MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules I through IV prohibiting unfair discrimination for previously uninsured personal automobile insurance applicants	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Interested Persons

1. On December 2, 1992, at 9:00 a.m., a public hearing will be held in Room 270 of the Mitchell Building, 126 North Sanders, Helena, Montana, to consider the proposed adoption of rules prohibiting unfairly discriminatory practices used against applicants for personal automobile insurance who lack prior insurance.

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

3. The proposed new rules provide as follows:

RULE I PURPOSE AND APPLICATION (1) The purpose of these rules is to prevent unfair discrimination in personal automobile insurance based solely on an applicant's lack of prior insurance at the time of application for insurance with any insurer. These rules prohibit unfair discrimination in underwriting such applicants by insurers, both in determining eligibility for insurance and in the pricing of such insurance.

(2) These rules apply to all coverages, including applicable deductible options and policy limits, in an automobile insurance policy issued to individuals or families. This includes any policy commonly known as an automobile policy, private passenger automobile policy, or any similar policy by whatever name, but does not include policies known as commercial automobile policies.

(3) These rules will support greater compliance with the unfair trade practices act, 33-18-101, et seq., MCA.

AUTH: 33-1-313, 33-18-102, MCA IMP: 33-18-210, MCA

RULE II DEFINITIONS (1) "Prior insurance" means an automobile insurance policy in force with any insurer, or an authorized self-insurance plan in effect, at the time of or at any time within the three-year period prior to application for coverage with any insurer.

(2) "Insurer" means an individual insurance company or a group of affiliated insurance companies.

AUTH: 33-1-313, 33-18-102, MCA IMP: 33-18-210, MCA

RULE III DISCRIMINATION IN DETERMINING ELIGIBILITY FOR INSURANCE PROHIBITED (1) Except as provided in (3) below, an insurer shall not reject any applicant for insurance solely on the basis that the applicant cannot or does not demonstrate the existence of prior insurance. This section does not prohibit an insurer from rejecting an applicant with no prior insurance if the insurer can demonstrate through driving records or other objective means that the applicant has at any time in the immediately prior three years been operating a motor vehicle in violation of any state's compulsory automobile insurance laws.

(2) If an insurer has filed with the insurance department, multiple pricing programs designed to reflect the risk quality of individual applicants (a "preferred" program for "better than average" risks, a "standard" program and a "substandard" program for "worse than average" risks, for example), the insurer shall not deem an applicant to be a "substandard" risk (and thus ineligible for the "standard" program) in the absence of supportive evidence in the driving records of the applicant.

(3) Nothing in these rules is intended to require that an applicant with no prior insurance be eligible for an insurer's "preferred" program for "better than average" risks. The insurer may require that such eligibility be "earned" by the policyholder through satisfactory driving records under an insurance policy.

AUTH: 33-1-313, 33-18-102, MCA IMP: 33-18-210, MCA

RULE IV DISCRIMINATION IN PRICING PROHIBITED (1) Once program eligibility has been established, the existence or nonexistence of prior insurance for a policyholder shall not be considered in determining the premium for a policy. The premium charged by an insurer for a policyholder with no prior insurance shall be the same as if the policyholder had prior insurance and was insured in the same program.

AUTH: 33-1-313, 33-18-102, MCA IMP: 33-18-210, MCA

4. These rules are necessary to prohibit arbitrary and unfair practices used against applicants for private passenger automobile liability insurance who do not have prior insurance and to support compliance with the unfair trade practices act, 33-18-101, et seq. The insurance department has received complaints concerning the practice of some insurers rejecting applicants, surcharging applicants, or placing applicants in a substandard insurance program solely because they have not previously carried automobile insurance. This practice appears to be arbitrary and unfair. Furthermore, the insurance department has received no credible data showing

that applicants with no prior insurance present greater claims risks or are worse drivers than those with prior insurance.

5. Interested persons may present their data, views, or arguments either orally or in writing at the public hearing. Written data, views, or arguments may also be submitted to John Bandy, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604. To guarantee consideration, written data, views, or arguments must be postmarked by December 10, 1992.

6. John Bandy has been designated to preside over and conduct the hearing.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Susan C. Witte
Rules Reviewer

Certified to the Secretary of State this 30th day of October, 1992.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to definitions and adoption of new rules pertaining to patient records, prospective drug review and patient counseling	))))))	NOTICE OF PROPOSED AMENDMENT OF 8.40.401 DEFINITIONS AND ADOPTION OF NEW RULES PERTAINING TO PATIENT RECORDS, PROSPECTIVE DRUG REVIEW AND PATIENT COUNSELING

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 12, 1992, the Board of Pharmacy proposes to amend and adopt the above-stated rules.

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

"8.40.401 DEFINITIONS (1) through (2) will remain the same.

(3) "Confidential information" means information maintained by the pharmacist in the patient's records, which is privileged and released only to the patient or, as the patient directs: to those health care professionals where, in the pharamcist's professional judgment, such release is necessary to protect the patient's health and well being; and to such other persons or governmental agencies authorized by law to receive such confidential information.

(4) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

(5) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, which is required under Federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician."

(6) "Distribute" means the delivery of a drug other than by administering or dispensing.

(7) "Labeling" means the process of preparing and affixing a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a non-prescription drug or commercially packaged legend drug or device. Any such label shall include all information required by Federal and Montana law or rule.

(8) "Non-prescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of Montana and the Federal government.

(9) "Non-resident pharmacy" means a pharmacy located outside Montana.

(10) "Patient counseling" means the oral communication by the pharmacist of information, as defined in the rules of the board, to the patient or caregiver, in order to improve therapy by ensuring proper use of drugs and devices.

(11) "Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to cure or prevention of a disease, elimination or reduction of patient's symptoms, or arresting or slowing of a disease process. Pharmaceutical care includes the judgment of a pharmacist in dispensing an equivalent drug or device in response to a prescription drug order, after appropriate communication with the prescriber and the patient.

(12) "Pharmacist-in-charge" means a pharmacist licensed in Montana who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, and who is personally in full and actual charge of such pharmacy.

(13) "Prescription drug" or "legend drug" means:

(a) a drug which, under Federal law, is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) "Caution: Federal law prohibits dispensing without prescription;"

(ii) "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian".

(b) or a drug which is required by any applicable Federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

(14) "Prospective drug review" means a review of the patient's drug therapy record and prescription drug order, as established in the rules of the board, prior to dispensing."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-102, 37-7-201, 37-7-301, 37-7-406, MCA

3. The proposed new rules will read as follows:

"I PATIENT RECORDS (1) A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist shall make a reasonable effort to obtain, record, and maintain the following information:

(a) full name of the patient for whom the drug is intended;

(b) address and telephone number of the patient;

(c) patient's age or date of birth;

(d) patient's gender;

(e) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(2) The pharmacist shall make a reasonable effort to obtain from the patient or the patient's agent and shall

record any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease status of the patient and the identity of any other drugs, including over-the-counter drugs, or devices currently being used by the patient which may relate to prospective drug review.

(3) A patient record shall be maintained for a period of not less than three years from the date of the last entry in the profile record. This record may be a hard copy or a computerized form."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-406, MCA

"II PROSPECTIVE DRUG REVIEW (1) A pharmacist shall review the patient record and each prescription drug order presented for dispensing for purposes of promoting therapeutic appropriateness by identifying:

(a) over-utilization or under-utilization;
(b) therapeutic duplication;
(c) drug-disease contraindications;
(d) drug-drug interactions;
(e) incorrect drug dosage or duration of drug treatment;
(f) drug-allergy interactions;
(g) clinical abuse/misuse.

(2) Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-406, MCA

"III PATIENT COUNSELING (1) Upon receipt of a prescription drug order and following a review of the patient's record, a pharmacist shall personally offer to discuss matters which will enhance or optimize drug therapy with each patient or caregiver of such patient. Such discussion shall be in person, whenever practicable, or by telephone and shall include appropriate elements of patient counseling. Such elements may include the following:

(a) the name and description of the drug;
(b) the dosage form, dose, route of administration, and duration of drug therapy;
(c) intended use of the drug and expected action;
(d) special directions and precautions for preparation, administration, and use by the patient;
(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
(f) techniques for self-monitoring drug therapy;
(g) proper storage;
(h) prescription refill information;
(i) action to be taken in the event of a missed dose; and
(j) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(2) Alternative forms of patient information shall be used to supplement patient counseling when appropriate.

Examples to include written information leaflets, pictogram labels, video programs, etc.

(3) Patient counseling, as described above and defined in this Act shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drug(s).

(4) A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-406, MCA

REASON: The proposed amendment of 8.40.401 and the proposed new rules will comply with Federal provisions of Omnibus Budget Reconciliation Act 1990, 432 U.S.C. 1396r-8, and Section 37-7-406, MCA, mandated by the 1991 Montana Legislature to ensure pharmacists personally interact with patients to offer and undertake counseling. The proposed rules will allow Montana pharmacists to exercise professional judgment in deciding the appropriate counseling for each patient.

4. Interested persons may present their data, views or arguments concerning the proposed amendment and adoptions in writing to the Board of Pharmacy, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 10, 1992.

5. If a person who is directly affected by the proposed amendment and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Pharmacy, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 10, 1992.

6. If the Board receives requests for a public hearing on the proposed amendment and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 117 based on the 1166 licensees in Montana.

BOARD OF PHARMACY
ROBERT J. KELLEY, CHAIRMAN

Anne M. Barta
ANNIE M. BARTOS
Rule Reviewer

BY: Anne M. Barta
ANNIE M. BARTOS, CHIEF COUNSEL

Certified to the Secretary of State, October 30, 1992.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to definitions and the proposed adoption of a new rule pertaining to ad valorem tax appraisal experience	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.57.401, AND THE PROPOSED ADOPTION OF A NEW RULE PERTAINING TO AD VALOREM TAX APPRAISAL EXPERIENCE

TO: All Interested Persons:

1. On December 14, 1992, at 10:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, a public hearing will be held to consider the proposed amendment of ARM 8.57.401, and the proposed adoption of a new rule pertaining to ad valorem tax appraisal experience.

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

"8.57.401 DEFINITIONS (1) will remain the same.

(2) "Year of experience" means at least 1000 hours of appraisal activity distributed over a twelve (12) month period. Maximum experience awarded for a ~~calendar year~~ twelve month year is 1000 hours.

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

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, MCA

REASON: The proposed amendment will bring the Montana statutes in compliance with National Foundation requirements which state two years, or 24 months of experience is required.

3. The proposed new rule will read as follows:

"I AD VALOREM TAX APPRAISAL EXPERIENCE (1) The two-year, 2000 hours appraisal experience requirement may be satisfied by proper documentation of two years in an appraisal capacity of the value estimating process for mass appraisal work. Experience credit may be awarded to ad valorem tax appraisers who demonstrate that they use techniques to value properties similar to those used by appraisers, and effectively use the appraisal process.

(2) Components of the mass appraisal process that may be given credit are: the highest and best use analysis; model specification (developing the model); and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit.

(3) Proper documentation shall be by affidavit from the supervising tax appraiser or other appropriate official, and must be from real property mass appraisals.

(a) The affidavit shall set forth the applicant's job description, duties, and/or role in the value estimating process if not included in the job description and duties.

(b) The supervising tax appraiser or other appropriate official signing the affidavit must indicate their understanding that experience credit shall only be awarded to applicants who demonstrate they use techniques to value properties similar to those used by appraisers.

(4) Applicants shall also submit an experience log indicating the type of experience and hours applicable to each type of experience, including without limitation, individual property appraisals, tax appeals, demonstration appraisal reports, model specifications, and model calibrations.

(5) Applicants shall hold, at a minimum, a residential certification issued by the Montana Department of Revenue, or equivalent from another state, as verified on supervisor's affidavit, or by separate documentation issued to applicant.

(6) Experience accepted under other provisions of applicable statutes or rules may be combined with any portion of the two years' mass appraisal experience set forth above.

(7) Mass appraisals shall be performed in accordance with Standards Rule 6 of the USPAP."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, MCA

REASON: The new rule will set forth requirements for use of mass appraisal or ad valorem tax appraisal experience for applicants.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Real Estate Appraisers, Arcade Building, Box 200513, 111 North Jackson, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 10, 1992.

5. Carol Grell, attorney, has been designated to preside over and conduct the hearing.

BOARD OF REAL ESTATE APPRAISERS
PAT ASAY, CHAIRMAN

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

BY: Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 1992.

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

In the matter of the adoption of rules I-VI establishing procedures for local water quality district program approval and procedures for granting enforcement authority to local water quality districts	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF NEW RULES I-VI (Water Quality)

To: All Interested Persons

1. On January 15, 1993, at 9:00 a.m., the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rules, which describe procedures for program approval of local water quality districts and procedures for granting enforcement authority to a local water quality district for the enforcement of Title 75, chapter 5, MCA.

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

3. The rules, as proposed, appear as follows:

RULE I PURPOSE The purpose of this subchapter is to establish guidelines, criteria, and procedures for the development and approval of local water quality district programs, to establish procedures for granting enforcement authority to local water quality districts, and to ensure that the programs and enforcement actions are consistent with Title 75, chapter 5, MCA.

AUTH: 75-5-106, 75-5-201, MCA; IMP: 75-5-106, 75-5-311, MCA.

RULE II DEFINITIONS For the purposes of this subchapter, the following definitions, in addition to those in sections 7-13-4502 and 75-5-103, MCA, will apply:

(1) "District" means a "local water quality district" established with definite boundaries for the purpose of protecting, preserving, and improving the quality of state water as authorized by Title 7, chapter 13, part 45, MCA and the rules of this subchapter.

(2) "Program" means a comprehensive local water quality district program designed to protect, preserve, and improve the quality of state water within the boundaries of a local water quality district established according to the procedures specified in Title 7, chapter 13, part 45, MCA.

AUTH: 75-5-201, MCA; IMP: 75-5-106, 75-5-311, MCA.

RULE III NOTIFICATION REQUIREMENTS (1) Upon passage of a resolution of intention to create a local water quality district, the commissioners shall submit a copy of the resolu-

tion to the department as notification that the commissioners intend to develop a district program and to apply for board approval of the program. Submission of the resolution of intention to the department initiates the consultation process required by 75-5-311(1), MCA.
AUTH: 75-5-201, MCA; IMP: 75-5-311, MCA

RULE IV PROGRAM APPLICATION CONTENT (1) To obtain approval of a district program, the district's board of directors shall file an application with the board and concurrently submit a copy of the application to the water quality bureau of the department. The application shall contain the following information:

(a) a map delineating the boundaries of the district and a description of the existing or potential water pollution problems within the proposed district;

(b) a map indicating general land ownership within the district;

(c) a general description of the area, including a brief description of the topography, geology, climate, population, and land use;

(d) a general description of the known hydrogeology of the area, including a description of aquifers, the rate and direction of ground water flow, and the location of recharge and discharge areas;

(e) a description of the water resources and water use within the district including an identification of wells, springs, lakes, streams, wetlands, and irrigation ditches;

(f) a characterization of the quality of the surface water and ground water within the district;

(g) a discussion of the type and extent of land use activities potentially affecting water quality within the district, including but not limited to commercial, municipal, and industrial discharges; underground storage tanks; storm water disposal; landfills; hazardous waste disposal; mining activities; agricultural activities; injection wells; animal feedlots; and improperly constructed or abandoned wells;

(h) identification of the district program goals and objectives;

(i) a district program work plan and implementation schedule;

(j) a quality assurance and quality control plan for field investigation and sampling activities;

(k) a program budget;

(l) a plan to evaluate the effectiveness of the district program;

(m) a brief analysis of potential impacts to human health and the environment caused by implementation of the district program;

(n) a description of any proposed district permit programs; and

(o) copies of any proposed local ordinances for the regulation of the facilities and sources of pollution specified in section 75-5-311(4), MCA, along with a statement demonstrat-

ing that the local ordinances meet the following conditions:

(i) the local requirements are compatible with and no less stringent than state requirements for the protection of water quality, pursuant to 75-5-311(5)(a), MCA, and

(ii) the district's enforcement procedures and enforcement actions are consistent with state enforcement actions, pursuant to section 75-5-311(5)(b) and (c), MCA.

AUTH: 75-5-201, MCA; IMP: 75-5-311, MCA

RULE V PROGRAM APPROVAL AND REPORTING (1) Upon receipt of a district program application by the department, the department will have 45 calendar days to conduct a completeness review of the application. If the application is incomplete, the department shall send written notification to the board of directors identifying the deficiencies and requesting additional information. Upon receipt of the requested information, the department will have 45 days to conduct a completeness review.

(2) No later than 30 days after the board of directors has been notified that the application is complete, the department shall submit the completed application to the board, along with a report and recommendation regarding approval of the district program. At its next regularly scheduled meeting following the department's submission of the report and recommendation under this rule, the board shall hold a hearing on the application.

(3) Subsequent changes in the boundaries of a district with an approved program must be submitted to the board for approval as an amendment to the approved program in accordance with 75-5-311(7), MCA, and the procedures in subsections (1) and (2) of this rule.

(4) Any modifications of an approved program that may affect the district's ability to protect, maintain, and improve the quality of state waters must be reported to the department at least 30 days prior to implementation of the proposed modifications. The department shall have 30 days to review the proposed modifications and to notify the district board whether the proposed modifications must be submitted to the board for approval. If the proposed modifications significantly alter the approved program, the department may request the board to review and approve or disapprove the proposed modifications at its next regularly scheduled meeting.

(5) One year after board approval of a district program and annually thereafter, the board of directors shall submit to the department a report that evaluates the effectiveness of the district program. The report shall include a description of program activities, monitoring results, budget summary, and the number and status of permits issued and enforcement actions initiated, as applicable to a particular district program.

(6) A district shall retain all records for a minimum of 3 years and make its monitoring data available to the department upon request.

AUTH: 75-5-201, MCA; IMP: 75-5-311, MCA.

RULE VI PROCEDURES FOR GRANTING STATE ENFORCEMENT

AUTHORITY TO LOCAL WATER QUALITY DISTRICTS (1) Whenever a person is in violation of 75-5-605, MCA, at a location within the district, the department may request that the district enforce the provisions of Title 75, chapter 5, MCA, and rules implementing that chapter for the particular violations. Alternatively, the district may request enforcement authority from the department in a particular case as specified under this rule. Authorization by the department is effective upon receipt of a letter granting enforcement authority to the district as provided in subsection (3).

(2) In making its determination of whether or not to grant enforcement authority to a district, the department shall consider the following;

(a) whether the district has submitted documentation to the department establishing the violation(s), as required by 75-5-106, MCA.

(b) the physical setting and geographical location of the violation;

(c) the severity of existing or potential impacts to human health or the environment;

(d) whether the district has sufficient resources to undertake timely and appropriate enforcement measures;

(e) whether the source of pollution may be more efficiently controlled and brought into compliance by the department; and

(f) any other relevant factors.

(3) A district is authorized to enforce the provisions of Title 75, chapter 5, MCA, and rules implementing that chapter upon receipt of a letter issued by the department granting enforcement authority for a particular case. The letter of authorization may include any limitations or conditions determined necessary by the department. Nothing in the grant of authority to a district may be construed to limit the department's legal responsibility and authority to take enforcement action against the source of pollution.

(4) The department may revoke the enforcement authorization for a district if it determines that conditions exist that warrant such revocation. Such conditions may include but are not limited to:

(a) the district lacks adequate enforcement capabilities or resources for effective enforcement efforts;

(b) the district requests the department to undertake enforcement in the case;

(c) the district has not complied with the conditions and limitations in the letter of authorization;

(d) a re-assessment of conditions or change of conditions that indicate that enforcement by the department would be more efficient and economical than local enforcement; or

(e) the violation has been effectively remediated.

(5) A district authorized to undertake enforcement actions pursuant to this section shall coordinate its enforcement activities with the department in a manner determined by the department.

AUTH: 75-5-106, 75-5-201, MCA; IMP: 75-5-106, MCA

4. The 1991 Legislature, in Ch. 357, allowed the creation of local water quality districts that could implement local water quality programs after approval by the Board of Health and Environmental Sciences. The board is proposing rules I-V to provide the procedures needed to enable a local water quality district to apply for review by the department and approval by the board for implementation of a local water quality program. The rules insure that the program will be consistent with the regulatory requirements of the Montana Water Quality Act and provide for annual review of the local programs by the Department.

Also in response to Ch. 357, the board is proposing Rule VI to provide the necessary criteria and procedure for granting enforcement authority to local water quality districts for the enforcement of the Montana Water Quality Act whenever the department determines that local enforcement is appropriate.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yoli Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than January 15, 1993.

/s/ William J. Spitz
for DENNIS IVERSON, Director

Certified to the Secretary of State October 30, 1992.

Reviewed by:

/s/ Eleanor A. Parker
Eleanor Parker, Attorney

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Amendment of Rule 23.14.404 Relating to Peace Officers Standards and Training	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 23.14.404 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 14, 1992, the Board of Crime Control proposes to amend the following rule.

2. The proposed amendments will read as follows:

23.14.404 GENERAL REQUIREMENTS FOR CERTIFICATION

(1) Each peace officer shall attest that he subscribes to the law enforcement code of ethics.

(2) To be eligible for the award of a certificate, each peace officer must be a full-time, paid and sworn peace officer employed by a law enforcement agency as defined by the board of crime control at the time the application for certification is received by the board.

(3) Full-time, paid and sworn peace officers known as special agents, investigators, inspectors, marshals and deputy marshals, patrol officers, deportation and detention officers, and special officers of the following designated federal agencies may apply for the award of a certificate if the applicant has met the requirements for such certification established by these rules. The designated federal agencies are:

(a) the federal bureau of investigation;
(b) the United States secret service;
(c) the United States immigration and naturalization service;
(d) the United States customs service;
(e) the United States marshal's service;
(f) the federal drug enforcement administration;
(g) the United States postal service;
(h) the federal bureau of alcohol, tobacco and firearms;
(i) the federal internal revenue service;
(j) the federal bureau of Indian affairs;
(k) the federal bureau of land management;
(l) the United States forest service;
(m) the United States national park service;
(n) the United States border patrol;
(o) the federal general services administration;
(p) the United States fish and wildlife service;
(q) the United States department of agriculture; and
(r) the United States air force office of special investigations.

(4) Remains the same.
(5) Remains the same.
(6) Remains the same.

AUTH: 44-4-301 MCA IMP: 7-32-303

3. The amendment to this rule is proposed because this federal government agency meets the definition of law enforcement and has been recommended by the Peace Officers Standards and Training Council.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Ellis E. Kiser, Director, Peace Officers Standards and Training, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than December 12, 1992.

5. If a person who is directly affected by the proposed amendment wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to Ellis E. Kiser, Director, Peace Officers Standards and Training, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than December 12, 1992.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 12.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Administrator

By: 
ELLIS E. KISER, Acting Administrator
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, 10/30/92


Rule Reviewer

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Proposed Adoption of Rule I regarding the DARE Trust Fund	)))))	NOTICE OF PROPOSED ADOPTION OF RULE I REGARDING THE DRUG ABUSE RESISTANCE EDUCATION (DARE) TRUST FUND NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 14, 1992, the Board of Crime Control proposes to adopt the following rules concerning contributions received under the drug abuse resistance education (DARE) trust fund checkoff.

2. The proposed rules will read as follows:

RULE I. DRUG ABUSE RESISTANCE EDUCATION (DARE) TRUST FUND

(1) Public contributions received under the drug abuse resistance education trust fund tax checkoff shall be used to develop, enhance and expand Drug Abuse Resistance Education (DARE) programs only.

(2) The Board may assess an administrative fee not to exceed 5% of the total contributions, gifts, and grants received each tax year under this act.

(3) Funds will be administered according to established policies and procedures of the Board.

(4) Funds collected for a given tax year will be allocated within three months after the Board is notified by the Department of Revenue of the total amount received through the checkoff.

(5) Existing DARE projects will receive up to 100 % of the contributions which originate from their service area as defined by the zip code from which the contribution was received.

(6) All remaining contributions, gifts, and grants received from zip code areas not served by DARE projects or from outside of Montana will be distributed when the amount in this category reaches a minimum of $2,000.

(7) Communities not served by a DARE project will be afforded the opportunity to apply for subgrant funds according to established Board subgrant guidelines.

AUTH: 44-2-702 MCA. IMP: 15-30-158 through 15-30-160 MCA

3. These rules are proposed for adoption to comply with Senate Bill 370.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption of rules in writing to the Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than December 12, 1992.

5. If a person who is directly affected by the proposed adoption wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to the Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than December 12, 1992.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 7.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Administrator

By: _____
ELLIS E. KISER, ~~Acting~~ Administrator
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, 10/30/92

_____
Rule Reviewer

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

In the matter of proposed new rules to require measuring devices on watercourses identified as chronically dewatered	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES

TO: All Interested Persons:

1. On December 4, 1992 at 10:00 AM a Public Hearing will be held at the Department of Natural Resources and Conservation conference room at 1520 East Sixth Avenue, Helena, Mt. to consider the adoption of new rules to require measuring devices on watercourses identified as chronically dewatered.

2. The proposed rules read as follows:

Rule I DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) "Appropriation facility" means a system including structures used to divert, impound, or withdraw water from a watercourse and convey water for a beneficial use.

(2) "Board" means the board of natural resources and conservation provided for in Title 2, Chapter 15, Part 3302.

(3) "Chronically dewatered watercourse" means a watercourse or portion of a watercourse identified by the Department pursuant to Section 85-2-150, MCA.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, Chapter 15, Part 33.

(5) "Director" means the director of the department or his/her designee.

(6) "Operator" means the owner or any other person having a right, title, or other interest in an appropriation facility or is responsible for the management of the appropriation facility.

(7) "Owner" means the individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity having a water right or interest in an appropriation facility.

(8) "Suitable controlling device" means a headgate or other adjustable structure to regulate the amount of water diverted from a watercourse. The suitable controlling device must be capable of being closed completely and to adequately vary the amount of water diverted into a ditch, canal, pipeline or other conveyance system.

(9) "Suitable measuring device" means a structure, gaging station or meter that determines the amount of water being diverted into an appropriation facility. The suitable measuring device may be integrated and be a part of a suitable controlling device or it may be separate. Plans and/or

specifications of measuring devices must be approved by the department prior to installation. The suitable measuring device must be capable of measuring one hundred twenty five per cent (125%) of the flow rate of the appropriative or reserved water right. The measuring device must be located as close as is reasonably possible to the point of diversion from the watercourse.

(10) "Water measurement program" means the program established by the 1991 legislature through HB 908 and codified in 85-2-113(4), 85-2-150, and 85-1-602, MCA. The purpose of the program is to more closely manage water uses from chronically dewatered watercourses.

(11) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

AUTH: 85-2-113, MCA IMP: 85-2-113 and 85-2-150, MCA

Rule II STANDING WATER MEASUREMENT ORDER- CHRONICALLY DEWATERED WATERCOURSE (1) The owner or operator of an appropriation facility on a watercourse or portion of a watercourse identified as chronically dewatered by the department pursuant to 85-2-150, MCA, must have a properly maintained suitable measuring device as part of the appropriation facility. The appropriation facility must also have a suitable controlling device to regulate the amount of water diverted from the watercourse. The appropriation facility must have a suitable controlling device and measuring device operational no later than two years after Department identification of the watercourse or portions of the watercourse as chronically dewatered.

(2) The board may defer the deadline for having a suitable controlling device and measuring device installed, an appropriation facility which is not currently used because the land to which the water is applied is contracted under a state or federal conservation set-aside program or the existing right is leased pursuant to 85-2-436, MCA or the existing right has a temporary change pursuant to 85-2-407, MCA. However the deferred facility must have a suitable controlling and measuring device before it can be put into service. It is the responsibility of the owner or operator of the appropriation facility to request the board to consider a deferment of the deadline.

(3) Whenever an established instream water right for a beneficial use exists on an identified chronically dewatered watercourse or portion of a watercourse a suitable device is required for measuring the right. However livestock drinking directly from the watercourse and waterspreading and natural overflow irrigation rights will not be required to have a measuring device.

(4) If the board specifically finds that the installation of suitable controlling and measuring devices along the entire watercourse or portion of watercourse is not practical within the two (2) year deadline, it may establish a

later deadline pursuant to ARM 36.13.202.

(5) Notice of an order issued under this rule must be pursuant to ARM 36.13.701.

AUTH: 85-2-113, MCA IMP: 85-2-113 and 85-2-150, MCA

Rule III IMPRACTICAL DEADLINE FOR INSTALLATION In order for the board to establish a deadline for acquiring and installing measuring devices beyond two (2) years from the department's identification of a chronically dewatered watercourse or portion of a watercourse:

(1) The owners of at least fifty per cent (50%) of the appropriation facilities or the owners of twenty (20) appropriation facilities, which ever is less, must petition the board to establish a deadline beyond two (2) years from the department's identification of a watercourse or portion of a watercourse as chronically dewatered. The petition must be accompanied by a written justification addressing the finding that must be made by the board. The petition must be received by the board at least one hundred eighty (180) days prior to the ordered deadline. The board must approve or deny the extension within ninety (90) days of receiving the petition. The board may extend the deadline by a maximum of two (2) years.

(2) The board must place a notice of consideration in the legal section and paid advertisement of a newspaper of general circulation in the area of the identified watercourse or portion of watercourse. The notice shall be made at least thirty (30) days before the date of a scheduled board meeting. Actual advertisement costs must be paid by the petitioners. (Individual notice is not given). The board's finding must be made from information presented by petitioners and participants at a scheduled board meeting.

(3) At a minimum the board must find:

(a) The two (2) year deadline is not practical for at least fifty per cent (50%) of the appropriation facilities.

(b) Installation of measuring devices is not practical because of factors including the availability of materials, labor and construction equipment, the time period necessary to obtain permits and to finance, acquire, and install controlling and measuring devices.

(c) The public welfare will not be negatively impacted by an extended deadline because:

(i) there are no significant adverse environmental impacts; and

(ii) there are no adverse effects on the quality of water for existing beneficial uses.

(4) An owner or owners of an individual appropriation facility on an identified watercourse may request an extension of a deadline for installation of measuring devices. The request for extension must be presented to the board at least one hundred eighty (180) days prior to the ordered deadline. The board will determine if an extension is to be granted and if so will specify a length of the extension. The board may request the department to investigate the request and report

its findings to the board. Additional requests for individual extensions may be considered by the board. No public notice of individual extensions will be made. Reasons for an individual extension will be limited to:

(a) extreme health or financial circumstances;

(b) circumstances beyond the owners control which delay any necessary permits from being obtained; or

(c) an owner who takes possession of the appropriation facility with insufficient time to acquire and install controlling and measuring devices before the established deadline.

(5) A one (1) year extension of the deadline for acquiring and installing measuring devices may be granted by the board for the owner or owners of appropriation facilities who are consolidating diversions or ditches. No public notice will be made.

AUTH: 85-2-113,MCA IMP: 85-2-113, MCA

Rule IV ENFORCEMENT (1) The department may verify to the extent possible, owner compliance with the requirement for suitable controlling and measuring devices.

(2) Entry upon land to verify compliance may be made pursuant to 85-2-115, MCA.

(3) Penalties for violating, refusing, or neglecting to comply with these rules or a board order are defined in 85-2-122, MCA.

AUTH: 85-2-113, MCA IMP: 85-2-115, 85-2-122, and 85-2-150, MCA

Rule V COMPLAINTS (1) Complaints alleging a violation of these rules or a board order shall be submitted to the board, the department, and the alleged violator in a written affidavit.

(2) The alleged violator will respond in writing to the board, the department, and the complainant within ten (10) days of receiving the complaint.

(3) The department may investigate the complaint and report its findings to the board in writing.

(4) Only complaints regarding the installation, operation, and/or maintenance of a controlling or measuring device will be considered. Complaints regarding the validity of the water rights, property rights, and/or easements will not be considered.

AUTH: 85-2-113, MCA IMP: 85-2-122 and 85-2-150, MCA

Rule VI MEASUREMENTS AND RECORDS (1) An owner or operator of an appropriation facility on a watercourse or portion of a watercourse identified as chronically dewatered by the department, shall keep records of diversions. Measurements will be recorded at a reasonable interval determined by the department after consultation with the affected owner or operator.

AUTH: 85-2-113, MCA IMP: 85-2-113, MCA

Rule VII NOTICE OF BOARD ACTIONS (1) Upon action by the board establishing a deadline or granting an extension of time, the department shall prepare a notice containing the facts pertinent to the order and shall publish the notice once in a newspaper of general circulation in the area of the identified watercourse.

(2) Before the date of publication, the department shall serve the notice by first-class mail upon:

(a) appropriators of water according to the records of the department who may be affected by the board action.

(b) any purchaser under contract for deed, as defined in 70-20-155, MCA, of the property that may be affected by the board action.

(c) any other person or agency the department feels may be interested in or affected by the board action.

(3) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

AUTH: 85-2-113, MCA. IMP: 85-2-150, MCA.

3. The reason for the new rules is to implement the chronically dewatered watercourse program under 85-2-150, MCA. The rules establish a deadline for installation of a suitable controlling and measuring device for an appropriation facility on a watercourse identified by the Department as chronically dewatered. The deadline for having such devices installed will be two (2) years from the time the watercourse has been identified as chronically dewatered. A deferrment from the deadline may be requested by owners or operators who are not currently using the water right because the land to which it is applied is contracted under a state or federal conservation set-aside program or the water right is leased for an instream use or the right has a temporary change. The rules also require an instream water right to have a way of being measured except that livestock drinking directly from the watercourse, water spreading and natural overflow irrigation rights will not be required to have measuring devices. The rules outline conditions and procedures for extending a deadline beyond two (2) years from the identification of a chronically dewatered watercourse. For the whole designated watercourse as well as an individual appropriator, the rules identify the criteria, the procedure, the petition and justification necessary to extend a deadline. The rules also provide a requirement for an owner or operator of an appropriation facility on a chronically dewatered watercourse to keep records of diversions.

4. Interested parties may present their data, views or arguments in writing or orally at the hearing. Written data, comments or arguments in support of or in opposition to the adoption must be submitted to Ron Schofield, Department of Natural Resources and Conservation, 1520 E. 6th Avenue,

Helena, MT 59620 no later than December 14, 1992.

5. Questions concerning the proposed adoption or requests for a copy of the draft rules should be directed to the Department of Natural Resources and Conservation at the above address, or call 444-6622.

6. Gary Fritz has been designated to preside over and conduct the hearing.

Donald D. MacIntyre
Chief Legal Counsel
Rules Reviewer

Jack E. Galt, Chairman
Board of Natural Resources
and Conservation

Certified to the Secretary of State, October 30, 1992.

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

In the matter of the amendment of rule 46.10.823 pertaining to self-initiated education or training	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.823 PERTAINING TO SELF-INITIATED EDUCATION OR TRAINING

TO: All Interested Persons

1. On December 30, 1992, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.10.823 pertaining to self-initiated education or training.

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

46.10.823 SELF-INITIATED EDUCATION OR TRAINING

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

(A) The number of slots to be filled will be determined by dividing the total sum of money available for child care for persons in self-initiated programs for the biennium by the average amount per individual paid by the department for child care. Applications for the slots will be taken ~~once a~~ during the year ~~at a time announced~~ beginning on a date established by the department. Persons awarded a slot must re-apply each year to continue receiving child care assistance.

(B) If a slot is not available at the time the department completes the assessment, the person will be put on a waiting list until a slot is available. The person's position on the waiting list will be based on the priorities set forth in subsections (2)(a)(ii)~~(A)(B), (2)(a)(ii)(C), and~~ through (2)(a)(iii)~~(A) through (E)~~. The waiting list will be revised as to priorities each month. Each year a new waiting list will be established ~~after the close of the application period~~.

(ii) ~~Those enrolled prior to March 1, 1992 in self-initiated training or education which has already been approved will continue to have child care paid until the end of the current school year, as defined by the school.~~ Slots will be awarded to persons who are eligible for self-initiated child care in descending order of preference according to the following priorities:

(A) ~~To receive child care until the completion of their program, those approved prior to March 1, 1992 for the self-initiated program must re-apply for approval and be chosen for one of the limited number of slots.~~ Persons whose self-initiated child care was approved prior to March 1, 1992, and who continue to pursue the same program approved in their original employability plan. Persons who were approved prior to

March 1, 1992, but are pursuing a different program than that approved in their original employability plan do not qualify for priority in this category.

(B) ~~Such individuals will be given priority in filling the slots over those whose self-initiated training or education was not approved prior to March 1, 1992. Priority will be given to those who are~~ Persons closest to the completion of their program.

(C) ~~As between persons having equal priority pursuant to subsection (2)(a)(ii)(B), priority will be given to a person~~ Persons who ~~has~~ have received AFDC cash assistance for at least 36 of the preceding 60 months ~~over a person who has not received AFDC cash assistance for at least 36 of the preceding 60 months~~.

(D) ~~Among persons having equal priority pursuant to subsections (2)(a)(ii)(B) and (C), priority will be given to the person whose application was filed earliest.~~ Persons who have not completed a recognized course of post-secondary education, such as vocational training or an associate degree program, within the preceding five years.

(E) Persons who have completed a recognized course of post-secondary education, such as vocational training or an associate degree program, within the preceding five years and are working for monetary gain 15 or more hours per week.

~~(iii) Among those who are not enrolled prior to March 1, 1992 in self-initiated training or education which was already approved, priority will be given in descending order of preference to persons in the categories described in subsections (A) through (E) below. Among persons having equal priority pursuant to subsections (A) through (E), priority will be given to the person whose application was filed earliest:~~

~~(A) persons attending high school or participating in either adult basic education or a GED program;~~

~~(B) those who are closest to the completion of their program;~~

~~(C) persons who have received AFDC cash assistance for at least 36 of the preceding 60 months;~~

~~(D) persons who have not completed a recognized course of post-secondary education; and~~

~~(E) persons who have completed a recognized course of post-secondary education, such as vocational training or an associate degree program within the preceding five years and are currently working for monetary gain 15 or more hours per week.~~

(iii) Within each of the categories listed above, priority will be given to the person with the earliest application date.

(iv) Persons who have completed a bachelor's degree ~~will~~ are not ~~be approved~~ eligible for self-initiated ~~training or education~~ child care;

(v) Persons who have completed a recognized course of post-secondary education, such as vocational training or an associate degree program, in the preceding five years and are not working for monetary gain 15 or more hours per week are not eligible for self-initiated child care.

Subsection (2)(a)(v) remains the same in text but is renumbered (2)(a)(vi).

Subsections (2)(b) through (2)(d) remain the same.

(3) ~~Child care is the only supportive service which may be provided to a person in self-initiated training or education.~~ Child care will be provided for a person participating in a self-initiated program approved by the department:

Subsections (3)(a) and (3)(b) remain the same.

AUTH: Sec. 53-4-212, 53-4-703, 53-4-719 and 53-4-720 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-706, 53-4-708 and 53-4-720 MCA

3. The Department of Social and Rehabilitation Services (SRS) pays the child care expenses of some but not all recipients of Aid to Families with Dependent Children (AFDC) who are in self-initiated training or education, that is, training or education commenced by the recipient on the recipient's own initiative rather than as part of the Job Opportunities and Basic Skills (JOBS) program. The Department has a limited number of child care slots for self-initiated recipients due to limited funding.

ARM 46.10.823 states the priorities and restrictions used to determine which recipients will be chosen for these child care slots. It also describes the application process for available slots and currently provides that applications will be taken only once a year at a time determined by the Department, with all applicants who are not awarded slots being put on a waiting list.

The Department is now amending Rule 46.10.823 to provide that applications for slots will be taken throughout the year and the waiting list will be revised as to priorities each month. This change is necessary because the Administration for Children and Families (ACF) of the U.S. Department of Human Services, the federal agency which administers the AFDC program, has informed the Department that it cannot limit applications for self-initiated child care to one period of the year.

The basis of this requirement is the provision of the Family Support Act of 1988 at 42 U.S.C. 602(g)(1)(A)(i)(II) which requires the state agency administering AFDC to guarantee child care to AFDC recipients participating in an approved education or training activity. Although it is permissible to limit funding of child care for such recipients due to budgetary constraints, ACF interprets this provision as requiring the states to give recipients the opportunity to apply for the child care slots which are available throughout the year.

The ACF has also advised the Department that it cannot limit supportive services for recipients in self-initiated programs to child care, based on the requirements of the Family Support Act. The Department is therefore deleting this limitation from ARM

46.10.823(3). Similarly, the Department is deleting subsection (2)(a)(iii)(A), which gives the highest priority among persons not approved prior to March 1, 1992, to persons attending high school or participating in adult basic education or GED programs, because the ACF has advised the Department that all persons in this category are required by the Family Support Act to be served in the JOBS program. Since they will be receiving supportive services through the JOBS program, these individuals will not be competing for self-initiated child care slots.

ARM 46.10.823 is also being amended to include an additional limitation on persons whose self-initiated programs were approved prior to March 1, 1992. As currently written, the rule provides that persons whose programs were approved after March 1, 1992, and who have completed a recognized course of post-secondary education within the last five years may receive child care assistance only if they are working at least 15 hours per week. However, the current rule does not apply this restriction to persons whose programs were applied prior to March 1, 1992.

It has recently come to the Department's attention that the rule in its present form does not accurately reflect the intention of the Self-initiated Task Force, which was to prohibit any person in a self-initiated program who had completed a course of post-secondary education in the preceding five years from receiving child care unless that person was working at least 15 hours per week, regardless of whether that individual's program had been approved prior to March 1, 1992, or not.

The Task Force felt that the Department's limited resources to pay for child care should be allocated to AFDC recipients most in need of training or education in order to achieve the goal of self-sufficiency. Individuals who had recently completed a course of post-secondary education would generally have marketable skills which would enable them to find employment and support themselves. On the other hand, if a recipient in this category had sufficient motivation to attend school and work at least 15 hours a week, the Task Force considered it worthwhile to provide child care to that recipient, if a slot was available after persons in categories having a higher priority were served.

Therefore the rule was written to allow recipients with recent post-secondary training to receive child care only in cases where they were working part-time also. The rule is now being changed to impose that limitation on all recipients, including persons whose program were approved prior to March 1, 1992.

Finally, the Department has made other changes in the wording and organization of subsections (2)(a)(ii)(A) through (2)(a)(v) to make the rule more readable. These changes do not reflect any change in policy.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 7, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 30, 1992.

BEFORE THE FINANCIAL DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a new rule pertaining to credit unions	))))	NOTICE OF ADOPTION OF NEW RULE I (8.80.403) CREDIT UNIONS - SURETY BOND AND HAZARD INSURANCE COVERAGE

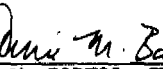
TO: All Interested Persons:

1. On August 27, 1992, the Financial Division published a notice of proposed adoption of the above-stated rule at page 1786, 1992 Montana Administrative Register, issue number 16.

2. The Financial Division has adopted the rule exactly as proposed.

3. No comments or testimony were received.

FINANCIAL DIVISION
DONALD HUTCHISON, COMMISSIONER
OF FINANCIAL INSTITUTIONS

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 1992.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of Procedural Rules I through V pertaining to investigative protocol by the department of justice in the performance of its investigative responsibilities	NOTICE OF ADOPTION OF RULES 23.3.201 THROUGH 23.3.205 REGARDING DEPARTMENT OF JUSTICE INVESTIGATIVE PROTOCOL

TO: All Interested Persons:

1. On September 24, 1992, the Department of Justice and the Law Enforcement Advisory Council published a notice to adopt the following rules concerning investigative protocol regarding its investigative responsibilities, at page 2117 of the 1992 Montana Administrative Register, Issue No. 18.

2. The Department has adopted and amended the rules as proposed with the following changes:

RULE I.(23.3.201) DEFINITIONS Unless the context requires otherwise, the following definitions apply to [rules I through V]:

(1) Same as proposed.

(2) "Investigative protocol" means the procedure used by the Montana department of justice law enforcement agencies to notify other law enforcement agencies and coordinate investigative activities to ensure the maximum effective use of personnel, respect for jurisdictional boundaries, and safety of officers involved in an investigation.

(3) through (4) same as proposed.

AUTH: 2-15-112, MCA; IMP: 44-2-115

RULE II.(23.3.202) PROTOCOL (1) through (2)(a) same as proposed.

(b) When an investigation is performed by a state agency at the request and under the direction of a federal law enforcement agency, the ~~federal agent in charge of the investigation shall notify the affected jurisdiction~~ responsibility for and decision regarding notification to other authorities shall be made by the federal agent in charge of the investigation. When joint federal and state investigations are conducted, the liaison officer for the state agency will request in writing that the federal agency notify local law enforcement officials that the investigation is in progress, and document the response to this notification.

(c) Same as proposed.

AUTH: 2-15-112, MCA; IMP: 44-2-115

RULE III.(23.3.203) INTERNAL INVESTIGATION (1) For a state agency ~~to~~ to initiate an internal investigation of another

law enforcement agency or public official pursuant to section 44-2-115, MCA, the following procedures must be followed:

(a) A written request must be received and approved by the attorney general or a designated representative. The request must be from a ~~law enforcement official in a position of authority~~ chief of police, sheriff or county attorney within the jurisdiction where the alleged offense(s) occurred.

(b) through (3) same as proposed.

AUTH: 2-15-112, MCA; IMP: 44-2-115

RULE IV.(23.3.204) COORDINATION Same as proposed.
RULE V.(23.3.205) COMPLAINT REVIEW Same as proposed.

3. The Department received a total of five comments. Three were in support of the rules as proposed. The Department thoroughly considered the other two comments. Those comments and the Department's responses are as follows:

COMMENT: One comment was received from Cascade County Sheriff/Coroner, Barry C. Michelotti recommending that Rule III (a) delete " from a law enforcement official in a position of authority" and insert "from the chief law enforcement officer or county attorney of the jurisdiction where the alleged offense(s) occurred." Sheriff Michelotti expressed concern that prior wording was too vague and may pose a conflict with administration, especially if an internal investigation was currently in process.

RESPONSE: The Department agreed the wording was too vague but determined the verbiage should be more specific than Sheriff Michelotti recommended. All law enforcement officers may be determined to have authority, at a given time. The Department specified chief of police, sheriff or county attorney, to eliminate this possibility.

COMMENT: One comment was received from the U.S. Department of Justice, Drug Enforcement Administration suggesting Rule I (2) and Rule III (1) be clarified to separate Montana and state Department of Justice from federal Department of Justice, and to clarify Rule IV (1) by inserting "subject to Rule II protocol above", between the words "effort" and "to".

The Drug Enforcement Administration did not agree that they would automatically notify local jurisdictions of their investigations just because they were working them jointly; that they must make their determination on a case-by-case basis. They suggested changing Rule II (2)(b) to allow the federal agent in charge to determine whether or not notification will be made to the affected local jurisdiction.

RESPONSE: The Department is changing Rule I (2) and Rule III (1) to include verbiage to separate Montana and state Department of Justice from federal Department of Justice. Rule IV (1) is

clear as written. To insert "subject to Rule II protocol above" is redundant.

The Department is changing Rule II (2)(b) to conform with the intent of the Drug Enforcement Administration's recommendation.

By: _____ _____
MARC RACICOT, Attorney General Rule Reviewer

Certified to the Secretary of State October 29, 1992

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

In the matter of the amendment of rule 46.10.404 pertaining to Title IV-A day care for children	)))	NOTICE OF THE AMENDMENT OF RULE 46.10.404 PERTAINING TO TITLE IV-A DAY CARE FOR CHILDREN

TO: All Interested Persons

1. On September 24, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.404 pertaining to Title IV-A day care for children at page 2125 of the 1992 Montana Administrative Register, issue number 18.

2. The Department has amended rule 46.10.404 as proposed.

3. No written comments or testimony were received.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 30, 1992.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1992. This table includes those rules adopted during the period September 1, 1992 through December 30, 1992 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1992, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1992 Montana Administrative Register.

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