# MONTANA ADMINISTRATIVE REGISTER



1991 ISSUE NO. 1
JANUARY 17, 1991
PAGES 1-99
INDEX COPY

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of amendment of Rule 8.86.301 as it relates to class I wholesale prices | ) | NOTICE OF PROPOSED AMENDMENT OF RULE 8.86.301 PRICING RULES |
| | ) | NO PUBLIC HEARING CONTEMPLATED |
| | ) | DOCKET #4-90 |

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:

1. On Monday, March 4, 1991, the Board of Milk Control proposes to amend ARM 8.86.301(6)(h)(ii) and (iii). The amendment is proposed at the request of John W. Ross, Esq., on behalf of the Montana milk processors. The proposed changes are needed to reflect volumes that are realistic in relation to costs of delivery and the addition of a 3.5% surcharge on dock prices will permit all distributors to compete on an equal basis.

2. The rule as proposed to be amended would read as follows: (Full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 Pricing Rules

(1)-(6)(h)(i) remains the same.

(ii) The minimum drop shipment wholesale price for retail grocery stores that purchase their fluid milk without the provision of any of the services outlined in (i) shall be calculated by multiplying the minimum retail prices by a factor of eighty-three percent (83%). Distributors selling fluid milk to retail grocery stores at this price will not be allowed to provide services to retail grocery stores, other than delivery of the fluid milk products to the back room refrigerated storage area of the retail stores. In the event the distributor or his agents provide any other service to the retail grocery store, the minimum wholesale price paid for the milk products by the retail grocery store to the distributor shall be the full service wholesale price as set forth in (i) above. Distributors selling fluid milk to retail grocery stores at this price will be allowed to make deliveries of fluid milk products no more than four (4) times per week, and each delivery must be for a minimum of $150.00. In the event a

distributor or his agents provide delivery of fluid milk products more than four (4) times per week, the minimum wholesale price paid for the fluid milk products by the retail grocery store to the distributor shall be the full service wholesale price set forth in section (i) above. All fluid milk purchased by retail grocery stores pursuant to this subsection (ii) must be paid within fifteen (15) days after invoicing.

(iii) The minimum wholesale price for fluid milk purchased by retail grocery stores at the distributor's dock will be calculated by multiplying the minimum retail price by a factor of seventy-eight percent (78%). All fluid milk purchased by retail grocery stores at the distributor's dock must be paid for within fifteen (15) days after invoicing. Delivery of such fluid milk shall be FOB the distributor's dock. The retail grocery store can pick up milk at the distributor's dock with its own equipment or by a contract hauler retained by and paid by the retail grocery store or can have the milk delivered by the distributor. If the distributor delivers the milk to the retail grocery store, the distributor shall charge the retail grocery store a delivery charge based upon the cost of delivery, which shall be a minimum of three and one-half percent (3.5%) of the retail grocery store's invoice. The distributor shall not provide any service of any type to retail grocery stores purchasing milk pursuant to this section (iii). In order for a retail store to be eligible to purchase fluid milk products from a distributor at this pricing level, the retail grocery store must purchase a minimum of ~~seven-hundred-fifty-(750)~~ five hundred (500) gallons of fluid milk products per week delivery."

3. The purpose for the processor's request to amend ARM 8.86.301(6)(h)(ii) and (iii) is to reflect volumes that are realistic in relation to their cost of delivery. It will also enable all processors to compete on an equal footing.

4. Interested persons may participate and present data, views, or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East Sixth Avenue, Room 50, Helena, MT 59620-0512, no later than February 18, 1991.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit along with any written comments he has to the above address no later than February 18, 1991.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty five (25), whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected,

a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent (10%) of those persons directly affected has been determined to be nine (9) persons based on five (5) licensed Montana distributors, sixty-five (65) jobbers and twenty-three (23) out-of-state distributors licensed to do business in Montana.

7. The authority for the Board to take the action and amend rules as proposed is in section 81-23-302, MCA. Such rules if amended in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

MONTANA DEPARTMENT OF COMMERCE

BY: _____
Andy J. Poole, Deputy Director

Certified to the Secretary of State January 7, 1991.

BEFORE THE FISH AND GAME COMMISSION

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|---|---|
| In the matter of the proposed adoption of hunting license and damage hunt rules | NOTICE OF PROPOSED ADOPTION OF LICENSE AND DAMAGE HUNT RULES |

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On February 19, 1991, the Montana Fish and Game Commission proposes to adopt the rules noted above.

2. The proposed rules will read as follows:

RULE I PURPOSE The purpose of these rules is to establish policies and procedures for issuing special hunting licenses and permits and for conducting big game damage hunts and game management seasons.

AUTH: Sec. 87-1-301, MCA IMP: Sec. 87-1-301, MCA

RULE II DEFINITIONS For purposes of these annual regulations:

(1) "Hunting season" means any season set to accomplish one or all of the following:

(a) to provide sport hunting (general season);

(b) to harvest numbers of a species to manage the population according to available habitat (management season);

(c) to fulfill responsibilities for game damage control (damage season).

(2) "License" means the document issued to an individual upon payment of the proper fee and in compliance with other requirements of law and rule from the department or its authorized license agent. A license constitutes the grant of authority by the state of Montana to hunt the species of game animal under the conditions set forth in annual rules adopted by the Commission.

(3) "Permit" means the document issued to an individual which, upon payment of the proper fee and in compliance with requirements of the department, constitutes permission to that individual to hunt the listed game animal species under the conditions set forth thereon. A permit may be used only in conjunction with the proper license.

(4) "Drawing" means the random selection of licenses or permits when applications received exceed the quota set by the commission for a hunting district. The license or permit may include limitations on taking by sex, age, species, time period, or designated area.

(5) "Commission" means the Montana fish and game commission.

(6) "Contiguous land" means land that is owned in fee title by the applicant and that is not interrupted by land owned by another person. Land that is owned by the applicant that is interrupted by adjacent federal or state land may on an individual basis be considered as contiguous land if the individual leases the federal or state land.

(7) "Game damage" means damage by game animals to private property - (most often stored livestock feed such as hay stacks or sileage or standing cultivated crops such as grain, alfalfa hay or alfalfa seed) - which is of a magnitude deemed "unreasonable", constituting a problem for landowners.

(8) "Land that is used by elk" means land that elk inhabit.

(9) "Landowner preference" means a drawing that is conducted before the general drawings in which the landowners are randomly drawn for a portion of the quota as set by the commission.

(10) "Landowner sponsor" means a landowner who meets the qualifications of Section 87-2-511, MCA and these rules for licenses.

(11) "Employees" mean individuals who are paid by a landowner for services rendered and have state, federal, or FICA taxes withheld from their pay.

(12) "Immediate family members" mean individuals who are related to the landowner by blood or marriage.

(13) "Quota" means a set number of animals to be harvested, or licenses to be issued, within a specified land area (hunting district, administrative region or state).

(14) "Tentative regulations" means "proposed" regulations which are distributed for public review and comment in draft form. In March, following publication, the Montana fish and game commission may amend "tentative regulations" prior to adopting them as "final regulations."

(15) "Class of licenses" means B-10 is a nonresident combination license, B-7 is nonresident deer, etc.

(16) "Prerequisite" means a license that must be purchased by a sportsman in order to purchase another license.

AUTH: Sec. 87-1-301, MCA IMP: Sec. 87-1-301, MCA

RULE III LICENSE/PERMIT PREREQUISITES (1) Deer. All valid resident conservation license holders and all valid nonresident big game (class B-10) and deer combination (class B-11) license holders may apply for deer permits. However, a holder of a B-11 license obtained through a landowner sponsor can only apply for a deer permit where the permitted area includes the landowner sponsor's property and can only use the permit for hunting on the landowner sponsor's property. All valid conservation license holders may apply for deer B licenses. All nonresident conservation license holders who do not possess a B-10 or B-11 license may apply for a nonresident deer A (B-7) license, if available.

(2) Elk. Only persons who possess a valid resident A-5 elk license or a valid nonresident class B-10 license may apply for a special elk permit or A-7 license.

(3) Moose, sheep, goat, deer B licenses, antelope, black bear, grizzly bear, swan, and mountain lion licenses, turkey permits/licenses. All valid conservation license holders may apply for moose, sheep, goat, deer B, antelope, black bear, grizzly bear, swan, and mountain lion licenses, and turkey permits/licenses. Resident sportsman and nonresident big game combination license holders may not apply for a black bear license.

(4) A nonresident who uses a class B-11 landowner sponsored license in conjunction with a deer permit or a wild turkey license may hunt only on the landowner sponsor's property. A nonresident who possesses a class B-1 landowner sponsored license and who hunts turkey off the landowner sponsor's property must also hold a class B-1, nonresident bird license valid statewide which is different than the restrictive B-1 license contained in the B-11 license. A nonresident holding both the class B-11 license and the class B-1 license valid statewide may purchase only one wild turkey license per spring season and one wild turkey license per fall season.

AUTH: Sec. 87-1-304, MCA IMP: Sec. 87-1-304, MCA

RULE IV ANTELOPE LICENSES (1) Manner of drawing. The department shall issue antelope licenses as described in section 87-2-706, MCA, and ARM 12.3.104 (landowner preference).

(2) Fifteen percent of a district quota will be set aside for the landowner drawing.

(3) Landowner applications must be on current year forms and postmarked no later than June 1st.

(4) Party applications.

(a) Party applications are limited to five or fewer members per party.

(b) All valid applications will be considered as a single application for purposes of the drawing; that is, all members will either be successful or unsuccessful.

(c) Any applicant applying as a member of an antelope party and who is otherwise eligible for landowner preference will be considered a member of a party and will be entered into the drawing without landowner preference.

(d) Applications must have all requested party information, and that information must be correctly presented.

(e) A party will be broken up only under the following circumstances:

(i) If all members of the party do not list districts in the same order on their applications, the party will be split up and all members will be entered into the drawing individually.

(ii) If one member of the party fails to provide mandatory information such as date of birth, signature, etc. -- that

member will be excluded from the drawings. The remaining members will be processed as a party.

(5) Nonresident doe/fawn license cost.

(a) Doe/fawn antelope licenses sold over-the-counter and through surplus sales are $35.00 each for nonresidents.

(6) Landowner preference applications. All applications claiming landowner preference are verified through local game wardens for authenticity of ownership. Applications with errors may be sent back to the applicants for correction at the discretion of the department if time allows.

AUTH: Sec. 87-2-706, MCA IMP: Sec. 87-2-706, MCA

RULE V ELK PERMITS (1) Manner of drawing. The department issues elk permits for landowner preference described in section 87-2-705, MCA, according to the following policies and procedures:

(a) The statutory requirement of 640 acres of contiguous land is used only to determine if the applicant is eligible to apply as a landowner.

(b) If license/permits are valid in a designated portion of a hunting district, some of the land owned by the applicant must be within the boundaries of that portion.

(c) Both resident and non-resident landowners must use the special drawing application provided by the department. The department shall verify that the applicant owns 640 acres, that it is contiguous land used by elk, and that the designee of the landowner preference is eligible.

(d) The 15% calculation may result in a fraction of a license/permit. e.g. 15% of 50 is 7.5. If the decimal is equal to or greater than .5, it will be rounded up to the next whole number. If the decimal is less than .5, it will be rounded down to the next whole number.

(e) Partnerships may delegate landowner preference to members of the immediate family, a partner or an employee. Only one person may be delegated landowner preference for each sole proprietorship, partnership or corporation. A corporation may delegate the landowner preference to one shareholder.

(f) All applicants entitled to landowner preference will be considered in the preference drawings for elk. Unsuccessful landowner applicants who exceed 15% of a district will be entered into the regular drawings with their district choices. As a result, unsuccessful landowner applicants will have two opportunities to be drawn.

(g) Landowner applications must be on current year forms and be postmarked no later than June 1.

(2) Party applications. Where the commission has authorized party elk hunts, the following rules apply:

(a) Application for elk permits is limited to two members per party;

(b) Both applications will be considered as a single application for the purposes of the drawing; both members of the party will either be successful or unsuccessful.

(c) Applications must have all requested party information correctly presented. A party will be broken up only under the following circumstances:

(i) If both members of the party do not list their districts in the same order on their applications the party will be broken up and both members will be entered in the drawing individually.

(ii) If one member of the party is missing mandatory information such as date of birth, signature, etc. only that member will be eliminated from the drawings. The remaining member will be entered in the drawing individually.

(3) Special elk permits. Residents may not apply for an elk permit without first purchasing an A-5 elk license. Nonresidents must purchase the B-10 nonresident big game combination license prior to or at the time of submittal of drawing applications. All persons holding a valid elk license may participate in post-season elk drawings under annual rules adopted by the commission.

(4) Landowner preference applications. Applications with errors may be sent back to the applicants for a correction at the discretion of the department if time allows.

AUTH: Sec. 87-2-706, MCA IMP: Sec. 87-2-706, MCA

RULE VI ANTLERLESS ELK LICENSE (1) Manner of drawing. The department issues elk licenses for landowner preference pursuant to section 87-2-705, MCA, according to the following policies and procedures:

(a) The statutory requirement of 640 acres of contiguous land is used only to determine if the applicant is eligible to apply as a landowner.

(b) If license/permits are valid in a designated portion of a hunting district, some of the land owned by the applicant must be within the boundaries of that portion.

(c) Both resident and non-resident landowners must use the special drawing application provided by the department. The department shall verify that the applicant owns 640 acres, that it is contiguous land used by elk, and that the designee of the landowner preference is eligible.

(d) The 15% calculation may result in a fraction of a license/permit. e.g. 15% of 50 is 7.5. If the decimal is equal to or greater than .5, it will be rounded up to the next whole number. If the decimal is less than .5, it will be rounded down to the next whole number.

(e) Partnerships may delegate landowner preference to members of the immediate family, a partner or an employee. Only one person may be delegated landowner preference for each sole proprietorship, partnership or corporation. A corporation may delegate the landowner preference to one shareholder;

(f) All applicants entitled to landowner preference will be considered in the preference drawings for elk. Unsuccessful landowner applicants who exceed 15% of a district will be entered into the regular drawings with their district choices. As a result, unsuccessful landowner applicants will have two opportunities to be drawn.

(g) Landowner applications must be on current year forms and be postmarked no later than June 1.

(h) Landowner preference applications are sent back to the applicants for a chance at correcting the error if time allows.

(2) Nonresidents are now eligible to apply for the antlerless elk license (A-7).

AUTH: Sec. 87-2-705 IMP: Sec. 87-2-705

RULE VII DEER B LICENSES/DEER PERMITS (1) Manner of drawing. The department shall issue deer B licenses and deer permits as described in ARM 12.3.104 (landowner preference).

(2) Special deer permits. Residents who apply for a deer permit may do so without prior purchase of a deer license. When an individual is successful in a drawing for a deer permit, he must purchase the appropriate license before hunting. A permit is not valid unless it is accompanied by a valid license for the proper species. A conservation license must be purchased prior to application. Nonresidents who are applying for drawings for deer permits must purchase a B-10 or B-11 license prior to or at the time of submittal of drawing applications.

(3) Landowner preference applications. Applications with errors may be sent back to the applicants for correction at the department's discretion if time allows.

AUTH: Sec. 87-1-304 IMP: Sec. 87-1-304

RULE VIII MOOSE, SHEEP, GOAT LICENSES (1) Manner of drawings. The department shall issue moose, sheep, and goat licenses as described in Sections 87-2-701 and 87-2-506, MCA, according to the following policy and procedures:

(a) Applicants for each species must specify one choice for a hunting district. However, for bighorn sheep, an applicant may specify an unlimited sheep hunting district as a second choice.

(b) Application for unlimited sheep must be on a current application form approved by the Department.

(2) Nonresident license allocations for moose, sheep and goat. The following procedure will be used when allocating 10% license opportunities for nonresidents in moose, sheep and goat drawings:

(a) The total regional license quota, by species and region, will be used to determine 10% nonresident quota.

(b) Nonresident license allocations will be applied to those hunting districts and season types with a quota of 10 or more in the tentative regulations.

(c) Any remaining license allocation will be put, on a rotating basis, in those districts and season types with a quota of less than 10 on the tentative regulations.

(d) If no district in a region has a quota of 10 or more licenses on the tentative regulations, all the nonresident license authority will be allocated as described in subsection (c).

AUTH: Sec. 87-1-304 IMP: Sec. 87-1-304

RULE IX QUOTA MODIFICATION (1) Quota modification. The authorized number of permits or licenses, as established by the commission, may be exceeded, if necessary, by up to 10% of the quota for each district by at least one license. The issuance of these licenses will be considered on a case-by-case basis only to accommodate any applicants who might have received a license or permit had it not been for an error on the part of the department in processing the applications. This increase in the quotas must be approved by the director, and may not exceed 50 for all species in any license year. Any necessary quota extension in excess of the number herein authorized must be approved by the commission.

AUTH: Sec. 87-2-506 IMP: Sec. 87-2-506

RULE X APPLICATION FOR DRAWINGS (1) Application for special permit/license drawings - location of drawings. All applications for participation in any special permit/license drawing, except drawings under item XXI (damage hunts) provided for by these regulations must be postmarked by the U.S. Postal Service on or before June 1, of the current license year, or delivered by private mail service on or before June 1, or if personally delivered, received in the Helena fish, wildlife, and parks office by 5:00 p.m., June 1, of the current license year. If the deadline date for application for any license or drawings, as set by the department, falls on a Sunday or state holiday, that date shall be automatically extended to 5:00 p.m. of the next full work day. Such applications must be made on forms provided by the department. No corrections or changes may be made after the department has received the drawing application, except that the department will accept corrections on the applications of those seeking landowner preference. Unless otherwise provided by these rules, all drawings will take place in Helena.

(2) Application for miscellaneous drawings. All applications for participation in buffalo, swan and turkey drawings must be postmarked by the U.S. postal service by the advertised deadline date, or delivered by private mail service on or before the date to the address indicated for the particular drawing which is being applied for.

(3) Procedure for application for drawings. Applications must be made on the current form provided by the department or

a photocopy of this form. The applicant must fill in the required information, sign the application, and submit the proper fee. Phoned-in requests and wired-in money will not be accepted. The department will not accept personal checks from nonresidents for nonresident licenses and drawing fees. Applications that are required to be submitted on a current year department approved form include nonresident combination licenses, special drawings, buffalo, unlimited sheep, surplus special license, mountain lion, and grizzly.

AUTH: Sec. 87-2-506, MCA IMP: Sec. 87-2-506, MCA

RULE XI MULTIPLE APPLICATIONS (1) Submittal of more than one application for any one drawing by an individual will disqualify that individual's applications from the drawing for which the multiple applications were submitted.

AUTH: Sec. 87-1-301, MCA IMP: Sec. 87-2-104, MCA

RULE XII HUNTER SAFETY REQUIREMENTS (1) Montana residents under 18 must possess a Montana hunter safety card to apply for hunting licenses or special drawings. If a course through another state has been completed, a card can be obtained through the hunter safety office in Helena, usually without taking the course again.

AUTH: Sec. 87-2-105, MCA IMP: Sec. 87-2-105, MCA

RULE XIII DRAWING FEE (1) When any part of an application is entered in a drawing, the fee will not be refunded; applications not processed in the drawing because of errors on the application will be returned to the applicant with all fees.

AUTH: Sec. 87-2-113, MCA IMP: Sec. 87-2-113, MCA

RULE XIV EXCESS LICENSES/PERMITS (1) When there are licenses or permits remaining after a drawing is conducted under these rules, those licenses or permits may be issued as determined by the director.

AUTH: Sec. 87-1-304, MCA IMP: Sec. 87-1-304, MCA

RULE XV LICENSE REFUNDS (1) No refund will be issued for any hunting, fishing, or trapping license sold by the department except as provided in subsections (a) through (e) of this rule.

(a) Death. A surviving heir may receive a refund in the event of the death of the license holder. A claim for such refund must be accompanied by verification of death of the license holder and will be made payable to the personal representative of the estate of the deceased. No refund will be awarded for any license if death occurs after the opening of the season for which the license is valid. If the request for a refund includes an archery license, the opening of the season is the beginning of the general archery hunting season for that species;

(b) Medical disability. A request for a refund due to medical disability, must be verified by a statement signed by a licensed physician. The physician must describe the nature of the disability and state that it precludes hunting. No refund will be awarded for any license if medical disability occurs after the opening of the season for which the license is valid. If the request for a refund includes an archery license, the opening of the season is the beginning of the general archery hunting season for that species;

(c) Exchange of single licenses for a combination license. A resident who has purchased a conservation, bear, deer, elk, bird, or fishing license may request a refund by returning the license to the Helena or regional office at the time of application for a sportsman's license. A nonresident who has purchased a conservation, bird, bear, season fishing or deer combination license may request a refund by returning such license to the Helena office at the time of application for a nonresident big game combination license. A nonresident who has purchased a conservation, bird or season fishing license may request a refund by returning the license to the Helena office at the time of application for a nonresident deer combination license;

(d) If an applicant is issued an incorrect license (e.g., a sportsman over 62 years old is issued a regular conservation license and elk license for full price instead of the half price elk license) through the fault of the department or a license agent, the license fees will be refunded;

(e) Requests for refunds for nonresident combination licenses must be received before October 1 and need not specify a reason. After October 1, refunds will be issued only for reasons outlined in (a) through (c) above. After December 31, refunds for nonresident combination or resident and nonresident general licenses will not be issued for any reason.

(f) Time of sale. For the purpose of considering refunds, any license ordered by mail shall be considered sold when the department receives a valid application.

(g) Appeals to the director/commission. The director may authorize exceptions to the refund policy due to extenuating circumstances. Any license holder who disagrees with the director's decision on a refund request may appeal that decision to the fish and game commission.

AUTH: Sec. 87-1-301 IMP: Sec. 87-1-301

RULE XVI DUPLICATE LICENSES (1) Duplicate licenses or permits may be issued as follows:

(a) If the original license is lost, stolen or destroyed.

(b) With the approval of the Regional Supervisor, duplicate general licenses may be issued by game wardens, license agents, biologists, Ex Officio wardens, sheriff offices and police departments;

(c) Duplicate special licenses, permits and non-resident combination licenses are issued only by the Regional and Helena office.

(d) The fee for each duplicate license or permit issued under sections (a), (b) and (c) is the original cost of the license, not to exceed $5.

AUTH: Sec. 87-2-104, MCA IMP: Sec. 87-2-104

RULE XVII ANIMALS UNFIT FOR HUMAN CONSUMPTION (1) In some instances, a hunter will shoot and tag a big game animal which is unfit for human consumption. Hunters who have shot such an animal may obtain a free replacement license. The replacement license replaces the license for the applicable license year only. No replacement license will be issued for use beyond the original license year or during any subsequent license year. In order to obtain a replacement license, a hunter may turn in the animal to a department biologist or warden for a determination that the animal is unfit for human consumption. The biologist or warden may make the determination or may refer the hunter to a licensed meat inspector or licensed veterinarian. If the hunter is referred to a meat inspector or veterinarian, a written statement from the meat inspector or veterinarian must be presented to the department for replacement. A hunter may go directly to, or may seek a second opinion from, a licensed meat inspector or a licensed veterinarian which would be honored by the department. No replacement license will be issued if the lack of fitness for human consumption is due to the hunter's improper handling or care of the animal. The animal must have all horns, antlers, bones, hide, hoofs, and teeth. This section does not apply to black bears, grizzly bears, buffalo, or mountain lions.

AUTH: Sec. 87-1-301, MCA IMP: Sec. 87-1-301, MCA

RULE XVIII REVOKED HUNTING LICENSES (1) Revoked hunting licenses. When any holder of a Montana hunting license forfeits that license or the privilege to hunt in the state under provisions of Section 87-1-102, MCA, any application for a hunting license or permit is invalid during the time for which the license or privilege to hunt is forfeited or revoked.

(2) Any permit or license issued to an individual who has forfeited hunting privileges under Section 87-1-102, MCA, is void.

AUTH: Sec. 87-1-102, MCA IMP: Sec. 87-1-102, MCA

RULE XIX COPYING LICENSE RECORDS (1) State law prohibits the distribution or sale of mailing lists, with the exception of compiling a list by examination of original documents or applications. Examination of original documents will be allowed under the following circumstances:

(a) Compilation process will not be allowed to interfere with normal department operation;

(b) Documents must be maintained in their original order at all times;

(c) Documents may not be moved from the immediate vicinity of the department's offices.

(d) Documents may be examined only during normal office hours (8:00 a.m. to 5:00 p.m.);

(e) There will be a charge of $0.02 per name and address to cover the costs;

(f) The information available for compilation will be:

(i) name;
(ii) address;
(iii) city;
(iv) state; and
(v) zip code;

(g) Manual compilation is preferred. Computers and transcribers are permitted. Copy machines and photography are not allowed; and

(h) Noncompliance with any statutes, ARM rules, or department policy is grounds for revocation of permission to examine documents.

AUTH: Sec. 2-6-109, MCA IMP: Sec. 2-6-109, MCA

RULE XX COMBINATION LICENSE ALTERNATE LIST (1) Upon completion of the sale of nonresident combination licenses, the department will prepare an alternates' list for both nonresident big game combination licenses and nonresident deer combination licenses. These lists will contain the names of a predetermined number of unsuccessful applicants from each category who may be contacted and given the opportunity to purchase a license in the event refunds are issued to successful applicants.

AUTH: Sec. 87-2-511, MCA IMP: Sec. 87-2-511, MCA

RULE XXI DAMAGE HUNTS (1) Damage hunts are carried out according to the following policies and procedures:

(a) In January, the department requests the commission to tentatively approve a specified number of antlerless deer, antlerless elk and doe/fawn antelope licenses for potential game damage occurring between August 1 and February 28.

(b) If a special damage season is determined by the regional supervisor to be necessary prior to the general hunting season, a random list of applicants on file for that district in special licensing will be requested. The list will include all those applications processed to date and on the computer file. If an applicant list is not available for the district, the regional applicant list for that species will be used. Hunters selected by the region to participate in the special damage season will not be allowed to hunt with the special damage license/permit during the general season if unsuccessful during the early damage hunt. These hunters will be in addition to the general season permit quota. After the August drawing,

successful applicants will be used before the general season and will not be in addition to the general season permit quota.

(c) Current license/permit holders successful in the general season drawings will be used for damage seasons conducted during the general hunting season. They will not be in addition to the general season permit quota.

(d) Deer and antelope. The list of unsuccessful applicants for the district will be utilized first, then a local drawing/first-come, first-served method of distribution for damage seasons will be conducted after the general hunting season. These hunters will be in addition to the general season permit quota. Licenses will be available from the local license dealer for all deer damage seasons in which A-4 or B-8 licenses are sold.

(e) Elk. A roster of hunters to participate in elk damage season conducted after the general hunting season will be developed according to the following priority: First, holders of A-7 elk licenses, valid in that portion of the district, who did not fill their A-7 elk license during the period when it was valid; second, unsuccessful applicants for A-7 elk licenses in that portion of the districts; third, unsuccessful applicants for a permit in the district; fourth, unsuccessful applicants for permits in the region; and finally, holders of permits, valid in the district, who did not fill their permit during the general season. If an applicant list is not available for that species, a local drawing with a first come, first served method of distribution will be used.

(2) Eligible licenses. Unless stated otherwise, participants in a damage hunt must possess a valid unused license and damage hunt permit for the following species:

(a) For deer, the hunter may use valid unused class AAA, A-3, A-4, B-7, B-8, B-10, B-11 or senior, disabled, or youth deer licenses, or special deer damage licenses. The holder of a class B-11 license may use the damage hunt permit only on the landowner sponsor's property;

(b) For elk, the hunter may use valid unused class AAA, A-5, senior, disabled, or youth or B-10 licenses. The holder of a class A-7 elk license may use the damage hunt permit only in the district in which the A-7 elk license is valid;

(i) a person who is contacted by the department for purpose of a damage hunt may waive the opportunity to participate, but may not be considered again until all other interested persons have been contacted; and

(ii) any person who receives an elk permit in the initial drawing may not receive a second permit in the same license year.

(3) With the exception of deer and antelope, no person may take more than one big game animal of any species during this license year.

(4) The 10% nonresident limitation is not applicable to damage hunts.

(5) No fee is necessary for a special permit issued under these procedures.

AUTH: Sec. 87-1-225, MCA IMP: 87-1-225, MCA

RULE XXII MANAGEMENT SEASONS (1) When an additional harvest is required to fulfill the department's responsibility to manage game populations according to available habitat, management seasons may be initiated.

(2) By law, the department is required to respond to all big game damage complaints. General hunting seasons are the primary tool to deal with animals causing or having the potential to cause game damage.

(3) The department investigates damage complaints as soon as possible, and within 48 hours of the filing of the complaint. If the department person who received the complaint is unable to respond within 48 hours, he will immediately refer the complaint to the nearest department employee who can respond within a 48-hour period. Exceptions may be made if complainant is agreeable to a longer waiting period;

(4) The department of fish, wildlife and parks investigates all damage complaints under this policy with the exception of (5). A phone call or on-site visit constitutes an immediate response under this provision.

(5) Damage caused by nongame, furbearing, or federally listed threatened and endangered species is not covered by this policy, but is addressed on a case-by-case basis.

(6) In response to legitimate damage complaints, a regional supervisor may address the problem in the following ways:

(a) Special Seasons. Special seasons may be used under the following conditions:

(i) during the time period of August through February;

(ii) when reasonable hunter access is available to allow for harvest of problem animals;

(iii) when there are enough animals involved to justify public hunting; and

(iv) when the game damage is a recurring problem, and animals are normally unavailable during the general hunting season.

(b) Herding. As a temporary measure, herding may be employed;

(c) Dispersal. A variety of animal dispersal methods may be employed, such as airplanes, snowmobiles, cracker shells and scareguns;

(d) Repellents. Bloodmeal and other repellents may be employed as temporary solutions;

(e) Fencing. If the problem is chronic and involves haystacks, various fencing options may be utilized:

(i) Permanent stackyards. In cases where records show haystack damage occurs annually, stackyards may be used as a permanent solution. The department will furnish the property owner with posts and wire. It is the landowner's

responsibility to construct the fence and to provide proper maintenance. In situations where stackyards enclose several acres, particularly those surrounding round bales, permanent stackyards may not be the most desirable treatment of the problem;

(ii) Electric fencing. In situations where a large area is being used for a stackyard, such as round bale storage, electric fencing may be the most feasible solution. The department will provide the charger and fencing materials. On the initial installation, the department will assist in setting up the fence. The storage and care of this equipment is the responsibility of the rancher, and with proper care, materials should last three years. If game damage does not recur in succeeding winters, the department will pick up the charger for use in other areas;

(iii) Snowfence. If a haystack has straight sides, 4 or 6 ft. snowfence works well, or in the case of elk, 8 ft. panels may be used. It is reasonable to assume the snowfence or panels will last for a minimum of three winters if properly cared for. Rolling and storage are the rancher's responsibility. Depending upon the size of the area and availability, the department will furnish the snowfence or panels, and the property owner will be responsible to put it up, take it down, and provide maintenance;

(iv) It will be the responsibility of the landowner to store materials furnished by the department in a manner consistent with proper care, with reasonable wear expected. A signed agreement with the landowner will record any planned actions and serve as a receipt for any materials that are provided. These agreements will be sent to the individuals. Fence fabric shall be returned to the department when it is no longer needed for protection from wildlife damage. Materials will be replenished when reasonable wear makes them ineffective;

(f) Kill permits. A kill permit may be considered to be the best immediate solution and may be activated without first exhausting any of the previously mentioned methods. Authorization for kill permits are issued by regional supervisors.

(g) In special situations, netting or mechanical devices may be used to reduce tree damage;

(h) Hunting Methods: When rifle hunting poses a threat to the safety and welfare of persons or property, use of archery, shotgun and/or muzzleloader may be used as an alternative.

(7) Denial of Assistance. Assistance may be denied or discontinued to a landowner who:

(a) creates or further contributes to game damage problems by not providing sufficient public hunting to aid in reduction of game populations;

(b) imposes other restrictions which prevent adequate harvests; or

(c) refuses reasonable suggestions, actions or remedies offered by the department. The decision to deny or terminate assistance will be made by the regional supervisor. Denial or

discontinuance of assistance will be documented with the reasons, history and other pertinent information used to make that decision. A copy of the written decision will be provided to the landowner. The written decision will explain appeal rights.

(8) Appeal Process.

(a) A landowner may appeal the denial or discontinuance of assistance to the director of the department. The appeal must be in writing and must contain specific reasons why the regional supervisor's decision is felt to be erroneous. The appeal must be filed within 10 days following receipt of a denial or discontinuance determination from the regional supervisor;

(b) The director of the department will review the information used by the regional supervisor in making the initial determination and the reasons cited by the landowner for appealing the decision. At the director's discretion, the commission may be asked to review the appeal and make recommendations for the decision. Following the review, a final decision will be rendered by the director.

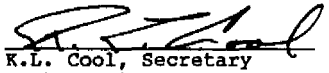
AUTH: 87-1-225, MCA IMP: 87-1-225, MCA

3. These rules are necessary to allow the department to establish the many detailed procedures required to implement laws for special hunting seasons and permits.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to James Herman, License Bureau Chief, Field Services Division, Department of Fish, Wildlife and Parks 1420 East Sixth, Helena, Montana, 59620, no later than February 14, 1991.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request in writing to James Herman, License Bureau Chief, Field Services Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than February 14, 1991.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.



K.L. Cool, Secretary
Montana Fish and Game
Commission

Certified to the Secretary of State January 7, 1991.

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

| | | |
|---|---|---|
| In the matter of the amendment of rules 16.44.401, 16.44.402, and 16.44.415 | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 16.44.401, 16.44.402 and 16.44.415 (Solid & Hazardous Waste) |

To: All Interested Persons

1. On February 19, 1991, at 4:00 p.m., the Department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The proposed amendments would define the terms large generator, small generator and conditionally exempt small generator of hazardous waste.

3. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.44.401 GENERAL PROVISIONS

(1)-(3) Same as existing rule.

(4) The ~~following~~ three categories of generators are defined by their monthly rates of hazardous waste generation and by the amounts of hazardous waste held in accumulation ("accumulation" means temporary on-site storage of hazardous waste(s)). For counting requirements see ARM 16.44.305~~:~~ as follows:

(a) A "large generator" is a generator of hazardous waste which is not either a "small generator" or "conditionally exempt small quantity generator" as defined below, or who generates at any time in a calendar month, or accumulates at any time:

~~(i) greater than 1000 kilograms (2200 pounds) of hazardous waste;~~

~~(ii)~~(i) greater than 1 kilogram (2.2 pounds) of acute hazardous waste; or

~~(iii)~~(ii) greater than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.

~~(b) A "large generator" may be a generator who accumulates at any time in a calendar month:~~

~~(i) greater than 6000 kilograms (13,200 pounds) of hazardous waste;~~

~~(ii) greater than 1 kilogram (2.2 pounds) of acute hazardous waste; or~~

~~(iii) greater than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting~~

~~from a discharge, into or on any land or water, of acute hazardous waste.~~

~~(c)~~(b) A "small generator" is a generator of hazardous waste who generates in a calendar month~~:~~ ~~(i)~~ between 100 kilograms (220 pounds) and 1000 kilograms (2200 pounds) of hazardous waste;

~~(ii) less than 1 kilogram (2.2 pounds) of acute hazardous waste; and~~

~~(iii) less than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.~~

~~(d) To be deemed a "small generator" the generator must never accumulate at any time in a calendar month:~~

~~(i) greater than 6000 kilograms (13,200 pounds) of hazardous waste;~~

~~(ii) greater than 1 kilogram (2.2 pounds) of acute hazardous waste; or~~

~~(iii) greater than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.~~

~~(e)~~(c) A "conditionally exempt small quantity generator" or "conditionally exempt generator" is a generator of hazardous waste who generates in a calendar month~~:~~ ~~(i) less~~ no more than 100 kilograms (220 pounds) of hazardous waste~~, including any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste; and.~~

~~(ii) less than 1 kilogram (2.2 pounds) of acute hazardous waste.~~

(i) If a conditionally exempt small quantity generator accumulates at any time more than 1000 kilograms (2200 pounds) of hazardous waste, all of those wastes shall be subject to regulation as if they were generated and accumulated by a small generator.

~~(f) To be deemed a "conditionally exempt small quantity generator" the generator must never accumulate at any time in a calendar month:~~

~~(i) greater than 1000 kilograms (2200 pounds) of hazardous waste;~~

~~(ii) greater than 1 kilogram (2.2 pounds) of acute hazardous waste; or~~

~~(iii) greater than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.~~

(d) For counting requirements, see ARM 16.44.305.

(5) Because of episodic fluctuations in the rate of accumulation or monthly generation, a generator may at any given point in time, be subject to different regulatory requirements for differing accumulations or monthly generations of hazardous waste. The appropriate requirements in this subchapter become applicable to the generated or accumulated hazardous waste, as appropriate. It is the responsibility of

the generator to insure compliance with such applicable requirements, and to maintain the documentation necessary to distinguish between such episodic fluctuations.
AUTH: Sec. 75-10-405, MCA; IMP. Sec. 75-10-405, MCA

16.44.402 HAZARDOUS WASTE DETERMINATION; APPLICABILITY OF RULES TO GENERATOR CATEGORIES; SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS
(1)-(4) Same as existing rule.
(5) The following special requirements apply to a conditionally exempt small quantity generator:
(a) A conditionally exempt generator may accumulate hazardous wastes on site in quantities up to the limits specified in ARM 16.44.401(4)~~(f)~~(c)(i). If he exceeds ~~these~~ this quantity limits, the time period of ARM 16.44.415(2) for accumulation of wastes on site ~~applies and the conditionally exempt generator becomes subject to the requirements for small generators or large generators, as applicable~~ by a small generator will apply. The time period for accumulation under ARM 16.44.415(2) begins for the conditionally exempt generator at any time when the accumulated hazardous wastes exceed 1000 kilograms (2200 pounds).
(b)-(d) Same as existing rule.
AUTH: Sec. 75-10-204, MCA; IMP: Sec. 75-10-204, 75-10-225, MCA

16.44.415 REQUIREMENTS FOR ACCUMULATION OF WASTES AND ACCUMULATION IN SATELLITE LOCATIONS (1) Large ~~or small~~ generators may accumulate hazardous waste on site for up to 90 days without a permit, irrespective of the quantity of hazardous waste accumulated. For a generator who is classified as a large generator by virtue of their accumulation of acute hazardous waste, the 90 day period for accumulation of the acute hazardous wastes begins at any time when these accumulated wastes meet the applicable limits described in ARM 16.44.401(4)(a).
(2) Provided that the total amount of hazardous waste accumulated on site does not exceed 6000 kilograms, ~~both large generators and~~ small generators may accumulate hazardous waste for up to 180 days or, if the waste must be transported a distance of greater than 200 miles to a designated facility, up to 270 days, without a permit.
(3) A ~~large or small~~ generator who exceeds the applicable ~~180 or 270 day~~ accumulation limits ~~or who simultaneously exceeds both the 90 day time limit and the 6000 kilogram quantity limit~~ in section (1) or (2) above is an operator of a storage facility and is subject to the requirements of subchapters 1, 6, 7, and 8 of ~~Title 16,~~ this chapter ~~44~~, unless the generator is granted an extension by the department. Upon a written request, an extension of up to 30 days may be granted by the department on a case-by-case basis where hazardous wastes must remain on site due to unforeseen, temporary, and uncontrollable circumstances.
(4)-(8) Same as existing rule.
(9) To ensure compliance with the accumulation and

generation requirements in these rules, the large or small generator shall prepare and maintain at its premises a log book or similar documentation, which lists the hazardous wastes it has generated for each calendar month by date, EPA hazardous waste number, and quantity. The log shall be current as of the most recent complete calendar month within 30 days after the end of said month, and shall contain monthly data for at least 11 consecutive calendar months, if appropriate. The log shall also note which of the listed wastes have been removed from accumulation for either on-site or off-site treatment, storage or disposal.
AUTH: Sec. 75-10-404, 75-10-405, MCA; IMP: Sec. 75-10-405, MCA

4. The Department is proposing these amendments to the rules in order to define the terms large generator, small generator and conditionally exempt small generator of hazardous wastes.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Roger Thorvilson, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than February 19, 1991.

6. Patti Powell, at the above address, has been designated to preside over and conduct the hearing.

DENNIS IVERSON, Director

Certified to the Secretary of State January 7, 1991 .

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

| | | |
|---|---|---|
| In the matter of the amendment of rules 16.44.102, 16.44.107, 16.44.116, 16.44.120, 16.44.124 16.44.202, 16.44.302-304, 16.44.333, 16.44.351, 16.44.402, 16.44.404, 16.44.415, 16.44.418, 16.44.528, 16.44.609-610, 16.44.613, 16.44.702-703, 16.44.802, 16.44.804-805, 16.44.817 - 16.44.819, 16.44.823 | ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES (Solid & Hazardous Waste) |

To: All Interested Persons

1. On February 19, 1991, at 4:30 p.m., the Department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The proposed amendments are intended to adopt changes in order to achieve parity with federal regulations. Passage of these amendments is necessary for authorization from the Environmental Protection Agency (EPA) to the State of Montana to independently operate a hazardous waste program.

3. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.44.101 PURPOSE OF RULES (1) The purpose of the rules in subchapters 1 through ~~9~~ 10 of this chapter is to provide for the control of all hazardous wastes that are generated within, or transported to Montana for the purposes of storage, treatment and disposal or for the purposes of resource conservation or recovery.

(2) The rules in subchapters 1 through ~~9~~ 10 of this chapter are adopted to discharge the department's responsibilities under Title 75, chapter 10, subchapter 4, Montana Code Annotated, the Montana Hazardous Waste Act (the "Act"), by establishing a management control system including permitting which assures the safe and acceptable management of hazardous wastes from the moment of their generation through each stage of management until their ultimate destruction or disposal.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.102 INCORPORATIONS BY REFERENCE (1)-(4) Remain the same.

(5) As of ~~February 17, 1987~~ July 14, 1986, all of the incorporations by reference of federal agency rules listed below within the specific state agency rules listed below shall refer

to federal agency rules as they have been codified in the July 1, 19869 edition of Title 40 of the Code of Federal Regulations (CFR). References in the state rules to federal rules contained in Titles 49 and 33 are updated to the extent that they have been updated by the federal rules which also incorporate these rules by reference. For the proper edition of these rules in Titles 49 and 33, see the reference in Title 40 of the CFR (19869 edition), provided in parenthesis. A short description of the amendments to incorporated federal rules which have occurred since the last incorporation by reference is contained in the column to the right. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.

| State Rule | Federal Rule Incorporated | Notation of Most Recent Changes to Federal Rules |
|---|---|---|
| 16.44. ... | 40 CFR . . . | |
| 103 | 264.17(b), 264.96, 264.117, 264.171, 264.172 | NC |
| 109 | 264.72, 264.73(b)(9), 264.76 | ~~Codification of HSWA language; used oil & hazardous waste fuel regulations.~~ NC |
| 110 | Parts 264 and 266 | ~~Codification of HSWA language; used oil & hazardous waste fuel regulations.~~ Hazardous waste tank systems; miscellaneous units; Part 264, Appendix IX reference. |
| 116 | 264.98, 264.99, 264.100, 264.112, 264.113, 264.117(a), 264.118, 264.147 | ~~NC~~ Part 264, Appendix IX reference. |
| 118 | 264.112, 264.113, 264.271, 264.272 | NC |
| 120 | 270.14 - 270.~~21~~23 | ~~Regulations identifying dioxin wastes; codification of HSWA language.~~ Hazardous waste tank systems; miscellaneous units; ground water corrective action, Part 264, Appendix IX reference. |

| | | |
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| 123 | 264.343, 264.345 | ~~Regulations identifying dioxin wastes.~~ NC |
| 124 | Part 264, Subpart M | ~~Regulations identifying dioxin wastes.~~ NC |
| 126 | Parts 264 and 266 | ~~Codification of HSWA amendments; used oil & hazardous waste fuel regulations~~ Hazardous waste tank systems; miscellaneous units; Part 264, Appendix IX. |
| 202 | Parts 264 and 266, Appendix to Part 262 | ~~Codification of HSWA language; used oil & hazardous waste fuel regulations.~~ Hazardous waste tank systems; miscellaneous units; Party 264, Appendix IX. |
| 305 | Part 266, Subparts C, D, and F | ~~Codification of HSWA language; used oil & hazardous waste fuel regulations.~~ Technical correction in 266.20. |
| 306 | Part 264, Subpart O; Part 265, Subpart O; Part 266, Subparts C-G; 265.71, 265.72 | ~~Codification of HSWA language; used oil & hazardous waste fuel regulations.~~ Technical correction in 266.20. |
| | 49 CFR . . . | |
| 321 | 173.300 (40 CFR 261.21) | NC |
| 323 | 173.51, 173.53, 173.88 (40 CFR 261.23) | NC |
| | 40 CFR . . . | |
| 331 | 261.31 | ~~Listing of spent solvents; four new spent solvents listed.~~ NC |

| | | |
|---|---|---|
| 332 | 261.32 | ~~New waste listings~~ Correction to K062 waste listing; `mining waste' listings K064, K065, K066, K088, K090, and K091. |
| 333 | 261.33(e) and (f) | ~~New waste listings~~ Corrections; chemical abstracts numbers added. |
| 334 | Part 265, Appendix V | NC |
| 351 | Part 261, Appendices I, II, III, and X | NC |
| 352 | Part 261, Appendices VII and VIII | ~~Chlorinated hydrocarbons; dioxin wastes; solvents.~~ Corrections; chemical abstracts numbers added. |
| 405 | Part 262, the Appendix | ~~Codification of HSWA language.~~ Waste minimization certification language. |
| | 49 CFR . . . | |
| 410 | Parts 173, 178, and 179 (40 CFR 262.30) | NC |
| 411 | Part 172, Subpart E (40 CFR 262.31) | NC |
| 412 | Part 172, Subpart D (40 CFR 262.32) | NC |
| 413 | Part 172, Subpart F (40 CFR 262.33) | NC |
| | 40 CFR . . . | |
| 415 | Part 265, Subparts C~~,~~ and D, 265.111, 265.114, Part 265, Subpart I~~, and~~; Part 265, Subpart J, (except ~~265.193, 265.16, 265.171, 265.172, 265.173(a)~~ 265.197(c) and 265.200) | ~~Codification of HSWA language.~~ Hazardous waste tank systems. |
| | 49 CFR . . . / 33 CFR . . . | |

| | | |
|---|---|---|
| 511 | 171.15, 171.16 / 153.203 (40 CFR 263.30) | NC |
| | 40 CFR . . . | |
| 603 | 264.250(c), 265.352, 265.383 | ~~Regulations identifying dioxin wastes.~~ NC |
| 609 | Part 265, Subparts B - Q, excluding Subpart H and 265.75 | ~~Codification of HSWA language; used oil & hazardous waste fuel regulations.~~ Hazardous waste tank systems; closure of surface impoundments. |
| 702 | Part 264, Subparts B - ~~O~~X, excluding Subpart H and 264.75; Part 264, Appendices I, IV, V, VI, and IX | ~~Codification of HSWA language; used oil & hazardous waste fuel regulations.~~ Hazardous waste tank systems; miscellaneous units; Appendix IX list of ground water monitoring parameters. |
| 802 | 264.197, 264.228, 264.258, 265.197, 265.228, and 265.258 | ~~Codification of HSWA language.~~ Hazardous waste tank systems; closure of surface impoundments. |
| 803 | 264.112, 264.117 - 264.120, 265.112, 265.117 - 265.120 | NC |
| 804 | 264.111 - 264.115, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.143(f)(3), 264.601 - 264.603; 265.111 - 265.115, 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404 | ~~Codification of HSWA language.~~ Hazardous waste tank systems; miscellaneous units; closure of surface impoundments. |
| 805 | 264.117 - 264.120; 264.228, 264.258, 264.280, 264.310, 264.145(f)(5), 264.603; 265.117 - 265.120, 265.228, 265.258, 265.280, 265.310 | ~~Codification of HSWA language.~~ Miscellaneous units. |
| 811 | 264.143(f) and 264.145(f) | ~~NC~~ Corporate guarantee language. |

| | | |
|---|---|---|
| 817 | ~~264.143(f), 264.145(f),~~ 264.147(f) and 264.147(g) | ~~NC~~ Corporate guarantee language. |
| 822 | 264.115 | NC |
| 823 | 264.151(a) ~~(e), (i), and~~ (j) | ~~NC~~ Corporate guarantee language. |

NC - Refers to no change in the material which is being incorporated by reference from the time of the last formally noticed incorporation by reference.

~~HSWA - Refers to the Hazardous and Solid Waste Act of 1984 which amends the Resource Conservation and Recovery Act of 1976, as amended in 1980.~~

(6) Remains the same.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.107 VALIDITY OF FEDERAL HWM PERMITS (1) HWM facilities located in Montana which possess an effective final HWM permit issued by the EPA prior to the effective date of this subchapter will be considered to possess a valid Montana HWM permit for the duration of the unexpired term of the federal permit, provided that:

(a) The facility remains in compliance with all the conditions specified in the federal permit and the requirements of ARM Title 16, chapter ~~4~~ 44.

(b) The operator submits a complete copy of the federal permit to the department no later than 30 days after the effective date of ARM Title 16, chapter ~~4~~ 44, subchapter 7.

(c) The owner submits a request to continue the validity of the federal permit addressed to the department no later than the effective date of ARM Title 16, chapter ~~4~~ 44, subchapter 7.
AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.116 MODIFICATION OR REVOCATION AND REISSUANCE

(1)-(2) Remain the same.

(3) The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) remains the same;

(b) the department has received notification [as required under ARM 16.44.109] of a proposed transfer of the permit].

(4)-(5) Remain the same.
AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.120 CONTENTS OF PART B (1)-(2) Remain the same.

(3) The department hereby adopts and incorporates by reference 40 CFR 270.14 through 270.~~21~~23. The correct CFR edition is listed in ARM 16.44.102.

(a)-(g) Remains the same.

(h) 40 CFR 270.21 is a federal agency rule setting forth permit information requirements relating to the nature, design,

operation and maintenance of HWM facilities which dispose of hazardous waste in land treatment ~~facilities~~ units;

(i) 40 CFR 270.23 is a federal agency rule setting forth permit information requirements relating to the nature, design, operation and maintenance of HWM facilities which store, treat or dispose of hazardous wastes in miscellaneous units;

~~(i)~~(j) copies of 40 CFR 270.14 through 270.~~21~~23 or any portion thereof may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.124 PERMITS FOR LAND TREATMENT DEMONSTRATIONS

(1)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, subpart M which includes sections 264.270 through 264.~~282~~283 and 40 CFR section 264.272. The correct CFR edition is listed in ARM 16.44.102.

(a)-(c) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.202 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1) "Aboveground tank" means a device meeting the definition of "tank" under these regulations, that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(1)-(3) Remain the same but are renumbered (2)-(4).

(5) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

(4)-(12) Remain the same but are renumbered (6)-(14).

(15) "Component" means either the tank or ancillary equipment of a tank system.

(13)-(15) Remain the same but are renumbered (16)-(18).

(19) "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

~~(16)~~(20) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part

21, MCA.

(17)-(29) Remain the same but are renumbered (21)-(33).

(34) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that was in operation, or for which installation had commenced on or prior to January 14, 1986. Installation will be considered to have commenced if the owner or operator had obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) a continuous on-site physical construction or installation program had begun, or

(b) the owner or operator had entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(30)-(48) Remain the same but are renumbered (35)-(53).

(54) "Inground tank" means a device meeting the definition of "tank" whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(49)-(50) Remain the same but are renumbered (55)-(56).

(57) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(51)-(52) Remain the same but are renumbered (58)-(59).

~~(53)~~(60) "Landfill" means a disposal unit or series of disposal units (i.e. landfill cells) where hazardous waste is placed in or on land and which is not a land treatment unit, a surface impoundment, a pile, ~~or~~ an injection well, a salt dome formation, a salt bed formation, an underground mine, or a cave.

(54)-(56) Remain the same but are renumbered (61)-(63).

(64) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

(57)-(61) Remain the same but are renumbered (65)-(69).

(70) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well, or unit eligible for a research, development, and demonstration permit under ARM 16.44.126.

(62)-(64) Remain the same but are renumbered (71)-(73).

(74) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 CFR 264.193(g)(2) and 265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

(65) Remains the same but is renumbered (75).

(76) "Onground tank" means a device meeting the definition of "tank" under these regulations that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(66)-(85) Remain the same but are renumbered (77)-(96).

(97) "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities.

(86)-(87) Remain the same but are renumbered (98)-(99).

(100) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(88)-(97) Remain the same but are renumbered (101)-(110).

(111) "Underground tank" means a device meeting the definition of "tank" under these regulations, whose entire surface area is totally below the surface of and covered by the ground.

(112) "Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(98)-(104) Remain the same but are renumbered (113)-(119).

~~(105)~~(120) "Wastewater treatment unit" means a device which:

(a) is part of a wastewater treatment facility that is presently subject to regulation ~~permitted~~ for either ~~as~~ a surface water discharge or a discharge to a publicly owned treatment works under Title 75, chapter 5, MCA, and rules implementing that chapter; and

(b)-(c) remain the same.

(106)-(108) Remain the same but are renumbered (121)-(123).

(124) "Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to groundwater or surface water.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.302 DEFINITION OF WASTE (1)(a) A waste is any discarded material that is not excluded by ARM 16.44.304(1)(b), (c), (d), (f), (g), (i), ~~or~~ (j) or (k) or that is not reclassified upon application to the department pursuant to ARM 16.44.328.

(b) A discarded material is any material which is:

(i)-(ii) remain the same;

(iii) considered ~~otherwise waste-derived~~ inherently waste-like, as explained in section (4) of this rule.

(2)-(3) Remain the same.

(4) The following materials are ~~otherwise waste-derived~~ inherently waste-like when they are recycled in any manner:

(a) remains the same.

(b) wastes added to this list by the department such as:

(i)(A) ~~the~~ those materials which are ordinarily disposed of, burned, or incinerated; or

(B) ~~the~~ those materials which contain the toxic constituents listed in ARM 16.44.352 and that are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and which are not used or reused during the recycling process; and

(ii) ~~the~~ those materials which may pose a substantial hazard to human health and the environment when recycled.

(5)-(6) Remains the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.303 DEFINITION OF HAZARDOUS WASTE (1) A waste, as defined in ARM 16.44.302, is a hazardous waste if:

(a) remains the same.

(b) it meets any of the following criteria:

(i)-(iii) remains the same;

(iv) it is a mixture of any waste and one or more hazardous wastes identified in ARM 16.44.330 through 16.44.333; however, the following mixture of wastes and hazardous wastes listed in ARM 16.44.330 through 16.44.333 are not hazardous wastes (except by application of subsection (1)(b)(i) or (ii) of this rule) if the generator can demonstrate that the mixture consists of wastewater that is presently subject to regulation as either a ~~the~~ surface water discharge ~~of which is permitted~~ or a discharge to a publicly owned treatment works pursuant to Title 75, chapter 5, MCA, and rules implementing that chapter and:

(A)-(E) remain the same.

(2)-(3) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA

16.44.304 EXCLUSIONS (1) The following are not subject to regulation under this chapter:

(a)-(j) remain the same.

(k) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) the secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(2)-(5) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA

16.44.333 DISCARDED COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SPILL RESIDUES THEREOF (1) The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded, as described in ARM 16.44.302(1)(b)(i), when they are ~~burned for purposes of energy recovery in lieu of their original intended use, when they are used to produce fuels in lieu of their original intended use,~~ mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use, or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel:

(a)-(b) Remain the same.

(c) Any residue remaining in a container or in an inner liner removed from a container that has ~~been used to hold~~ held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsections (1)(e) or (f) of this rule, ~~or any container or inner liner removed from a container that has been used to hold any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsections (1)(e) or (f) of this rule,~~ unless the container is empty as defined in ARM 16.44.307.

(d) Any residue or contaminated soil, water or other debris resulting from the discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (1)(e) or (f) of this rule, or any residue or contaminated soil, water or other debris resulting from the discharge, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (1)(e) or (f) of this rule. [The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in ..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in subsection (1)(e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance

listed in subsection (1)(e) or (f), such waste will be listed in either ARM 16.44.301 or 16.44.302, or will be identified as a hazardous waste by the characteristics set forth in ARM 16.44.320 through 16.44.324.]

(e)-(g) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.351 REPRESENTATIVE SAMPLING METHODS; EP TOXICITY TEST PROCEDURES; CHEMICAL ANALYSIS TEST METHODS; AND TESTING METHODS (1) For the purposes of this chapter, the department hereby adopts and incorporates herein by reference the following (the correct CFR edition is listed in ARM 16.44.102):

(a)-(d) Remain the same.

(e) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", second edition as amended by Update I (April 1984) and Update II (April 1985), an EPA publication setting forth standard sampling, extraction, and analytical test methods for the national hazardous waste program (NTIS document number PB87-120-291).

(2) Remains the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.402 HAZARDOUS WASTE DETERMINATION; APPLICABILITY OF RULES TO GENERATOR CATEGORIES; SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS (1) Remains the same.

(2) Conditionally exempt small quantity generators are subject only to the following requirements in this ~~sub~~chapter:

(a)-(e) remains the same.

(3) Small generators are subject to the following requirements in this subchapter:

(a)-(k) remain the same.

(l) ARM 16.44.418 -- exception reporting;

(l)-(m) remain the same but are renumbered (m)-(n).

(4) Remains the same.

(5) The following special requirements apply to a conditionally exempt small quantity generator:

(a)-(b) Remains the same.

(c) A conditionally exempt generator's hazardous waste may be mixed with a solid waste (non-hazardous waste) and remain subject to these limited requirements even though the resultant mixture exceeds the quantity limitations identified in ARM 16.44.401(4)~~(e) and (f)~~ unless the mixture meets any of the characteristics of hazardous wastes identified in ARM 16.44.320 through 16.44.324.

(d) Remains the same.

(e) The hazardous waste of a conditionally exempt generator (except for wastes identified as hazardous solely on the basis of ignitability) may not be used for dust suppression or road treatment. If these hazardous wastes are mixed with used oil or with other materials, the resultant mixture is likewise prohibited from use in dust suppression or road treatment.

AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-225, MCA

16.44.404 MAINTENANCE OF REGISTRATION AND REGISTRATION FEES (1)-(4) Remain the same.

(5) The size classes for determining the annual registration fee amount are defined in Table 1 below:

TABLE 1

| Size Class | Annual Generation Rate (in tons) | Annual Reg. Fee | Relationship to the Three Generator Categories Defined in ARM 16.44.401 |
|---|---|---|---|
| I | X ≤ 1.3 | $ 10 | Conditionally exempt generators who choose to be registered |
| II | 1.3 < X ≤ 13 | $ 75 | Small generators/ Large generators |
| III | 13 < X ≤ 100 | $ 200 | Large generators |
| IV | 100 < X ≤ 1000 | $ 600 | Large generators |
| V | 1000 < X ≤ 2500 | $1000 | Large generators |
| VI | 2500 < X | $1500 | Large generators |

(6)-(9) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.415 REQUIREMENTS FOR ACCUMULATION OF WASTES AND ACCUMULATION IN SATELLITE LOCATIONS (1)-(3) Remain the same.

(4) During the time that small generators and large generators accumulate hazardous wastes on site, the following requirements apply:

(a)-(c) Remain the same.

(d) For wastes which the generator chooses to store in containers, the generator must comply with subpart I of 40 CFR Part 265 (except that small generators need not comply with 40 CFR 265.176)~~, and for wastes stored in tanks, the generator must comply with subpart J of 40 CFR Part 265, except 40 CFR 265.193~~ (~~these~~ this subparts~~ are both~~ is incorporated by reference in ARM 16.44.609); and

(e) For wastes which a large generator stores in tanks, the large generator must comply with subpart J of 40 CFR Part 265 and 40 CFR 265.111 and 265.114, except that such large generator is not subject to 40 CFR 265.197(c) and 265.200. For wastes which a small generator stores in tanks, the small generator must comply with the special tank storage requirements in 40 CFR 265.201 (40 CFR Part 265 subpart J and 40 CFR 265.111 and 265.114 are incorporated by reference in ARM 16.44.609); and

(e) Remains the same but is renumbered (f).

(5) Remains the same.

(6) Small generators must further comply with the following:

(a) At all times there must be at least one ~~emergency coordinator~~ employee on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) who shall coordinate all emergency response measures specified in subsection (6)(d) of this rule. This employee is the emergency coordinator.

(b)-(d) Remain the same.

(7)-(8) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.418 EXCEPTION REPORTING (1) A large generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A large generator must submit an exception report to the department if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report must include:

(a)-(b) remains the same.

(3) A small generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit to the department a legible copy of the manifest, with some indication that the small generator has not received confirmation of delivery.

AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-225, MCA

16.44.528 COMMERCIAL TRANSFER FACILITY ANNUAL REPORT (1) The owner or operator of a commercial transfer facility as defined in ARM 16.44.202 shall prepare and submit a written annual report to the department by March 1 of each year. The report must cover transfer facility activities during the previous calendar year, and must include the following information:

(a)-(d) Remain the same.

~~(e) the name and EPA identification number of each hazardous waste management facility receiving the wastes described in subsection (1)(d) of this rule, and the listing of hazardous wastes shipped to each facility; and~~

(f) Remains the same but is renumbered (e).

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY PERMITS (INTERIM STATUS) (1) Remains the same.

(2) The compliance dates for providing tank integrity

assessments specified in 40 CFR 265.191, for the purpose of compliance with this chapter, shall be as follows:

| 40 CFR Section | 40 CFR Date Specified | Substitute ARM Date |
|---|---|---|
| 265.191(a) | 01/12/88 | 01/12/92 |
| 265.191(c) | federal new waste listing date + 12 months | state new waste listing date + 12 months |

(3) The compliance dates for providing secondary containment for tanks specified in 40 CFR 265.193, for the purpose of compliance with this chapter, shall be as follows:

| 40 CFR Section | 40 CFR Date Specified | Substitute ARM Date |
|---|---|---|
| 265.193(a)(2) | 01/12/87 + 2 years | 01/12/92 |
| 265.193(a)(3) | 01/12/87 + 2 years | 01/12/92 |
| 265.193(a)(4) | 01/12/87 + 8(or 2) yr. | 01/12/91 + 5(or 2) yr. |
| 265.193(a)(5) | federal waste listing date + 8(or 2) years | state waste listing date + 8(or 2) years |

(2)-(3) Remain the same but are renumbered (4)-(5).
AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.610 CHANGES DURING TEMPORARY PERMITTING (INTERIM STATUS) (1)-(4) Remain the same.

(5) Changes may not be made to a permitted existing facility during temporary permitting which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new facility. Changes under this section do not include changes made solely for the purpose of complying with the requirements of 40 CFR 265.193 for tanks and ancillary equipment.
AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.613 ANNUAL REPORT (1) The owner or operator of an interim status hazardous waste management facility must prepare and submit an annual report to the department by March 1 of each year. The annual report must be submitted on forms obtained from the department. The report must cover facility activities during the previous calendar year and must include the following information:

(a)-(g) Remain the same.

(h) for generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(i) for generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984;

~~(h)~~(j) the certification signed by the owner or operator of the facility or his authorized representative.
AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES (1) Except as provided in ARM 16.44.124, any person who owns or operates a HWM facility must comply with the standards in 40 CFR Part 264, subparts B through and including ΘX, excluding subpart H and 40 CFR 264.75. ~~Subpart H of 40 CFR Part 264 (financial assurance) is set forth in full in subchapter 8 of this chapter.~~

(2) The compliance dates for providing tank integrity assessments specified in 40 CFR 264.191, for the purpose of compliance with this chapter, shall be as follows:

| 40 CFR Section | 40 CFR Date Specified | Substitute ARM Date |
|---|---|---|
| 264.191(a) | 01/12/88 | 01/12/92 |
| 264.191(c) | federal new waste listing date + 12 months | state new waste listing date + 12 months |

(3) The compliance dates for providing secondary containment for tanks specified in 40 CFR 264.193, for the purpose of compliance with this chapter, shall be as follows:

| 40 CFR Section | 40 CFR Date Specified | Substitute ARM Date |
|---|---|---|
| 264.193(a)(2) | 01/12/87 + 2 years | 01/12/92 |
| 264.193(a)(3) | 01/12/87 + 2 years | 01/12/92 |
| 264.193(a)(4) | 01/12/87 + 8(or 2) yr. | 01/12/91 + 5(or 2) yr. |
| 264.193(a)(5) | federal waste listing date + 8(or 2) years | state waste listing date + 8(or 2) years |

~~(2)~~(4) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, subparts B through and including ΘX, excluding subpart H and 40 CFR 264.75. The correct CFR edition is listed in ARM 16.44.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 264.75 is set forth in ARM 16.44.~~603~~703. Subparts B through ΘX, excluding subpart H, are federal agency rules setting forth, respectively, general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I); and requirements for tanks (J); surface impoundments (K); waste piles (L); land treatment (M); landfills (N); ~~and~~ incinerators (O) and miscellaneous units (X). A copy of 40 CFR Part 264, subparts B through and including ΘX, excluding subpart H, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, appendices I, IV, V, VI and IX. These are appendices included as a part of federal agency rules setting forth respectively, recordkeeping instructions (I), Cochran's students' T-test for statistical analysis (IV), examples of potentially incompatible waste (V), political jurisdictions in which compliance with seismic location standards must

be demonstrated (VI), and a list of groundwater monitoring parameters (IX). A copy of appendices I, IV, V, VI, and IX to 40 CFR Part 264 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.
AUTH: 75-10-405, 75-10-406, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.703 ANNUAL REPORT (1) The owner or operator of a permitted hazardous waste management facility must prepare and submit an annual report to the department by March 1 of each year. The annual report must be submitted on forms obtained from the department. The report must cover facility activities during the previous calendar year and must include the following information:

(a)-(f) remain the same.

(g) for generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(h) for generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984;

~~(g)~~(i) the certification signed by the owner or operator of the facility or his authorized representative.
AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-204, MCA

16.44.802 APPLICABILITY OF FINANCIAL REQUIREMENTS

(1)-(2) Remain the same.

(3) Except as provided in section (1), the requirements of this subchapter, with respect to post-closure care, apply to:

(a) disposal facilities; ~~and~~

(b) piles and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these post-closure requirements are made applicable to such facilities in 40 CFR 264.228 and 40 CFR 264.258,~~, or 40 CFR 265.228 and 40 CFR 265.258.~~

(c) tank systems that are required under 40 CFR 264.197 or 265.197 to meet the requirements for landfills.

(4) Remains the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR 264.197, 264.228, 40 CFR 264.258, and 40 CFR ~~265.228, and 40 CFR 265.258~~ 265.197, which are federal agency rules setting forth closure and post-closure care standards for~~, respectively,~~ tank systems, and permitted surface impoundments and waste piles ~~for permitted or interim status facilities~~. The correct CFR edition is listed in ARM 16.44.102. Copies of 40 CFR 264.197, 264.228, 40 CFR 264.258, and 40 CFR ~~265.228, and 40 CFR 265.258~~ 265.197, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.804 COST ESTIMATE FOR FACILITY CLOSURE (1) The owner or operator of a hazardous waste management facility permitted under subchapter 1 of this chapter must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 264.111 through 264.115 and applicable closure requirements in 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, ~~and~~ 264.351, and 264.601 through 264.603. The owner or operator of a hazardous waste management facility with a temporary permit (interim status) under subchapter 6 of this chapter must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 265.111 through 265.115 and applicable closure requirements in 40 CFR ~~265.178,~~ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404.

(a)-(d) Remain the same.

(2)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Sections 264.111 through 264.115, 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, ~~and~~ 264.351, and 264.601 through 264.603, and all of the corollary sections for interim-status facilities: 40 CFR Sections 265.111 through 265.115, ~~265.170,~~ 265.197, 265.228, 265.258, 265.280, 265.310, ~~and~~ 265.351, 265.381, and 265.404. The correct CFR edition is listed in ARM 16.44.102. 40 CFR 264.111 through 264.115 and 40 CFR 265.111 through 265.115 are federal agency rules setting forth general closure requirements applicable to all hazardous waste management facilities. 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, ~~and~~ 264.351, and 264.601 through 264.603, and 40 CFR ~~265.178,~~ 265.197, 265.228, 265.258, 265.280, 265.310, ~~and~~ 265.351, 265.381 and 265.404 are federal agency rules setting forth specific closure requirements for different types of hazardous waste management units and address~~, respectively,~~ closure of permitted container storage areas, closure of tanks, closure of surface impoundments, closure of waste piles, closure of land treatment units, closure of landfills, ~~and~~ incinerator closure, interim status thermal treatment unit closure, interim status chemical, physical and biological treatment unit closure, and closure of permitted miscellaneous units. The department also hereby adopts and incorporates herein by reference 40 CFR 264.143(f) (3), which is a federal agency rule pertaining to a letter by a chief financial officer, a report of a certified public accountant on financial statements, and a report by the certified public accountant regarding data in the letter by the chief financial officer. A copy of all of these sections, or any part thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.805 COST ESTIMATE FOR POST-CLOSURE CARE (1) The owner or operator of a temporarily permitted (interim status) hazardous waste management facility subject to post-closure mon-

itoring or maintenance requirements must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in 40 CFR 265.117 through 265.120, 265.228, 265.258, 265.280, and 265.310. The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment, or landfill unit, or of a surface impoundment or waste pile required under 40 CFR 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in 40 CFR 264.117 through 264.120, 264.228, 264.258, 264.280, ~~and~~ 264.310, and 264.603.

(a)-(b) Remain the same.

(2)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Sections 264.117 through 264.120, and 40 CFR Sections 264.228, 264.258, 264.280, ~~and~~ 264.310, and 264.603. 40 CFR Sections 264.117 through 264.120 are federal agency rules setting forth general post-closure care requirements applicable to all disposal facilities. 40 CFR 264.228, 264.258, 264.280, ~~and~~ 264.310, and 264.603 are federal agency rules setting forth specific post-closure requirements for different types of disposal units and address, respectively, ~~post-closure care of~~ surface impoundments, ~~post-closure care of~~ waste piles, ~~post-closure care of~~ land treatment units, ~~and post-closure care of~~ landfills, and miscellaneous units. The department adopts and incorporates herein by reference the corollary sections pertaining to interim-status facilities: 40 CFR 265.117 through 265.120, 265.228, 265.258, 265.280, and 265.310. 40 CFR 264.145(f)(5) pertaining to submission of updated information within 90 days after the close of each succeeding fiscal year is also incorporated by reference herein. The correct CFR edition for these sections is listed in ARM 16.44.102. A copy of these sections, or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.817 FINANCIAL TEST AND CORPORATE GUARANTEE FOR LIABILITY COVERAGE (1) Owners or operators may satisfy the requirements of ARM 16.44.818 and/or 16.44.819 by demonstrating to the department that they meet the financial test for liability coverage set forth at 40 CFR 264.147(f) or the test for a corporate guarantee for ~~closure and/or post-closure~~ liability coverage set forth at 40 CFR ~~264.143(f) and 264.145(f)~~ 264.147(g).

(2) The department hereby adopts and incorporates herein by reference ~~40 CFR 264.143(f), 40 CFR 264.145(f), and~~ 40 CFR 264.147(f) and 264.147(g) which are federal agency rules setting forth minimum financial worth and bond rating criteria by which owners and operators of hazardous waste management facilities may demonstrate adequate financial assurance for~~, respectively, clo-~~

~~sure/ post-closure care and~~ liability for sudden and non-sudden occurrences. The correct CFR edition is listed in ARM 16.44.102. Copies of ~~40 CFR 264.143(f), 40 CFR 264.145(f), and~~ 40 CFR 264.147(f) and 264.147(g) may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.818 REQUIREMENTS FOR LIABILITY COVERAGE: SUDDEN OCCURRENCES (1) Remains the same.

(2) - (3) Remain the same.

(4) An owner or operator may demonstrate the required liability coverage through use of the financial test, corporate guarantee, ~~and~~ insurance, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance as these mechanisms are specified in this subchapter. The amounts of coverage must total at least the minimum amounts required by section (1) of this rule.
AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.819 REQUIREMENTS FOR LIABILITY COVERAGE: NON-SUDDEN ACCIDENTAL OCCURRENCES (1) An owner or operator of a surface impoundment, landfill, ~~or~~ land treatment ~~facility~~ unit, or disposal miscellaneous unit which is used to manage hazardous waste, or a group of such hazardous waste management facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of ~~the~~ its facility or group of facilities. The owner or operator must have and maintain liability coverage for non-sudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways, as specified in sections (2), (3), and (4) of this rule:

(2) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section:

(a) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in ARM 16.44.823~~(6)~~(10). The wording of the certificate of insurance must be identical to the wording specified in ARM 16.44.823~~(7)~~(11). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the department. If requested by the department, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the department at least 60 days before the date on which hazardous waste is first received for treatment, storage,

or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(b) Remains the same.

(3) Remains the same.

(4) An owner or operator may demonstrate the required liability coverage through use of the financial test, corporate guarantee, ~~and~~ insurance, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance as these mechanisms are specified in this subchapter. The amount of coverage must total at least the minimum amounts required by section (1) of this rule.

(5) Remains the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.823 WORDING OF THE INSTRUMENTS (1)-(5) Remain the same.

(6) A letter from the chief financial officer as specified in ARM 16.44.811 must be worded in strict accordance with 40 CFR 264.151(f).

(7) A letter from the chief financial officer as specified in ARM 16.44.817 must be worded in strict accordance with 40 CFR 264.151(g).

(8) A corporate guarantee for closure or post-closure care as specified in ARM 16.44.811 must be worded in strict accordance with 40 CFR 264.151(h)(1).

(9) A corporate guarantee for liability coverage as specified in ARM 16.44.817 must be worded in strict accordance with 40 CFR 264.151(h)(2).

(6)-(7) Remain the same but are renumbered (10)-(11).

~~(8)~~(12) The department hereby adopts and incorporates herein by reference 40 CFR 264.151, subsections (a) through and including ~~(e), (i), and~~ (j). The correct CFR edition is listed in ARM 16.44.102. 40 CFR 264.151 subsections (a) through and including ~~(e), (i) and~~ (j) are federal agency rules setting forth, respectively, specific wording for trust agreements and certifications of acknowledgment (a), surety bonds guaranteeing payment into closure and/or post-closure trust funds (b), surety bonds guaranteeing performance of closure and/or post-closure (c), closure and/or post-closure letters of credit (d), closure and/or post-closure certificates of insurance (e), a letter from a company's chief financial officer (f) and (g), a corporate guarantee for closure and/or post-closure care (h)(1), a corporate guarantee for liability coverage (h)(2), liability endorsements (i) and, certificates of liability insurance (j), which are instruments guaranteeing closure and/or post-closure financial assurance and liability coverage for HWM facilities. A copy of 40 CFR 264.151, subsections (a) through ~~(e), (i) and~~ (j) may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

4. The Department is proposing these amendments to the rules in order to achieve parity with federal regulations and

maintain authorization from EPA to independently operate a hazardous waste program. The significant changes proposed in these amendments relate to that part of the ongoing process of authorization described as "Non-HSWA Clusters 3 and 4." The majority of these amendments address requirements for owners and operators of treatment, storage and disposal facilities, as well as new requirements relating to tank systems. In addition, other minor changes are being made as specified in the applicable "cluster" checklists.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Roger Thorvilson, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than February 19, 1991.

6. Patti Powell, at the above address, has been designated to preside over and conduct the hearing.

/s/ Dennis Iverson

DENNIS IVERSON, Director

Certified to the Secretary of State January 7, 1991

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the Matter of Proposed Amendment of an Existing Rule Pertaining to Motor Carrier Insurance. | ) ) ) ) | NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF AN AMENDMENT TO RULE 38.3.706 |

TO: All Interested Persons

1. On Wednesday, February 20, 1991, at 1:30 p.m., a hearing will be held in the large conference room of the Public Service Commission to consider the proposal identified in the above titles.

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

38.3.706 ENDORSEMENTS (1) All insurance policies issued by the insurance company to the carrier must include, at time of issuance, the terms, conditions and requirements set forth in this rule and repeated on endorsement forms approved by the commission and identified as "Endorsement MV4" and "Endorsement MV2" available from the office of the commission.

(2) The following terms, conditions and requirements are hereby deemed a substantive part of all policies issued, and are hereby incorporated therein:

(a) Cargo insurance (Endorsement MV2) shall be issued in an amount no less than:

(i) $1,000 for cargo transported in a vehicle designed, equipped, and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;

(ii) $10,000 for all other vehicles.

(b) Casualty (liability) insurance (Endorsement MV4) shall be issued in an amount no less than:

(i) $100,000 for 7 passengers or less;

(ii) $500,000 for 8 to 15 passengers;

(iii) $750,000 for 16 to 30 passengers;

(iv) $1,000,000 for 31 passengers or more;

(v) except any motor carrier, other than as provided in (i) above, operating under a certificate of public convenience and necessity authorizing passenger operations only within a particular city or 10 mile radius thereof is required to carry a minimum of $500,000 insurance regardless of size of vehicle used;

(vi) $100,000 for transportation of nonhazardous freight in a vehicle designed, equipped and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;

~~(vi)~~ (vii) $500,000 for transportation of nonhazardous freight for all other vehicles;

~~(viii)~~(viii) the federal department of transportation minimum insurance limits for hazardous materials freight, as hazardous materials is defined by that department.

(3) These endorsements must be executed, countersigned and attached to the original policy when issued.

~~(4)--This-rule-shall-become-effective-January-7,-1991.~~

AUTH: 69-12-201, MCA, IMP. 69-12-402, MCA

3. Rationale: This amendment is necessary to equalize minimum insurance requirements for equal classes of carriers and to correct any equal protection problem that might arise from discrimination between equal classes.

4. Interested parties may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Martin Jacobson, 2701 Prospect Avenue, Helena, Montana 59620-2601 no later than February 20, 1991.

5. Martin Jacobson, Staff Attorney, Public Service Commission, has been designated to preside over and conduct the hearing.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

Howard L. Ellis

HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JANUARY 7, 1990.

R

Reviewed By

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

| | | |
|---|---|---|
| In the matter of the amendment of Rule 46.14.401 pertaining to eligibility of group homes for weatherization assistance | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.14.401 PERTAINING TO ELIGIBILITY OF GROUP HOMES FOR WEATHERIZATION ASSISTANCE |

TO: All Interested Persons

1. On February 7, 1991 at 10:00, a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.14.401 pertaining to eligibility of group homes for weatherization assistance.

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

46.14.401 PRIORITIZATION FOR SERVICE Subsections (1) through (2) remain the same.

(3) The department may determine licensed group homes occupied by low-income elderly or handicapped individuals to be eligible for weatherization and designate these homes a high priority. To be so designated, it shall be the responsibility of the department to document eligibility and provide names and addresses of households to local contractors.

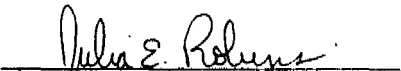
Original subsections (3) through (6) remain the same in text but will be renumbered as subsections (4) through (7).

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 90-4-201 and 90-4-202 MCA

3. This rule change is necessary to ensure that the state of Montana is in compliance with 10 CFR, Part 440.16 which requires that state weatherization programs implement procedures which ensure that priority is given to providing weatherization assistance to elderly and handicapped low-income persons.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than February 15, 1991.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State January 7, 1991.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of amendment of Rule 8.86.505 as it relates to quota plans | ) | NOTICE OF AMENDMENT OF RULE 8.86.505 |
| | ) | QUOTA AND POOLING RULES |
| | ) | DOCKET #3-90 |

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:

1. On November 19, 1990, the Montana Board of Milk Control published notice of proposed amendments of rule 8.86.505(1)(b) as it relates to the statewide pool and quota plan. Notice was published at page 2072 of the 1990 Montana Administrative Register, issue no. 22 as MAR NOTICE 8-86-39.

2. The board has amended the rule exactly as originally proposed.

3. No comments or testimony were received concerning the proposed amendments.

4. The authority for the board to amend the rule is contained in section 81-23-302, MCA, and implements section 81-23-302, MCA.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

BY: _____
Charles A. Brooke, Director
Department of Commerce

Certified to the Secretary of State January 7, 1991.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| IN THE MATTER of the Emergency Amendment of Existing Rule Pertaining to Motor Carrier Insurance. | ) ) ) ) | NOTICE OF EMERGENCY ADOPTION OF AMENDMENT TO RULE 38.3.706 |

TO: All Interested Persons

1. The Department of Public Service Regulation finds that there is imminent peril affecting the health, safety, and welfare of the public justifying this emergency adoption. Its reasoning is as follows. On June 28, 1990 it published notice of adoption of rules pertaining to insurance and made the effective date September 1, 1990. Comments preceding the adoption include extensive opposition to proposed rates applying to taxies. The comments were accepted by the Department and resulted in significant changes in the proposed rates. Although no comments were received from the class of carriers identified as pickup and delivery, they are similarly affected, are in the same relevant class, the same logic applies to them, and there is a potential constitutional equal protection problem in treating them differently (the minimum insurance amounts are significantly higher). In and of itself, the constitutional problem is important but not of the status imminent peril. However, the potential results of the problem may cause curtailment of pickup and delivery service or operation of pickup and delivery services without insurance. Both do constitute an imminent peril to the health, safety and welfare of the public.

2. The Department of Public Service Regulation has adopted an amendment as follows:

38.3.706 ENDORSEMENTS (1) All insurance policies issued by the insurance company to the carrier must include, at time of issuance, the terms, conditions and requirements set forth in this rule and repeated on endorsement forms approved by the commission and identified as "Endorsement MV4" and "Endorsement MV2" available from the office of the commission.

(2) The following terms, conditions and requirements are hereby deemed a substantive part of all policies issued, and are hereby incorporated therein:

(a) Cargo insurance (Endorsement MV2) shall be issued in an amount no less than:

(i) $1,000 for cargo transported in a vehicle designed, equipped, and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;

(ii) $10,000 for all other vehicles.

(b) Casualty (liability) insurance (Endorsement MV4) shall be issued in an amount no less than:

(i) $100,000 for 7 passengers or less;

(ii) $500,000 for 8 to 15 passengers;

(iii) $750,000 for 16 to 30 passengers;

(iv) $1,000,000 for 31 passengers or more;

(v) except any motor carrier, other than as provided in (i) above, operating under a certificate of public convenience and necessity authorizing passenger operations only within a particular city or 10 mile radius thereof is required to carry a minimum of $500,000 insurance regardless of size of vehicle used;

(vi) $100,000 for transportation of nonhazardous freight in a vehicle designed, equipped and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;

~~(vi)~~(vii) $500,000 for transportation of nonhazardous freight for all other vehicles;

~~(vii)~~(viii) the federal department of transportation minimum insurance limits for hazardous materials freight, as hazardous materials is defined by that department.

(3) These endorsements must be executed, countersigned and attached to the original policy when issued.

(4) This rule shall become effective ~~September 1, 1990~~ January 7, 1991.

AUTH: Sec. 69-12-201, MCA, IMP: Sec. 69-12-402, MCA

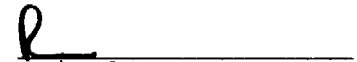
Rationale: This amendment is necessary to equalize minimum insurance requirements for equal classes of carriers and to correct any equal protection problem that might arise from discrimination between equal classes. It is further necessary and justified as stated in paragraph 1 above.

3. This amendment shall be effective January 7, 1991 and remains effective for a period of 120 days.

4. The Department of Public Service Regulation will commence proposed rulemaking under nonemergency procedures, by future notice, to obtain public comment on matters including permanence of the above amendment.

HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JANUARY 7, 1991.



Reviewed By

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

| | | |
|---|---|---|
| In the matter of the amendment of rule 46.10.403 pertaining to suspension of AFDC for one month | ) ) ) ) | NOTICE OF THE AMENDMENT OF RULE 46.10.403 PERTAINING TO SUSPENSION OF AFDC FOR ONE MONTH |

TO: All Interested Persons

1. On October 25, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.403 pertaining to suspension of AFDC for one month at page 1947 of the 1990 Montana Administrative Register, issue number 20.

2. The Department has amended Rule 46.10.403 as proposed.

3. No written comments or testimony were received.

Julia E. Rotering
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 7, 1991.

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

| | | |
|---|---|---|
| In the matter of the amendment of rule 46.10.512 pertaining to AFDC earned income disregards policy | ) ) ) ) | NOTICE OF THE AMENDMENT OF RULE 46.10.512 PERTAINING TO AFDC EARNED INCOME DISREGARDS POLICY |

TO: All Interested Persons

1. On October 25, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.512 pertaining to AFDC earned income disregards policy at page 1945 of the 1990 Montana Administrative Register, issue number 20.

2. The Department has amended Rule 46.10.512 as proposed.

3. No written comments or testimony were received.

Julia E. Robuns
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 7, 1991.

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

| | | |
|---|---|---|
| In the matter of the adoption of Rules I through V and the amendment of 46.12.4008 pertaining to treatment of income and resources of institutionalized spouses for medicaid purposes | ) ) ) ) ) ) | NOTICE OF THE ADOPTION OF RULES I THROUGH V AND THE AMENDMENT OF 46.12.4008 PERTAINING TO TREATMENT OF INCOME AND RESOURCES OF INSTITUTIONALIZED SPOUSES FOR MEDICAID PURPOSES |

TO: All Interested Persons

1. On October 11, 1990, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I through V and the amendment of 46.12.4008 pertaining to treatment of income and resources of institutionalized spouses for medicaid purposes at page 1883 of the 1990 Montana Administrative Register, issue number 19.

2. The Department has amended Rule 46.12.4008 as proposed.

3. The Department has adopted Rules 46.12.4010 [RULE I], INSTITUTIONALIZED SPOUSE, DEFINITIONS; 46.12.4012 [RULE II], INSTITUTIONALIZED SPOUSE, RESOURCE ELIGIBILITY DETERMINATION; 46.12.4013 [RULE IV], INSTITUTIONALIZED SPOUSE, RECEIPT OF ADDITIONAL RESOURCES; 46.12.4014 [RULE V], INSTITUTIONALIZED SPOUSE, TRANSFER OF RESOURCES TO COMMUNITY SPOUSE as proposed.

4. The Department has adopted 46.12.4011 [RULE II] as proposed with the following changes:

46.12.4011 INSTITUTIONALIZED SPOUSE, RESOURCE ASSESSMENTS Subsections (1) through (1)(c) remain as proposed.

(2) ONLY ONE RESOURCE ASSESSMENT PER LIFETIME IS AVAILABLE TO EACH INSTITUTIONALIZED SPOUSE. THE RESOURCE ASSESSMENT IS BASED ON THE COUPLE'S COUNTABLE RESOURCES AT THE BEGINNING OF THE FIRST PERIOD OF CONTINUOUS INSTITUTIONALIZATION BEGINNING AFTER SEPTEMBER 30, 1989.

(~~2~~3) An institutionalized spouse, community spouse or a representative for either spouse may request a resource assessment based on the married couple's combined countable resources, whether owned individually or jointly, as of the first moment of the ~~first~~ month of ~~the most recent continuous period of~~ institutionalization.

Subsections (3) through (6) remain as proposed but will be renumbered as subsections (4) through (7).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 56-6-131 MCA

5. Renumbered subsection (2) has been changed to make the rule consistent with provisions of OBRA 1990 which clarified that a resource assessment will be done only once.

6. No written comments or testimony were received.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 3, 1991.

VOLUME NO. 43 OPINION NO. 79

EDUCATION - Authority to enter into or modify group insurance plans;
EMPLOYEES, PUBLIC - Authority to enter into or modify group insurance plans;
LABOR RELATIONS - Authority to enter into or modify group insurance plans;
SCHOOL DISTRICTS - Authority to enter into or modify group insurance plans;
MONTANA CODE ANNOTATED - Section 2-18-702;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 37 (1987), 38 Op. Att'y Gen. No. 20 (1979).

HELD: 1. Under section 2-18-702(1), MCA, a governing body must only obtain a two-thirds vote of all its officers and employees to authorize entry into an initial group insurance plan and, once so authorized, the governing body may enter into any such plan it deems appropriate and may modify that or subsequent group insurance plans without further vote.

2. A governing body may agree to modify a group insurance plan covering employees represented for collective bargaining purposes unless such changes would affect employees in another collective bargaining unit represented by a different labor organization; in the latter situation, concurrence of both representatives is required before the modifications could be made.

December 18, 1990

David L. Nielsen
Valley County Attorney
221 Fifth Street South
Glasgow MT 59230

Dear Mr. Nielsen:

You have requested my opinion addressing the following questions:

1. Under section 2-18-702(1), MCA, is a two-thirds vote of officers and employees needed in order for a governing body to (a) change group insurance carriers, (b) change certain policy provisions, or (c) renew an existing policy?

2. Can a governing body agree in a collective bargaining agreement to give one bargaining unit exclusive authority to select a group insurance carrier and determine certain policy provisions without the agreement of a second bargaining unit?

Your letter of inquiry states that teachers have a collective bargaining unit within the Glasgow school district. The school district custodians are members of another collective bargaining unit and the remainder of the school district employees are not members of any collective bargaining unit. One insurance policy provides coverage for all school district officers and employees.

Several employees of the district have expressed a desire to change insurance carriers. You have informed me that the bargaining agreement with the teachers' association precludes the school district from modifying policy conditions without the association's consent. You ask specifically if a governing body, here the school district, is required to obtain a two-thirds vote of all its officers and employees before changing group insurance carriers, altering certain policy provisions, or renewing an existing policy.

Section 2-18-702(1), MCA, provides:

> **Group insurance for public employees and officers.** (1) All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. [Emphasis added.]

The language of this statute is clear, and thus speaks for itself. Hammill v. Young, 168 Mont. 81, 86, 540 P.2d 971, 974 (1975). The only purpose of the vote called for by section 2-18-702(1), MCA, is to simultaneously authorize and require entry into a group health or other specified plan and, once such initial authorization is given, no further votes are mandated. A governing body therefore need not obtain a two-thirds vote of all officers and employees to change group insurance carriers or policy provisions, or renew an existing policy. Decisions regarding the precise nature of insurance coverage after the original vote are instead matters subject to the governing body's discretion except as otherwise constrained by law.

Next you ask whether the school board may agree in a collective bargaining agreement to give the teachers' collective bargaining unit exclusive authority to select the district's group insurance carrier and determine certain policy provisions. Group health insurance matters, of course, are a mandatory subject of bargaining. 38 Op. Att'y Gen. No. 20 at 71 (1979).

In 42 Op. Att'y Gen. No. 37 at 149 (1987), the Attorney General held that a county could not establish a separate health benefit plan for certain employees in a collective bargaining unit when a county employee-wide group insurance plan adopted in accordance with section 2-18-702(1), MCA, existed. That opinion also stated:

> It must be emphasized, however, that such a county remains obligated to bargain over other health insurance matters, such as monetary coverage limits, deductible amounts, or the level of employee contributions, which may involve modification of an existing group plan.

The opinion did not address the question of whether implementation of such changes could occur without approval by other affected employees or their collective bargaining representatives. With respect to unrepresented employees, I find no statutory prohibition to modifying a benefit plan consistent with any negotiated settlement reached with the collective bargaining representative of another employee group. As held above, once the requisite consent is given by the overall employee group, the governing body is vested with authority, except to the extent constrained by other law, to modify a benefit plan. No such constraint exists as to unrepresented employees. A governing body, however, cannot ordinarily change existing terms and conditions of employment for represented employees without consent of those employees' collective bargaining unit, and the school district here may therefore not alter the plan absent approval by the representative of the second collective bargaining unit affected by the proposed changes.

THEREFORE, IT IS MY OPINION:

1. Under section 2-18-702(1), MCA, a governing body must only obtain a two-thirds vote of all its officers and employees to authorize entry into an initial group insurance plan and, once so authorized, the governing body may enter into any such plan it deems appropriate and may modify that or subsequent group insurance plans without further vote.

2. A governing body may agree to modify a group insurance plan covering employees represented for collective bargaining purposes unless such changes would affect

employees in another collective bargaining unit represented by a different labor organization; in the latter situation, concurrence of both representatives is required before the modifications could be made.

Sincerely,

MARC RACICOT
Attorney General

VOLUME NO. 44 OPINION NO. 1

ADMINISTRATION, DEPARTMENT OF - Authority to fix compensation of Developmental Disabilities Planning and Advisory Council staff;
DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL - Salaries of staff;
EMPLOYEES, PUBLIC - Salaries of Developmental Disabilities Planning and Advisory Council staff;
SALARIES - Classification of Developmental Disabilities Planning and Advisory Council staff;
STATUTORY CONSTRUCTION - Conflicting statutes;
MONTANA CODE ANNOTATED - Sections 2-15-121, 2-15-2204, 2-18-103, 2-18-104, 2-18-201, 53-20-206;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 68 (1984).

HELD: The Developmental Disabilities Planning and Advisory Council has the authority to set the salaries of the Council's staff without reference to the state personnel classification plan.

January 3, 1991

Julia Robinson, Director
Department of Social and
Rehabilitation Services
P.O. Box 4210
Helena MT 59604-4210

Dear Ms. Robinson:

You have requested my opinion on the following question:

> Does the Developmental Disabilities Planning and Advisory Council have the authority to set the salaries of its staff without reliance upon the personnel classification plan developed by the Department of Administration?

Review of the applicable statutes reveals that the Developmental Disabilities Planning and Advisory Council (hereinafter "Council") was created in 1975 with the enactment of section 2-15-2204, MCA. Section 2-15-2204, MCA, outlines the composition of the Council and the members' terms. The Council's 22 members include elected officials, state department directors, professionals, and consumer representatives.

Section 53-20-206, MCA, outlines certain procedures and duties of the Council. Among other things, the Council is to advise governmental entities and private organizations regarding service programs for the developmentally disabled. Subsection

(4) of that statute states, "The council may employ and fix the compensation and duties of necessary staff."

However, section 2-18-201, MCA, states that the Department of Administration is to develop a personnel classification plan (which includes salary schedules) "for all state positions." Thus, there is a question of whether the state personnel classification plan, or section 53-20-206, MCA, should apply to the setting of salaries of the Council's staff.

Statutes dealing with the same subject matter are to be construed together and harmonized if possible. Crist v. Segna, 191 Mont. 210, 622 P.2d 1028 (1981). Where there is an irreconcilable conflict, the statute enacted most recently supersedes the prior-enacted statute. Dolan v. School District No. 10, 195 Mont. 340, 636 P.2d 825 (1981); State v. State Board of Land Commissioners, 137 Mont. 510, 353 P.2d 331 (1960). And a specific statute will normally prevail over a general statute. Taylor v. Department of Fish, Wildlife, & Parks, 205 Mont. 85, 666 P.2d 1228 (1983); Teamsters, Etc., Local 45 v. Montana Liquor Control Bd., 155 Mont. 300, 471 P.2d 541 (1970).

In this situation, the statutes cannot be reconciled without applying the aforementioned rules of statutory construction. Section 53-20-206, MCA, was enacted in 1975, whereas section 2-18-201, MCA, was enacted in 1973. Also, section 53-20-206, MCA, specifically provides for the setting of staff salaries by the Council, whereas section 2-18-201, MCA, is a general statute that applies to all state positions not specifically excepted or exempted in sections 2-18-103 and 2-18-104, MCA. Therefore, the applicable rules of statutory construction compel the conclusion that the provisions of section 53-20-206, MCA, allowing the Council to set the salaries of its staff, control in this instance.

The language of section 2-15-2204, MCA, also supports the conclusion that section 53-20-206, MCA, is to override the general administrative statutes when there is a conflict. Section 2-15-2204, MCA, provides that the "council is allocated to the department [of Social and Rehabilitation Services] for administrative purposes only and, unless inconsistent with the provisions of this section and 53-20-206, the provisions of 2-15-121 apply." (Emphasis added.) Section 2-15-121, MCA, outlines the respective duties of an agency and a department when an agency is allocated to a department "for administrative purposes only," and states that a department is to provide staff for the agency. That language, however, is inconsistent with the provisions of section 53-20-206, MCA, and as a result the provisions of the latter statute control. § 2-15-2204, MCA.

In 40 Op. Att'y Gen. No. 68 (1984), a question similar to the one at hand was addressed. Compensation of the state librarian and the director of the Montana Historical Society was dealt with in statutes enacted respectively in 1945 and 1963.

§§ 22-1-102, 22-3-107, MCA. When the 1973 Legislature enacted the comprehensive plan for classification and pay of all state employees, the positions of state librarian and Historical Society director were not specifically exempted by section 2-18-103 or section 2-18-104, MCA. Thus, the issue arose of how the salaries were to be set, and the Attorney General concluded that the salaries were not exempt from the state personnel classification plan.

However, the issue in 40 Op. Att'y Gen. No. 68 (1984) involved the more recent enactment of a general statute. Here we are dealing with the more recent enactment of a specific statute and the rules of statutory construction require that the more recent specific statute be given effect without further analysis of statutory intent.

THEREFORE, IT IS MY OPINION:

> The Developmental Disabilities Planning and Advisory Council has the authority to set the salaries of the Council's staff without reference to the state personnel classification plan.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 44 OPINION NO. 2

ALCOHOLIC BEVERAGES - Dance band as "lawful business" under section 16-3-305;
ALCOHOLIC BEVERAGES - Members of band as employees under bar closure statute;
MONTANA CODE ANNOTATED - Sections 16-3-304, 16-3-305;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 10 (1987).

HELD: 1. Members of a band hired to perform at a bar are "employees" of the bar within the meaning of section 16-3-304, MCA, and thus may remain on the premises after closing time.

2. Under section 16-3-305, MCA, as long as the owner of the licensed premises is engaged in a lawful business, nonemployees may remain on the premises after closing time but may not consume any alcoholic beverages even if the beverages were purchased prior to closing time.

January 7, 1991

Gary R. Thomas
Red Lodge City Attorney
210 South Broadway, Suite D
Red Lodge MT 59068

Dear Mr. Thomas:

You have requested my opinion on a question which I have rephrased as follows:

> Are band members hired to play music in a bar allowed on the bar premises between the hours of 2 a.m. and 8 a.m., either as "employees" within the meaning of section 16-3-304, MCA, or as an "other lawful business" within the meaning of section 16-3-305, MCA?

You have asked several other related questions which will be addressed in the discussion answering the main question.

Section 16-3-304, MCA, generally requires that all establishments licensed by the state to sell alcoholic beverages must be closed between the hours of 2 a.m. and 8 a.m. each day. The statute further provides:

> During such hours all persons except the alcoholic beverage licensee and employees of such licensed establishment shall be excluded from the licensed premises.

You state that the word "employees" in the aforementioned statute has been interpreted by various law enforcement agencies to include only those individuals who are salaried workers, and for whom the licensee pays unemployment insurance and workers' compensation, and withholds taxes. If this interpretation is applied, a liquor licensee could be cited with a violation of section 16-3-304, MCA, if members of a band who are hired to play at a licensed establishment are not excluded from the bar after 2 a.m.

The definition of "employee" relied upon by the law enforcement agencies mentioned above is derived from the distinction drawn between an "employee" and "independent contractor" for the purposes of unemployment insurance, workers' compensation, and income tax withholding. See §§ 39-51-203(4), 39-51-201(14), MCA (definition of employment and independent contractor for purposes of unemployment insurance coverage); §§ 39-71-118, 39-71-120, MCA (definition of employee and independent contractor for purposes of workers' compensation coverage). Here, however, such distinctions are inapplicable because the issue is not whether a particular class of workers is meant to be protected by the unemployment insurance or workers' compensation laws. There is no question concerning the benefits and rights accorded to employees as opposed to independent contractors. It is necessary to look instead to the purposes of the bar closure statute and the class of persons intended to be affected by the bar closure.

While there are no Montana Supreme Court cases defining who is affected by the bar closure statutes, cases from other jurisdictions do provide guidance. In Hansmeyer v. Illinois Liquor Control Commission, 33 Ill. Dec. 908, 397 N.E.2d 241 (1979), a friend of the bar owner was seen by the local police entering the bar at a few minutes before 2 a.m. and leaving with a package about 2:15 a.m. There was evidence, however, that the friend was helping the owner clean up the bar after closing. The Court, in interpreting an ordinance requiring closure, stated:

> The requirement that patrons and customers leave the premises within 10 minutes of closing was, of course, designed to enforce the restriction of the ordinance against the sale of liquor after specified hours. We conclude that the ordinance is inapplicable to persons performing services for the licensee either gratuitously or for compensation as the evidence shows was the case with Sudano.

397 N.E.2d at 244. Similarly, the Supreme Court of Wisconsin in State v. Wachsmuth, 73 Wis. 2d 318, 243 N.W.2d 410 (1976), interpreted the closure statute as requiring exclusion of all patrons and customers, but the court expressly stated:

> [I]t is apparent that it would be unreasonable to hold that bona fide employees or workmen performing work on the premises are not permitted to be thereon during the period when the tavern is closed for purposes relating to the dispensing or the drinking of alcoholic beverages. Patrons or customers must leave the premises by 1 a.m. or by whatever time is statutorily set as a closing hour. Internal operations of the business, counting of cash, tallying of receipts, bookkeeping, cleaning of the premises, and renovation or repair obviously were not intended to be within the prohibition of the statute, and such activities need not be confined to such times as the licensed premises are permitted to be open under the fermented malt beverage and intoxicating liquor laws.

243 N.W.2d at 418.

While band members do not necessarily contribute to the internal operations of the bar, clearly the band was performing a service for the bar. Under section 39-3-201(5), MCA, an "employee" includes any person who works for another for hire. This broad definition of employee under the Montana Wage Payment Act is more applicable than the definition utilized for unemployment insurance or workers' compensation purposes. As long as an individual is performing a service for the bar and is not a patron or customer of the bar, that individual need not be excluded from the bar premises.

You also ask whether under section 16-3-305, MCA, the bar could permit nonemployees to remain on its premises. Section 16-3-305, MCA, provides:

> During the hours when the licensed establishments where alcoholic beverages are sold at retail are required by this code to be closed, it shall be unlawful to sell, offer for sale, give away, consume, or allow the consumption of alcoholic beverages. When an establishment licensed to sell alcoholic beverages is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, grocery store, pharmacy, or other lawful business other than that of the sale of alcoholic beverages, then such other lawful business need not be closed.

The Montana Supreme Court interpreted the predecessor of this section in State v. Perez, 126 Mont. 15, 243 P.2d 309 (1952). In Perez, the Court held that the statute was violated when a licensee, who had a restaurant in conjunction with the liquor establishment, allowed patrons to dine and dance in the barroom after 2 a.m., even if no liquor was sold. The Court concluded that the statutory terms "closed" and "excluded" required the licensee to prevent admission to the room where liquor was sold, even if the restaurant business could be conducted without using

the barroom. However, the precedential value of Perez is minimal in light of amendments to sections 16-3-304 and 16-3-305, MCA. In 1985, the Montana Legislature amended those sections in Senate Bill 357, entitled, "An Act Removing The Requirement That A Business Operated On The Same Premises As An Establishment Licensed To Sell Alcoholic Beverages Close Off From 2 A.M. To 8 A.M. The Part Where Alcoholic Beverages Are Sold." The legislation specifically removed from section 16-3-305, MCA, a provision that required closure of that part of a licensed establishment where alcoholic beverages are sold whenever some other lawful business that was operated in conjunction with the licensed establishment remained open after 2 a.m. According to 42 Op. Att'y Gen. No. 10 (1987), this amendment superseded Perez and it is no longer necessary to close off the premises where alcoholic beverages are sold when the licensee is operating some other lawful business in conjunction with the liquor license. The opinion, which preceded adoption of amendments to Title 23, chapter 5, MCA, permitting local governments to place restrictions on hours during which gambling operations may be conducted, held that the owner of a licensed establishment could conduct a poker game after 2 a.m. and did not need to close off the licensed premises. Persons on the licensed premises could not, however, consume alcoholic beverages during hours of closure, even if the beverages were purchased prior to closing time.

You suggest that section 16-3-305, MCA, requires that the "other lawful business" be distinct from the regular business of bars. 42 Op. Att'y Gen. No. 10 did not draw such a distinction. As long as the business is lawful, section 16-3-305, MCA, allows nonemployees to remain on the licensed premises without requiring the owner of the establishment to close off the licensed premises. Presumably then, the offering of musical entertainment and the selling of nonalcoholic beverages and snacks could be considered a lawful business under section 16-3-305, MCA. The caveat still applies that the persons on the licensed premises may not consume alcoholic beverages during hours of closure, even if the beverages were purchased prior to closing time.

THEREFORE, IT IS MY OPINION:

1. Members of a band hired to perform at a bar are "employees" of the bar within the meaning of section 16-3-304, MCA, and thus may remain on the premises after closing time.

2. Under section 16-3-305, MCA, as long as the owner of the licensed premises is engaged in a lawful business, nonemployees may remain on the premises after closing

time but may not consume any alcoholic beverages even if the beverages were purchased prior to closing time.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

## NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1990. This table includes those rules adopted during the period October 1, 1990 through December 31, 1990 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1990, this table and the table of contents of this issue of the MAR.

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