32-4728, R.C.M. 1947. Permits for the foregoing signs must be secured from the Department pursuant to MAC 18-2.6AI(14)-S6230. Applications for permits must be received by the Department by December 2, 1977.

(2) Information regarding the routes which have been placed on the Federal Aid Primary System may be obtained at any of the Department of Highways Field Offices located in Missoula, Butte, Great Falls, Glendive and Billings, and from the Helena Headquarters office. (History: Sec. 82A-701.1, R.C.M. 1947; Sec. 32-4718, R.C.M. 1947; NEW MAC Not. No. 18-2-18; Order MAC No. 18-2-16; Adp. 7/14/77; Eff. 8/4/77.)

Statement of Reason for Amendment of Rule S680(3).

Rule S680(3) has been amended to conform with the amendments to §§8-108, 8-109 and 8-110 that were adopted by the 1977 Legislature. These amendments were adopted by the legislature in order to more adequately cover costs of administration and to decrease the number of spurious applications and cancellations.

38-2.6(1)-S680 APPLICATIONS FOR MOTOR CARRIER AUTHORITY

(3) Every application for operating authority must be accompanied by the appropriate filing fee as required by 8-108, 8-109 and 8-110.

(i) The specific filing fee is based on the number of counties contained within the application; i.e., 1-5 counties, $100; 6-25 counties, $200; 26-56 counties, $300.

(ii) Application fee for a certificate of public convenience and necessity to operate under a federal and/or state contract, as provided under §8-110(2), R.C.M. 1947, shall be $100 for all such applications.

(iii) Fees for the registration of interstate authority are as provided for under 38-2.6(1)-S690(5).

*Additional text found in Code.

(History: Sec. 8-103, RCM 1947; Order MAC No. 38-1; Adp 12/31/72; Eff. 12/31/72; AMD MAC No. 38-2-18; Order MAC No. 38-2-16; Adp 7/5/77; Eff 8/5/77).

The Board has heretofore implemented this rule such that there could be absolutely no connecting entrance and that any existing doorways would have to be sealed off. This amendment recognized the undue hardship and potential fire hazard that the old rule has caused and therefore makes this change. However, under no circumstances shall any connection between the salon and the residence be used during business hours.

The amendment adds the word "open" to sub-section (1) (b) (ii) of MAC 40-3.30(6)-S3090-Salons, as follows:

"(ii) After December 31, 1972 all new residential salons shall have only outside entrances and no open entrance into the residence."
*The text of the rule prior to this amendment may be found on page 40-118 11-11/25/74.
(History: Sec. 66-806 R.C.M. 1947; IMP Sec. 66-803 R.C.M. 1947; Order MAC No. 40-1; Adp. 12/31/72; Eff. 12/31/72; AMD, MAC Not. No. 40-3-30-7; Order MAC No. 40-3-30-5; Adp. 9/15/74; Eff. 10/5/74; PRIOR p. 40-118; AMD, MAC Not. No. 40-3-30-24; Order MAC No. 40-3-30-14;Adp. 7/14/77; Eff. 8/4/77; PRIOR p. 40-118 11-11/25/74)

BOARD OF HORSE RACING
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

The Board of Horse Racing has determined that the best interests of the wagering public demands that they should have the opportunity to be informed of the best performance of the horses entered in each race so that they may make a more informed wager. The Board has found that not all race tracks have been making this information available. Therefore, this amendment makes it mandatory.

The amendment makes the following change to existing sub-section 15 of MAC 40-3.46(6)-S46010-General Conduct of Racing:

"(15) A horse which during the past calendar year has started in a race shall not be entered at a Montana track unless and until the owner or trainer shall have furnished to the Racing Secretary at least thirty-six (36) hours prior to such entry, performance records, as hereinafter designated. Such performance records shall show where and when said horse raced in his last three (3) starts, the distance of each, the weight carried in each, amount earned in each, said horse's finishing position in each and the official time in each. Such performance records furnished to the Racing Secretary shall be signed by the owner or trainer of the horse. Every licensee must post such performance records in five (5) conspicuous spaces in the para-mutuel area at least 30 minutes before post time of every day's race."

*The text of the rule prior to this amendment may be found on page 40-195 3-3/25/75.

(History: Sec. 82A-1605, 62-505, 506 R.C.M. 1947; IMP, Sec. 62-505, 506 R.C.M. 1947; Order MAC No. 40-1; Adp. 12/31/72; Eff. 12/31/72; AMD Not. No. 40-3-46-1; Order MAC No. 40-3-46-3; Adp. 3/16/74; PRIOR p. 40-194, 195, 196, 205; EMERG, AMD, Order MAC No. 40-3-46-4; Adp. 7/3/74; Eff 7/3/74; PRIOR p. 40-203, 211; AMD, MAC Not. No. 40-3-46-5; Order MAC Not. No. 40-3-46-5; Adp. 9/15/74; Eff. 10/5/74; PRIOR p. 40-203; AMD, MAC Not. No. 40-3-46-7; Order MAC No. 40-3-46-6; Adp. 3/17/75; Eff. 4/4/75; PRIOR p. 40-195, 196; Order MAC No. 40-3-46-7; Adp. 4/5/74; Eff. 5/5/75; PRIOR p. 40-194; AMD, MAC Not. No. 40-3-46-10; Order MAC No. 40-3-46-9; Adp. 4/15/76; Eff. 5/6/76; PRIOR p. 40-193.1, 4-4/25/74, 40-198, 200, 201, 202, 203, 9-9/25/74; AMD, MAC Not. No. 40-3-46-13; Order MAC No. 40-3-46-13; Adp. 7/14/77; Eff. 8/4/77; PRIOR p. 40-195 3-3/25/75.)

BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

The Board, by statute, issues a two (2) year license. Prior to this amendment the Board pro-rated the license fee for persons licensing in the latter six (6) months of the first year or second year. The Board has found this procedure to be administratively cumbersome and costly, and thus, by this amendment has eliminated such pro-rated fees.

The amendment of MAC 40-3.96(6)-S96000-Fee Schedules, now reads as follows:

"(e) License fees
(i) 7-1-76 to 12-31-77----------$20.00
(iii) 1-1-78 to 12-31-78----------$10.00"
*The test of the rule prior to this amendment may be found on page 40-386.5.
(History: Sec. 66-3704 R.C.M. 1947; IMP, Sec. 66-3707 R.C.M. 1947; NEW, MAC Not. No. 40-3-96-1; Order MAC No. 40-3-96-1; Adp. 9/15/76; Eff. 10/5/76; AMD, MAC Not. No. 40-3-96-2; Order MAC No. 40-3-96-2; Adp. 7/14/77; Eff. 8/4/77; PRIOR p. 40-386.5.)

CHAPTER 1

ORGANIZATIONAL RULE

44-2.1-0100 OFFICE ORGANIZATION

(1) History The office of the Secretary of State of the State of Montana was created by the 1889 Constitution of the State of Montana, Art. VII, Sec. 1. The office was continued and is currently provided for in the 1972 Constitution of the State of Montana, Art. VI, Sec. 1.

(2) The office of the Secretary of State is a part of the executive branch of state government and is headed by an elected official, the Secretary of State.

(3) Internal structure The internal structure of the office is defined in terms of the various functions and duties imposed upon the Secretary of State by the state Constitution and by legislative enactment. Such functions and duties are not assigned for administrative purposes to any formally organized units within the office. Rather they are performed and administered directly by, or under the supervision of the Secretary of State.

(a) Attached Under Section 23-4785, R.C.M. 1947 the office of the Commissioner of Campaign Finances and Practices is attached to the office of the Secretary of State for administrative purposes only as specified in Section 82A-108, except that the provisions of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e) and (3)(a) of Section 82A-108, R.C.M. 1947, do not apply.

(i) The Commissioner of Campaign Finances and Practices is appointed for a five (5) year term by a four (4) member selection committee comprised of the Speaker of the House, the President of the Senate and the minority floor leaders of both houses of the Montana legislature.

(b) Attached Board The Board of State Canvassers was transferred to the Office of the Secretary of State under the Executive Reorganization Act of 1971. The membership of the board consists of the State Auditor, State Treasurer and the Attorney General. The Secretary of State is the secretary for the board. The Board of State Canvassers has no rule making authority.

(4) Duties and Functions of the office

(a) The Secretary of State is primarily a custodian of records, and as such is:

(i) custodian of official records of the state

(ii) custodian of such private documents as corporate records, bonds, deeds, mortgages and liens which have been designated by law for filing in his office

(iii) official custodian of the Great Seal of the State of Montana for his use in providing attestation and authentication to execute documents and appointments, corporate, election and other certificates.

(b) Legislative duties

(i) formally organizes the House of Representatives

(ii) receives copies of all legislation introduced

(iii) is custodian of the original copies of all bills introduced and signed into law

(iv) registers and licenses lobbyists

(v) processes orders for copies of the official legislative proceedings

(c) Chief election officer

(i) directs all primary and general elections for federal, state and district offices

(ii) received and certifies all delcarations of nominations for such public offices

(iii) publishes the official election laws

(iv) sets up the meetings for presidential electors

(v) directs all official state canvasses

(aa) conducts canvasses for primary elections in the presence of the governor and the state treasurer

(ab) acts as secretary for the Board of State Canvassers

(d) Corporation officer

(i) licenses domestic and foreign corporations to do business in Montana through his issuance of the respective certificates of incorporation and authority to do business in the state, upon the prospective corporation's compliance with statutory prerequisites

(ii) administers the state's corporation laws and services the necessary filings which perpetuate corporate existence

(iii) initiates corporate dissolution proceedings through certification of corporate default to the state attorney general

(e) Acts as agent for service of process against certain corporations and nonresident motor vehicle operators involved in law suits resulting from automobile accidents within the state

(f) Uniform Commercial Code administrator

(i) is designated by the code as central filing officer for certain documents executed in secured transactions

(g) Official administrator, reviser and publisher of the Montana Administrative Code and the Montana Administrative Register

(i) compiles and publishes all administrative agency rules which have been duly certified to him for publication in the code and register

(ii) recommends, interprets and advises code format for departments and their agencies

(iii) maintains the code and register in updated form and distributes copies thereof

(h) Miscellaneous functions

(i) processes, authenticates and maintains records of notarial commissions issued by the governor

(ii) registers and maintains records of trade names, trade marks and oaths of office

(iii) distributes such official publications as the supreme court reports and election returns

(iv) maintains the official records of executive reorganization

(5) Board memberships The Secretary of State is an ex officio member of the State Board of Examiners, State Board of Land Commissioners and Board of Election Devices.

(6) Information and submissions General inquiries regarding the office may be addressed to the Secretary of State, State of Montana, Capitol, Helena, Montana 59601.

(7) Personnel roster

Frank Murray, Secretary of State, State of Montana

Leonard C. Larson, Chief Deputy

Kenneth W. Brown, Deputy

Marian F. Campbell, Deputy

Iris D. Rigler, Deputy

Thomas C. Tucker, Deputy

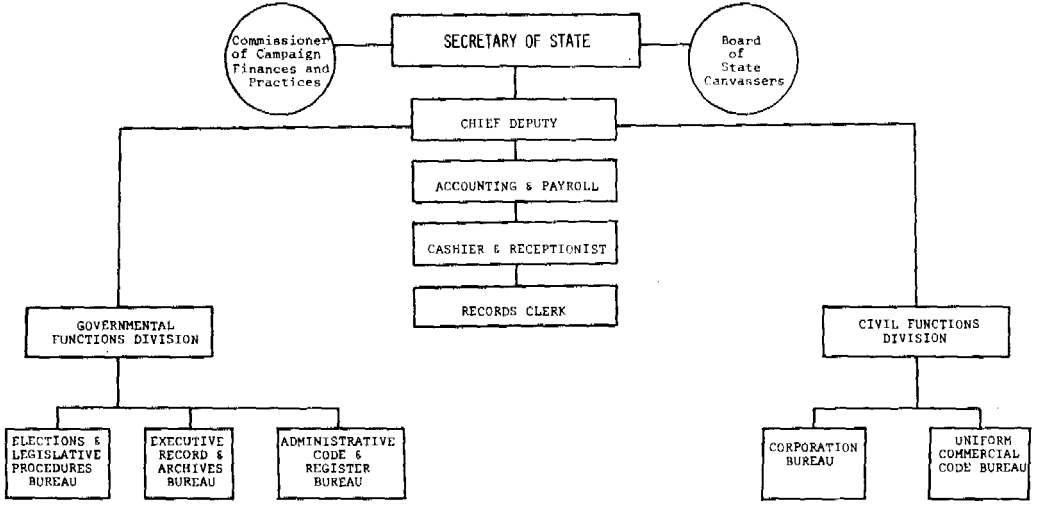
Alex S. Wardlaw, Deputy

(8) The Montana Administrative Procedure Act applies only to those agencies as are defined as an agency in Section 82-4202 (1), R.C.M. 1947. To be considered an agency thereunder, the office of the Secretary of State must have authority to determine contested cases.

An examination of the statutes dealing with the powers of the Secretary reveals no instance in which the Secretary of State may determine a contested case pursuant to the Act.

Therefore, since the office of the Secretary of State is not an agency for purposes of the Monana Administrative Procedure Act, it has not filed rules for publication in the code.

However, in the spirit of the public information functions of the Montana Administrative Procedure Act, this office has filed its organization description for inclusion in the Montana Administrative Code. (History: Sec. 82-4203, R.C.M. 1947; Order MAC No. 44-1; Adp. 12/31/72; Eff. 12/31/72; AMD. Order MAC No. 44-2-2; Adp. 7/1/75; Eff. 8/4/75; AMD. Order MAC No. 44-2-3; Adp. 7/14/77; Eff. 7/26/77.)



ORGANIZATION CHART

July, 1977

APPROVED: Frank Munro

SECRETARY OF STATE

INTERPRETATION SECTION

SOCIAL AND
REHABILITATION SERVICES

REASONS FOR ADOPTING EMERGENCY RULE 46-2.10(18)-S11447

Currently, the Montana Department of Social and Rehabilitation Services is providing personal care services in a recipient's home to qualified Medicaid applicants or recipients by means of Purchase of Service contracts with private providers. Personal Services in a recipient's home now provide the only alternative to institutionalization and allow the recipient freedom from institutional restrictions and a freedom of choice in his daily regimen. Those services are intended to meet the recipients' medical and personal grooming needs where skilled or intermediate nursing care is not required. The services are provided only in accordance with the prescription of a physician and a Personal Care Service Plan developed and carried out by a supervising Registered Nurse.

It has been brought to the attention of the Department that there is no authority in rule to provide such services. In order to legally continue payments on behalf of current recipients and make payments on behalf of other persons in immediate need of Personal Care Services, the Department must adopt Emergency Rule 46-2.10(18)-S11447 pursuant to Sections 71-1511 and 71-1517, R.C.M. 1947. If this rule is not adopted immediately, the provision of Personal Care Services in a recipient's home must cease and the health, safety and welfare of current recipients and other persons in immediate need of these services will be endangered, because these services are the only alternative to institutionalization.

46-2.10(18)-S11447 PERSONAL CARE SERVICES
IN A RECIPIENT'S HOME

The Department shall provide, either directly or by contract with provider organizations or persons, Personal Care Services in a recipient's home to all persons eligible under the terms of MAC 46-2.10(18)-S11470.

A. Personal Care Services shall consist of:
   Assistance With:
   1. Skin, hair and nail care
   2. Oral hygiene and denture care
   3. Ambulation and transfers
   4. Dressing
   5. Eating and special diets
   6. Transportation to necessary medical services.

B. Personal Care Services does not include the following Domestic type services:
   1. Household maintenance: such as cleaning, dishwashing, etc.
   2. Clothing: repair, selection or laundry.
   3. Socialization, friendly visiting, escort services to social events, counseling.
   4. Babysitting.

46-2.10(18)-S11447 SOCIAL AND REHABILITATION SERVICES

C. Personal Care Services must be prescribed by a physician. The physician shall prescribe the types of services and the amount of time required for their provision.

D. A Personal Care Service Plan must be developed and carried out under the supervision of a Registered Nurse licensed to practice in the State of Montana.

E. Provider of service cannot be a member of the family and must meet the following criteria:
1. Mental and physical competency.
2. Ability to read and write.
3. Willingness to accept training and supervision of Registered Nurse. (History: Sec. 71-1511, 71-1517, R.C.M. 1947; EMERG, Order MAC 46-2-63; Adp. 6/28/77; Eff. 6/28/77.)

expires Sept. 25, 1977

VOLUME NO. 37 OPINION NO. 39

ADMINISTRATIVE LAW - Applicability of rules of evidence to a contested case - referee bound by rules of evidence in an aftercare hearing, held pursuant to Section 80-1414.1, R.C.M. 1947;

DEPARTMENT OF INSTITUTIONS - Applicability of rules of evidence to a contested case - referee bound by rules of evidence in an aftercare hearing, held pursuant to Section 80-1414.1, R.C.M. 1947;

JUVENILES - Applicability of rules of evidence to a contested case - referee bound by rules of evidence in an aftercare hearing, held pursuant to Section 80-1414.1, R.C.M. 1947.

HELD: A referee appointed by the Department of Institutions to conduct a hearing on an alleged violation of an aftercare agreement, pursuant to Section 80-1414.1, R.C.M. 1947, is bound by the common law and statutory rules of evidence.

1 July 1977

Robert F. James, Deputy
County Attorney's Office
Cascade County
Great Falls, Montana 59401

Dear Mr. James:

You have requested my opinion concerning the interpretation of Section 80-1414.1, R.C.M. 1947, in relation to the following question:

Whether a referee is bound to follow the rules of evidence in a hearing on an alleged violation of an aftercare agreement?

To begin answering your question, I direct your attention to Section 82-4210(1), R.C.M. 1947, of the Montana Administrative Procedure Act (MAPA), Section 82-4201 et seq., R.C.M. 1947, which states in reference to contested cases before an agency:

> Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objection to evidentiary offers may be made and shall be noted in the record ...

An "agency" is defined by Section 82-4202(1), R.C.M. 1947, as:

> ...any board, bureau, commission, department, authority or officer of the state government authorized by law to make rules and to determine contested cases, ...

In conjunction, Section 82-4202(3), R.C.M. 1947, states:

> "Contested case" means any proceeding before an agency in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing.

Turning to the aftercare situation, Section 80-1414.1(3), R.C.M. 1947, authorizes the Department of Institutions to appoint a referee to conduct the hearing on an alleged violation of an aftercare agreement and to adopt rules and regulations governing the procedure of such a hearing. Furthermore, the purpose of this hearing is to determine if the youth has violated his aftercare agreement and whether he should be returned to the juvenile facility from which he was released. Section 80-1414.1(1), R.C.M. 1947.

Therefore, a hearing on an alleged violation of an aftercare agreement is a contested case before an agency, and as such is governed by Section 82-4210, R.C.M. 1947, providing for applicability of the rules of evidence. As stated before, Section 82-4210, R.C.M. 1947, requires an agency to be bound by the common law and statutory rules of evidence, unless otherwise provided by statute relating directly to the agency. An examination of the statutes relating directly to the department, Section 80-1401 et seq., R.C.M. 1947, reveals that the department is not statutorily exempted from Section 82-4210, R.C.M. 1947.

It may be argued that MAPA does not apply to the aftercare violation hearing since Section 82-4202(1), R.C.M. 1947, listing some specific exceptions to the MAPA states:

> (f) the supervisions and administration of any penal, mental, medical or eleemosynary institution with regard to the admission, release, institutional supervisions, custody, care or treatment of inmates, prisoners or patients; [Emphasis supplied.]

However, this provision does not exempt all activities of the Department of Institutions, but concerns the administration and supervision of custodial institutions, which do not directly concern us here. An aftercare situation arises subsequent to release from an institution. At this stage a youth is within the care, control and supervision of the department, but the custodial institution has been divested of any custody, supervision, or control of the youth, as prescribed by the statutes governing aftercare.

Section 80-1414, R.C.M. 1947, states:

> A youth released by the department from one of the state juvenile facilities to the supervision, custody and control of the department shall, before his release, sign an aftercare agreement ... [Emphasis supplied.]

Additionally, Section 80-1414.1, R.C.M. 1947, governing the hearing on an alleged violation of an aftercare agreement, refers a number of times to the phrase "the juvenile facility from which he was released"; and Section 80-1415, R.C.M. 1947, states:

> The department has control over a child released under Section 80-1414 until he attains the age of twenty-one (21) years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by the child while under the control of the department. [Emphasis supplied.]

Consequently, the aftercare hearing is separate and apart from the release of the youth from one of the State's juvenile correctional facilities, and as such is not exempt from the MAPA, and Section 82-4210, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

> A referee appointed by the Department of Institutions to conduct a hearing on an alleged violation of an aftercare agreement, pursuant to Section 80-1414.1, R.C.M. 1947, is bound by the common law and statutory rules of evidence.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 37 OPINION NO. 40

CONTRACTS WITH STATE - Application of one year statute of limitation in contract actions against the State of Montana; STATE OF MONTANA - Application of one year statute of limitation in contract actions against the State of Montana; STATUTES OF LIMITATION - Application of one year statute of limitation in contract actions against the State of Montana. SECTION 83-602, R.C.M. 1947.

HELD: Section 83-602, R.C.M. 1947, provides three separate periods of limitation applicable to disputes arising from express contracts with state agencies.

(1) A contractor who fails to submit his claim to an agency having an administrative procedure for resolving contract disputes within the time limits prescribed in the contract or, if no time is specified, within ninety (90) days after the dispute arises, is barred from thereafter submitting his claim to the agency or litigating the question in the district court.

(2) A contractor who timely submits his dispute to an agency having an administrative procedure but who fails to bring an action in the district court within one year after a final adverse decision by the agency, is barred from thereafter litigating his claim in the district court.

(3) In cases where no settlement procedure is provided by a contracting agency, a simple one year statute of limitations, commencing at the time the cause of action arises, applies.

1 July 1977

George L. Mitchell
Legal Counsel
University of Montana
Missoula, Montana 59801

Dear Mr. Mitchell:

You have requested my opinion regarding the scope of the one year statute of limitations set forth in Section 83-602, R.C.M. 1947, and whether said section has been the subject of appellate review.

Section 83-602, R.C.M. 1947, provides:

> Whenever any contracting agency of the state of Montana provides a procedure for the settlement of any question or dispute arising between the contractor and said agency, the contractor, before proceeding to bring an action in court under the provisions of this act, must resort to such procedure within the time specified in his contract or, if no time is specified, within ninety (90) days after the question or dispute has arisen; provided, however, that in the case where a settlement procedure is provided by said contracting agency, all actions authorized hereunder must be commenced within one (1) year after a final decision has been rendered pursuant to such settlement procedure, and, provided further, that in the case where no settlement procedure is provided by said contracting agency, the action must be commenced by the contractor within one (1) year after the cause of action has arisen.

There are no cases mentioned in the annotation following Section 83-602 either in the main volume of Revised Codes of Montana Annotated or in the 1975 Cumulative Pocket Supplement. I have also reviewed the applicable topics of the Montana Digest and similarly find no case concerning the section.

The language of Section 83-602 is plain and explicit; the statute speaks for itself. Hammill v. Young, 540 P.2d 971(Mont. 1975). Chapter 6 of Title 83 was enacted as Chapter 138 of the Laws of 1955, entitled "An Act Permitting Actions on Express Contracts Against the State of Montana, and Describing the Practice and Procedure Therefor." The chapter is exclusively concerned with disputes arising from express contracts entered into with the State of Montana or any agency, board or officer thereof, see Section 83-601, R.C.M. 1947. The statute of limitations set forth in Section 83-602 applies only to disputes arising from such express contracts. The Uniform Commercial Code does not supercede or modify Section 83-602. See Section 87A-10-103, R.C.M. 1947.

The precise period of limitations depends upon whether the contracting state agency, board or officer has an established administrative procedure for the settlement of contract

disputes. Where such administrative procedure exists, the aggrieved contractor must first submit his claim to the agency within the period of time specified in his contract, or, if no time is specified, within ninety (90) days after the question or dispute arises. A contractor dissatisfied with a final agency decision concerning the dispute must then bring an action in the district court, as authorized in Section 83-601, within one year after the adverse final decision. Where no agency procedure for resolving contract disputes exists, the contractor must bring an action in district court within one year after the cause of action arises.

In summary, Section 83-602, R.C.M. 1947, provides three separate periods of limitation applicable to disputes arising from express contracts with state agencies. (1) A contractor who fails to submit his claim to an agency having an administrative procedure for resolving contract disputes within the time limits prescribed in the contract or, if no time is specified, within ninety (90) days after the dispute arises, is barred from thereafter submitting his claim to the agency or litigating the question in the district court. (2) A contractor who timely submits his dispute to an agency having an administrative procedure but who fails to bring an action in the district court within one year after a final adverse decision by the agency, is barred from thereafter litigating his claim in the district court. (3) In cases where no settlement procedure is provided by a contracting agency, a simple one year statute of limitations, commencing at the time the cause of action arises, applies.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 37 OPINION NO. 41

PENDING

VOLUME NO. 37 OPINION NO. 42

CITIES AND TOWNS - Necessity of ordinance or resolution to implement city court misdemeanor jurisdiction;

CITY COURTS - Necessity of ordinance or resolution to implement city court misdemeanor jurisdiction;

COURTS - Necessity of ordinance or resolution to implement city court misdemeanor jurisdiction;

CRIMINAL LAW - Jurisdiction of city courts over certain misdemeanors;

JUSTICE COURTS - Concurrent jurisdiction with city courts over certain misdemeanors;

ORDINANCES AND RESOLUTIONS - Necessity of ordinance or resolution to implement city court misdemeanor jurisdiction;

WORDS AND PHRASES - "Concurrent jurisdiction";

SECTIONS - 11-1602, 93-410 and 95-1503, R.C.M. 1947.

HELD: 1. Statutory jurisdiction granted city courts by Section 11-1602, R.C.M. 1947, is self-executing and a city or town does not need to take any affirmative action by resolution or ordinance to effect such jurisdiction.

2. Misdemeanor prosecutions which are within the concurrent jurisdictions of both a city court and a justice court may at the election of the prosecuting officer be brought in either court. Prosecution of such offenses in either court must be instituted in the name of the state.

3. State criminal statutes may be enforced within cities and towns and such enforcement does not depend upon adoption of the statutes through ordinances or resolutions.

1 July 1977

William F. Meisburger, Esq.
City Attorney
P.O. Box 149
Forsyth, Montana 59327

Dear Mr. Meisburger:

You have requested my opinion concerning the jurisdiction of city courts over misdemeanor offenses against the State. You have asked the following questions:

1. Is the city obligated to take any affirmative action by resolution or ordinance in order to accept the concurrent jurisdiction conferred upon city courts by Section 11-1602 R.C.M. 1947?

2. Is it mandatory under sub-paragraph (2) of Section 11-1602, that any action brought for a violation of a state law within the city be filed in the city court in the name of the State of Montana as plaintiff? May such action also be filed in justice court? Is this an elective matter with the officer involved to bring the action in whichever court he may choose?

3. In order to enforce a state law in a city court, absent any city ordinance on the subject matter, is it necessary that the city adopt the state law word for word by an ordinance?

City courts, formerly called police courts, are established by Chapter 16 of Title 11, R.C.M. 1947, specifically Section 11-1601. Their jurisdiction is set forth in Sections 11-1602 and 11-1603, R.C.M. 1947. Section 11-1602, granting jurisdiction over certain misdemeanors, provides:

> Jurisdiction of city courts. The city court has concurrent jurisdiction with the justices' court of all misdemeanors punishable by fine not exceeding five hundred dollars ($500), or by imprisonment not exceeding six (6) months, or by both fine and imprisonment under the following conditions:
>
> (1) Any action charging the commission of an offense within the city or town limits in violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) Any other action brought for violation of a state law within the city shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

(3) Application for search warrants and complaints charging the commission of a felony may be filed in the city or town court and when they are so filed the city judge shall have the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court. (Emphasis added.)

Your first question requires a determination of whether the jurisdiction vested in city courts is self-executing.

Where the legislature has granted cities and towns discretionary powers, it has customarily employed such words as "the city or town council has power", or "may." See generally Chapters 9 and 10 of Title 11, R.C.M. 1947. In contrast, the language used in Chapter 16 of Title 11 is mandatory, see State ex rel. McCabe v. District Court, 106 Mont. 272, 76 P.2d 634 (1938); and not discretionary, see State ex rel. Browman v. Wood, 543 P.2d 184, 187 (Mont. 1975). "A city court is established in each city or town * * *", Section 11-1601, R.C.M. 1947; and each city court so established "has concurrent jurisdiction with the justices' court of all misdemeanors * * *," Section 11-1602, R.C.M. 1947. (Emphasis supplied.) In establishing city courts, the legislature has exercised the authority granted it by Article VII, Section 1 of the 1972 Constitution of Montana, which vests the judicial power of the state in "one supreme court, district courts, justice courts, and such other courts as may be provided by law. (Emphasis supplied.) The provisions of Chapter 16 of Title 11, are "statutes which clearly show that the state legislature deems the subject matter of the legislation to be a matter of general state-wide concern rather than a purely local municipal problem, (and) the city is then without the essential authority or power to pass or adopt any ordinance dealing with that subject matter." State ex rel. City of Libby v. Haswell, 147 Mont. 492, 494-495, 414 P.2d 652 (1966). Therefore, city courts have such jurisdiction as conferred by Sections 11-1602 and 11-1603, R.C.M. 1947, see State ex rel. Marquette v. Police Court, 86 Mont. 297, 308, 283 P.430 (1929); and cities and towns have no authority to add or detract from that statutory jurisdiction. An ordinance which merely adopts and implements jurisdiction which is expressly granted to city courts by statute is redundant and unnecessary.

Your second question is answered by Cashman v. Vickers, 69 Mont. 516, 525-526, 223 P. 897 (1924), which defines "concurrent jurisdiction." Section 11-1602 grants city courts "concurrent jurisdiction with the justices' court of all misdemeanors punishable by fine not exceeding five hundred dollars ($500), or by imprisonment not exceeding six (6) months, or by both * * *." Justice court jurisdiction over the same class of offenses is provided in Section 93-410, R.C.M. 1947. In Cashman the Montana Supreme Court held that the term "concurrent jurisdiction", as used in a statute giving justice courts "concurrent jurisdiction" with district courts over cases of forcible entry and unlawful detainer, means "equal jurisdiction" and "that different tribunals are authorized to deal equally with the same subject matter at the choice of the suitor." 69 Mont. at 526. Misdemeanor prosecutions of the type described in Sections 11-1602 and 93-410 may therefore be brought in either city court or justice court at the election of the prosecuting officer. Subsection (2) of Section 11-1602 requires that prosecution brought in city courts for violations of state law must be commenced in the name of the state. Section 95-1503, R.C.M. 1947, a statute of general applicability which specifies the form of criminal charges, makes clear that prosecutions for violations of state law which are brought in justice court must similarly be brought in the name of the state. Misdemeanors, by definition, are violations of state law - the term does not encompass violations of local ordinances. See Section 94-2-101(37), R.C.M. 1947, and Streight v. Justice Court, 45 Mont. 375, 381, 123 P. 405 (1912).

Your third question is answered by the reasoning of my answer to your first question. State misdemeanor statutes are of general statewide effect and are not dependent upon local implementing acts. See State ex rel. City of Libby v. Haswell, supra.

THEREFORE, IT IS MY OPINION:

1. Statutory jurisdiction granted city courts by Section 11-1602, R.C.M. 1947, is self-executing and a city or town does not need to take any affirmative action by resolution or ordinance to effect such jurisdiction.

2. Misdemeanor prosecutions which are within the concurrent jurisdictions of both a city court and a justice court may at the election of the prosecuting officer be brought in either court. Prosecution of such offenses in either court must be instituted in the name of the state.

3. State criminal statutes may be enforced within cities and towns and such enforcement does not depend upon adoption of the statutes through ordinances or resolutions.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 37 OPINION NO. 43

BOARD OF PARDONS - Postponement of application for executive clemency;

COMMUTATION - Consecutive sentences may be commuted either individually or aggregately;

CONSECUTIVE SENTENCES - May be commuted either individually or aggregately;

EXECUTIVE CLEMENCY - Such may not be postponed until exhaustion of other remedies;

EXHAUSTION OF REMEDIES - One need not exhaust appeal and sentence review procedures before having request for executive clemency acted upon;

HELD: 1. Under its present rules, the Board of Pardons may not postpone consideration of an application for executive clemency until the applicant has exhausted the appeal and sentence review processes.

2. Consecutive sentences may be commuted either individually or aggregately.

5 July 1977

John Lynch, Executive Secretary
Montana State Board of Pardons
1119 Main Street
Deer Lodge, Montana 59722

Dear Mr. Lynch:

You have requested my opinion regarding the following questions:

1. May the Board of Pardons postpone consideration of an application for executive clemency until the applicant has exhausted the appeal and sentence review processes?

2. Are consecutive sentences to be commuted individually or aggregately?

Your initial question involves the possible postponement by the Board of Pardons of applications for executive clemency until other processes have been exhausted. In this regard, Section 95-3223, R.C.M. 1947, provides:

> The board shall investigate and report to the governor with respect to all cases of executive clemency. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted, and as to the individual circumstances relating to social conditions of the applicant. If the board, or a majority thereof, approves such application for executive clemency, it shall advise the governor and recommend action to be taken. (Emphasis supplied.)

The Board of Pardons has adopted a rule more explicitly defining the timetable for processing applications. The Montana Administrative Code provides: "Thirty days will ordinarily be required for an investigation by the field staff of the board, and their written report will be considered by the Board at the meeting following receipt of each investigation report." M.A.C. §20-3.10(10)- S10100(1).

The statute requires that when an application is made, the Board "shall cause an investigation to be made", while the rule gives notice that the investigation will not "ordinarily" require more than thirty days, and that the Board will consider the application at its next regular meeting following the investigation. No exceptions to this timetable are provided for applications which precede exhaustion of judicial remedies. The word "ordinarily" in the rule excepts unforseeable circumstances, but cannot by itself except a clearly delineated class of applications such as the class at issue here. To read the rule otherwise would substantially impair its notice-giving function. Under the existing rule, an application for executive clemency filed before exhaustion of judicial remedies must be treated like any other application.

Where statutes or rules do not interfere, the Board and the Governor may exercise broad discretion in dispensing executive clemency. Goff v. State, 139 Mont. 641, 642-43, 367 P.2d 557 (1961) cert. denied, 369 U.S. 806, 7 L.Ed. 2d 553, 82 S.Ct.

648 (1962); State ex rel. Biles v. District Court, 125 Mont. 337, 338-39, 238 P.2d 908 (1951). This discretion is broad enough to permit a policy of postponing consideration of clemency applications until judicial remedies are exhausted. But such a policy must be clearly stated in a properly promulgated rule.

The Montana Administrative Procedure Act partially exempts the Board of Pardons from its requirements, Section 82-4202(1)(e), R.C.M. 1947, but the Board is subject to Section 82-4203 of that Act. That section requires the Board to "[a]dopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency." Section 82-4203(1)(b), R.C.M. 1947. A policy of postponing consideration of clemency applications pending exhaustion of judicial remedies would be a "procedure" covered by this section, requiring adoption of a rule.

A new rule could be adopted providing that applications for clemency will not be accepted until certain specified judicial remedies are exhausted. Section 20-3.10(10) - S10100 could then be left intact, since it only applies to applications once filed. There is already precedent for this approach in the Board's rules. Section 20-3.10(10) - S10110, M.A.C., provides that a new clemency application may be filed six months after the denial of an earlier application - clearly implying that it may not be filed before that time. The rule proposed here would be to the same general effect, providing that no application may be filed prior to exhaustion of certain judicial remedies.

It should be noted that as the law now stands, there is nothing to prevent the Board and the Governor from granting clemency prior to exhaustion of judicial remedies. This is an element of the broad discretion mentioned earlier. Several courts have held that clemency may be granted while an appeal is pending. Goss v. State, 107 Tex. Crim. 659, 298 S.W. 585, 586 (1927); State ex rel. Barnes v. Garrett, 135 Tenn. 617, 188 S.W. 58, 60 (1916); Gilmore v. State, 3 Okla. Crim. 639, 108 P. 416, 416-17 (1910); People v. Marsh, 125 Mich. 410, 84 N.W. 472, 474 (1900). The breadth of discretion which allows clemency pending appeal would also allow clemency pending sentence review.

As to the second portion of your request, although the Montana Supreme Court has never addressed this precise issue, it has addressed a very similar one. In State ex rel. Herman v. Powell, 139 Mont. 583, 367 P.2d 553 (1961), the court ruled on the Board of Pardon's practice of treating consecutive sentences individually for parole purposes. It found the practice to be within the Board's discretion, id.

at 589, for reasons which seem clearly to extend to clemency as well. The court, after calling the practice "cumbersome and confusing", id., concluded: "However, the object to be served thereby is well within the spirit and intent of the Probation, Parole, and Executive Clemency Act (i.e., to permit worthy inmates to go out on parole)." Id. Since a further objective of that Act is to provide worthy inmates with the benefits of executive clemency, the court's conclusion should extend to commutation as well. Thus, the Board may commute consecutive sentences individually.

The Herman opinion went on to say that "[t]he Board could, in order to avoid any ambiguity or confusion in the case of consecutive sentences, issue one parole to cover the maximum period of confinement." Id. Again, the same reasoning applies to commutation, and the conclusion must be that the Board may commute consecutive sentences aggregately.

THEREFORE IT IS MY OPINION:

1. Under its present rules, the Board of Pardons may not postpone consideration of an application for executive clemency until the applicant has exhausted the appeal and sentence review processes.

2. Consecutive sentences may be commuted either individually or aggregately.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 37 OPINION NO. 44

CONTRACTS - Public employment, provision for extra pay for working on holidays includes substitute days off under Section 59-1009, R.C.M. 1947;

HOLIDAYS - Public employment contract provisions for extra pay for working on holidays includes substitute days off under Section 59-1009, R.C.M. 1947;

PUBLIC EMPLOYEES - Employment contracts, provisions for extra pay for working on holidays includes substitute days off under Section 59-1009, R.C.M. 1947.

HELD: An employment contract providing that public employees are entitled to extra pay for working on a paid holiday applies fully to employees called to work on the day they were to have off in place of a holiday under Section 59-1009, R.C.M. 1947.

6 July 1977

Mr. Kenneth R. Wilson
City Attorney
Miles City, Montana 59301

Dear Mr. Wilson:

You have requested my opinion on the following question:

> When an employment contract provides that public employees are entitled to extra pay for working on a paid holiday, does this provision extend to employees called to work on the day they were to have off in place of a holiday under section 59-1009, R.C.M. 1947?

Section 59-1009, R.C.M. 1947, provides:

> Any employee of the state of Montana, or any county or city thereof, who is scheduled for a day off on a day which is observed as a legal

> holiday, except Sundays, shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

This section has been interpreted by a Montana Attorney General's opinion as follows:

> State, county and city employees, who are regularly scheduled to work Monday through Friday, are entitled to the benefits of section 59-1009, R.C.M. 1947, and shall have off the Friday preceding a legal holiday falling on Saturday, or the Monday following a legal holiday falling on Sunday.

34 Mont. Atty. Gen. Op. No. 27 (1971).

The opinion clarifies the fact that the statute has created a substitute day off whenever a legal holiday falls on a weekend. The question is whether this substitute day off is a "holiday" as that word is used in contracts promising extra compensation to employees called to work on a holiday. The Montana Supreme Court has not defined "holiday", but a California opinion provides a standard definition:

> That term is defined in 29 C.J. 761, as follows: "(1) a consecrated day, a religious festival, (2) a day on which the ordinary occupations are suspended, a day of exemption, i.e., cessation from work, a day of festivity, recreation, or amusement; and a legal holiday is a day designated and set apart by legislative enactment for one or more of such purposes."

Vidal v. Backs, 218 Cal. 99, 21 P.2d 952, 955 (1933) (emphasis added). According to this definition, Section 59-1009, R.C.M. 1947, creates a legal holiday for public employees since "a day of exemption, i.e., cessation from work..." is "designated and set apart by legislative enactment...."

It is true that this holiday for public employees is not a general holiday, but the legislature can create a holiday for limited classes or purposes. Thus in Vidal a bank holiday was held not to be a judicial holiday, 21 P.2d at 955, but it was still a holiday for all banking purposes. The Illinois Supreme Court has also confronted the issue of limited holidays:

> Moreover, Lincoln's Birthday is not a holiday in this state so far as the performance of judicial functions is concerned. It is made a

> legal holiday by statute in this state for certain purposes in regard to negotiable instruments. The rule is that, if a day be made a holiday for purposes stated in the statute creating it, it is not a legal holiday for any purpose not named in the statute.

Richter v. Chicago & E.R. Co., 273 Ill. 625, 113 N.E. 153, 154 (1916). Thus the day off provided by Section 59-1009, R.C.M. 1947, is not a holiday for any purposes beyond those of public employment, but for those limited purposes it is a holiday.

If public employees enter into an employment contract which uses the word "holiday", the term includes those holidays created by Section 59-1009, R.C.M. 1947. The Montana Supreme Court has held that "[t]he laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms". Valier Co. v. State, 123 Mont. 329, 341, 215 P.2d 966, cert. denied, 340 U.S. 827, 95 L.Ed. 607, 71 S.Ct. 63 (1950). The fact that contracts incorporate existing law was maintained even more forcefully in a later opinion: "The law controlling a written contract becomes a part of it, and cannot be varied by parol any more than what is written." Ryan v. ALD, Inc., 146 Mont. 299, 302, 406 P.2d 373 (1965).

Under these decisions Section 59-1009, R.C.M. 1947, is a part of any public employment contract which mentions "holidays." Therefore, if such a contract provides for extra compensation for employees called to work on a holiday, the employees are entitled to the same extra compensation if they are called to work on their substitute day off.

THEREFORE, IT IS MY OPINION:

> An employment contract providing that public employees are entitled to extra pay for working on a paid holiday applies fully to employees called to work on the day they were to have off in place of a holiday under Section 59-1009, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General