

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
17.74.301, 17.74.350 through 17.74.357,	)	PROPOSED AMENDMENT,
17.74.359, 17.74.360, 17.74.361,	)	ADOPTION, AND REPEAL
17.74.364, and 17.74.365; the adoption of	)	
New Rules I through IV; and the repeal of	)	(ASBESTOS)
ARM 17.74.303 pertaining to incorporation	)	
by reference, OSHA preclusion, and	)	
asbestos project management	)	

TO: All Concerned Persons

1. On May 4, 2011, at 1:30 p.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., April 25, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.74.301 APPLICABILITY AND PURPOSE (1) Except as otherwise specifically provided, this subchapter applies to all persons or entities engaged in an asbestos-related occupation, persons in charge of asbestos ~~abatement~~ projects, persons engaged in facility demolition or renovation activities, and persons who offer course work for accreditation of persons engaged in asbestos-related ~~abatement~~ projects occupations.

(2) The purpose of these rules is to regulate and establish criteria for certain asbestos ~~abatement~~ practices and to require statewide standards for accreditation of persons in asbestos-~~type~~ related occupations, for approval of course work, and for a fee and permit system.

AUTH: 75-2-503, MCA  
IMP: 75-2-503, MCA

**REASON:** The department is proposing revisions to ARM 17.74.301 that conform the rule to the proposed revisions in this rulemaking notice and to the language used in 75-2-502(3), MCA. Even though "applicability and purpose" rules

generally are not enforceable, the department believes it is important that ARM 17.74.301 conforms to and explains the proposed content of subchapter 3 and the Asbestos Control Act.

The department also is proposing minor editorial revisions that are not intended to have any substantive effect.

17.74.350 INCORPORATION BY REFERENCE -- PUBLICATION DATES

(1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to:

(a) a federal regulation, the reference is to the July 1, ~~2006~~ 2010, edition of the Code of Federal Regulations (CFR);

~~(b) a section of the United States Code (USC), the reference is to the 2000 edition of the USC and Supplement III (2003); or~~

~~(c) a section of the Montana Code Annotated (MCA), the reference is to the 2005 edition of the MCA.~~

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: Periodically, the department updates ARM 17.74.350, which incorporates by reference the CFR. The incorporation by reference process is accomplished by amending the respective publication dates specified in ARM 17.74.350. The amendments to ARM 17.74.350 would allow the department to follow the most recent edition of federal regulations, and thus maintain conformity with EPA, to preserve program authorization.

The department is proposing to delete (1)(b) because there are no references to the USC in subchapter 3.

The department also proposes to delete the reference to the MCA because the most recent version of the Asbestos Control Act is applicable even in the absence of a reference in the rules.

17.74.351 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) and (a)(i) remain the same.

(b) National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, fourth edition, August 1994, which contains a description of the 7400 Analytical Method for detecting asbestos and other fibers by phase contrast microscopy (PCM) and a description of the 7402 Analytical Method for detecting asbestos by transmission electron microscopy (TEM); and

~~(c) Montana Asbestos Work Practices and Procedures Manual (2005) Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116 (1993).~~

(2) remains the same.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: Concerning the deletion of (1)(c), the department assessed the Asbestos Control Program's rules and the Montana Asbestos Practices and Procedures Manual (manual) pursuant to a decision by the Supreme Court of the United States in Gade v. National Solid Wastes Management Association, 505 U.S. 88; 112 S. Ct. 2374, 120 L.Ed.2d 73 (1992), in which the Court held that Section 18 of the Occupational Safety and Health Act (OSH Act) preempts any state law or regulation that establishes an occupational health and safety standard on an issue for which the Occupational Safety and Health Administration (OSHA) had already promulgated a standard, unless the state had obtained OSHA's approval to adopt a state regulatory scheme. The department determined that many of the Asbestos Control Program's rules and manual requirements are preempted by the OSH Act. Because a large amount of material would have to be removed from the manual, the department has decided to remove the incorporation of the manual into the rule. Therefore, the department is proposing to remove the existing language in (1)(c).

In the new language in (1)(c), the department is proposing to incorporate by reference an asbestos analysis method (Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116 (1993)) because the method would be referenced in ARM 17.74.354. The department is proposing to incorporate this asbestos analysis method because it is EPA's preferred method. In 1979, EPA developed a protocol for analyzing asbestos in bulk insulation to support the "Asbestos-Containing Materials in Schools" program (40 CFR Part 763). This effort resulted in the publication of the Interim Method for the Determination of Asbestos in Bulk Insulation Samples, EPA-600/M4-82-020 (1982). This protocol used polarized light microscopy (PLM) and x-ray powder diffraction (XRD) analytical techniques. As EPA programs expanded into the monitoring of asbestos-containing products beyond bulk insulation materials, the need for additional analytical techniques made it necessary to revise and expand the "Interim Method." EPA developed an expanded protocol that included analysis by transmission electron microscopy (TEM) for a wide variety of building materials. The method was published in Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116 (1993). This method is referred to as the "Improved Method" and is recommended by EPA as a preferred substitute for the Interim Method. OSHA and other asbestos monitoring programs also reference this improved method.

17.74.352 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Amended water" means water to which surfactant (wetting agent) has been added to increase the ability of the liquid to penetrate ACM.

~~(1)~~ (2) "Approved asbestos disposal facility" means a licensed Class II or Class IV landfill as described in ARM 17.50.504.

(2) remains the same, but is renumbered (3).

(4) "Asbestos-containing waste" has the meaning given for "asbestos-containing waste materials" in 40 CFR 61.141.

(3) through (6) remain the same, but are renumbered (5) through (8).

~~(7)~~ (9) "Asbestos project contractor/supervisor" means any person who provides supervision and/or direction to asbestos workers engaged in an asbestos project supervises asbestos projects and the personnel who conduct asbestos

projects.

(8) remains the same, but is renumbered (10).

~~(9) (11) "Asbestos project worker" means any person other than those listed in (4) (6) and (6) (8) through (8) (10) who is engaged in an asbestos project, and who encapsulates, encloses, removes, repairs, renovates, places in new construction, or demolishes asbestos, or transports or disposes of asbestos-containing wastes.~~

(10) remains the same, but is renumbered (12).

(13) "Background level" means:

(a) the concentration of asbestos in a comparable environmental setting at or near an asbestos project site; or

(b) the concentration of asbestos that provides a defensible reference point to evaluate whether or not a release at the asbestos project site has occurred.

(14) "Building or other structure" as used in the definition of "asbestos project" in 75-2-502, MCA, has the meaning given for "facility" in 40 CFR 61.141.

~~(11) "Category I non-friable ACM" has the meaning given in 40 CFR 61.141.~~

~~(12) "Category II non-friable ACM" has the meaning given in 40 CFR 61.141.~~

~~(13) "Clean room" means an uncontaminated room having facilities for the storage of employees' street clothing and uncontaminated materials and equipment.~~

~~(14) "Containment area" means a negative pressure asbestos project work area and decontamination unit that is configured to isolate asbestos project activities from areas that are to remain uncontaminated.~~

~~(15) "Critical barrier" means one or more layers of plastic sealed over all openings into a work area or any other similarly placed physical barrier sufficient to prevent airborne asbestos in a work area from migrating to an adjacent area.~~

~~(16) "Decontamination area" means an enclosed area adjacent and connected to the regulated area and consisting of an equipment room, shower area, and clean room, which is used for the decontamination of workers, materials, and equipment that are contaminated with asbestos.~~

(17) through (19) remain the same, but are renumbered (15) through (17).

~~(20) (18) "Encapsulation" means the treatment of regulated asbestos-containing material (RACM) with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant). This definition does not include the repainting of a previously painted, and undamaged, non-friable RACM surface primarily to improve the appearance of the surface.~~

~~(21) (19) "Enclosure" has the meaning given in 40 CFR 763.83 means an airtight, impermeable, permanent barrier around ACM to prevent the release of asbestos fibers into the air.~~

~~(22) "Equipment room (change room)" means a contaminated room located within the decontamination area that is supplied with impermeable bags or containers for the disposal of contaminated protective clothing and equipment.~~

(20) "Engaged in an asbestos-related occupation" means:

(a) conducting an asbestos inspection pursuant to ARM 17.74.354;

(b) creating a project design pursuant to ARM 17.74.355; or

(c) engaged in any activity for which an asbestos project permit is required

under this subchapter.

(23) remains the same, but is renumbered (21).

(22) "Friable" means able to be crumbled, pulverized, or reduced to powder by hand pressure when dry.

~~(24) "Friable asbestos-containing material" or "friable ACM" means any ACM that when dry may be crumbled, pulverized, or reduced to powder by hand pressure.~~

(25) remains the same, but is renumbered (23).

~~(26)~~ (24) "Inspection" means an activity undertaken in a facility to determine the presence or location, or to assess the condition, of friable or non-friable RACM or suspected RACM, whether by visual or physical examination, or by collecting samples of the material. This term includes reinspections of friable and/or non-friable known or assumed RACM which has been previously identified. The term does not include the following:

(a) remains the same.

(b) visual inspections performed solely to determine completion of response actions asbestos projects.

~~(27) "Local education agency" or "LEA" has the meaning given in 40 CFR 763.83.~~

~~(28) "Non-friable asbestos-containing material (non-friable ACM)" has the meaning given in 40 CFR 61.141.~~

~~(29) "Nonoccupational setting" means an environment in which the occupants are not handling, working with, or exposed to asbestos resulting from an asbestos project.~~

(30) remains the same, but is renumbered (25).

~~(31) "Regulated area" means an area established by an asbestos contractor or building owner to demarcate areas in which an asbestos project is being conducted, and any adjoining area where debris and waste from such asbestos work accumulate.~~

(32) remains the same, but is renumbered (26).

~~(33)~~ (27) "Renovation" means altering (including modifying and/or remodeling) a facility or any of its components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions has the meaning given in 40 CFR 61.141.

(34) and (35) remain the same, but are renumbered (28) and (29).

(30) "Surfacing material" means material that is sprayed-on, troweled-on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials applied to surfaces for acoustical, fireproofing, or other purposes.

(31) "Thoroughly inspect" means to conduct a facility demolition-specific or renovation-specific asbestos inspection, pursuant to ARM 17.74.354, for the purposes of:

(a) identifying all ACM that potentially may be impacted by the subsequent renovation or demolition; and

(b) determining which requirements of this subchapter, and the Asbestos Control Act codified at Title 75, chapter 2, part 5, MCA, apply to the proposed demolition or renovation activity.

~~(36) "Visible emissions" has the meaning given in 40 CFR 61.141.~~

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: In ARM 17.74.352(1), the department is proposing to define "amended water" because that term is used in New Rules II, III, and IV. The addition of the definition is necessary to clarify the meaning of the rule.

The department is proposing to add "Class IV" to the definition of "approved asbestos disposal facility" because Class IV landfills may accept certain asbestos-containing wastes.

The department is proposing to add the definition of "asbestos-containing waste" because the term is used in ARM 17.74.352, 17.74.357, 17.74.359, and 17.74.360, and in New Rules I, II, and IV. Because Montana has been delegated authority to administer the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR 61, subpart M (53 FR 50524), the department is proposing to define "asbestos-containing waste" to have the same meaning as the federal definition of "asbestos-containing waste material" so that the affected rule would be comparable to the federal regulation with respect to this term.

The department is proposing revisions to the definition of "asbestos project contractor/supervisor" that clarify the definition, but do not change the meaning.

The department is proposing revisions to the definition of "asbestos project worker" that list the common activities performed by an asbestos project worker, and conform the definition to the definition of "asbestos project" in 75-2-502, MCA. The proposed revisions to the definition of "asbestos project worker" clarify the definition, but do not change the meaning.

The department is proposing to add the definition of "background level" because the term is used in ARM 17.74.357(6). The addition of the definition is necessary to clarify the meaning of the rule.

The definition of "building or other structure" was included in the manual which, as noted in the statement of reasonable necessity for ARM 17.74.351, has been incorporated by reference into the rules, but no longer would be.

The department is proposing to delete the definitions "clean room," "containment area," "critical barrier," "decontamination area," "equipment room (change room)," "friable asbestos-containing material," "local education agency," "nonoccupational setting," and "regulated area" because the terms are not used in the text of subchapter 3. Also, the terms "non-friable asbestos-containing material," "visible emissions," "category I non-friable ACM," and "category II non-friable ACM" are defined in 40 CFR 61.141, which is incorporated by reference in ARM 17.74.351.

The department is proposing to replace "regulated asbestos-containing material (RACM)" with "ACM" in the definition of "encapsulation" to conform the definition to the usage of the term in 75-2-502(3), MCA. The department is proposing to delete the word "non-friable" from the definition of "encapsulation" because the word is unnecessary. The proposed revision does not change the meaning of the definition.

The department is proposing to provide the full text of the definition of "enclosure" as provided in 40 CFR 763.83. This would make the text of the

definition easier to find for people who use the rules. The proposed revision does not change the meaning of the definition.

The department is proposing to include a newly developed definition of "engaged in an asbestos-related occupation." The phrase "engaged in an asbestos-related occupation" is used only in ARM 17.74.301, Applicability and Purpose. The proposed definition would clarify the meaning of the rule. Even though "applicability and purpose" rules generally are not enforceable, the department believes it is important that this definition is added to ensure ARM 17.74.301 conforms to and explains the content of subchapter 3.

The department is proposing to add the definition of "friable" because the definition of "friable asbestos-containing material" is not used in the rules, but the term "friable" is used many times. The proposed definition of "friable" is substantively the same as the relevant portion of the existing definition of "friable asbestos-containing material."

The department is proposing to revise the definition of "inspection" by deleting "friable and/or non-friable" and replacing "RACM" with "ACM." This is necessary because some ACM is not regulated until it is removed in a regulated manner, but it still should be identified in the inspection. In addition, all ACM is friable or non-friable, so the term adds nothing to the definition. The department is proposing to substitute the phrase "asbestos projects" for the phrase "response actions" in (24)(b) to clarify the scope of visual inspections and because "response actions" appears nowhere else in subchapter 3.

The department is proposing to replace the existing definition of "renovation" with the federal definition of the same term as provided in 40 CFR 61.141. The use of the federal definition for the term "renovation" ensures that an affected rule would be comparable to the federal regulation with respect to this term. The definition of "renovation" in 40 CFR 61.141 is the same as the existing definition in ARM 17.74.352, except the existing definition includes the phrase "including modifying and/or remodeling." Both definitions include similar language that provides: "altering a facility or any of its components in any way ...." The phrase "altering a facility in any way" would include "modifying and/or remodeling." The department believes the phrase "modifying and/or remodeling" is redundant. The proposed amendment of the definition of "renovation" does not change the meaning of the definition or any rule.

The department is proposing to add the definition of "surfacing material" because the phrase is used in the proposed amendments to ARM 17.74.354. The addition of the definition of the phrase is necessary to clarify where bulk samples must be taken pursuant to ARM 17.74.354(3). The definition of the phrase is substantively the same as the definition of the same term provided in 40 CFR 763.83. 40 CFR part 763, Asbestos-Containing Materials in Schools, contains many asbestos management requirements similar to those in subchapter 3.

The department is proposing to add the definition of "thoroughly inspect" because the term is used in the proposed amendments to ARM 17.54.354. The term is used in 40 CFR 61.145(a), but there is no definition for the term provided in subpart M. The department has developed a definition for "thoroughly inspect" to ensure that the owner of an affected facility is informed as to what constitutes a satisfactory evaluation and meets the inspection standard under ARM 17.74.354.

The department also is proposing minor editorial revisions that are not intended to have any substantive effect.

17.74.353 APPLICABILITY--ASBESTOS PROJECT REQUIREMENTS

(1) All asbestos projects must be ~~performed~~ conducted in accordance with the requirements of ~~the Montana Asbestos Work Practices and Procedures Manual~~ this subchapter and 40 CFR 61, subpart M, with the following exceptions:

(a) the minimum quantities of regulated asbestos-containing material (RACM) specified in 40 CFR 61.145(a)(1)(i) and (ii) and (4)(i) and (ii) do not apply; ~~and~~

(b) for purposes of 40 CFR 61.145(a)(1) and (4), the minimum quantities of ~~RACM~~ asbestos provided in 75-2-502(3), MCA, ~~shall~~ apply;

(c) in 40 CFR 61.145(b)(1), pertaining to notification requirements, "Provide the department with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, facsimile, email, or hand delivery is acceptable, and delivery of the notice is complete when the department receives the notice" is substituted for "Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable";

(d) in 40 CFR 61.145(b)(3), pertaining to the written notice of intention to demolish or renovate, "Notice must be received by the department as follows:" is substituted for "Postmark or deliver the notice as follows:"; and

(e) alternate work practices may be used if approved in writing by the department in advance. Requests for approval to employ alternate work practices must be submitted to the department on a form provided by the department.

(2) remains the same.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing to delete the reference to the Montana Asbestos Work Practices and Procedures Manual from (1) for the same reasons given in the statement of reasonable necessity for ARM 17.74.351 for the deletion of the reference to the manual from ARM 17.74.351(1)(c). The department is proposing to replace the reference to the manual with "this subchapter" because many of the requirements in the manual that are not preempted by the OSH Act are proposed to be included in subchapter 3 in this rulemaking.

In (1)(b), the department is proposing to replace the federal term "RACM" with "asbestos," which is used in the Asbestos Control Act. Because (1)(b) concerns the Asbestos Control Act, it is necessary to use "asbestos."

The department is proposing to add (1)(c) and (d) to clarify the effective date of receipt of notification and to reflect the program's current business practice. It is necessary to define when delivery is accomplished because there are many things that can delay or otherwise affect mail delivery. It is more appropriate for the ten-day period for NESHAP-required notification to begin upon receipt of the notice by the department rather than upon the date of the postmark, in order to allow for consistency in the time available for the department to act. In 75-2-503(2), MCA, the

Legislature requires the department to issue asbestos project permits for asbestos projects costing \$3,000 or less within seven calendar days following the "receipt" of a properly completed permit application and the appropriate fee, not within seven days following the date of the postmark. If the department has the same time period in all cases, the department will be able to act more consistently in all cases and not be rushed into a potentially wrong decision merely because mail service was delayed, resulting in insufficient time for the department to adequately assess what it should do.

The department is proposing in (1)(e) to allow alternative work practices, but only when a request is submitted on a form provided by the department and department approval is obtained prior to implementation of the alternate work practice. Alternate work practices upon approval by the department were provided for in Section 4.02 of the manual, and (1)(e) retains that flexibility where the department finds it to be appropriate.

17.74.354 INSPECTION REQUIREMENTS OF FOR DEMOLITION AND RENOVATION ACTIVITIES (1) ~~Prior to any demolition or renovation of a facility, the owner or operator shall have the facility inspected for the presence of asbestos by a Montana-accredited asbestos inspector~~ ensure the facility or part of the facility where demolition or renovation actions will occur is thoroughly inspected by a department-accredited asbestos inspector in accordance with this subchapter.

~~(2) An inspection required under this rule must be conducted in conformance with the Montana Asbestos Work Practices and Procedures Manual. The owner or operator shall ensure that a copy of the inspection report is kept on site during the asbestos project, and during subsequent renovations or demolition. The inspection report must be made available to the department upon request.~~

(3) A department-accredited asbestos inspector conducting an inspection in accordance with this subchapter shall:

(a) visually inspect the areas that may be affected to identify the locations of all suspect ACM;

(b) touch all suspect ACM to determine whether it is friable;

(c) collect bulk samples from each surfacing material that is not assumed to be ACM in a statistically random manner that is representative of the surfacing material. Samples must be collected as follows:

(i) at least three bulk samples must be collected from each surfacing material area that is 1,000 ft<sup>2</sup> or less;

(ii) at least five bulk samples must be collected from each surfacing material area that is greater than 1,000 ft<sup>2</sup>, but less than or equal to 5,000 ft<sup>2</sup>; and

(iii) at least seven bulk samples must be collected from each surfacing material area that is greater than 5,000 ft<sup>2</sup>;

(d) collect samples from thermal system insulation as follows:

(i) at least one bulk sample from each area of patched thermal system insulation that is not assumed to be ACM;

(ii) at least three random bulk samples from each type of thermal system insulation that is not assumed to be ACM;

(iii) no bulk samples where the accredited inspector has determined that the thermal system insulation is fiberglass, foam glass, rubber, or other non-ACM;

(e) randomly collect at least three bulk samples from all mechanical system insulation and fittings, such as tees, elbows, and valves, that are not assumed to be ACM;

(f) randomly collect at least three bulk samples from each type of miscellaneous material that is not assumed to be ACM; and

(g) collect at least three bulk samples from any type of non-friable suspected ACM that is not assumed to be ACM.

(4) For inspections conducted under (3), the inspector shall ensure that:

(a) bulk samples are analyzed by persons or laboratories with proficiency demonstrated by current successful participation in a nationally recognized testing program such as the National Institute of Standards and Technology (NIST), National Voluntary Laboratory Accreditation Program (NVLAP), the round robin for bulk samples administered by the American Industrial Hygiene Association (AIHA), or an equivalent testing program accepted in writing by the department prior to analysis;

(b) except for wallboard system samples, bulk samples are not composited for analysis, but are analyzed for asbestos content by polarized light microscopy (PLM) using the "Method for the Determination of Asbestos in Bulk Building Materials" (EPA/600/R-93/116) or another method acceptable to the department; and

(c) the sample analytical report includes:

(i) results of the analysis;

(ii) method of analysis;

(iii) name and address of each laboratory performing an analysis;

(iv) the laboratory's accreditation number;

(v) the date of analysis; and

(vi) the name and signature of the person performing the analysis.

(5) For the purposes of an inspection conducted under (3):

(a) a material is considered to be ACM if the analytical results of at least one sample collected from that material show that asbestos is present in an amount greater than 1%; and

(b) a material is considered not to be ACM only if the analytical results for all samples collected from the material show that asbestos is not present in an amount greater than one percent.

(6) For inspections conducted under (3), the asbestos inspector shall report the findings in a written inspection report to the owner of the building or the operator conducting the planned demolition or renovation activity. The asbestos inspection report must include:

(a) the site of the asbestos inspection;

(b) the scope and purpose of the inspection and how it corresponds to the extent of the planned renovation or demolition activity;

(c) the date of the asbestos inspection;

(d) the signature of the accredited inspector conducting the asbestos inspection;

(e) the inspector's accreditation number and expiration date;

(f) an inventory of all assumed asbestos-containing and sampled materials;

(g) all sample locations;

- (h) where ACM is located by type;
  - (i) the areas where friable material is assumed to be ACM, and areas where non-friable material is assumed to be ACM;
  - (j) a copy of the sample analytical report with the name and address of each laboratory performing an analysis, the date of analysis, and the name and signature of the person performing the analysis; and
  - (k) information on whether it will be necessary to remove any ACM before any activity begins that would break up, dislodge, or similarly disturb the material.
- (7) If the inspection required in (1) was not conducted or was improperly conducted prior to commencement of renovation or demolition activities, an inspection must be conducted in accordance with (3) as soon as possible upon discovery of the missing or improper inspection, and before any additional renovation or demolition activities occur, with the addition of the following:
- (a) industry-recognized procedures must be employed for sampling and analyzing settled dust to determine the extent of any asbestos contamination. The department will provide a list of acceptable procedures upon request;
  - (b) air sampling may not be used by the department-accredited asbestos inspector as the sole means of evaluating whether asbestos is present; and
  - (c) the department-accredited asbestos inspector shall summarize sampling and analytical procedures and evaluation findings in a written report. A recommendation on whether a new or continued asbestos project is necessary based on the evaluation must be included in the written report. The report must be submitted to the department before any further renovation or demolition work occurs.
- (8) The department may conduct its own asbestos inspection if it deems an inspection conducted under (7) deficient.
- (9) An inspection conducted under (7) does not excuse any failure to complete the inspection required in (1).

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

**REASON:** The department is proposing to revise (1) to include the term "thoroughly inspected." Because Montana has been delegated authority to administer subpart M, the department is proposing to use the federal term "thoroughly inspect" in a manner comparable to its use in subpart M (40 CFR 61.145(a)).

The proposed new (2) would require that a copy of the inspection report be kept on site during the asbestos project and any subsequent renovations or demolition. It is necessary to keep the inspection report on site to provide a reference for asbestos workers and the supervisor for identifying asbestos sources to be addressed during the course of an asbestos project. Maintaining the inspection report on site also would inform department inspectors about the presence and location of asbestos, which would assist the department in determining compliance. Finally, maintaining the inspection report on site during subsequent renovation and demolition activities will provide a reference for workers to ensure that they do not impact any ACM that might remain in the facility after the asbestos project is completed.

Proposed new (3) through (6) are substantively the same as the comparable sections contained in 3.01 through 3.03 of the manual, except for proposed new (3)(d). Proposed (3)(d) requires sampling of all patched thermal system insulation if it is not assumed to be ACM, while the comparable section in the manual requires sampling of such material only where there is less than "six linear or square feet." Patched thermal system insulation that is not assumed to be ACM should be sampled, and patches larger than six linear or square feet should not be exempt.

The department is proposing new (7) through (9) to address the situation where a thorough inspection was not conducted prior to the start of a renovation or demolition. The purpose is to ensure that a proper, if belated, inspection is conducted subsequently consistent with subpart M and that the scope of any ensuing project is tailored to address possible impacts from an unpermitted project to the facility, if necessary. The requirement to conduct a subsequent inspection is necessary to protect public health or mitigate harm to public health and the environment by ensuring that asbestos within a facility is properly characterized and any disturbed asbestos is addressed through proper work practices, if necessary.

17.74.355 ASBESTOS PROJECT PERMITS (1) remains the same.

(2) ~~The owner, or the asbestos project contractor, or the owner or operator~~ of the facility where an asbestos project is to be conducted shall submit to the department, on a form provided by the department, an application for a project permit that contains the following:

(a) a completed, signed original Montana Asbestos Project Permit Application and NESHAP Demolition/Renovation Notification form provided by the department; and

~~(b) a description of the facility, the asbestos project to be performed, and the dates during which the asbestos project will be performed;~~

~~(c) a signed statement by the owner or the asbestos project contractor/supervisor that all work performed under authorization of the requested permit will be performed in accordance with this subchapter;~~

~~(d) a list of the asbestos project workers and contractor/supervisors who will be performing functions on the project, including their Montana accreditation identification numbers and accreditation expiration dates;~~

~~(e) (b) the permit fee required under ARM 17.74.401;~~

~~(f) a project design prepared by an asbestos project designer. At a minimum, the asbestos project design must contain the following information:~~

~~(i) a description of the physical work area, including a drawing (not necessarily to scale), indicating the location of exhaust ventilation machines, decontamination enclosures and waste load out area;~~

~~(ii) a description of the amount of RACM to be removed, encapsulated, enclosed, repaired, transported, or disposed;~~

~~(iii) a description of how the project will shut down and lock out electric power and heating, ventilation, and air conditioning systems;~~

~~(iv) a description of precleaning and removal of objects from the work area;~~

~~(v) a schedule for sealing off all openings with critical barriers including, but not limited to, corridors, doorways, skylights, ducts, grills, diffusers, and other penetrations of the work area;~~

- ~~(vi) a description of containment barriers including airlocks, fire and emergency exits, and labeling procedures to be used on barriers;~~
- ~~(vii) a description of the worker decontamination enclosure system to be used;~~
- ~~(viii) a description of exhaust ventilation systems to be used;~~
- ~~(ix) a description of alternate methods of containment to be used, such as glove bags, removal of the entire asbestos covered pipe or structure, and construction of mini-enclosures, which, if used, must comply with the Montana Asbestos Work Practices and Procedures Manual.~~
- ~~(x) a description of personal protective equipment and clothing to be worn by asbestos project workers;~~
- ~~(xi) a description of work practices to be followed by asbestos project workers;~~
- ~~(xii) a description of methods to be used to remove, encapsulate, repair, or enclose RACM;~~
- ~~(xiii) a description of wetting agents, encapsulants, and sealants to be used;~~
- ~~(xiv) a description of the air monitoring plan and the identity of the individual conducting the air monitoring; and~~
- ~~(xv) a description of the procedures to be used for transportation and disposal of RACM.~~

(3) If an application is deficient or incomplete, the department shall notify the applicant of the information necessary to complete the application. If the department has not received the information within its established time frame ten days from the date of the deficiency letter, the application will be considered withdrawn.

(4) If the dates during which an asbestos project is to be conducted change, the asbestos project contractor/supervisor, or the owner of the facility or operator shall notify the department of the change at least 24 hours prior to:

(a) through (5) remain the same.

(6) The department shall issue asbestos project permits for asbestos projects having a cost of \$3,000 or less within seven calendar days following the receipt of a properly completed permit application and the appropriate fee.

(7) A copy of the asbestos project permit application, permit, project design, contract, and sketch must be posted and maintained on site in a conspicuous location during the asbestos project.

(8) For an asbestos project limited to transportation and disposal, the posting of the project sketch required in (7) does not apply.

AUTH: 75-2-503, MCA

IMP: 75-2-503, 75-2-511, MCA

REASON: The department is proposing revisions to (2)(a) that clarify the rule, but do not change the meaning.

The department is proposing to delete (2)(b) through (d) and (2)(f) because these requirements are preempted by the OSH Act. The deletion of these subsections is for the same reasons given in the statement of reasonable necessity for the deletion of the manual from ARM 17.74.351(1)(c).

In (3), the department is proposing to add a defined time frame "ten days from

the date of the deficiency letter" in place of the phrase "established time frame." The standard "ten days from the date of the deficiency letter" reflects the program's current business practice for submittal of information. It is necessary for the department to continue to be consistent in this matter and for the applicant to know the exact time frame for submittal of information.

The department is proposing to add "operator" in (4) because this will allow notice of a change of dates to be provided to the department by other persons as authorized in the NESHAP and does not limit the notice requirement to the asbestos project contractor/supervisor. It gives greater flexibility in giving notice without causing any detriment to the department's needs.

The department is proposing to add new (6), which is a restatement of 75-2-503(2), MCA. The restatement of the statute would provide in another location the time that the department has to issue an asbestos project permit which would be beneficial to an applicant and make the rules more complete.

The proposed new (7) would require that a copy of the permit application, permit, design, contract, and sketch be kept on site during the asbestos project. It is necessary to keep these on site to provide a reference for asbestos workers and the contractor/supervisor to identify the asbestos tasks to be addressed during the course of an asbestos project. Maintaining the permit application, permit, design, contract, and sketch on site also would assist the department in determining compliance.

The proposed new (8) would state that it is not necessary to post a project sketch for transportation and disposal projects because a sketch would not have any utility.

17.74.356 ASBESTOS PROJECT CONTROL MEASURES (1) An asbestos project contractor/supervisor shall be:

(a) physically present at all times at the work site when regulated work is being conducted on an asbestos project;

(b) ~~The asbestos project contractor/supervisor shall be accessible to all asbestos project workers; and~~

(c) responsible for ensuring that the asbestos project complies with the asbestos project permit and the project design.

~~(2) Asbestos projects, including any on-site air monitoring, must comply with the requirements of the Montana Asbestos Work Practices and Procedures Manual.~~

(3) (2) Upon written request, the department may approve an alternate control measures that are equivalent to those required under this rule subchapter may be used if written approval is obtained from the department in advance.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing amendments to (1) to reformat the existing sentence without changing the meaning of that section of the rule, and to provide for the addition of new (1)(c). The department is proposing to add (1)(c) to clarify which person is responsible for compliance with the asbestos project permit and the project design. The deletion of (2) is proposed for the same reason given in

the statement of reasonable necessity for the deletion of the reference to the manual from ARM 17.74.351(1)(c). The department is proposing to substitute "subchapter" for "rule" in existing (3) to correct a clerical error and has reformatted that section without changing the meaning.

17.74.357 STANDARDS AND METHODS FOR CLEARING ASBESTOS PROJECTS AND REQUIREMENTS FOR PERSONS CLEARING ASBESTOS PROJECTS

(1) At the conclusion of any asbestos project conducted in a facility, the owner of the facility or the owner's designee shall sample and analyze the air to ensure that the indoor concentration of airborne fibers in a nonoccupational setting for each of five samples is less than or equal to 0.01 fibers per cubic centimeter of air or 70 structures per square millimeter of filter. Clearance sampling is not required if an asbestos project in a facility has occurred immediately prior to demolition of the entire facility, and the facility is not reoccupied prior to demolition. The five air samples must be taken in accordance with the Montana Asbestos Work Practices and Procedures Manual ensure that final visual inspection and air clearance sampling are conducted in all asbestos project work areas.

(2) The department may approve alternate work practices. The concentration of asbestos fibers in air clearance samples collected pursuant to (1) must be:

(a) less than or equal to 0.01 fibers per cubic centimeter of air for each of five samples collected within the work area, if analyzed by PCM. The PCM analysis must be conducted using the NIOSH 7400 or NIOSH 7402 method; or

(b) less than or equal to the average concentration of 70 structures per square millimeter for five samples collected within the work area, if analyzed by transmission electron microscopy (TEM). The TEM analysis must be conducted using EPA's interim TEM analytical methods provided in 40 CFR 763, subpart E, appendix A.

(3) Final visual inspection and clearance sampling and analysis must be conducted as follows:

(a) a person performing a final visual inspection and final air clearance sampling shall:

(i) observe the entire asbestos project area to verify that the asbestos project contractor has removed all visible asbestos-containing waste, dust, and debris from the work area;

(ii) require any necessary recleaning by the asbestos project contractor and conduct subsequent visual inspections that verify that the asbestos project contractor has removed all ACM identified in the asbestos project permit and related asbestos-containing waste, dust, and debris from the work area; and

(iii) complete a signed, written affidavit verifying that the asbestos project contractor has removed all ACM identified in the asbestos project permit and related asbestos-containing waste, dust, and debris;

(b) a person collecting final air clearance samples shall:

(i) ensure final clearance air sampling and testing are not performed until after the final visual inspection has been completed in accordance with this rule;

(ii) once the work area has passed the final visual inspection, sweep an air stream from a high-speed blower or equivalent air-blowing device across all surfaces

in the work area for a time adequate to disturb air in all areas of the work area prior to beginning final air clearance sampling;

(iii) ensure the air is continually agitated, creating maximum air disturbance in all potentially occupied areas, i.e., continually running fans, during the collection of final air clearance samples. Agitating the air in the work area prior to final air clearance sampling is not required for unoccupied areas such as crawl spaces; and

(iv) immediately after agitating the air in the work area, begin collecting at least five final clearance air samples in the work area;

(c) for an asbestos project with more than a single isolated work area within a large space contained by four walls and a ceiling, the owner or operator of a renovation or demolition activity shall ensure the isolated work areas are sampled by taking at least one air sample within each isolated work area. If more than five isolated work areas are used in a space contained by four walls and a ceiling, at least five aggressive air samples must be collected. The first four air samples must be gathered from those isolated work areas where the greatest potential for asbestos exposure exists; the fifth sample must be taken in the last isolated work area in which the asbestos project occurred;

(d) for asbestos projects employing glovebags, the owner or operator of the renovation or demolition activity shall have at least one aggressive air sample collected in the immediate area of each glovebag, with at least five air samples collected for each space contained by four walls and a ceiling. If more than five glovebags are used in a space contained by four walls and a ceiling, at least five air samples are required for that space. The five samples must be gathered from areas where the greatest potential for asbestos exposure exists;

(e) the asbestos project may not be cleared until after the final visual inspection and after the results of all required air clearance samples demonstrate that asbestos concentrations do not exceed the applicable concentration specified in (2);

(f) persons conducting a final visual inspection and final air clearance sampling and testing shall record:

(i) the names of the asbestos project contractor/supervisor and the person or persons conducting final visual inspection and final air clearance sampling;

(ii) the name and address of the facility site and location of the asbestos project;

(iii) the number of the asbestos project permit issued by the department;

(iv) the date of final visual inspection and final air clearance sampling;

(v) whether the work area was aggressed;

(vi) the number of samples collected;

(vii) the type of samples (i.e., PCM or TEM);

(viii) a statement of whether final visual inspection and final air clearance sampling has documented the completion of the asbestos project;

(g) the final visual inspection and air clearance sampling report must include the signatures of the project contractor/supervisor and final air clearance sampling person attesting to the completion of the asbestos project; and

(h) the results of the final visual inspection and final air clearance sampling and testing must be maintained by the asbestos project contractor and by the person who performed the sampling and must be made available to the department within

five working days of a request for the results.

(4) For asbestos projects with final air clearance sampling, the person conducting final air clearance sampling shall:

(a) collect five samples of air, with each sampling at least 1,199 liters of air, by using an air sampling pump capable of drawing a volume that is equal to or greater than 1,199 liters of air through each of the five millimeter filters, at a rate equal to or greater than one liter and less than ten liters per minute for TEM samples and equal to or greater than one liter and less than 16 liters per minute for PCM samples;

(b) ensure that the flow rate for each air sampling pump is calibrated at the beginning and end of the sampling period; and

(c) ensure air sampling cassettes are placed four to six feet above the floor at a 45 degree angle down. The cassettes must be uniformly distributed throughout the work area. At least one cassette must be located in each room. If the asbestos project was conducted in more than five rooms, a representative sample of rooms must be selected. Each cassette must be subject to normal air circulation, avoiding room corners, walls, ceilings, obstructed locations, and sites near windows, doors, or vents.

(5) If the background level of asbestos, as identified by the thorough inspection required in ARM 17.74.354(1), is determined to exceed the maximum allowable concentration in (2), the department may issue a written waiver from (3)(e) upon receipt of a written request in advance of the asbestos project.

(6) An asbestos project is considered complete when the final visual inspection documents no residual visible ACM, dust, or debris is present, and the results of clearance air sampling meet the requirements of (2).

(7) Air samples required by this rule may be analyzed only by laboratories accredited by the American Industrial Hygiene Association (AIHA) or laboratories that participate in the AIHA proficiency analytical testing (PAT) program and that have received a "proficient" rating for asbestos PCM samples, or another laboratory accepted in writing by the department. For sampling and sample analysis, a quality assurance program must be implemented as described in the NIOSH 7400 method or another quality assurance program accepted in writing by the department. PAT results must be submitted to the department upon request.

(8) PCM analyses required by this rule may be conducted only by a person certified in the NIOSH 582 or 582E sample collection and analytical method and who participates in a round robin quality assurance/quality control program for PCM analysts or another certification or quality assurance/quality control program accepted in writing by the department in advance.

(9) TEM sample analyses required by this rule must be conducted by a laboratory accredited by the National Voluntary Laboratory Accreditation Program or a laboratory accredited by an equivalent accreditation program that is accepted in advance by the department in writing.

(10) Proposed alternate standards and methods for clearing asbestos projects that provide results at least as accurate as the standards and methods set forth in (1) through (9) may be used if approved in advance by the department in writing. Requests for approval to employ alternate standards and methods must be submitted in advance to the department on a form provided by the department.

(11) A person performing a final visual inspection and final air clearance sampling:

(a) must be accredited by the department as an asbestos project worker or asbestos project contractor/supervisor; and

(b) may not be contractually associated with the asbestos project contractor, and there may not be any common ownership or employment relationship between the person or entity carrying out the asbestos project and the person or entity conducting the final clearance or sampling and analysis operations.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing a minor revision to (1) that clarifies the rule, but does not change the meaning. The department is proposing to delete the phrase "nonoccupational setting" from (1) because the phrase has no logical purpose in the sentence. The proposed deletion of the phrase does not change the meaning of the rule.

The department is proposing to divide existing (1) into three sections. New (2) contains the standards from (1) and adds the methods by which the required sampling must be done. NIOSH 7400 and TEM were the methods required in the manual. NIOSH 7402 was added because it allows differentiation between asbestos and nonasbestos fibers. The proposal to create three sections clarifies the rule, but does not change the meaning of the rule.

The department is proposing to delete existing (2) concerning alternative methods and move the provision to ARM 17.74.353(1)(e). The inclusion of existing (2)'s reference to work practices in ARM 17.74.357 is not logical and appears to have been in error, as work practices already would have been employed before the clearance stage of any project. The alternative work practices referenced in existing (2) do not apply to the standards and methods for final clearance addressed in ARM 17.74.357, but to work practices found in 40 CFR part 61, subpart M, which is addressed in ARM 17.74.353(1).

Proposed (3) through (9) are substantively the same as the comparable sections contained in 6.01 through 6.10 from the manual, except proposed new (7), (8), and (9) would allow alternatives to the required specifications, if the alternatives are acceptable to the department. It is necessary to allow some flexibility in specifications for laboratory analyses, quality control, and accreditation given that the advance of technology often results in new methods of analysis, quality control, and accreditation and the department does not want such methods to be disallowed out of hand.

Except as specified above, the proposed move of these sections from the manual to ARM 17.74.357 would not change the content of subchapter 3.

The department also proposes to add new (10), which provides that the department may approve alternate standards and methods for clearing asbestos projects that provide results at least as accurate as those set forth in the rule. The department should have the flexibility to allow alternative work practices to clear a project where the specified standards and methods may be inappropriate under particular circumstances, as long as the alternative can be demonstrated to provide

equally accurate results. The proposed alternative must be requested in advance so the department has an opportunity to ensure that the alternative standard or method is at least as accurate as the required standard or method before it is employed.

The department proposes to add new (11), which sets certain requirements for persons conducting final visual inspection and final air clearance sampling. Section (11) is substantively the same as sections 6.01(a) and (b) of the manual, with the additional provision in (11)(b) that would bar any common ownership or employment relationship between the person or entity conducting the final visual inspection and final air clearance sampling and the person or entity carrying out the asbestos project. Prohibiting only contractual relationships between persons carrying out an asbestos project and persons clearing those projects does not prevent many of the situations where conflicts of interest may occur. Where the person or entity carrying out the clearance employs any of the same persons or shares any part of its ownership with the person or entity that carried out the abatement project, the potential for a conflict of interest is at least as great as where there is a contractual relationship. It is important to avoid even the appearance of a conflict, much less the presence of an actual conflict.

The department also is proposing minor editorial revisions that are not intended to have any substantive effect.

17.74.359 ANNUAL ASBESTOS PROJECT PERMITS (1) remains the same.

(2) The owner or operator of a facility may apply to the department for an annual asbestos project permit if the facility:

(a) and (b) remain the same.

(c) maintains an asbestos health and safety program that incorporates standard operating procedures for employees involved in asbestos projects ~~in accordance with the Montana Asbestos Work Practices and Procedures Manual.~~

(3) An owner or operator conducting asbestos projects under an annual asbestos project permit shall comply with all requirements pertaining to asbestos project notification.

(4) The owner or operator of a facility applying for an annual asbestos project permit shall submit to the department:

(a) and (b) remain the same.

(c) a completed application on a form provided by the department, including:

(i) through (iv) remain the same.

(v) a signed statement that ~~removed RACM:~~

(A) asbestos-containing waste will be transported to and disposed of at an approved asbestos disposal facility and the name and location of;

(B) identifies the transporter of the asbestos-containing waste; and

(C) identifies the disposal facility by name and location.

~~(5) A facility owner or operator may apply annually for renewal of an annual permit.~~ An annual asbestos project permit expires one year after issuance unless the facility owner applies for renewal at least 45 days before the expiration date and the department approves the application.

~~(a) (6)~~ (6) An application for renewal need of an annual asbestos project permit must address in detail only the portions of the permit application that require

revision, updating, supplementation, or deletion, and may reference any required information that has been previously submitted.

(7) An amendment to the permit is required when there is a change in project contractor, demolition/renovation contractor, transporter, or disposal site or other change of similar scope or magnitude.

AUTH: 75-2-503, MCA

IMP: 75-2-503, 75-2-504, MCA

REASON: Deletion of the reference to the manual in (2)(c) is proposed for the same reasons given in the statement of reasonable necessity for the deletion of the reference to the manual from ARM 17.74.351(1)(c).

The proposed amendments to (3) and (4)(c)(v) clarify the rules and add a requirement that the transporter of the asbestos-containing waste be identified in the annual asbestos project permit application, but otherwise do not change the meaning. It is important that the transporter be identified to ensure transportation is carried out by a properly accredited person.

The department is proposing amendments to (5) because the existing language is unclear. It is necessary for a permittee to know exactly when a permit will expire and when a permit renewal application must be submitted. The requirement to submit an application to renew an annual asbestos project permit 45 days before it expires is appropriate because it traditionally takes up to 45 days for the department to thoroughly review and consider annual asbestos project permit applications.

The proposed substitution of the phrase "of an annual asbestos project permit must" for the word "need" clarifies but does not change the meaning of (5).

The department is proposing to add new (7) to clarify the types of revisions to an annual asbestos project permit that require the applicant to submit a fee pursuant to ARM 17.74.401(1)(c). That rule requires that an application to amend an annual asbestos project permit be accompanied by a fee, and there has been confusion in the regulated community about the types of changes that require an amendment and submission of a fee. The addition of new (7) is intended to help clarify the issue.

17.74.360 RECORDKEEPING (1) through (2)(b) remain the same.

(3) Records of asbestos projects must include, but are not limited to, the following:

(a) remains the same.

(b) the location and description of each project and the amount of RACM that was enclosed, removed, repaired, encapsulated, or placed in new construction;

(c) remains the same.

(d) the name and address of each facility where asbestos-containing waste RACM was deposited for disposal.  ~~Holders of annual permits are not required to maintain records designating where wastes from specific asbestos projects are deposited, but holders of annual permits shall maintain records of each shipment of RACM;~~

(e) a ~~receipt~~ waste shipment record from each disposal facility indicating the amount of ~~RACM~~ asbestos-containing waste deposited at the site and the date of the deposit; and

(f) the ~~transportation manifest~~ waste shipment records indicating the amount of ~~RACM~~ asbestos-containing waste transported to each approved ~~asbestos~~ disposal facility and the name and location of each facility.

AUTH: 75-2-503, MCA

IMP: 75-2-513, MCA

REASON: The department is proposing to change the term "RACM" to "ACM" in (3)(b) because some of the affected asbestos may not be regulated until it is removed in a regulated manner. It is the ACM that must be identified in the record.

The department is proposing to change the term "RACM" to "asbestos-containing waste" in (3)(d) through (f) for the same reason provided in the statement of reasonable necessity for defining the phrase "asbestos-containing waste" in ARM 17.74.352.

The department also proposes to use the term "waste shipment record" instead of "receipt" or "transportation manifest" to more accurately and consistently describe the documents that are the subject of the rule.

The department also is proposing minor editorial revisions that are not intended to have any substantive effect.

17.74.361 DEPARTMENT INSPECTIONS (1) The owner of the facility where an asbestos project is being or was conducted, or a person conducting or in charge of an asbestos project shall:

(a) remains the same.

(b) upon request, make records maintained pursuant to this subchapter available to the department for inspection and copying; and

~~(c) allow department inspectors to consult privately with asbestos project workers concerning occupational exposure to asbestos and other matters related to the applicable provisions of this subchapter, to the extent necessary for an effective and thorough inspection; and~~

(d) remains the same, but is renumbered (c).

AUTH: 75-2-503, MCA

IMP: 75-2-518, MCA

REASON: The proposed deletion of (1)(c) is necessary because the department has determined it does not have the statutory authority to require private consultations with asbestos workers. Such conversations still may take place voluntarily.

17.74.364 TRAINING PROVIDER REQUIREMENTS (1) Pursuant to 75-2-511, MCA, a person may not offer a training course in Montana for accreditation of persons to engage in any asbestos-related occupation in Montana unless the

department has approved the course. A person offering a training course outside Montana also may apply to the department for course approval.

(2) remains the same.

(3) For department approval of a training course, instructors' qualifications must include:

(a) remains the same.

(b) current accreditation in the course(s) they teach asbestos-related occupation related to the course to be taught.

(i) ~~A training provider~~ An instructor who is accredited as a contractor/supervisor may teach the asbestos project worker course without current accreditation as an asbestos project worker.

(4) remains the same.

(5) All training course materials and examinations must be submitted to the department in advance for approval. A person may apply for approval of a training course by submitting all of the following to the department at least 45 calendar days prior to the proposed date of course presentation:

(a) through (h) remain the same.

(i) documentation of EPA course approval if the course has been approved by EPA ~~pursuant to 15 USC 2643.~~

(6) remains the same.

(7) The department must be notified in advance of any proposed changes in the content of training courses, examinations, or instructors. The department shall approve or deny in writing any proposed changes in training course or examination contents or change in instructor(s) ~~prior to approving the course or examination.~~

(8) Guest speakers at a training course, such as physicians, attorneys, or other asbestos experts, do not need to be accredited in the discipline being taught. However, their presentation must be supervised by the course instructor and the course instructor remains responsible for ensuring that all required information is taught.

(8) through (10) remain the same, but are renumbered (9) through (11).

(12) Within two working days of completing a course, the training course provider shall submit a course roster to the department. The course roster must identify:

(a) the name and address of the training provider who provided the course;

(b) the name of the asbestos-related occupation course completed;

(c) the date(s) of the class;

(d) the printed name and signature of at least one course instructor;

(e) each course participant's signature and printed name;

(f) each course participant's course certificate number; and

(g) a statement that each person receiving a certificate has completed the training required for accreditation under this subchapter.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

REASON: The department is proposing amendments to (1) to allow training courses outside the state to be approved by the department. The department has

received requests for approval of training classes to be held outside Montana for Montana accreditation and believes it is necessary to amend this rule to allow approval of those courses.

The department is proposing to amend (3)(b) to clarify that a person is accredited in an occupation, not in a course.

In (5)(i), the department is proposing to strike the reference to 15 USC 2643 because the requirement is not necessary for determining whether the submitted training course materials and examinations meet the department's requirements. Section 15 USC 2643 concerns the promulgation of regulations by EPA and is not related to training course approval.

The department is proposing to delete the requirement in (7) that department approval for changes to training courses, examinations, or instructors be granted prior to approving the course or examination, as it is a non sequitur. It is only after the department has approved a course or examination that changes must be approved by the department.

The department is proposing to add (8), pertaining to guest speakers, to allow training course providers to use outside asbestos experts to broaden and enhance the course content and make the course more interesting for attendees. The proposed addition of (8) does not change, but instead confirms, the requirement that responsibility for course content remains with the accredited course instructor.

The department is proposing to add (12), pertaining to submitting a course roster to the department, because the information would allow the department to more quickly process on-line applications for accreditation. The department is currently developing on-line asbestos project permitting and accrediting.

17.74.365 TRAINING COURSE REQUIREMENTS (1) through (5) remain the same.

(6) For purposes of this rule, the phrase "public and commercial building" has the meaning given in the definition of "facility" at ARM 17.74.352~~(23)~~.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

REASON: The proposed amendments to ARM 17.74.352 would change the numbering of the definitions. Therefore, the citation to ARM 17.74.352(23) is incorrect. The department prefers to not include the exact section number in citations that cross-reference definitions in rules because definitions are listed alphabetically and are easy to find without section numbers, and, when definitions are renumbered, all of the citations referencing an exact section number require updating.

4. The proposed new rules provide as follows:

NEW RULE I TRANSPORTATION AND DISPOSAL OF ASBESTOS-CONTAINING WASTE (1) A person may not transport asbestos-containing waste generated at a facility unless accredited by the department as an asbestos project worker or asbestos project contractor/supervisor or escorted and supervised by a

person who is accredited as an asbestos project worker or asbestos project contractor/supervisor.

(2) Prior to transporting or disposing of asbestos-containing waste from an asbestos project, a person shall obtain an asbestos project permit from the department.

(3) A person who transports or escorts a vehicle that contains asbestos-containing waste from an asbestos project shall:

(a) maintain proof of accreditation and the asbestos project permit and make it available, upon request, to the department during asbestos-containing waste handling activities;

(b) prior to waste pick up:

(i) obtain assurance from the asbestos project contractor/supervisor that the asbestos-containing waste is adequately wet;

(ii) confirm the asbestos-containing waste is properly packaged in leak-tight containers, or wrappings, except as provided in 40 CFR 61.150(a)(3);

(iii) confirm the contained or wrapped asbestos-containing waste is labeled with the name of the waste generator and the location at which the waste was generated;

(iv) ensure that any vehicle used to transport asbestos-containing waste during the loading and unloading of the waste is marked with signs conforming to the requirements of 40 CFR Part 61, subpart M;

(v) ensure that the waste shipment record form contains all information required by 40 CFR Part 61, subpart M, and record the asbestos project permit number on the form;

(vi) either deposit asbestos-containing waste at a licensed Class II or Class IV landfill facility as soon as practical, or, if asbestos-containing waste is not disposed of as soon as practical, store any asbestos-containing waste in a secure holding facility or location accessible only to asbestos project workers or asbestos project contractor/supervisors accredited by the department; and

(vii) retain responsibility for asbestos-containing waste until the waste is accepted by a licensed Class II or Class IV landfill; and

(c) retain the waste shipment record for at least two years.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing to adopt New Rule I because it provides certain transportation and disposal elements that were previously included in the manual and because transportation and disposal of asbestos-containing waste are included in the definition of "asbestos project" in 75-2-502, MCA. The department is proposing to remove the incorporation by reference of the manual from the rules because it included many requirements that were preempted by the OSH Act (see the reason for ARM 17.74.351), and the department is proposing to include many of the "non-OSHA" requirements from the manual in the existing rules and new rules, as well as including new provisions to further ensure that the transportation of asbestos-containing waste is as protective of human health and the environment as is reasonably possible.

Section (1) requires a person who transports, or escorts the transport of, asbestos-containing waste to be accredited by the department as an asbestos project worker or asbestos project contractor/supervisor. It is necessary that a department-accredited person be present at all times during the transportation of asbestos-containing waste because the additional training that is required for accreditation protects human health and the environment. If there is a vehicle accident or other mishap involving the transport of asbestos-containing waste, an accredited asbestos project worker or asbestos project contractor/supervisor would have the training to prevent the release of asbestos emissions or to manage a release of emissions. It is not necessary for the driver to be accredited, if the driver is escorted by an accredited person who is responsible for ensuring that all requirements are followed.

Section (2) requires that a person obtain an asbestos project transportation permit prior to transporting asbestos-containing waste from a facility. Section 75-2-502(3), MCA, defines "asbestos project" as including the transportation or disposal of asbestos-containing waste, and 75-2-511(2), MCA, states that a person may not conduct an asbestos project without a permit from the department. Therefore, the Legislature has mandated that an asbestos project permit be required for the transportation of asbestos-containing waste.

Section (3) clarifies the requirements of 40 CFR 61.150 and the "non-OSHA" requirements from Section 5.09 of the manual and imposes on the transporter the obligation to ensure that all NESHAP requirements are met. The proposed criteria are necessary to ensure safe handling standards for asbestos destined for disposal. The requirements are currently achievable with existing transportation and handling techniques and reflect many industry best practices already in use.

#### NEW RULE II ENCLOSURE OF ASBESTOS-CONTAINING MATERIAL

(1) A person may not conduct asbestos enclosure procedures for an asbestos project unless accredited by the department as an asbestos project worker or asbestos project contractor/supervisor.

(2) When conducting asbestos enclosure procedures for an asbestos project, a person shall:

(a) apply amended water to the ACM to reduce airborne asbestos concentrations;

(b) remove or repair loose or hanging ACM;

(c) ensure that the enclosure material is impact resistant and installed in a manner that provides an airtight barrier;

(d) ensure that the enclosed ACM is conspicuously marked or labeled to warn persons of its presence; and

(e) meet the requirements of ARM 17.74.357.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing to adopt an enclosure rule because it provides certain requirements that were previously included in the manual, and because enclosure is included in the definition of "asbestos project" in 75-2-502,

MCA. The proposed additions include many useful asbestos management standards or practical enclosure procedures from the related asbestos provisions of 40 CFR 763, Asbestos-Containing Materials in Schools. The additions are necessary to protect human health by establishing standards for sealing asbestos, which has the incidental benefit of furthering compliance with the existing subpart M work practice and emission standards. The requirements are currently achievable with existing asbestos-related sealing techniques and reflect many industry best practices already in use.

NEW RULE III ENCAPSULATION OF ASBESTOS-CONTAINING

MATERIAL (1) A person may not conduct asbestos encapsulation procedures for an asbestos project unless accredited by the department as an asbestos project worker or asbestos project contractor/supervisor.

(2) A person conducting asbestos encapsulation procedures for an asbestos project shall:

(a) apply amended water to the ACM to reduce airborne asbestos concentrations;

(b) remove or repair loose or hanging ACM;

(c) field-test encapsulants prior to their use by applying each encapsulant to a small area to determine how well the encapsulant works with the ACM to be encapsulated; and

(d) meet the requirements of ARM 17.74.357.

(3) Bridging and penetrating encapsulants must be applied to ACM according to the encapsulant manufacturer's specifications.

(4) Encapsulants must be applied in a manner that does not dislodge or disturb the ACM.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing to adopt an encapsulation rule because it provides certain requirements that were previously included in the manual, and because encapsulation is included in the definition of "asbestos project" in 75-2-502, MCA. The proposed additions include many useful asbestos management standards or practical encapsulation procedures from the related asbestos provisions of 40 CFR 763, Asbestos-Containing Materials in Schools. The additions are necessary to protect human health by establishing standards for effectively encapsulating asbestos, which has the incidental benefit of furthering compliance with the existing subpart M work practice and emissions standards. The requirements are currently achievable with existing covering or sealing techniques and reflect many industry best practices already in use.

NEW RULE IV REPAIR OF ASBESTOS-CONTAINING MATERIAL (1) A person may not conduct asbestos repair procedures for an asbestos project unless accredited by the department as an asbestos project worker or asbestos project contractor/supervisor.

(2) A person conducting asbestos repair procedures for an asbestos project

shall:

- (a) apply amended water to the ACM to reduce airborne asbestos concentrations;
- (b) remove or repair loose or hanging ACM;
- (c) ensure that the repaired ACM is sufficiently repaired to prevent the release of asbestos;
- (d) ensure that the repaired ACM is conspicuously marked or labeled to warn persons of its presence; and
- (e) meet the requirements of ARM 17.74.357.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing to adopt a repair rule because "repair" is included in the definition of "asbestos project" in 75-2-502, MCA. The proposed additions include many useful asbestos management standards or practical repair procedures from the related asbestos provisions of 40 CFR 763, Asbestos-Containing Materials in Schools. The additions are necessary to protect human health by establishing standards for effectively repairing asbestos, which has the incidental benefit of furthering compliance with the existing subpart M work practice and emission standards. The requirements are currently achievable with existing techniques and reflect many industry best practices already in use.

5. The rule proposed to be repealed is as follows:

17.74.303 EXCLUSIONS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8301, Administrative Rules of Montana. The department is proposing to repeal this rule for consistency with the asbestos NESHAP, 40 CFR 61, subpart M, which has been adopted by reference into the state's rules and which the department is proposing to continue to adopt by reference. 40 CFR 61.141 excludes regulation of renovations and demolitions in residential buildings having four or fewer dwelling units. Section 75-2-503(1), MCA, states that the rules adopted by the department to implement the Asbestos Control Act must be consistent with federal law. ARM 17.74.303 excludes from regulation a private homeowner conducting, on his own, an asbestos project within his own residence, but does not exclude from regulation asbestos projects in other residential buildings having four or fewer dwelling units. The department does not believe that rules that are more stringent than comparable federal laws necessarily are inconsistent with those laws. However, given limited department asbestos program resources, it is necessary for the department to limit the scope of facilities regulated under its asbestos program to those facilities regulated under Subpart M.

6. Concerned persons 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than May 12, 2011. To be

guaranteed consideration, mailed comments must be postmarked on or before that date.

7. David Rusoff, attorney, has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; openpit mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ David Rusoff BY: /s/ Richard H. Opper  
DAVID RUSOFF RICHARD H. OPPER, Director  
Rule Reviewer

Certified to the Secretary of State, April 4, 2011.