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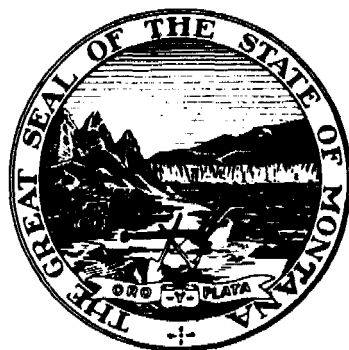
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OCT 27 1989

OF MONTANA
**MONTANA
ADMINISTRATIVE
REGISTER**

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1989 ISSUE NO. 20
OCTOBER 26, 1989
PAGES 1624-1682



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OCT 27 1989

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 200 MONTANA

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.30.406 EXAMINATION,
to examinations, fees and) 8.30.407 FEE SCHEDULE AND
itemization) 8.30.604 ITEMIZATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 25, 1989, the Board of Morticians
proposes to amend the above-stated rules.

2. The proposed amendment of 8.30.406 will read as
follows: (new matter underlined, deleted matter interlined)
(full text of the rule is located at pages 8-928 and 8-929,
Administrative Rules of Montana)

"8.30.406 EXAMINATION (1) The licensing examination
shall be any consist of the subjects covered by the national
board examinations of the conference of funeral service
examining boards taken within the past 5 years and in
addition, the statutes and rules under Title 37, chapter 19,
MCA, and the rules of the Montana state department of health
covering registration of deaths, embalming, transportation,
disposition of dead human bodies and funeral directing.

~~(2) An examinee may present to the board the results of
a national board examination taken within the past 5 years, in
partial fulfillment for a mortician's license, provided that
he shall also successfully complete the examination covering
rules of the Montana state department of health, covering
registration of deaths, embalming, transportation, disposition
of dead human bodies, funeral directing, and the statutes and
rules under Title 37, chapter 19, MCA.~~

~~(3) (2) A passing grade of 75% must be obtained for to
passing the statutes and rules examination.~~

~~(4) In the event of failure of no more than 2 subjects,
the applicant may re-write the subjects failed.~~

~~(a) Failure in more than 2 subjects will require
rewriting the entire examination.~~

~~(b) Such re-writing shall be at the next following
examination offered by the board."~~

Auth: Sec. 37-19-202, MCA; IMP, Sec. 37-19-302,
37-19-303, MCA

REASON: The amendments are being proposed to make clear that
the board requires passing the National Board Examination as a
minimum qualification and that 75% is the pass-fail point for
the law and rules examination.

3. The proposed amendment of 8.30.407 will read
as follows: (new matter underlined, deleted matter

interlined) (full text of the rule is located at page 8-929, Administrative Rules of Montana)

"8.30.407 FEE SCHEDULE

(1) through (5) will remain the same.

(6) Inspection fee for new facility \$200.00"

Auth: Sec. 37-1-134, 37-19-202, MCA; IMP, Sec. 37-1-134, 37-19-301, 37-19-303, 37-19-304, 37-19-306, 37-19-401, 37-19-402, 37-19-403, MCA

REASON: The Board is proposing this amendment to set a fee to cover the costs of inspection of a new mortuary facility. This is a one-time fee.

4. The proposed amendment of 8.30.604 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-936, Administrative Rules of Montana)

"8.30.604 ITEMIZATION (1) An itemized listing of the service charges must be disclosed and made available to posted in-a-place-easily-seen-by the consuming public.

(2) Each mortuary shall have a card or brochure in each casket on display stating the price of the funeral-service using-said casket and-listing-the-services-and-other merchandise-included-in-the-price.

(a) Each mortuary must display the least expensive casket available either physically or by photograph.

(3) will remain the same."

Auth: Sec. 37-19-202, MCA; IMP, Sec. 37-19-403, MCA

REASON: The rule amendments are needed to conform the board's rule to FTC regulations dealing with the same subject matter.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Morticians, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than November 23, 1989.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Morticians, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than November 23, 1989.

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

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directly affected has been determined to be 29 based on the 293 licensees in Montana.

BOARD OF MORTICIANS
JACK SEVERNS, CHAIRMAN

BY: Andy Poole
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 16, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of a rule pertaining) THE PROPOSED AMENDMENT OF
to renewals) 8.32.411 RENEWALS

TO: All Interested Persons:

1. On November 17, 1989, at 9:00, a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the amendment of the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-978.1, Administrative Rules of Montana)

"8.32.411 RENEWALS (1) In November of each year, the board of nursing shall mail an application for renewal of license to all persons currently licensed. The licensee must fill out the application and return it to the board BEFORE January 1, together with the renewal fee of ~~\$20.00~~ \$23.00. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the current year beginning January 1, and expiring December 31.

(2) To place a license on active status, the licensee pays the renewal fee of ~~\$20.00~~ \$23.00 for the current year at the time that practice is resumed.

(3) Registered professional nurses and licensed practical nurses failing to renew their license by January 1 or requesting reinstatement of a lapsed license will pay a late fee of \$5.00 plus the ~~\$20.00~~ \$23.00 renewal fee which will be due upon application."

Auth: Sec. 37-1-134, 37-8-202, MCA; Sec. 37-1-134, 37-8-202, 37-8-431, MCA

REASON: The Board is proposing amendments to ARM 8.32.411 in order to fund a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or excessive use of drugs. This program, mandated by the 51st Legislature under HB378, will provide assistance to the chemically dependent licensees and monitor their efforts toward rehabilitation.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than November 23, 1989.

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

BOARD OF NURSING
AVA BOSCHKEE, RN, PRESIDENT

BY:


GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 16, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD SANITARIANS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment a rule pertaining to) OF 8.60.408 MINIMUM
minimum standards) STANDARDS FOR REGISTRATION
) CERTIFICATE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 25, 1989, the Board of Sanitarians proposes to amend the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1649, Administrative Rules of Montana)

"8.60.408 MINIMUM STANDARDS FOR REGISTRATION CERTIFICATE

(1) through (1)(a)(i) will remain the same.

(2) The applicant must successfully complete an examination within 30 days from the date of application with a minimum score of 70% overall. For good cause shown Additional time to take the test may be allowed at the discretion of the board."

Auth: Sec. 37-40-203, MCA; IMP, Sec. 37-40-302, MCA

REASON: This rule is being amended to clarify the pass-fail standard for the licensing examination and to recognize that there are valid hardship reasons for failure to complete the licensing examinations within 30 days of application.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Sanitarians, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than November 23, 1989.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Sanitarians, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than November 23, 1989.

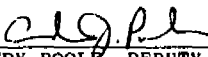
5. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from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

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directly affected has been determined to be 15 based on the 154 licensees in Montana.

BOARD OF SANITARIANS
SAMUEL KALAFAT, CHAIRMAN

BY:



ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 16, 1989.

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

In the matter of the proposed amendment of rules pertaining to board members; forward commitment periods of loans; and loan assumptions) NOTICE OF PROPOSED AMENDMENT OF 8.97.1101 ORGANIZATIONAL RULE; 8.97.1303 FORWARD COMMITMENT FEES AND YIELD REQUIREMENTS FOR ALL LOANS; AND 8.97.1414 LOAN PROGRAMS ASSUMPTIONS
---	--

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 25, 1989, the Board of Investments proposes to amend the above-stated rules.
2. The proposed amendment of 8.97.1101 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3541, Administrative Rules of Montana)

"8.97.1101 ORGANIZATIONAL RULE (1) will remain the same.

(2) The board consists of nine members appointed by the governor in the manner prescribed by 2-15-124, MCA. The members are one member from the public employees' retirement board provided for in 2-15-1009, MCA, one member from the teachers' retirement board provided in 2-15-1010, MCA, and seven members who will provide a balance of professional expertise, public interest, and public accountability, and who are informed and experienced in the subject of investment and who are representative of the financial community, agriculture, and labor. The names and addresses of the members of the board are as follows:

Dave E. Aageson, RR 74, Box 15, Gildford, Montana 59525
Robert Br-Batista, 415 Third Street NW, Great Falls,
Montana-59401

G. Steven Brown, 1520 Highland, Helena, Montana 59601
John Conners, P.O. Box 157, Whitefish, Montana 59937

James Cowan, P.O. Box 369, Seeley Lake, Montana 59868
Dr-William-Kearns, Jr., 210 North Walnut, Townsend,
Montana-59644

Patrice Br-LaFourette, 427 Lupfer Avenue, Whitefish,
Montana-59937

Joel Tr-Bong, 5430 Gene Sarazen Drive, Billings, Montana
59106

Dwight MacKay, 2811 Terrace Drive, Billings, Montana
59102

Joseph Br-Reber, 801 Floweree, Helena, Montana-59601
W.E. Schreiber, 488 Barkley Lane, Whitefish, Montana
59937

Wilbur E. Scott, 3021 8th Avenue South, Great Falls,
Montana 59401

Frederick B. Tossberg, Box 210 Grantsdale, Hamilton,
Montana 59840

Warren Vaughan, P.O. Box 1316, Billings, Montana 59103
(3) and (4) will remain the same."

Auth: Sec. 2-4-201, 17-6-201, 17-6-324, MCA; IMP, Sec.
2-4-201, 17-6-201, 17-6-324, MCA

REASON: This amendment recognizes the expiration of the terms
of five members and conforms to and recognizes the appointment
of five new members.

3. The proposed amendment of 8.97.1303 will read as
follows: (new matter underlined, deleted matter interlined)
(full text of the rule is located at pages 8-3553 and 8-3554,
Administrative Rules of Montana)

"8.97.1303 FORWARD COMMITMENT FEES AND YIELD
REQUIREMENTS FOR ALL LOANS (1) through (3)(b) will remain the
same.

(c) the forward commitment fees charged, exclusive of
the net yield requirement, are:

<u>Forward Commitment Period</u>	<u>Fee</u>
1 to 90 calendar days	1/4% of the amount committed
1 to 180 calendar days	1/2% of the amount committed
181 to 270 calendar days	an additional 1/2% of the amount committed
271 to 360 calendar days	an additional 1/2% of the amount committed
<u>361 to 450 calendar days</u>	<u>an additional 1/2% of the</u> <u>amount committed</u>
<u>451 to 540 calendar days</u>	<u>an additional 1/2% of the</u> <u>amount committed</u>

(d) through (f) will remain the same."

Auth: Sec. 17-5-1504, 17-5-1521, 17-6-315, 17-6-324,
MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-211, 17-6-315,
17-6-324, MCA

REASON: The amendments are necessary to allow commercial
borrowers enough time to complete the construction phase of
projects.

4. The proposed amendment of 8.97.1414 will read as
follows: (new matter underlined, deleted matter interlined)
(full text of the rule is located at page 8-3575,
Administrative Rules of Montana)

"8.97.1414 CONVENTIONAL, FHA, VA, COMMERCIAL, AND
MULTI-FAMILY LOAN PROGRAMS - ASSUMPTIONS (1) through (4) will
remain the same.

(5) If an agreement is reached to assume the
remaining balance, a one-half of one percent (1/2 of 1%)
assumption/processing fee will be required on a conventional

loan, and a three-fourths of one percent (3/4 of 1%) assumption/processing fee will be required on commercial and multi-family loans. The board may waive such fee if action by a third party improves the board's status in the loan. A copy of the settlement statement and assumption agreement will be required for conventional, commercial and multi-family loans. An assumption/processing fee will not be required with an assumption of an FHA/VA loan.

(6) and (7) will remain the same."

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only but may be a correct interpretation of this section. Sec. 17-5-1504, 17-5-1521, MCA; Implied Sec. 17-6-201, 17-6-315, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-211, 17-6-315, 17-6-324, MCA.

REASON: Under this proposed amendment, the Board could, in lieu of foreclosing on a loan, waive the assumption fee if a third party is able to improve the board's position in the loan. This would reduce losses to the board's portfolio from foreclosures.

5. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Board of Investments, Department of Commerce, 555 Fuller Avenue, Helena Montana 59620, no later than November 23, 1989.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Montana Board of Investments, Department of Commerce, 555 Fuller Avenue, Helena, Montana 59620, no later than November 23, 1989.

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

MONTANA BOARD OF INVESTMENTS
W.E. SCHREIBER, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 16, 1989.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING ON
of new rules pertaining to the	)	THE PROPOSED ADOPTION OF NEW
Montana Economic Development	)	RULES PERTAINING TO THE
Act; specifically the Conser-	)	MONTANA ECONOMIC DEVELOPMENT
vation Reserve Payment	)	ACT
Enhancement Program)	

TO: All Interested Persons:

1. On November 28, 1989, at 9:00 a.m. to 12:00 p.m., a public hearing will be held in the conference room at the office of the Board of Investments, 555 Fuller Avenue, Helena, Montana, to consider the adoption of rules pertaining to the Economic Development Bond Act, specifically the Conservation Reserve Payment Enhancement Program.

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

3. The proposed new rules will read as follows:

"1. DEFINITIONS In addition to the definitions set forth in 17-5-1503, MCA, the following definitions shall apply for purposes of these rules:

(1) "Access easement" means an access easement from a borrower to the board including any amendments thereto relating to land subject to the borrower's CRP contract;

(2) "Act" means Title 17, Chapter 5, Part 15, Montana Code Annotated;

(3) "Agricultural enterprise project" means a project located in Montana whereby CRP loan proceeds are used for restructuring or refinancing existing agricultural indebtedness; agricultural working capital; purchase of livestock, agricultural land or equipment; or other agriculturally related enterprise.

(4) "Annual payments" means payments referred to as "annual rental payments" in a CRP contract which can be in the form of cash or payment in kind certificates;

(5) "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture, and any successor or its functions;

(6) "Borrower" or "loan recipient" means a person who has received a CRP loan from the board pursuant to the requirements of these rules;

(7) "CCC" means the Commodity Credit Corporation of the USDA, its successors and assigns;

(8) "Closing" means the finalizing of a CRP loan, at which time the trustee disburses funds for a loan to a borrower;

(9) "Commitment agreement" means the agreement so designated and amendments or supplements thereto wherein the borrower agrees to take a CRP loan from the board by a date

certain for purposes of financing the borrower's agricultural enterprise project for a specific amount and at a fixed interest rate;

(10) "Commitment fee" means the fee paid by the borrower upon submission of the commitment agreement to the loan originator;

(11) "CRP" means U.S. Conservation Reserve Payment program of the USDA under Title XII of the Food Security Act of 1985, as amended;

(12) "CRP contract" means a contract between the borrower and the CCC under the conservation reserve program;

(13) "CRP loan" means a loan made by the board to the borrower pursuant to these rules;

(14) "CRP payment" means the payment made by the CCC under a CRP contract, whether the payment is made in cash or by payment in kind certificates;

(15) "CRP program" means the board's conservation reserve payment enhancement program pursuant to which the board makes loans for agricultural enterprise projects;

(16) "Loan fund" means the fund from which disbursements to borrowers shall be made to finance agricultural enterprise projects;

(17) "Mortgage" means a mortgage and security agreement entered into between a borrower and the board;

(18) "Note" means a promissory note executed and delivered by a borrower to the board to evidence a loan;

(19) "Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated association or government or agency, or political subdivision;

(20) "Program documents" collectively means the application and its exhibits, commitment agreement, note, CRP contract, successor in interest agreement, commodity certificates, mortgages, origination agreement and access easement;

(21) "SCS" means the U.S. Soil Conservation Service of the U.S. Department of Agriculture;

(22) "State" means the State of Montana;

(23) "Trustee" means the person responsible for administering the bond funds;

(24) "USDA" means the U.S. Department of Agriculture;

(25) "Working capital" means money used in a for-profit activity either to increase current assets or to decrease current liabilities."

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

"II. DESCRIPTION AND GOALS OF THE STATE CRP ENHANCEMENT PROGRAM (1) The state CRP program is an economic development loan program administered by the board.

(2) The board will issue its economic development bonds pursuant to the Act, for the purpose of funding a program pursuant to which a person participating in the federal CRP program can borrow money against his contract and use the loan proceeds for an agricultural enterprise project.

(3) The goals of the program are to:

(a) provide loans for agricultural enterprise projects at favorable interest rates in order to strengthen the state's agricultural industry;

(b) provide loans to persons participating in the U.S. Conservation Reserve Payment program for agricultural enterprise projects in amounts which will assist those persons while simultaneously protecting the board and other investors."

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

"III. GENERAL STATE CRP PROGRAM REQUIREMENTS (1) The borrower receiving CRP loan funds must enter into a successor in interest agreement with the board and CCC prior to receiving a CRP loan. All contracts assigned must be subject to recourse, which in turn the board may assign to the trustee for the bondholders.

(2) While the board becomes responsible for CRP contract compliance under the terms of the successor in interest agreement, the borrower still must agree, in consideration of receiving a CRP loan, to retain responsibility for CRP contract compliance.

(3) The borrower must also agree as follows:

(a) to provide an annual certification of compliance to the board whereby the borrower certifies that he is in compliance with all federal CRP program requirements and that he agrees to provide the SCS with all information necessary to determine compliance;

(b) to provide the board a first mortgage on his Montana CRP acres or other interest that the board determines equally protects the board;

(c) to grant the board an access easement for the CRP acres in order to allow the board to promptly correct instances of noncompliance; and

(d) to reimburse the board for all noncompliance penalties assessed by the ASCS and for all other costs associated with corrective measures taken by the board or its agents."

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

"IV. ELIGIBILITY CRITERIA FOR STATE CRP PROGRAM

(1) Any person participating in the U.S. Conservation Reserve Payment program may apply and be eligible for a loan under the state CRP program except that the board may exclude participation for any of the following reasons:

(a) a person is

(i) a debtor in any case under Title 11 of the United States Code; or

(ii) a debtor liquidating or operating under a plan confirmed pursuant to Chapter 11, 12 or 13 of Title 11 of the United States Code;

(b) a person is in default under the CRP contract;

(c) taxes, special assessments or other governmental charges are not due and unpaid upon the CRP acres;

(d) a person has assigned, or agreed to assign, to any person any interest in the CRP contract;

(e) a person's CRP acres or other assets are subject to any lien on which proceedings for foreclosure or other enforcement action has been initiated; and

(f) a person is aware of any delinquency or other fact or circumstance which might cause the lienholder to initiate a foreclosure or other enforcement action on any lien."

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

"V. HOLDBACK FOR ESTABLISHMENT OF COVER - EMERGENCY USE OF COVER (1) If an applicant has not established cover in accordance with his CRP plan, the board may still allow the applicant to participate in the CRP program. In order, however, to limit board exposure to the potential reseeding costs, the board may holdback a portion of the borrower's loan proceeds pending the establishment of cover. A holdback of \$20 per acre for introduced grasses and \$30 per acre for native grasses will be held back for all CRP contracts which have not received certification by the SCS as having an established cover. The board may periodically adjust the holdback amount per acre required to reflect changes in reseeding costs. Amounts held back, and earnings thereon, will be disbursed to borrowers as soon as an SCS certification is issued and received by the board.

(2) If an emergency occurs, such as a drought or other naturally occurring event, the board, at its sole discretion, may authorize the use of the cover. The borrower prior to such use occurring shall be obligated to compensate the board for that portion of the CRP payment deducted by the USDA for such use."

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

"VI. PERMISSIBLE USES OF LOAN FUNDS (1) A state CRP loan recipient may use loan proceeds for an agricultural enterprise project, including, but not limited to:

(a) refinancing of existing indebtedness incurred in the acquisition of a farm or ranch or for the improvements thereto;

(b) acquisition of agricultural equipment or agricultural machinery, or for the refinancing of existing indebtedness incurred for such acquisition;

(c) acquisition of real property used for agricultural purposes only;

(d) working capital for operation of a farm or ranch; or

(e) for any combination of (a) through (d) above.

(2) A CRP loan recipient may not use loan proceeds for any project which does not qualify as an agricultural enterprise project."

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

"VII. APPLICATION PROCEDURES FOR STATE CRP PROGRAM - LOAN REQUIREMENTS FOR THE APPLICANT/BORROWER (1) An applicant for a CRP loan shall request an application form from the individual designated by the board to assist applicants.

(2) An applicant must submit a satisfactorily completed application form with all requested exhibits. If deemed complete, it will be processed. If deemed incomplete, it will be returned to the applicant to be completed as directed.

(3) An applicant must also submit a non-refundable application fee in the amount of \$500 to cover application and processing costs.

(4) If the board determines that the application and other documents comply with the rules, the board will approve the loan.

(5) A commitment agreement will be entered into between the board and the applicant by a date certain. The applicant will be required to pay a commitment fee when he returns the executed commitment agreement. In the commitment agreement the applicant must agree to borrow funds if the board is able to provide a specified minimum loan amount and the board agrees to use its best efforts to sell bonds and fund the loan to the applicant.

(a) The commitment fee shall be a commitment amount equal to one percent (1%) of the minimum loan amount set forth in the commitment agreement.

(6) An applicant with an outstanding mortgage or encumbrance on his CRP acres must also arrange to have that lien or encumbrance subordinated to the board's mortgage and security interest, unless the board deems otherwise."

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

"VIII. APPLICATION PROCEDURES FOR CRP PROGRAM - LOAN AGREEMENT, CLOSING, FUNDING (1) Each CRP loan must be evidenced by a note and approved by the board.

(2) All CRP loans must be closed within 90 days of the sale of the bonds unless otherwise authorized by the board.

(3) The borrower must submit the following documents prior to the disbursement of loan funds: a fully executed mortgage, access easement, note, fully executed subordination agreement (where applicable), an executed successor in interest agreement signed by both the borrower and the local ASCS committee, and a mortgagee's title insurance policy, 1970 form ALTA, issued by a title company, approved by the board and accepted by the board as to form, exceptions and endorsements, in an amount not less than the CRP loan, insuring the mortgage as a valid first lien on the land described therein, subject only to encumbrances acceptable to the board.

(4) A borrower must agree to repay the CRP loan with interest in annual installments, the last of which shall be due not later than the final stated maturity of the bonds whose proceeds are used to fund such loan.

(5) If all program documents have been submitted, and are fully and accurately completed and recorded, the board shall authorize disbursement of loan funds to the borrower."

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

"IX. DETERMINATION OF LOAN AMOUNT (1) Loans made under the CRP program will bear the interest rate necessary to pay interest on the board's bonds to fully amortize up front financing and loan origination costs, net of the borrower's application and commitment fees, and to pay annual CRP program-related costs.

(2) The dollar amount that a borrower will receive under the program will be the discounted value (present value) of the annual payments remaining on his CRP contract at the interest rate borne by the loan. The actual dollar amount received by a borrower will be the loan amount (plus the application and commitment fees previously received) less application processing fees, loan origination fees, charges for title reports and insurance, recording and filing fees, cover escrow (if applicable), and any other costs and expenses incurred in connection with processing and closing the borrower's loan."


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

REASON: The Board is proposing to adopt these rules in order to implement HB 717, Ch. 684, Laws of 1989, thereby revising the use of bond proceeds for agricultural projects. The proposed rules will allow the state to take advantage of the revised federal farm support program.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mr. David Lewis, Executive Director, Board of Investments, 555 Fuller Avenue, Helena, Montana, no later than November 28, 1989.

5. Mona Jamison, attorney, of Helena, Montana, has been designated to preside over and conduct the hearing.

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

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 16, 1989.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING ON PROPOSED
amendment of Class 1) AMENDMENT OF ARM 10.57.401, CLASS 1
Professional Teaching) PROFESSIONAL TEACHING CERTIFICATE
Certificate)

TO: All Interested Persons

1. On December 5, 1989, at 3:00 P. M., or as soon thereafter as it may be heard, a public hearing will be held in the Conference Room, Montana School for the Deaf and Blind, 3911 Central Avenue, Great Falls, Montana, in the matter of the amendment of ARM 10.57.401, Class 1 Professional Teaching Certificate.

2. The rule as proposed to be amended provide as follows:
10.57.401 CLASS 1 PROFESSIONAL TEACHING CERTIFICATE (1) through (3) remain the same.

(4) Renewal: Verification of one year of successful teaching experience or the equivalent. Beginning with those certificates expiring in 1994, six credits will also be required for renewal. Renewal credits consist of college credit including extension course credits and continuing education credits. Also acceptable are staff development credits, inservice training credit, and local school district professional development credit, as approved by the office of public instruction.

(5) through (7) remain the same.

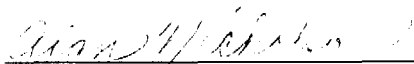
AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-106, 20-4-108 MCA

3. The board is proposing this amendment to make the requirements for this teaching certificate consistent with those of other teaching certificates.

4. Interested persons may present their data, views or arguments either orally or in writing to Alan Nicholson, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than November 30, 1989.

5. Alan Nicholson, Chairperson, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 So. Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.


ALAN NICHOLSON, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: 

Certified to the Secretary of State October 16, 1989.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC
adoption of new rules I	)	HEARING ON THE PROPOSED
through XX regarding the	)	ADOPTION OF MOTORIST
installation of motorist	)	INFORMATION SIGN
information signs along	)	RULES
interstate and primary)	
highways)	

TO: All Interested Persons:

1. On November 16, 1989 at 10:00 A.M. a public hearing will be held in the auditorium of the Department of Highways building at Helena, Montana, to consider the adoption of Rules I through XX.

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

3. The proposed rules provide as follows:

RULE I POLICY STATEMENT (1) The purpose of [these rules] is to implement Title 60, Chapter 5, Part 5, MCA, motorist information signing. Rules II through IX and XIV through XX implement 60-5-504 through 60-5-514, MCA, specific information signing, and Rules II and X through XX implement 60-5-519 through 60-5-522, MCA, tourist oriented directional signing.

(2) These rules provide for the installation of motorist information signs to inform the motoring public of traveler services conveniently accessible from interstate highways and of traveler and tourist services accessible from primary highways within Montana. The signs are not intended to provide an advertising medium for businesses.

AUTH: 60-5-513, MCA

IMP: 60-5-513, MCA

RULE II DEFINITIONS (1) When used in [these rules] the terms: business sign, crossroad, department, franchisee, motorist information sign, motorist service, specific information sign, and tourist-oriented directional sign shall have the same meaning as in 60-5-502, MCA.

(2) "Combination Sign" means a specific information sign displaying the availability of two types of services.

(3) "General Service Sign" means a sign which identifies a motorist service at a given location but does not identify a specific business by name or trade name.

(4) "Gore" means the area immediately beyond the divergence of two traveled ways, bounded by the edges of those traveled ways.

(5) "Interstate highway" means a highway on the federal-aid interstate system as defined in 60-1-103(14), MCA.

(6) "Interstate spur" means a short segment of interstate highway which connects another interstate highway to a state highway, county road, or city street and which is officially designated with an "I" followed by three numbers.

(7) "Lease agreement" means the written contract between the franchisee and the owner.

(8) "Owner" means a person who owns or operates a qualified business and who has authority to enter into and be bound by agreements relevant to matters included in [these rules].

(9) "Primary highway" means a highway on the federal-aid primary system as defined in 60-1-103(15), MCA.

(10) "Qualified business" means a business which meets the criteria established by Title 60, Chapter 5, Part, 5, MCA, and [these rules].

(11) "Rural area" means an area outside of an urban area; except that if the land within the urban area is sparsely populated or is primarily devoted to agricultural use, or if the roadside development does not appear to be urban in character, then the land may also be considered rural. The decision of whether specific areas are rural areas under this definition shall be made by the department, whose decision shall be final.

(12) "Supplemental directional sign" means a specific information sign located adjacent to an exit ramp.

(13) "Trade name" means any brand name, trademark, distinctive symbol or other similar device or thing used to identify a particular motorist service.

(14) "Trailblazer sign" means a small sign with the type of service, name of business, direction, and distance to a qualified business.

(15) "Traveled way" means the traffic lanes of the interstate or primary highway, including all exit and entrance ramps and acceleration and deceleration lanes.

(16) "Urban area" means the developed area inside and outside the corporate limits of a municipality with a population of 1,500 or more as shown in the most recent official census.

AUTH: 60-5-513, MCA

IMP: 60-5-513, MCA

RULE III BUSINESS ELIGIBILITY FOR SPECIFIC INFORMATION SIGNS

(1) In order to be a qualified business, a business must provide one or more of the following services: gas, food, lodging, or camping.

(2) A business must meet the following requirements:

(a) Gas-diesel vehicle service stations shall:

(i) Provide fuel, oil, water, and air.

(ii) Provide restroom facilities and drinking water.

(iii) Provide a telephone available for public use.

(iv) Be in continuous operation at least 16 hours per day, 7 days per week.

(b) Food and restaurant facilities shall:

(i) Be approved or licensed as required by the state agency or political entity having jurisdiction.

(ii) Be in continuous operation to serve three meals per day, seven days per week opening no later than 8:00 a.m.

(iii) Provide restroom facilities.

(iv) Provide a telephone available for public use.

(c) Lodging, motel, and hotel facilities shall:

(i) Be approved or licensed as required by the state agency or political entity having jurisdiction.

(ii) Provide a telephone available for public use.

(iii) Provide adequate sleeping accommodations.

(d) Camping and campground facilities shall:

(i) Be approved or licensed by the state agency or the political entity having jurisdiction.

(ii) Provide modern sanitary facilities and drinking water.

(iii) Provide adequate camping and parking spaces.

AUTH: 60-5-513, MCA

IMP: 60-5-514, MCA

RULE IV LOCATION OF QUALIFIED BUSINESSES FOR SPECIFIC INFORMATION SIGNS

(1) Specific information signs may be erected only for qualified businesses located within three miles of an interchange as measured from the gore of the exit ramp along public highways to the nearest point of intersection of the driveway of the qualified business and public highway, except as provided below.

(2) If no qualified business within a service category under Rule III(1) exists within three miles of the interchange, then successive three-mile increments up to 15 miles may be considered. If considered, then all qualified businesses within the service category and within the successive increment may be included, but not to exceed the maximum capacity of the specific service sign.

(3) A qualified business located more than three miles from an interchange may not qualify for signing if a motorist could obtain similar services adjacent to the next interchange by traveling fewer miles.

AUTH: 60-5-513, MCA

IMP: 60-5-512, MCA

RULE V SPACING AND LOCATION OF SPECIFIC INFORMATION SIGNS

(1) Specific information signs shall be erected not less than 800 feet in advance of the exit direction sign at interchanges.

(2) The exact location of specific information signs and supplemental directional signs shall be determined by

the franchisee, subject to approval by the department; however, the signs shall be located so as to have the least impact on the scenic environment and to avoid conflict with other signs within the highway right-of-way. Lateral clearance and height shall be as specified in 2A-23 and 2A-24 of the Manual on Uniform Traffic Control Devices.

(3) Spacing between each specific information sign shall be not less than 800 feet, or more than 1,000 feet unless there are other intervening signs.

(4) Specific information signs shall be located at least 800 feet from existing highway guide signs.

(5) Specific information signs may not be erected at an interchange where an exit ramp is provided but no convenient re-entry ramp exists in the same direction of travel.

(6) Specific information signs may not be erected on interchanges where interchange ramps connect directly to another interstate highway, except where the interstate highway connects to an interstate spur.

(7) Specific information signs shall be erected with a lateral offset equal to or greater than existing guide signs, and they should be at least 30 feet from the edge of the shoulder, where possible.

AUTH: 60-5-513, MCA

IMP: 60-5-513, MCA

RULE VI SPECIFIC INFORMATION SIGN DESIGN AND ORDER

(1) Specific information signs shall comply with the standards provided in Section 2G-5 of the Manual on Uniform Traffic Control Devices and the specifications in the contract between the department and the franchisee.

(2) Only six business signs for gas and four each for food, lodging, and camping will be available in each direction of travel at any interchange on an interstate highway.

(3) Specific information signs shall be erected in the following order in the direction of traffic toward the exit: CAMPING, LODGING, FOOD, and GAS.

(4) Where there is insufficient space for all four specific service signs, the signs shall be erected with the following priority: GAS, FOOD, LODGING, and CAMPING.

(5) Combination signs may be erected only in remote rural areas where no more than two qualified businesses are available or are likely to become available within two years.

AUTH: 60-5-513, MCA

IMP: 60-5-513, MCA

RULE VII SUPPLEMENTAL DIRECTIONAL SIGNS (1) The information displayed on specific information signs must be repeated on supplemental directional signs when the

qualified businesses identified on the specific information signs are not visible to traffic approaching from the traveled way.

(2) Where the qualified business is located more than 1 mile from the interchange, mileage must also be given on the supplemental directional sign.

(3) The franchisee shall determine if a qualified business is visible from the traveled way, subject to review by the department.

(4) Supplemental directional signs shall be located on the highway right-of-way along the interchange ramp or at the ramp terminal.

(5) The exact location of the supplemental directional signs shall be determined by the franchisee, subject to review by the department.

(6) A minimum of 100 feet is required between successive supplemental directional signs.

(7) Supplemental directional signs shall be installed in the same order as the specific information signs.

(8) Supplemental directional signs shall conform to the specifications stated in the contract between the department and the franchisee.

AUTH: 60-5-513, MCA

IMP: 60-5-513, MCA

RULE VIII TRAILBLAZER SIGNS (1) Trailblazer signs must be installed along a highway for a qualified business if the business cannot be seen from the highway.

(2) Trailblazer signs may be located on the right-of-way of the public highway near all intersections where the direction of the route changes or where it might be questionable as to which roadway to follow.

(3) If conflicts with existing signs arise, the exact location of trailblazer signs shall be determined by the department.

(4) If a trailblazer sign must be erected along a public highway which is not under the maintenance jurisdiction of the department, the franchisee shall obtain written permission from the applicable authority before the sign may be erected.

(5) Trailblazer signs shall be erected in the same order as specific information signs.

(6) Trailblazer signs shall indicate, by arrow, the direction to the qualified business and shall indicate mileage where the business is located more than 1 mile from the sign.

(7) All necessary trailblazer signs must be erected before a business sign may be installed.

(8) The department may review the franchisee's determination of number and location of trailblazer signs.

AUTH: 60-5-513, MCA

IMP: 60-5-513, MCA

RULE IX BUSINESS SIGNS (1) Only a business name or trade name shall be used on business signs. If a nationally, regionally, or locally recognized trade name is available, it shall be used in preference to any other form of business identification.

(2) Any message which advertises rather than identifies a business is prohibited. On "GAS" business signs, the word "diesel", or a department approved symbol for diesel, may be included on the business sign.

(3) Messages or trade names which interfere with, imitate, or resemble any official warning or regulatory signs, signals, or traffic control devices, or attempt or appear to attempt to direct the movement of traffic are prohibited.

(4) A business sign shall normally have a white message on a blue background; however, colors consistent with customary use may be used with nationally, regionally, or locally known trade names. The principal legend on the business sign shall be a minimum of four inches in height. Where a trade name is used alone for a business sign, any legend on the trade name shall be in proportion to the size. A business sign shall have a white border. When trade names are used alone, the border may be omitted.

(5) Business signs shall initially be placed on a specific information sign, having two rows of such signs in order of increasing distance as follows: Closest, upper left; second, lower left; third, upper center; fourth, lower center; fifth, upper right; sixth, lower right. On specific information signs with a single row of business signs, individual business signs shall be placed in order of increasing distance from left to right. Relative distance of each qualified business to the interchange shall be determined at the time of lease application. Later additions may be made without rearranging the remaining business signs.

(6) The order of arrangement for business signs on supplemental directional signs and trailblazer signs will be determined by the direction of the arrow. Businesses located on the left shall be designated at the top of the sign.

AUTH: 60-5-513, MCA

IMP: 60-5-513, MCA

RULE X TOURIST-ORIENTED DIRECTIONAL SIGNS - GENERAL

(1) Tourist-oriented directional signs may not be erected for an activity or site located within an urban area.

(2) Tourist-oriented directional signs may not be erected within the corporate limits of a town with a

population of less than 1,500 persons without the written consent of the local government.

(3) When a qualified activity or its on-premise signing is visible from the primary highway, as determined by the department, the activity may not qualify for a tourist-oriented directional sign unless operational safety requires an advance sign.

(4) An activity or site will not qualify for a tourist-oriented directional sign if the activity or site is identified by an off right-of-way directional sign that is within one mile of the intersection on the same route and is facing the same direction as the proposed tourist-oriented directional sign or where the activity is identified by a department directional sign that is within the right-of-way.

(5) An activity which is located more than five and less than 15 miles from a primary highway may request a waiver from the department in order to apply for a tourist-oriented directional sign panel. The waiver may be given in the discretion of the department where the business provides a tourist service different from those located within five miles of the intersection, where it is not located within five miles of another primary highway or an interstate, and where no other directional signing is available for the business.

AUTH: 60-5-513, MCA

IMP: 60-5-519, MCA

RULE XI TOURIST-ORIENTED DIRECTIONAL TRAILBLAZER SIGNS (1) Where the location of a business requires additional signing, trailblazer signs shall be erected.

(2) Where trailblazer signs must be erected along public highways not under the maintenance jurisdiction of the department, the franchisee shall obtain written permission from the applicable authority before the signs may be erected.

(3) No tourist-oriented directional sign may be erected until all necessary trailblazer signs are in place.

AUTH: Sec. 60-5-513, MCA

IMP: Sec. 60-5-521, MCA

RULE XII DESIGN OF TOURIST-ORIENTED DIRECTIONAL SIGNS AND PANELS (1) Tourist-oriented directional signs shall have reflective blue background with reflective white legend and display the words "Tourist Activities" in 6" letters at the top. The signs shall be 6 feet wide and as high as necessary to accommodate a maximum of four individual panels. They shall meet the specifications provided in the contract between the department and the franchisee.

(2) The tourist-oriented directional sign panels shall contain space for two lines of legend in six-inch letters, a directional arrow and distance to the activity. The legend shall be the activity name only; however, appropriate service or recreational symbols and logos may be used if reduced to appropriate size. Promotional advertising and symbols or logos resembling official traffic control devices are prohibited.

(3) When approved symbols or logos are used, they may not exceed the height of two lines of word legend. If used with a word legend, the symbol or logo shall be placed to the left of the word legend. Times of operation may be displayed on the tourist-oriented directional sign panel if necessary for the convenience of the motorist. When times of operation are displayed, they must be incorporated into the two lines of legend.

AUTH: 60-5-513, MCA

IMP: 60-5-521, MCA

RULE XIII TOURIST-ORIENTED DIRECTIONAL SIGN
INSTALLATION (1) Tourist-oriented directional signs shall be installed a minimum of 200 feet in advance of the intersection while maintaining a minimum of 300 feet between tourist-oriented directional signs and a minimum of 300 feet between tourist-oriented directional signs and any other highway signs, with the exception of no parking, loading zone and similar signs as approved by the department.

(2) The right turn sign shall be the closest to the intersection with the left turn sign being the farthest in advance of the intersection.

(3) The advance tourist-oriented directional sign "1/2 Mile" or "Next Right (or Left)" may not be used unless the department determines that it is needed for highway operational safety.

(4) Where the number of activities to be signed is four or less at any one intersection, the tourist-oriented directional panels for right and left may be combined on one tourist-oriented directional sign. On a combination sign, the tourist-oriented directional panels will be arranged with the left arrows at the top and the right arrows below.

(5) Tourist-oriented directional signs may not be installed at an intersection where the department determines that the installation would detract from the effectiveness of the necessary traffic control devices.

(6) Lateral clearance for tourist-oriented directional signs shall be equal to or greater than the other guide signs at the intersection. If adequate lateral clearance cannot be maintained due to terrain or other

obstruction, tourist-oriented directional signs may not be installed.

(7) Where the right-of-way includes a sidewalk, tourist-oriented directional signs shall be erected beyond the outside edge of the sidewalk and are prohibited where there is insufficient right-of-way to erect the signs, except where prior approval from the department is obtained.

AUTH: 60-5-513, MCA

IMP: 60-5-521, MCA

RULE XIV APPLICATION PROCEDURE AND NOTICE (1) The franchisee shall give at least one public notice of intent to erect specific information sign panels at an interchange or tourist-oriented directional signs at an intersection or shall contact each qualified business in the area, or both, at least 30 days prior to accepting requests to place business signs on a specific information sign or tourist-oriented directional sign. The notice of intent shall be published in a newspaper published in the county or counties where the signs will be erected. The notice shall specify from whom applications may be requested, and where and to whom the applications must be submitted for consideration.

(2) The franchisee shall retain complete records showing the notice and all contacts with local businesses for at least one year after the notice and contacts were made. These records are subject to review by the department.

(3) The franchisee shall require that requests for space on specific information signs or tourist-oriented directional signs be submitted to him.

(4) The franchisee shall require that all requests be made by the owner of a qualified business.

(5) In the event that the requests to place business signs on information sign panels exceed the available space, the franchisee shall use the following criteria to determine the allocation of spaces on information sign panels:

(a) In all instances, those businesses nearest to the interchange shall be given priority. Distances shall be measured from the gore of the exit along public highways to the nearest driveway of the business.

(b) The applicants must meet the minimum criteria of these rules.

(c) Where two qualified businesses are the same distance from the interchange and there is only space for one, the earliest application shall be given priority.

(6) The franchisee shall use the same criteria as provided in subsection (5) to determine allocation of space

on tourist-oriented directional signs. The business nearest the intersection shall be given priority.

AUTH: Sec. 60-5-513, MCA

IMP: Sec. 60-5-505, MCA

RULE XV LEASE AGREEMENTS (1) The franchisee shall require the owner to sign a lease agreement with the franchisee on a form approved by the department and shall obtain the written assurance required from the owner under 60-5-514(2) or 60-5-522(2), MCA.

(2) Before approving the lease agreement the franchisee shall review the owner's qualifications for compliance with the applicable criteria and may not approve the lease agreement if the criteria are not met.

(3) Upon approval of the lease agreement, the franchisee shall transmit a copy of the signed lease agreement to the owner.

(4) Lease agreements shall be valid for a period not to exceed five full years.

(5) When a owner meets the applicable requirements and the required fees have been paid, the franchisee shall install the business sign within 30 calendar days if the specific service sign has already been installed or within 120 calendar days if the specific service sign has yet to be installed. The franchisee shall install the tourist-oriented directional sign within 120 days of the payment of fees.

(6) The franchisee shall allow the owner or his legal successor during the term of the agreement to change the business sign or tourist-oriented directional sign copy so long as the copy conforms to the statutes and these rules. The cost of changes in the copy may be charged to the owner. The owner may also be charged an additional fee for each sign removed and remounted by the franchisee at the request of the owner.

(7) Before a lease agreement may be renewed, the franchisee must determine whether or not there are any qualified businesses closer to the interchange or intersection which wish to participate in the program. The lease agreement may not be renewed unless there are no other applicants and there is space on the specific information sign or tourist-oriented directional sign.

AUTH: 60-5-513, MCA

IMP: 60-5-505, MCA

RULE XVI MAINTENANCE (1) The franchisee shall repair or replace within four weeks after damage occurs, any sign panels that are destroyed or damaged.

(2) The franchisee shall wash all signs on an annual basis or at any time the reflectorized facing becomes dull.

(3) The franchisee shall conduct an inspection annually on the breakaway mechanism for any dirt or other obstruction that may interfere with the breakaway mechanism. All bolts shall be loosened and retorqued to proper specification.

(4) The franchisee shall be responsible for the cost of the relocation of any of his signs for highway improvements and shall complete the relocation within 60 days after notification that the sign must be removed.

AUTH: 60-5-513, MCA

IMP: 60-5-505, MCA

RULE XVII REMOVAL OF SIGNS AND COVERING SEASONAL SIGNS

(1) The franchisee must notify the owner by certified mail a minimum of thirty days in advance of the removal of his or her business sign or tourist-oriented directional sign for any cause.

(2) Business signs or tourist-oriented directional signs may be removed for any of the following:

(a) Failure to pay fees.

(b) Violation of the provisions of 60-5-514 or 60-5-522, MCA.

(c) Failure to meet the minimum criteria to qualify for the specific service sign program or the tourist-oriented directional sign program.

(3) If a business is closed due to fire, accident, remodeling, or other emergencies for more than seven, but not more than 90 days, then the franchisee shall have the business sign or the tourist-oriented directional sign covered to prevent inconvenience to the traveling public. The business shall not lose its priority or be required to reapply prior to the normal expiration of its contract. Extensions of time beyond 90 days may be granted in such case where insurance claims or financial arrangements require additional time. However, an owner who, due to his or her own negligence, fails to open within the 90-day period may lose his or her right to occupy the specific information sign panel or tourist-oriented directional sign panel.

(4) Within five working days of closure of the business, the franchisee shall cover or remove the signs for businesses which are operated on a seasonal basis.

AUTH: 60-5-513, MCA

IMP: 60-5-505, MCA

RULE XVIII GENERAL SERVICE SIGNS (1) At interchanges on the interstate system where none of the qualified businesses wish to participate in the program, the department will maintain the existing general service sign.

(2) The general service signs at any interchange will be removed by the department when the first specific information sign panel is installed.

(3) When a tourist-oriented directional sign is erected for a business identified by a general service sign, the department will remove the general service sign.

(4) No new general service signs may be erected along primary highways for businesses which qualify for tourist-oriented directional signing.

AUTH: 60-5-513, MCA

IMP: 60-5-501, MCA

RULES XIX FEES FOR POSTING ON SPECIFIC INFORMATIONAL SIGN PANELS AND TOURIST-ORIENTED DIRECTIONAL SIGNS (1)

The fee for placing business signs on specific information sign panels may include the prorated cost for fabrication, erection, maintenance, or servicing of specific information and business signs; removal or covering business signs; other costs associated with the program, including the department's costs in administering the program, and reasonable profit for the franchisee operating the program. The fee may include the supplemental directional sign if needed and trailblazer signs if needed. The fee for each space on specific information sign panels shall be the same for all businesses.

(2) Similar criteria to set fees for tourist-oriented directional signs shall be used.

(3) The department shall review the fees charged and any subsequent increases for reasonableness and shall authorize them if they are in compliance with 60-5-510, MCA.

AUTH: 60-5-513, MCA

IMP: 60-5-510, MCA

RULES XX OVERSIGHT OF THE FRANCHISEE BY THE DEPARTMENT (1)

The department may review all proposed locations for signs to determine if they comply with the rules or if there is a conflict with existing signs or future sign installations. The department may review an agreement with an owner, check businesses for compliance with state statutes and [these rules], and make audits to determine that the program is operated fairly and in compliance with Title 60, Chapter 5, Part 5, MCA and [these rules].

(2) Complaints about the motorist information sign program or the actions of the franchisee in relation to the program may be submitted in writing to the department. Complaints shall be investigated by the department which will provide a written response to the complainant. A copy of the complaint and the response shall be provided to the franchisee.

AUTH: 60-5-513, MCA

IMP: 60-5-505, MCA

4. The department is proposing these rules because they are necessary to implement the motorist information sign program enacted as Chapter No. 537 of the Montana Session Laws of 1989.

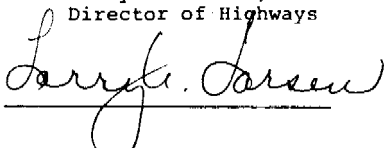
5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Gordon L. Larson, P.E., Assistant Administrator, Engineering Division, Department of Highways, 2701 Prospect Ave., Helena, Montana, 59620, no later than November 27, 1989.

6. Kelly O'Sullivan, Assistant Attorney General, Agency Legal Services, Justice Building, 215 N. Sanders, Helena, Montana, 59620 has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on section 60-5-513, MCA, and the rules implement sections 60-5-501 through 60-5-522, MCA.

Larry W. Larsen, P.E.
Director of Highways

By:



Certified to the Secretary of State October 16, 1989

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of the prevailing	)	ON A PROPOSED AMENDMENT
wage enforcement rule,	)	TO THE PREVAILING WAGE
ARM 24.16.9009 and the	)	ENFORCEMENT RULE AND THE
adoption of a new rule	)	PROPOSED ADOPTION OF A
placing all prevailing wage	)	NEW RULE WHICH INCLUDES
cases under wage claim	)	ALL PREVAILING WAGE CASES
proceedings.	)	UNDER WAGE CLAIM PROCEEDINGS

TO: All interested persons:

1. On November 16, 1989, at 1:30 p.m., a public hearing will be held in the First Floor Conference Room of the Employment Security Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.16.9009(6), regarding enforcement of the prevailing wage and the proposed adoption of a rule placing all prevailing wage cases under wage claim review proceedings.

2. The proposed adoption of rules concerning the review of wage claims by the board of personnel appeals will also be heard at that time. The board of personnel appeals' proposed new rules are found at MAR Notice No. 24-26-19.

3. The proposed new rules and amendments to existing rules implement Chapter 554 of the 1989 Session Laws. Chapter 554 provides that the board of personnel appeals will act as a board of review over wage claim decisions and that all prevailing wage cases will be included under wage claim review proceedings.

4. The prevailing wage enforcement rule as proposed to be amended is as follows:

24.16.9009 \$25,000 LIMIT - ENFORCEMENT (1) through (5) remain the same.

(6) If the public contracting agency or public contractor fails to comply with the Act as provided in subsection (5), the department may institute action in court file a wage claim pursuant to sections 39-3-201, et seq., MCA, to enforce compliance with the Act. Prevailing wage cases will proceed under normal wage claim review procedures.

(7) remains the same.

AUTH: 18-2-431, MCA

IMP: 18-2-407, MCA

7. RATIONALE: Section 18-2-407, MCA (1989) allows the commissioner of labor and industry to file wage claims on behalf of all employees who are not paid prevailing wage. That Section further provides that prevailing wage cases are now subject to wage claim review procedures.

8. The proposed new prevailing wage rule provides as follows:

RULE I PROCEDURES FOR ENFORCING THE ACT (1) If, after investigation of a prevailing wage complaint, the department determines that the standard prevailing wage rate is not being paid, the commissioner may file wage claims on behalf of all

MAR Notice No. 24-16-18

20-10/26/89

employees not properly paid.

(2) The wage claim(s) will be heard by a department hearings officer. Any party, including the department, aggrieved by the decision of the hearings officer may then appeal to the board.

(3) In the event the department determines no wage claim should be filed, the complaining party may instigate a review of that decision by a department hearings officer. Any party aggrieved by the decision of the hearings officer may then appeal to the board.

AUTH: 18-2-431, MCA

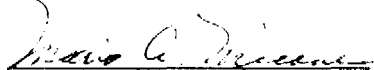
IMP: 18-2-407, MCA

9. RATIONALE: The 1989 legislature, by passing Chapter 554 of the Session Laws, has indicated its intent that prevailing wage claims be treated as wage claims and thus be reviewed by the board.

10. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Administrator, Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624, no later than November 27, 1989.

11. David Scott, an attorney for the department of labor and industry, P. O. Box 1728, Helena, MT 59624, has been designated to preside over and conduct the hearing.

12. The authority of the agency to make the proposed amendments is based on sections 2-4-201 and 18-2-431, MCA, and Chapter 554, Sec. 6 (1989 Sessions Law). The rules implement sections 2-4-201 and 18-2-407, MCA, and Chapter 554 Sec. 3 and 5 (1989 Sessions Law.)


Mario A. Micone, Commissioner
Department of Labor and Industry

Certified to the Secretary of State on October 12, 1989.

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC
of new rules concerning the	)	HEARING ON THE PROPOSED
review of wage claims by the	)	ADOPTION OF RULES FOR
Board of Personnel Appeals	)	THE BOARD OF PERSONNEL
	)	APPEALS

TO: All interested persons:

1. On November 16, 1989, at 1:30 p.m., a public hearing will be held in the First Floor Conference Room of the Employment Security Building, 1327 Lockey, Helena, Montana, to consider the proposed adoption of rules concerning the review of wage claims by the board of personnel appeals.

2. A proposed amendment to the department of labor and industry's prevailing wage enforcement rule, 24.16.9009(6), will also be considered at that time. That proposed amendment is found at MAR Notice No. 24-16-18.

3. The proposed rules implement the 1989 legislature's decision to have the board of personnel appeals act as a board of review over wage claim determinations by the department's hearings officers.

4. Proposed Rule III modifies ARM 24.26.215(2). ARM 24.26.215(2) provides twenty days from service of the hearings examiner's recommended order in which to file exceptions or a notice of appeal to the board. Proposed Rule III shortens the time period to 15 days when the recommended order is a wage claim determination. This modification is required by Section 39-3-216(2), MCA, and applies solely to appeals of wage claim determinations.

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

5. The proposed new rules provide as follows:

Rule I PURPOSE (1) The purpose of these regulations is to create orderly and uniform procedures to be used when a party aggrieved by a wage claim decision of a department hearings officer seeks review of that decision by the board.

AUTH: 2-4-201, MCA

IMP: 39-3-217, MCA

Rule II DEFINITIONS (1) The board hereby adopts the definitions set forth in section 39-3-201, MCA (1989).

(2) "Review" shall mean the process by which an appealed decision of a hearings officer is reviewed by the board.

AUTH: 2-4-201, MCA

IMP: 39-3-217, MCA

Rule III RIGHT TO APPEAL (1) Any party aggrieved by a department hearings officer's wage claim determination made pursuant to section 39-3-216, MCA, may seek review of the

determination by the board.

(2) The aggrieved party must seek review by filing a notice of appeal within 15 days after the day the decision of the hearings officer is mailed.

(3) The notice of appeal shall consist of a written statement of the party's desire to appeal the decision of the hearings officer. The notice of appeal must set forth the specific errors of the hearings officer and the issues that will be raised on appeal.

(4) The completed and signed notice of appeal shall be mailed to the central office of the department:

Administrator, Employment Relations Division
Department of Labor and Industry
P. O. Box 1728
Helena, MT 59624

(a) It must be postmarked no later than 15 days after the day the decision of the hearings officer was mailed.

(5) Upon receiving the notice of appeal, the administrator of the employment relations division shall immediately transmit the notice to the administrator of the board.

(6) The administrator of the board shall schedule a review of the determination. The review shall take place as soon as possible.

(7) The record of the hearing below shall be provided the board. The contents of the record shall be determined pursuant to Section 2-4-614, MCA.

AUTH: 2-4-201, MCA

IMP: 39-3-217, MCA

RULE IV NOTICE OF REVIEW (1) Once the administrator has scheduled the review, the board shall give written notice of the date, time and place to all interested parties. Notice shall be mailed to the parties at least ten days prior to the day of the review.

(2) At the request of a party, or upon its own motion, the board may, for good cause, continue the review.

AUTH: 2-4-201, MCA

IMP: 39-3-217, MCA

RULE V REVIEW PROCEDURE (1) The review is to be conducted informally. However, any party may be represented by an attorney.

(2) The board may hear argument concerning the findings of fact and the conclusions of law reached by the hearings examiner.

(3) The findings of fact shall be deemed correct by the Board and shall not be overturned except upon proof of collusion, fraud or lack of due process. Failure of the hearing examiner to make a finding on a critical fact may be corrected by the board's remanding to the hearings officer.

(4) The board shall not consider any new evidence tendered at the review unless good cause is shown for the failure to produce the evidence before the hearings officer.

If good cause is shown and new evidence is to be introduced, the board may remand the matter to the hearings examiner for a ruling.

(5) The board may include in the record before it and consider as evidence all records of the department that are material to the issues. If the department records, or portions thereof, are not part of the record below, good cause must be shown why it was not offered into evidence before the hearings examiner.

(6) If deemed necessary, the board may request briefs.

AUTH: 2-4-201, MCA

IMP: 39-3-217, MCA

RULE VI DECISION OF THE BOARD (1) The board shall issue its decision (final order) as soon after the review as possible. If the board does not sustain the decision of the hearings officer, the final order shall include findings of fact, conclusions of law and reasons for the decision. The final order shall also summarize the appeal rights of the parties.

(2) Copies of the decision shall be promptly mailed to all interested parties.

(3) Copies of all decisions of the board shall be kept on file at the office of the board in Helena, Montana. The decisions shall be open for inspection.

AUTH: 2-4-201, MCA

IMP: 39-3-217, MCA

RULE VII BOARD'S RECONSIDERATION OF ITS DECISIONS

(1) Definitions. The following definitions apply to this rule:

(a) "Petition" means a petition for reconsideration.

(b) "Petitioner" means the party requesting reconsideration.

(2) All petitions shall be filed within ten days of mailing of the board's decision to the petitioner. The petitioner shall serve upon all parties a copy of the petition.

(3) The filing of a petition is not a prerequisite for seeking judicial review of the board's final order.

(4) Grounds. A petition may be granted only upon the following grounds:

(a) Clerical error.

(b) To present relevant evidence or argument that proper procedures were not followed during the appeal to the board.

(5) Contents of petition. The petition must state the ground or grounds upon which reconsideration is sought and a detailed statement why the grounds will likely mandate a change in the board's decision.

(6) The board shall rule on the petition at its next meeting and notify the parties of its decision.

(7) A decision of the board denying a petition is a final order pursuant to sections 2-4-623 and 2-4-702, MCA.

AUTH: 2-4-201, MCA

IMP: 39-3-217, MCA

RULE VIII CHALLENGES TO AND DISQUALIFICATIONS OF BOARD MEMBERS

(1) No member of the board shall participate in a review of a wage claim in which he has an interest.

(2) No member of the board shall represent any party or witness at any review before the board.

(3) Any party may challenge any member of the board, in writing, served upon the board fifteen days in advance of the scheduled review. The motion and answering affidavits shall be filed pursuant to ARM 24.26.212.

AUTH: 2-4-201, MCA

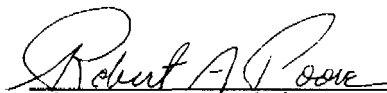
IMP: 39-3-217, MCA

6. RATIONALE The 1989 Legislature, by Chapter 554 of the 1989 Session Laws, mandated that the board become a board of review for all wage claim decisions issued by department hearings officers. These rules create the procedure by which this review shall occur.

7. Persons interested in these rules may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the administrator, board of personnel appeals, department of labor and industry, P.O. Box 1728, Helena, MT 59624, no later than November 27, 1989.

8. David A. Scott, attorney for the department of labor and industry, P.O. Box 1728, Helena, MT 59624, has been designated to preside over and conduct the hearing.

9. The authority of the agency to make the proposed amendments is based on Section 2-4-201, MCA and Chapter 554, Sec. 6 (1989 Session Law). The rules implement Sections 2-4-201, 39-3-216 and 39-3-217, MCA.


Robert A. Poore, Chairman
Board of Personnel Appeals

Certified to the Secretary of State on October 12, 1989.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

IN THE MATTER OF RULES	)	NOTICE OF AMENDMENT OF RULES
REGULATING SHEEP, BISON	)	32.3.201 AND 32.3.218 AND NEW
AND LLAMAS	)	RULES I AND II

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 27, 1989, the Board of Livestock acting through the department of livestock proposes to adopt amendments to Rules 32.3.201 and 32.3.218 and to adopt new Rules 32.3.224 and 32.3.225 regulating sheep, bison and llamas. The rules as amended and proposed provide as follows:

32.3.201 DEFINITIONS

Subsections (1) through (a) remains the same.

(b) "Livestock" means cattle, horses, mules, asses, sheep, swine, and goats, bison and llamas.

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

AUTH:	81-2-102(d) MCA and	IMP: 81-2-102(d) MCA and
	81-2-103, MCA	81-2-103, MCA

32.3.218 SPECIAL REQUIREMENTS FOR SHEEP

Subsection (1) remains the same.

(2) Rams with ram epididymitis may not be shipped into Montana. The official health certificate if required or permit application shall certify that rams have been individually examined and are free from gross lesions of ram epididymitis. All breeding rams must have a negative ELISA, or other recognized test, for Brucella ovis within 30 days prior to entry into Montana or originate directly from an officially recognized Brucella Ovis Free Flock. Individual identification by ear tag or tattoo is required along with date of the last Brucella Ovis herd test. All rams must be free of any gross lesions of ram epididymitis upon examination by the certifying accredited veterinarian.

(3) Sheep infected with biting lice (Damalina ovis) may enter by permit only after acceptable insecticide treatment under supervision of an accredited veterinarian. If tested rams are destined for an official Montana free flock they will be held separate and apart from other sheep at destination and officially retested for Brucella Ovis 45 days after arrival.

(4) Sheep infected with biting lice (Damalina ovis) may enter by permit only after acceptable insecticide treatment under supervision of an accredited veterinarian.

AUTH: 81-2-102(d) and IMP: 81-2-102(d) and
81-2-103, MCA 81-2-103, MCA

RULE I BISON (1) Bison may enter the state of Montana provided they enter in conformity with sections 32.3.201 through 32.3.211 and in addition are:

(a) Officially tested negative for brucellosis within 30 days of entry except the following:

(i) Steers, spayed heifers, and calves under 12 months of age;

(ii) Bison consigned directly to an official slaughtering establishment for immediate slaughter;

(iii) An official calfhood vaccinate in which the first pair of permanent incisors has not erupted and which are not parturient, post parturient, or in the last trimester of pregnancy;

(iv) Originate in an official certified brucellosis free bison herd.

(b) Bison required to be tested for entry may be quarantined for a 45 to 120 day brucellosis retest, at owner's expense, after arrival in Montana. Included here will be all female bison from areas with brucellosis classification of A, B, or lower.

(c) With regards to tuberculosis, all bison are:

(i) Officially tested negative for tuberculosis within 60 days of entry, or;

(ii) Consigned to an official slaughtering establishment for immediate slaughter, or;

(iii) Originate from an accredited tuberculosis free herd. AUTH: 81-2-102(d), 103, MCA IMP: 81-2-102(d), 103, MCA

RULE II LLAMAS (1) Llamas may enter the state of Montana provided they enter in conformity with sections 32.3.201 through 32.3.211 and in addition are:

(a) With regard to brucellosis, officially tested negative to brucellosis within 30 days of entry into the state.

(b) With regard to tuberculosis, officially tested negative for tuberculosis within 60 days of entry into the state.

AUTH: 81-2-102(d) and IMP: 81-2-102(d) and
81-2-103, MCA 81-2-103, MCA

3. The Board of Livestock proposes to adopt these amendments and rules pursuant to the mandates of 81-8-102(d), MCA which requires that the department of livestock "adopt rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable or dangerous diseases . . .".

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620 no later than November 24, 1989.

5. If a person who is directly affected by the proposed rules or amendments wishes to express his data, views and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Executive Secretary to the Board of Livestock, no later than November 24, 1989.

6. If the Board receives requests for a public hearing on the proposed rules and amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed rules, 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 public hearing will be held at a later date.

Notice of Hearing will be published in the Montana Administrative Register.

Nancy Esby
NANCY ~~ESBY~~ CHAIRMAN
Board of Livestock

BY: Les Graham
Les Graham, Executive Secretary
To the Board of Livestock

Certified to the Secretary of State October 16, 1989.

TO: All Interested Persons:

- 20-10/26/89

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF THE AMENDMENT OF
of Rules 11.5.1002 and	)	RULES 11.5.1002 AND 11.14.105
11.14.105 pertaining to day	)	PERTAINING TO DAY CARE RATES
care rate payments and parental	)	AND PARENTAL ACCESS TO DAY
access to day care facilities	)	CARE FACILITIES
)	

To: All Interested Persons

1. On September 14, 1989, the Department of Family Services published notice of the proposed amendment of Rules 11.5.1002 and 11.14.105 pertaining to day care rate payments and parental access to day care facilities at page 1305 of the Montana Administrative Register, issue number 17.

2. The Department has amended Rule 11.5.1002 as proposed with the following changes in Authority and Implementation.

AUTH: 52-1-103 and 52-2-704, MCA
IMP: 52-2-713, MCA

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

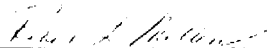
11.14.105 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES Subsections (1) through (7) remain the same.

(8) The licensee or registrant shall allow custodial and non-custodial parental access to the facility at any time during which child day care services are provided, barring any court order preventing parent-child contact.

Subsections (8), (9) and (10) are renumbered to (9), (10) and (11) and otherwise remain the same.

AUTH: Sec. 52-1-103 and 52-2-704, MCA
Sec. 53-2-723 and 53-2-731, MCA

4. No comments or testimony were received.



Director, Department of Family
Services

Certified to the Secretary of State Oct 14, 1989.

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

In the Matter of Amendments to	)	NOTICE OF AMENDMENT OF ARM
ARM 36.15.101 through 36.15.903,	)	36.15.101, 36.15.202 through
Repeal of 36.15.210, and Adop-	)	36.15.204; 36.15.209,
tion of New Rules Pertaining	)	36.15.216, 36.15.501 through
to Floodplain Management	)	36.15.503; 36.15.601 through
	)	36.15.606; 36.15.701,
	)	36.15.703, 36.15.801,
	)	36.15.901 through 36.15.903;
	)	REPEAL of ARM 36.15.210, AND
	)	ADOPTION OF ARM 36.15.205,
	)	36.15.218, AND 36.15.505

TO: All Interested Persons:

1. On June 15, 1989, a notice of public hearing to consider the proposed amendment of floodplain rules was published on pages 727 through 742 of the Montana Administrative Register, Issue Number 11.

2. On Monday, July 17, 1989, at 3:30 p.m., the public hearing was held in the main conference room of the Department of Natural Resources and Conservation, 1520 East 6th Avenue, Helena, MT 59620.

Present were William A. Shields, Chairman of the Board of Natural Resources and Conservation, who presided over and conducted the hearing; DNRC staff members Gary Fritz, Rick Bondy, John Hamill, and Faye Bergan; and Board members Terry Anderson, Lorents Grosfield, Ed McHatton, Janice Rehberg, Joan Toole, and Jerry Wiedebush; Board counsel G. Steven Brown; Board secretary Norma Andriolo; and Althea Ginnebaugh and John Vance.

The hearing was tape-recorded; the tapes and transcripts are included with the file on this matter. Testimony was made at the hearing by three parties: the Department of Natural Resources and Conservation, which presented a review of the events leading to the amendments to the floodplain rules; and John Vance and Althea Ginnebaugh both of whom offered comments regarding base flood elevations, interpretation of floodplain maps and Zone B or sheetflood areas.

Prior to and after the hearing, comments were also submitted by Mr. Vance and attorney David K. W. Wilson submitted comments on behalf of Althea Ginnebaugh.

3. Based on the comments received at the hearing and by letter, the rules are being amended as proposed and advertised in the June 15, 1989 Administrative Register with the following exceptions: (new matter underlined, deleted matter interlined).

"36.15.101 DEFINITIONS In addition to the terms contained in Section 76-5-103, MCA, and unless the context requires otherwise, as used in the Act and in this chapter:

(1) through (11) remains the same.

(12) "Floodplain Boundary" the designated floodplain boundary is based on base flood elevations. The mapped floodplain boundary may be used as a guide for determining whether property is within the designated floodplain, but the exact boundary shall be determined according to the base flood elevation.

Definitions (12) through (17) to be renumbered to (13) through (18).

(19) "Sheetflooding" means areas subject to 100-year flooding with depths less than one (1) foot. Sheetflood areas are generally removed from the main stream channel and have been identified as Zone B by FEMA or as a sheetflood zone by the Soil Conservation Service.

Definitions (18) through (22) to be renumbered (20) through (24).

"36.15.501 FLOODPLAIN AND FLOODWAY DELINEATION - DATA USED - HYDROLOGICAL CERTAINTY

(1) through (5) remain the same.

(6) The designated floodplain boundary is based on base flood elevations. The mapped floodplain boundary may be used as is a guide for determining whether property is within the designated floodplain, but the exact boundary shall be determined according to the base flood elevation. If the local administrator determines it is unclear whether property is in or out of the floodplain, the local administrator shall require the applicant to provide additional information which may include elevations obtained through a level survey performed by a professional engineer or registered land surveyor.

"36.15.701 ALLOWED USES (1) All uses allowed in the designated floodway without a permit under ARM 36.15.601 shall also be allowed without a permit in the flood fringe.

(a) In addition, individual or multiple family sub-surface sewage disposal systems are allowed ~~without-permit provided-that only when~~ they are reviewed and approved under laws and regulations administered by the Department of Health and Environmental Sciences or the local health board.

(2) through (3)(e) remain the same.

4. The following are comments made by John Vance, Althea Ginnebaugh and David K.W. Wilson at the hearing or by letter followed by the Board's response:

COMMENT: Mr. Vance commented that areas classified by the Federal Emergency Management Agency (FEMA) as Zone B areas may be subject to mapping errors.

RESPONSE: The Floodplain and Floodway Management Act specifically excepts "sheetflood areas that receive less than 1 foot of water per occurrence and are considered 'zone B' by..." FEMA from inclusion in the floodplain. § 76-5-103(11), MCA. The Board cannot adopt rules to include areas that are specifically excluded in the authorizing statute. However, the Act allows local governing political subdivisions to adopt floodplain management regulations for sheetflood areas as determined by FEMA if they choose. § 76-5-301(1), MCA.

COMMENT: It was suggested to include a definition of sheetflooding in the rules.

RESPONSE: The rules have been revised to include a definition of sheetflooding.

COMMENT: Ms. Ginnebaugh commented that all applications for building permits should be required to show by certified elevation that the area is above the base flood elevation. She commented that the FEMA maps contain errors, and that local administration of floodplain regulations is lacking.

RESPONSE: The proposed rules establish that the base flood elevation is the means to determine the floodplain boundary with the maps to be used as a guide. Rule 36.15.501(6) has been revised to clarify that the maps may be used as a guide but the exact boundary shall be determined according to the base flood elevation.

The Board will not require certified elevations be provided for each application for building permit. Requiring certified elevations substantially increases burden to all landowners and may not necessarily provide useful information to interpret floodplain maps or Zone B areas. Landowners should not be required to furnish surveyed elevations unless they are needed to make a reasonably accurate determination of whether the property is in or out of the designated floodplain. In such an instance, local floodplain administrators have the authority and flexibility to require whatever additional information is necessary to make a determination, including surveyed elevations. Rule 36.15.501(6) was revised to specifically recognize the authority of the local floodplain administrator to require additional information, if necessary. The floodplain rules have also added provisions for the Board to more closely monitor local enforcement of floodplain regulations and to suspend local regulatory powers for failure to comply with the Floodplain and Floodway Management Act or the Board's rules.

COMMENT: A comment was received by legislative counsel in regard to an omission of referencing the statutory authority to adopt rules in rules numbered 36.15.503, 36.15.601, and new rules II and III.

RESPONSE: Reference to Section 76-5-208, MCA as authority to adopt rules is added to clarify from where the authority is derived.

Board of Natural Resources and
Conservation

By 
William A. Shields, Chairman

Certified to the Secretary of State, October 13, 1989

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.545, 46.12.546
46.12.545, 46.12.546 and	)	and 46.12.547 PERTAINING TO
46.12.547 pertaining to	)	OCCUPATIONAL THERAPY
occupational therapy	)	SERVICES
services)	


TO: All Interested Persons

1. On August 31, 1989, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.545, 46.12.546 and 46.12.547 pertaining to occupational therapy services at page 1270 of the 1989 Montana Administrative Register, issue number 16.

2. The Department has amended Rules 46.12.545, 46.12.546 and 46.12.547 as proposed.

3. These rules which are being revised to make the benefits, limitations and reimbursement policies consistent with speech therapy and physical therapy services. All proposed changes were developed through negotiations with an ad hoc committee of the Montana Occupational Therapy Association. No financial impact is anticipated as the most recent ad hoc study of client usage of occupational therapy services for FY 88 indicates that all recipients received less than 100 hours.

4. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State October 16, 1989.

VOLUME NO. 43

OPINION NO. 39

GAMBLING - "Crane games" as illegal gambling devices;
MONTANA CODE ANNOTATED - Sections 23-5-111,
23-5-112(10), 23-5-112(11);
MONTANA LAWS OF 1989 - Chapter 642.

HELD: "Crane games" are "gambling devices" utilized
for "gambling activity" and because such
devices are not clearly authorized by Montana
law, they are prohibited.

October 3, 1989

Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula MT 59802

Dear Mr. Deschamps:

You have asked my opinion on the question of whether
"crane machines," "crane games," or "skill cranes" are
prohibited gambling devices under Montana law.

As you know, on October 1, 1989, it became the
responsibility of the Department of Justice to regulate
almost all gambling activities in the state of Montana
(1989 Mont. laws, ch. 642). The Legislature, in
imposing that responsibility, mandated that the gambling
laws must be strictly construed by the Department "to
allow only those types of gambling and gambling activity
that are specifically and clearly allowed" by law.
§ 23-5-111, MCA. "Crane games," "crane machines," or
"skill cranes" are not specifically and clearly
authorized by law. As a result, if such games,
machines, or devices involve a gambling activity, the
statutes would not permit their use in Montana.

In reviewing the definitions of the new gambling law, a
"gambling device" is a mechanical, electromechanical, or
electronic device used or intended for use in an
activity where money, or any other thing of value, is
risked for a gain that is contingent in whole or in part
upon lot or chance (§ 23-5-112(10), (11), MCA). It is
my understanding that a crane game, or similar device,
regardless of its name, involves the operation of a
mechanical, electromechanical, or electronic device
where money or some other thing of value is risked for a
gain, namely the award of a prize (other than the chance

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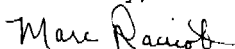
to win a replay), and that the gain is contingent in whole or in part upon lot or chance.

Thus, a "crane game," "crane machine," or "skill crane" is a "gambling device" utilized for "gambling activity" as those terms are defined in the new gambling statutes. Because such machines or devices are not clearly and specifically authorized by law, I must conclude that they are prohibited.

THEREFORE, IT IS MY OPINION:

"Crane games" are "gambling devices" utilized for "gambling activity" and because such devices are not clearly authorized by Montana law, they are prohibited.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marc Racicot".

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1989. This table includes those rules adopted during the period July 1, 1989 through September 30, 1989 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1989, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1989 Montana Administrative Register.

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