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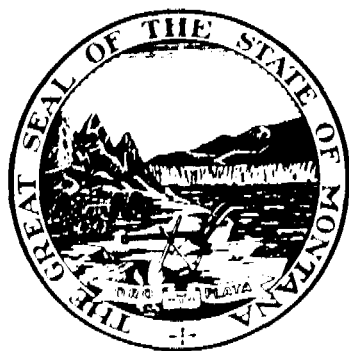
RESERVE

1 6 1993
OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

**DOES NOT
CIRCULATE**

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OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to traineeship requirements, fees, record retention, unethical conduct, complaints, disciplinary actions, testing procedures, and continuing educational requirements, and the adoption of new rules pertaining to notification, definitions, forms of bills of sale contracts and purchase agreements, and inactive status)	NOTICE OF PROPOSED AMENDMENT OF ARM 8.20.401, 8.20.402, 8.20.407, 8.20.408, 8.20.409, 8.20.411, 8.20.412, AND 8.20.501, AND THE ADOPTION OF NEW RULES PERTAINING TO NOTIFICATION, DEFINITIONS, FORM OF BILLS OF SALE, CONTRACT, AND PURCHASE AGREEMENTS, AND INACTIVE STATUS
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NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 25, 1992, the Board of Hearing Aid Dispensers published a notice of public hearing on the proposed amendment and adoption of the above-stated rules, at page 1284, 1992 Montana Administrative Register, issue number 12.

2. Due to inaccuracies in the original notice, a second notice of proposed rule amendments is now necessary to clarify the amendments to existing rules, and addition of new rules.

3. A public hearing was held on July 27, 1992, with oral comments received. Written comments were also accepted through July 23, 1992 with regard to that hearing. Further public comments will be accepted regarding this proposal as addressed below.

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

"8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS

(1) The licensed hearing aid dispenser (supervisor) will ~~shall:~~

(a) ~~peruse directly supervise~~ every fitting made by the trainee. The supervisor shall approve the selection of the ear mold, ~~and hearing aid, and shall approve the choice of which ear to fit prior to fitting.~~ The supervisor shall directly supervise during the trainee's first 90 days of the training period.

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

(6) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee in his training activities, in accordance with section 37-16-405, MCA.

(7) The supervisor's name, business phone number, and title "supervisor" shall be included on all written materials

distributed by a trainee, if such materials include the trainee's name."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-301, 37-16-405, MCA

REASON: The proposed amendment will require direct supervision of a trainee for the first 90 days of the training period, in compliance with 1991 Legislative changes to Title 37, chapter 16, MCA, and will allow customers an opportunity to speak directly to the trainee's licensed supervisor.

"8.20.402 FEES (1) The fees shall be as follows:

(1) (a) Application fee (includes initial written and practical examination	\$150.00
(b) Re-examination--written	65.00
(c) Re-examination--practical (includes renewal of trainee license)	55.00
(d) Original license (upon passing examinations)	100.00
(e) Renewal active license	125.00
(f) Renewal inactive license	<u>60.00</u>
(g) Copies of law and rules	5.00

~~(2) The application fee is refundable within the first 60 days after application, with \$50.00 being retained for board administrative costs.~~

(2) All other fees payable to the board are nonrefundable."

Auth: Sec. 37-1-134, 37-16-202, MCA; IMP, Sec. 37-1-134, 37-16-402, 37-16-405, 37-16-407, MCA

REASON: The proposed amendment will set a fee for inactive license renewal and will allow for nonrefundability of fees, set the fees commensurate with program area costs for processing of applications and preparing for examinations.

"8.20.407 RECORD RETENTION (1) All hearing aid dispensers shall maintain all hearing tests and records indefinitely on all persons to whom he sells hearing aids.

(2) will remain the same."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-411, MCA

REASON: The proposed amendment will clarify record-keeping requirements for all customers.

"8.20.408 UNETHICAL CONDUCT (1) For the purpose of section 37-16-411~~(1)~~, MCA, unethical conduct shall include, but not be limited to, the following:

~~(1) (a) It shall be considered unethical conduct to the use in advertising or otherwise, of the words "prescribe" or "prescription" or any abbreviation, variation or derivative thereof or symbol therefore in referring to or in describing any industry product unless such product was made pursuant to a prescription given by a physician; provided, however, that the word "prescription" or words of similar meaning may be used to refer to or describe an industry product which was specifically made to compensate for the hearing loss of a~~

particular purchaser in accordance with the directions furnished by a qualified person other than a physician when such words are accompanied by a clear and conspicuous disclosure that the "prescription" was not based on a medical examination and that the person issuing it was not a physician.

~~(2) It shall be unethical conduct to engage in any of those methods of advertising that are prohibited by rules 1 through 17 of the Trade Practice Rules of the federal trade commission as adopted and promulgated on July 20, 1965 and as amended to date.~~

~~(a) Because of the length of these rules and because the cost of publishing them in entirety in this rule would be prohibitive, they are incorporated herein by this reference. The full text of these Trade Practice Rules, may be obtained from the Board of Hearing Aid Dispensers, 1424 9th Avenue, Helena, Montana 59626-0407.~~

~~(3) Any person, firm or corporation residing outside of the state of Montana, who may be engaging in the business of distributing hearing aids within this state or in the business of advertising within this state the sale of hearing aids shall be required by this board to comply with these standards of ethical conduct as well as to comply with the governing statutes and rules of the board.~~

~~(4) (b) It shall be considered unethical conduct for a hearing aid dispenser to initiate initiating contact by telephone, without the dispenser first identifying himself by name and company he represents. Nor shall he make or making more than one such contact unless further contact is specifically requested by the client. In the case of a person who already has a hearing aid still under guarantee, it shall be unethical for a hearing aid dealer other than the dealer who sold the aid to that person to contact more than once unless specifically requested by the person to make contact.~~

~~(c) contacting a person who already has a hearing aid still under warranty, more than once, unless contact is made by the original dispenser, or further contact is specifically requested by the client.~~

~~(5) (d) It shall be considered unethical conduct for a hearing aid dispenser to use of a contract which does not specify on its face the time limit between the time of signing the contract and the time of delivery. Such time limit shall be prominently displayed on the face of the contract and the dealer must orally inform the client of this provision in the contract prior to the consummation of such contract. comply with the board's rules on contract content.~~

~~(6) (e) It shall be understood that any hearing aid dispenser who shall engage engaging in a home solicitation sale shall be expected and subject to without complying with the statutory requirements of the Door to Door Sales Act as set out in section 30-14-501, et seq., MCA.~~

(2) Any person, firm or corporation located outside the state of Montana, who engages in the business of distributing or advertising of hearing aids within this state, shall comply with all applicable statutes and rules of the board."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-411, MCA

REASON: The proposed amendment will delete the Federal Trade Commission Trade Practice Rule reference, as these rules were deleted in 1977, and will re-number and re-word the sections for clarity and compliance with statutory requirements.

"8.20.409 COMPLAINTS (1) Complaints to this board will be forwarded to the firm ~~or dealer and dispenser~~ involved ~~and this dealer or in the complaint.~~ The firm and dispenser will be given 30 days to ~~resolve~~ respond to the complaint. The complainant is also to be so informed."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-411, 37-16-412, MCA

REASON: The proposed amendment will use the term "dispenser" rather than dealer for consistency with the statute and will require both dispenser and firm to respond to the complaint in a timely manner.

"8.20.411 DISCIPLINARY ACTIONS - FINES (1) The board reserves the ~~discretion right~~ to take appropriate disciplinary action provided for in section 37-1-136, ~~and 37-16-411, and 37-16-414, MCA,~~ against a licensee who has violated any law or rule of the board, and to decide on a case by case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:

(a) through (2)(f) will remain the same.

(g) ordering the licensee to successfully complete appropriate professional training; ~~or~~

(h) imposition of a fine or fines not to exceed \$500 per incident of violation-1

(i) ordering the licensee to make restitution to the purchaser or his estate, of the purchase price of a hearing aid or related device, minus the dispensing fee, in accordance with 37-16-414, MCA.

~~(i) (3) Fines~~ will be determined by the board on an individual ~~per case-by-case~~ basis.

(ii) and (iii) will remain the same but will be renumbered (a) and (b).

(3) will remain the same but will be renumbered (4)."

Auth: Sec. 37-1-136, 37-16-202, MCA; IMP, Sec. 37-16-411, 37-16-414, MCA

REASON: The proposed amendment will add the disciplinary action of restitution as allowed by 37-16-414, MCA, mandated by the 1991 Legislature.

"8.20.412 MINIMUM TESTING AND RECORDING PROCEDURES

(1) ~~The minimum testing procedures under section 37-16-411(15), MCA, shall include the following:~~ The following tests shall be performed as specified:

(a) ~~Air~~ conduction tests ~~must shall~~ be made at conducted bilaterally in accordance with American national standards institute (ANSI) standard frequencies of 250-500-1000-2000-4000-6000 hertz. ~~Appropriate masking must shall~~ be used in ~~administering these tests.~~

(b) ~~Speech~~ conduction tests ~~must shall~~ be made ~~conducted~~ bilaterally, if appropriate, on every client at in accordance with ANSI standards at 500-1000-2000-4000 hertz. Proper ~~Appropriate~~ masking ~~must shall~~ be applied while administering these tests used.

(c) Speech reception threshold and discrimination testing ~~must shall~~ be conducted in an a quiet environment not to exceed 55 dBA ambient noise level consistent with OSHA standards, with appropriate masking used and measurement of user discomfort level.

~~(d) Measurements of user discomfort levels must be taken.~~

(2) will remain the same.

(3) Reports of audiometric test results on the patient's audiogram for the purpose of fitting and dispensing hearing aids shall include the following information:

(a) ~~Name and age of the patient client;~~

(b) ~~Date of the test;~~

(c) ~~Name and license number of the person giving performing the test; and~~

(d) ~~Whether the test was calibrated in SPL or HTL.~~

(4) ~~All Audiometers used in testing the hard of hearing must shall~~ be calibrated to ANSI standards once a year. A certified copy of an electronic audiometer calibration made within the past twelve months ~~must shall~~ be submitted to the board by the licensee ~~no later than on~~ June 30 annually."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-202, 37-16-411, MCA

REASON: The proposed amendment will clarify that tests must be conducted bilaterally on every client. The OSHA standard reference is deleted, as OSHA does not address minimum noise standards for speech testing. Audiometer calibration reporting is standardized for ease of monitoring.

"8.20.501 CONTINUING EDUCATIONAL REQUIREMENTS (1) will remain the same.

(2) Continuing education courses recognized by the board pertaining to fitting and dispensing hearing aids include those sponsored by the Montana hearing aid society, the ~~National Hearing Aid Society~~, the National institute of for hearing instruments studies, the American speech-language hearing association, the American conference of audioprosthology, the Montana speech and hearing association, college courses, and other such programs approved by the board.

(3) A dispenser who is first licensed within the ~~12~~ six months immediately preceding the annual renewal date will not be required to meet the continuing education requirements during that ~~12~~ six month period.

(4) through (7) will remain the same."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-404, MCA

REASON: The proposed amendment will delete the reference to the National Hearing Aid Society, which does not offer continuing education courses, and lower the grace period for

waiver of the continuing education requirement from 12 to six months, to ensure properly trained and updated licensees for the protection of the public.

3. The proposed new rules will read as follows:

"I NOTIFICATION (1) The board will provide copies of all proposed amendments and new rules noticed under the Administrative Procedure Act, to all licensed hearing aid dispensers and trainees."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-202, MCA

REASON: The proposed new rule will ensure all licensees and trainees are made aware of and have an opportunity to comment on any amendments or new rules proposed by the board.

"II DEFINITIONS (1) "Related devices" means those parts, attachments, or accessories that are sold with a hearing aid by a licensed hearing aid dispenser or trainee, and includes assistive devices of all types if sold by a licensee, but does not include general merchandise items, such as cleaners, cords or batteries that are commonly available at most retail stores.

(2) "Permanent place of business" means the headquarters or home office of the company, corporation or franchise offices which are considered to be permanent by the person or persons in charge of the company, corporation or franchise office, and who also have authority concerning hiring and firing of employees, as well as financial responsibility for the company, and employee liabilities.

(3) "Designated licensee in charge" means the licensed dispenser in charge of the permanent place of business.

(4) "Thirty day cancellation period" means a total of 30 days of actual possession of the hearing aid(s) by the purchaser. If the aid is returned during the 30 day time frame for service, repair or re-make, the time period the aid is out of the purchaser's possession will not count against his 30 day total.

(5) "Defective in fit or function" means a case, shell, component, or circuit defect that prevents the purchaser from wearing and using the hearing aid.

(6) "Dispensing fee" includes, but is not limited to, hearing tests, delivery, counselling, travel, telephone, shipping and handling, postage, hearing aid options, materials, overhead costs, equipment maintenance and calibration."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-301, 37-16-304, 37-16-414, MCA

REASON: The proposed new rule will define terms and phrases used in statutes and rules as interpreted by the board, to provide guidelines to licensees on allowable conduct.

"III REQUIREMENTS FOR BILL OF SALE, CONTRACT, PURCHASE AGREEMENT AND DELIVERY VERIFICATION FORM (1) The following information shall be placed on all bills of sale, contracts,

and purchase agreements, in addition to those items required by section 37-16-303, MCA:

(a) purchaser has a 30-day cancellation or refund period beginning on the date of delivery, but not including periods of return for service, repair or re-make;

(b) refunds will be made if hearing aids are defective in fit or function, or dispenser has failed to correct a problem in fit or function;

(c) name and address of the board in addition to the statement required in section 37-16-403, MCA;

(d) the specific time limit between the time of signing the contract and the time of delivery, to be prominently displayed on the face of the contract, and orally presented to the client prior to signing of the contract;

(e) whether or not dispenser will retain a dispensing fee, which may be up to 20 percent of the total sale.

(2) A delivery verification form stating the date of delivery and signed by the purchaser shall be obtained at the time of delivery by the dispenser. The delivery verification form shall also restate the terms of the 30-day refund or cancellation period. Dispensers have the option to use contracts with the required information, signed at delivery, in lieu of the separate delivery verification requirement."

Auth: Sec. 37-16-202, MCA; IME, Sec. 37-16-303, MCA

REASON: The proposed new rule will set guidelines for the form of bills of sale, contract, purchase agreements and delivery verification forms to standardize licensee's services, and inform the public as to their rights in purchasing hearing aids.

"IV INACTIVE STATUS (1) A licensed dispenser requesting inactive status shall certify his intention to the board on the annual renewal form.

(2) Inactive licensees shall not be required to meet the continuing education requirements under section 37-16-407, MCA.

(3) Inactive licensees shall keep the board office informed of their current mailing address.

(4) Inactive licensees reactivating their license shall submit a minimum of 10 hours of additional formal training or continuing education to be approved by the board, which shall not include on-the-job experience."

Auth: Sec. 37-16-202, MCA; IME, Sec. 37-16-407, MCA

REASON: The proposed new rule will delineate procedures for inactive licensees, and require 10 hours of continuing education to reactivate the license.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Hearing Aid Dispensers, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., March 11, 1993.

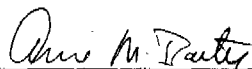
5. If a person who is directly affected by the proposed amendments and adoptions wishes to express his data, views or

arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Hearing Aid Dispensers, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., March 11, 1993.

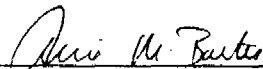
6. If the board receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 11 based on the 110 licensees in Montana.

BOARD OF HEARING AID DISPENSERS
BYRON RANDALL, CHAIRMAN

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 1, 1993.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
repeal of rules pertaining to	)	THE PROPOSED REPEAL OF RULES
the 1985 and 1986 Federal	)	PERTAINING TO THE 1985 AND
Community Development Block	)	1986 FEDERAL COMMUNITY
Grant Program and the proposed	)	DEVELOPMENT BLOCK GRANT
adoption of a new rule for the	)	PROGRAM AND THE PROPOSED
administration of the 1993	)	ADOPTION OF A NEW RULE
Federal Community Development	)	PERTAINING TO THE ADMINIS-
Block Grant Program	)	TRATION OF THE 1993 FEDERAL
	)	COMMUNITY DEVELOPMENT BLOCK
	)	GRANT (CDBG) PROGRAM

TO: All Interested Persons:

1. On March 10, 1993, at 2:30 p.m., a public hearing will be held in the large downstairs conference room at the Department of Commerce Building, 1424 - 9th Avenue, Helena, Montana, to consider the repeal and adoption of the above-stated rules.

2. ARM 8.94.3701 and 8.94.3702 appear at pages 8-3429 and 8-3430, Administrative Rules of Montana. The authority and implementing section for these rules is 90-1-103, MCA. These rules are being repealed because all of the grants awarded under the 1985 and 1986 program years have been completed and closed out. Therefore, these rules are no longer necessary.

3. The proposed new rule will read as follows:

"I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1993 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1993 Application Guidelines and the Montana Community Development Block Grant Program, 1993 Grant Administration Manual published by it as rules for the administration of the 1993 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

- (a) the policies governing the program,
- (b) requirements for applicants,
- (c) procedures for evaluating applications,
- (d) procedures for local project start up,
- (e) environmental review of project activities,
- (f) procurement of goods and services,
- (g) financial management,
- (h) protection of civil rights,
- (i) fair labor standards,
- (j) acquisition of property and relocation of persons displaced thereby,
- (k) administrative considerations specific to public facilities, housing rehabilitation and neighborhood revitalization, and economic development projects,
- (l) project audits,

(m) public relations, and
(n) project monitoring.
(3) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-1-103, MCA; IMP, Sec. 90-1-103, MCA

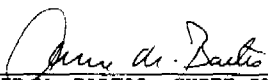
4. It is reasonably necessary to adopt this rule because the federal regulations governing the states' administration of the 1993 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than March 11, 1993.

6. Richard M. Weddle will preside over and conduct the hearing.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 1, 1993.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Transportation	)	PROPOSED AMENDMENT OF ARM
	)	10.64.301 DEFINITIONS,
	)	10.64.354 BUS CHASSIS,
	)	10.64.355 BUS BODY,
	)	10.64.356 SPECIAL EDUCATION
	)	VEHICLE, THE REPEAL OF
	)	10.64.357 LP GAS MOTOR FUEL
	)	INSTALLATION, 10.64.601
	)	GENERAL, 10.64.602 APPLICATION,
	)	10.64.603 SPECIAL EQUIPMENT AND
	)	NEW RULES I, II, III

To: All Interested Persons

1. On March 18, 1993 at 2:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held at the Board of Public Education offices 2500 Broadway, Helena, in the matter of the amendment of ARM 10.64.301 Definitions, 10.64.354 Bus Chassis, 10.64.355 Bus Body, 10.64.356 Special Education Vehicle, New rules I, II, III and repeal of 10.64.357 LP Gas Motor Fuel Installation, 10.64.601 General, 10.64.602 Applications, 10.65.603 Special Equipment.

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

10.64.301 DEFINITIONS (1) will remain the same.

~~(2) But for certain noted exceptions, the minimum standards which follow apply to all types of school buses:~~

(a) A Type "A" school bus is a ~~(i)~~ conversion or body constructed upon a van-type compact truck or a front-section vehicle, with a gross weight rating of 10,000 pounds or less, designed for carrying more than 10 persons.

(b) A Type "B" school bus is a ~~(i)~~ conversion or body constructed and installed upon a van or front-section vehicle chassis, or stripped chassis, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. ~~Most Part~~ of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

(c) A Type "C" school bus is a ~~(i)~~ body installed upon a flat back cowl chassis with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. All of the engine is in front of the windshield and the entrance door is behind the front wheels.

(d) A Type "D" school bus is a ~~(i)~~ body installed upon a chassis, with the engine mounted in the front, midship, or rear, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. The engine may be

behind the windshield and beside the driver's seat; it may be at the rear of the bus, behind the rear wheels, or midship between the front and rear axles. The entrance door is ahead of the front wheels.

AUTH: Sec. 20-2-121 IMP, Sec. 20-10-111

I INTERPRETATIONS (1) Standards for school buses in Montana are adapted in part from the 1990 National Standards for School Buses and Operations as recommended by the Eleventh National Conference on School Transportation (NCST). The interpretation committee of the NCST occasionally issues an interpretation on one or more of its recommended standards. The interpretations made by the NCST interpretation committee shall be the official interpretation of the corresponding Montana standard unless that interpretation is specifically redefined or pre-empted by a corresponding Montana standard, law or regulation.

AUTH: Sec. 20-2-121 IMP, Sec. 20-10-111

II REPLACEMENT PARTS (1) The standards for school buses in Montana apply to all new school buses to be used in Montana. Although it is recommended that used school buses be re-equipped with parts and supplies that meet the construction standards as they are replaced through periodic maintenance and repair, it is not intended that the requirements of these standards preclude the use of replacement parts or supplies that do not meet these higher standards when said parts and supplies are not readily available for emergency and/or roadside repairs. Further, it is not intended that the use of such regular standard parts, because of the lack of ready availability, should incur increased liability to the operator or district should damages or risk occur as a result of the use or failure of that part or supply when such district or operator has acted in good faith in making the emergency and/or roadside repair(s). If emergency and/or roadside repairs are made with regular standards parts, or supplies, it is recommended that said parts or supplies be replaced by parts or supplies which meet or exceed the standards for school buses in Montana within sixty (60) days.

AUTH: Sec. 20-2-121 IMP, Sec. 20-10-111

10.64.354 BUS CHASSIS (1) The board of public education adopts and incorporates for bus chassis construction by reference herein the 1995--1990 National Minimum Standards for School Buses, (2) with the following changes and/or additions:

(a) Electrical system
(bi) Change paragraph 2. heading to: "Generator---or Alternator"

(*A) Amend paragraph 2.a. to: "All Type A buses and Type B buses up to 15,000 lbs GVWR shall have a minimum of 80 ampere per hour alternator."

~~(iiB) Type C and D buses shall have a generator or alternator with a minimum rating of at least 130 ampere (in accordance with Society of Automotive Engineers rating) with minimum charging of 30 ampere at manufacturer's recommended engine idle speed (12-volt system) and shall be ventilated and voltage controlled and, if necessary, current controlled. Amend paragraph 2.b. to: "Type B buses over 15,000 lbs GVWR and all C and D buses shall be equipped with a heavy-duty truck or bus type alternator meeting SAE J 180; having a minimum output rating of 130 amperes, alternator shall be capable of producing a minimum of 50 percent of its maximum rated output at the engine manufacturer's recommended idle speed."~~

~~(iiiC) Amend paragraph 2.c. to: "Type A, buses and Type B, buses up to 15,000 lbs GVWR E--and--D--buses, equipped with an electrical power lift, shall have a minimum of 130 ampere per hour alternator."~~

(b) Exhaust System

(i) Add to paragraph 1.: "Entire system shall be free of leaks."

(c) Frame

(i) Add as paragraph 6.: "There shall be no trailer hitches, ball or pin type, attached to buses."

(d) Heating System, Provision for

(i) Add as paragraph 2.: "Heater hose in the engine compartment and between the engine and the driver shut off, or the first body heater, whichever comes first, shall be armored or reinforced hose such as Goodyear Hi Miler, or equivalent."

(e) Passenger Load

(i) Amend paragraph 3, last sentence to: "The superintendent of public instruction shall, in turn, transmit such ratings to each other state agency responsible for development or enforcement of state standards for school buses."

(f) Tires and Rims

(i) Add as paragraph 6.: "Tread depth 4/32" on front and 2/32" on rear will be minimum. Retreads are allowed on rear wheels only."

(32) The 1985-1990 Revised Education-Edition of the National Minimum-Standards for School Buses, adopted by reference in subsection (1) of this rule, is a nationally recognized model setting forth minimum standards and requirements for school bus construction. A copy of the 1985-1990 National Minimum-Standards for School Buses may be obtained from the Office of Public Instruction, Capitol Station, Helena, MT 59620, at cost plus postage and handling. A copy may also be obtained by writing the National Safety Council, 444 North Michigan Avenue, Chicago, IL 60611.

(3) The changes in this section shall be effective August 15, 1993.

AUTH: Sec. 20-2-121

IMP, Sec. 20-10-111

10.64.355 BUS BODY (1) The board of public education adopts and incorporates for bus body construction by reference herein the

1985-1990 National Minimum Standards for School Buses--(2) with the following changes and/or additions:

(a) Color

(i) Repunctuate paragraph 2. to: "The body exterior paint trim, bumper, lamp hoods, emergency door lettering, and arrow, shall be black."

(b) Changes

(i) No changes shall be made in the construction of a vehicle used for the transportation of school children which are not approved by the Montana board of public education, by and with the advice of the Montana highway patrol and the superintendent of public instruction.

(b) Emergency Equipment

(i) Amend paragraph 1.a. to: "The bus shall be equipped with at least one pressurized, five-pound or greater, dry chemical fire extinguisher complete with hose, to meet Underwriters Laboratories, Inc., approval. Extinguisher must be mounted in a bracket, located in the driver's compartment and readily accessible to the driver and passengers. A pressure gauge shall be mounted on the extinguisher and easily read without moving the extinguisher from its mounted position."

(ii) Add paragraph 1.c. as: "A Halon extinguisher may be carried in addition to the dry chemical extinguisher."

(iii) Add to paragraph 3.a.: "This standard shall apply retroactively to all Montana school buses."

(c) Heaters

(i) Renumber paragraphs 7.-11. as 8.-12. and insert as paragraph 7.: "Heater hose in the engine compartment and between the engine and the driver shut-off or the first body heater, whichever comes first, shall be armored or reinforced hose such as Goodyear Hi Miler, or equivalent."

(ad) Insulation

(i) Ceiling and walls shall be insulated with proper material to deaden sound and to reduce vibrations to a minimum. If thermal insulation is specified also, it shall be of fire-resistant material of type approved by Underwriters Laboratories, Inc.

(ii) Amend paragraph 2. to: "Floor insulation is required. It shall be either 5-ply, at 5/8 inches thick and/or it nominal 19/32 inches thick plywood, or a material of equal or greater strength and insulation R value and shall equal or exceed properties of exterior-type softwood plywood, C-D Grade as specified in standard issued by U. S. Department of Commerce. (See Appendix.) When plywood is used all exposed edges shall be sealed."

(e) Lamps and Signals

(i) Amend paragraph 3.a. to: "Definition: School bus red signal lamps are alternately flashing lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform other users of the roadway that such vehicle is stopped on roadway to take on or discharge school children."

(ii) Amend Paragraph 3.b. to: "School bus amber signal lamps are alternately flashing lamps mounted horizontally both front and

rear, intended to identify a vehicle as a school bus and to inform other users of the roadway that such vehicles are about to stop on the roadway to take on or discharge school children."

(iii) Amend paragraph 3.b.(4) to: "Red lamp shall flash at any time the stop signal arm is extended. This provision shall apply retroactively to all Montana school buses effective August 15, 1993. (Reference section on Stop Signal Arm.)"

(iv) Renumber paragraph 4.b. as 4.c. and insert paragraph 4.b. as: "Signal lamps on Types B,C, and D buses shall include a left and right side mounted turn signal lamp. They shall be located midway from the front axle and the rear of the bus and approximately twelve (12) inches from the bottom of the side windows. This lamp will be a standard manufacturer's design for this purpose and will have an amber color lens."

(f) Stop Signal Arm

(i) Add to paragraph 1.: "The stop signal arm is a required retrofit of all school buses, effective July 1, 1987. (Reference section on lamps and signals 3.b.(4))"

(g) Warning Statements

(i) After section titled "Ventilation", add as a new section titled "Warning Statements": "1. A school may choose to add one or both of the following warning statements to the rear of the bus. These statements must be located either between the upper and lower glass panes on the rear emergency exit door, or equivalent location if rear door is absent, and/or below the rear tail/stop lights on the right side. a. 'This Bus Stops At All R.R. (or Railroad) Crossings.' (An equivalent message may be substituted, not to exceed total number of letters and spaces of original.) b. 'STOP--Illegal to Pass When Overhead Red Lights Are Flashing' (An equivalent message may be substituted, not to exceed total number of letters and spaces of original.) 2. The lettering shall conform to 'series B' of Standard Alphabets for highway signs, shall be black, and shall be sized so the message will fit the available space, but not to exceed two inches".

(32) The 1985-1990 Revised Edition of the National-Minimum Standards for School Buses adopted by reference in subsection (1) of this rule is a nationally recognized model setting forth minimum standards and requirements for school bus construction. A copy of the 1985-1990 National-Minimum Standards for School Buses may be obtained from the office of public instruction, Capitol Station, Helena, MT 59620, at cost plus postage and handling. A copy may also be obtained by writing the National Safety Council, 444 North Michigan Avenue, Chicago, IL 60611.

(a3) ~~This incorporation will. The changes in this section shall be effective February 1, 1987, August 15, 1993 except "stop signal arm," page 27 of the National-Minimum Standards for School Buses, will be effective July 1, 1987.~~

AUTH: Sec. 20-2-121

IMP: Sec. 20-10-111

10.64.356 SPECIAL-EDUCATION VEHICLE-SPECIALLY EQUIPPED SCHOOL BUS STANDARDS (1) The board of public education adopts and incorporates for special-education-vehicle-standards for specially education-vehicle equipped school bus construction by reference herein the 1985-1990 National Minimum-Standards for School Buses- (2) with the following deletions changes and/or additions:
(i) ~~---Delete all reference to MPV (Multi-Purpose-Passenger Vehicles)---~~

(ii) ~~---Delete third and fourth introduction paragraphs and add the following wording:---By federal regulation,---buses,---including school-buses,---are defined as vehicles designed to carry ten or more passengers.---The rated capacity of the bus before conversion to---a---special-education-unit---(bus)---is---the---capacity---used---for reimbursement---~~

(a) Introduction

(i) Add to the second paragraph of the introduction: "The rated capacity of the bus before conversion to a specially equipped unit (bus) is the capacity used for reimbursement."

(ii) Amend the first sentence of the third paragraph of the introduction to: "The following standards address modifications as they pertain to school buses that, with standard seating arrangement prior to modification, would accommodate eleven or more persons (including the driver)."

(b) General Requirements

(i) Amend paragraph 1. to: "School buses designed for transporting students with special transportation needs shall comply with Montana School Bus Standards and with Federal Motor Vehicle Safety Standards applicable to their GVWR category."

(c) Seating Arrangements

(i) Add as paragraph 2.: "This seating arrangement provision shall apply to all new specially equipped school buses, and older buses modified or retrofitted to carry wheelchairs/mobile seating device(s), and any older specially equipped buses whose wheelchair/mobile seating device positions are retrofitted or modified, after August 15, 1993. This provision shall apply retroactively to all specially equipped school buses after August 15, 1998."

(d) Securement System for Mobile Seating Device/Occupant

(i) Add as paragraph 13.: "These securement systems for mobile seating device/occupant provisions shall apply to all new specially equipped school buses, any older buses modified or retrofitted to carry wheelchair/mobile seating device(s), and any older specially equipped buses whose wheelchair/mobile seating device positions are retrofitted or modified, after August 15, 1993. These provisions shall apply retroactively to all specially equipped school buses after August 15, 1998."

(32) The 1986-1990 Revised Edition of the National-Minimum Standards for School Buses adopted by reference in subsection (1) of this rule is a nationally recognized model setting forth standards and requirements for school bus construction. A copy of the-1985 1990 National-Minimum-Standards for School Buses may be obtained from the Office of Public Instruction, Capitol Station,

Helena, MT 59620, at cost plus postage and handling. A copy may also be obtained by writing the National Safety Council, 444 North Michigan Avenue, Chicago, IL 60611.

(3) The changes in this section shall be effective August 15, 1993.

AUTH: Sec. 20-2-121 IMP: Sec. 20-10-111

10.64.357 LP GAS MOTOR FUEL INSTALLATION (IS HEREBY REPEALED)

AUTH: Sec. 20-2-121 IMP: Sec. 20-10-111

III. ALTERNATE FUEL POWERED SCHOOL BUSES (1) The industry serving the alternate fuel market is rapidly emerging and technologies and standards which guide said industry and market are still being debated and written. There not being a great demand for alternately fueled school buses in Montana at the time of this writing, Montana has taken a watch-and-learn stand regarding standards for alternately fueled school buses.

(2) Alternate fuel powered school buses are permitted in Montana. School districts, transportation contractors, and other entities which desire to use alternate fuels (other than gasoline or diesel) in their school buses which will transport students from home to school, and from school to home, and related events, shall use construction and/or conversion standards which are current and appropriate for desired fuel and related system.

(3) The school bus industry is generally held to a higher standard of safety regarding construction of its school buses. It should be noted that, even with the lack of formal standards which specifically address the alternate fuel option, it is the intent of those whose commission it is to formulate standards that the same extra level of safety be incorporated into the construction or conversion of the alternately fueled school bus.

(4) Currently known standards include, but are not limited to, publications from the National Fire Protection Association, Inc.

(a) Pamphlet No. 58 is in reference to LP Gas powered vehicles.

(b) Pamphlet No. 52 is in reference to Natural Gas powered vehicles.

(5) Alternate fuel powered school buses may be subject to special permits and/or fees, or taxes.

(6) Any district, transportation contractor, or other entity which wishes to convert an existing school bus, or obtain a new bus which will use an alternate fuel shall first contact the Montana Office of Public Instruction to be appraised of the latest industry and legal standards which may apply. Said school bus shall then be built or converted according to said referenced standards.

AUTH: Sec. 20-2-121 IMP: Sec. 20-10-111

Text of rules proposed for repeal can be found on pages 10-997 and 10-998 of the Administrative Rules of Montana.

10.64.601 GENERAL (IS HEREBY REPEALED)

AUTH: Sec. 20-2-121 IMP: Sec. 20-10-111

10.64.602 APPLICATION (IS HEREBY REPEALED)

AUTH: Sec. 20-2-121 IMP: Sec. 20-10-111

10.64.603 SPECIAL EQUIPMENT (IS HEREBY REPEALED)

AUTH: Sec. 20-2-121 IMP: Sec. 20-10-111


10.64.604 INSPECTIONS (IS HEREBY REPEALED)

AUTH: Sec. 20-2-121 IMP: Sec. 20-10-111

3. The board is proposing the amendments, repeals and new rules to update the rules with the current edition of National Standards for School Buses dated 1990.

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 Bill Thomas, Chairperson of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than March 15, 1993.

5. A member of the Board of Public Education, 2500 Broadway, Helena, MT 59620, has been designated to preside over and conduct the hearing.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 2/1/93.

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

In the matter of the amendment of)	NOTICE OF PUBLIC
rules 16.42.302-307, 309-311,)	HEARING FOR PROPOSED
313-317, 321-322, 401-402, and 404-))	AMENDMENT OF RULES
405 dealing with asbestos abatement)	
requirements; permit, accredita-)	
tion, and course fees; and remedies))	
for violations.)	(Occupational and Radiological Health)

To: All Interested Persons

1. On March 5, 1993, at 9:30 a.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 clarify the existing rules and definitions, impose additional requirements for private homeowners, allocate responsibilities for acquisition of asbestos abatement permits, increase fees for asbestos abatement permits and establish standards for enforcement.

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

16.42.302. DEFINITIONS For purposes of this subchapter and unless otherwise indicated, the following terms shall have the meanings or interpretations given to them in this section and must be used in conjunction with the definitions contained in 75-2-502, MCA.

(1)-(4) Remain the same.

(5) "Asbestos abatement supervisor" means any individual who provides supervision and direction to workers engaged in asbestos removal, encapsulation, enclosure and/or repair. Asbestos abatement supervisors may include individuals with the position title of foreman, working foreman, competent person, construction superintendent, or leadman as designated in collective bargaining agreements.

(6)-(10) Remain the same.

(11) "Asbestos abatement worker" means any individual other than those listed in subsections (5), and (7)-(10) and not otherwise excluded from regulation under ARM 16.42.303 who is engaged in an asbestos abatement project and who is qualified to transport and dispose of asbestos-containing material.

(12) Remains the same.

(13) "Competent person" means the same as the definition of competent person as cited in 29 CFR 1926.58, 1991 edition.

(13) (14) "Demolition" means the wrecking or removal, taking out of any load-supporting structural component member of a

~~building or the wrecking, removal, or facility together with any related handling of related building or structural materials operations or the intentional burning of any facility.~~

(14)-(20) Remain the same but are renumbered (15)-(21).

~~(21)-(22)~~ "Response action" means a method including removal, encapsulation, enclosure, repair, operation, and maintenance that protects human health and the environment from friable asbestos-containing building materials.

(22)-(23) Remain the same but are renumbered (23)-(24).

~~(25) "Structural member" means any load supporting member of a facility such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload supporting walls.~~

(24)-(27) Remain the same but are renumbered (26)-(29).

~~(30) The department hereby adopts and incorporates herein by reference the definition of "competent person" contained in 29 CFR 1926.58, 1991 edition, which specifies requirements for persons working with asbestos. A copy of the definition can be obtained from the occupational and radiological health bureau at the Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, MT 59620.~~

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

16.42.303 EXCLUSIONS (1)-(2) Remain the same.

~~(3) A private homeowner as described in subsection (1) must use an accredited asbestos abatement worker or an accredited asbestos abatement contractor or accredited asbestos abatement supervisor to perform the transportation and disposal operations described in subsection (2).~~

~~(4) A private homeowner as described in subsection (1) must obtain an asbestos abatement project permit from the department for transportation and disposal operations as described in subsection (2).~~

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

16.42.304 EVALUATION OF ASBESTOS HAZARDS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (1) In a structure other than a LEA school building, if the owner or other similarly placed person in charge of the structure chooses to evaluate the asbestos hazard in the structure through the use of an Montana accredited asbestos inspector, the asbestos hazard must be evaluated by the a Montana accredited asbestos inspector according to the methods contained in 40 CFR 763.85, 1988~~91~~ edition, (inspections and reinspections); 40 CFR 763.86, 1988~~91~~ edition, (sampling); 40 CFR 763.87, 1988~~91~~ edition, (analysis); and 40 CFR 763.88, 1988~~91~~ edition, (assessment).

(2)(a)-(e) Remain the same.

~~(f) Analysis for air samples or bulk samples required by this rule is to be done by a laboratory accredited by the American Industrial Hygiene Association (AIHA) or a laboratory which participates in the AIHA Proficiency Analytical Testing (PAT) program and has received a "proficient" rating for asbestos phase contrast microscopy (PCM) samples. For the sampling and sampling analysis, a quality assurance program~~

must be implemented as described in the NIOSH 7400 method or in accordance with 29 CFR 1926.58, Appendix A - Quality Control Procedure, 1991 edition. Quality assurance records and PAT results must be submitted, upon request, to the Montana department of health and environmental sciences, occupational and radiological health bureau. Analysis for air samples is to be done by phase contrast microscopy (PCM) utilizing the National Institute of Occupational Safety and Health (NIOSH) 7400 method published in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987.

(g) Analysis for air samples ~~or~~ bulk samples is to be done by a laboratory approved by EPA ~~or~~ the National Institute for Standards and Technology (NIST).

(3) The department hereby adopts and incorporates herein by reference 40 CFR 763.85 through 40 CFR 763.88, and 29 CFR 1296.58, Appendix A - Quality Control Procedure, 198891 edition, which pertain to, respectively, methods of inspections and reinspection, sampling, analysis, and assessment of asbestos standards and quality control procedures; and, the National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, 3rd edition, second supplement, August 1987, which contains a description of the 7400 analytical method. A copy of each can be obtained from the occupational and radiological health bureau at the Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.305 CLEARING ASBESTOS ABATEMENT PROJECTS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (1)(a) At the conclusion of any asbestos abatement project performed in a structure other than a LEA school building, the asbestos abatement contractor or the person in charge of the asbestos abatement project, such as the owner ~~or manager~~ of a structure, shall ensure that the maximum allowable indoor concentration for air-borne fibers in a non-occupational setting is not more than 0.01 fibers per cubic centimeter of air (f/cc), represented by an average of the results of five air samples.

(b) Each of the five air samples referred to in subsection (1)(a) must be collected in a negative pressure enclosure, except as provided in paragraphs (f) and (g) below. The standard of 0.01 f/cc clearance sampling referred to in subsection (1)(a) is not applicable where asbestos abatement in a building or other structure has occurred immediately prior to destruction or demolition of an entire building or other structure.

(b)(c) The five Five air samples referred to in subsections (1)(a) and (b) must be collected by the individual described in subsection (2) below to test for maximum allowable concentration.

(e)(d) Collection of air clearance samples must involve use of aggressive air sampling techniques such as use of with leaf blowers and/or fans placed in a setting sufficient to create maximum air disturbance in all potentially occupiable

areas. Aggressive air sampling is not necessary where asbestos abatement in a building has occurred ~~immediately prior to demolition~~ and in areas which are not occupied, such as crawl spaces.

(d)(e) For each air sample collected as required by subsection (1)(a) of this rule, the minimum volume of air drawn through the collecting filter must be 1,199 liters of air for 25 mm filters or 2,799 liters of air for 37 mm filters.

(f)(i) Asbestos abatement projects utilizing mini-enclosures, as described in 29 CFR 1926.58, Appendix G, must be sampled by taking a minimum of one aggressive air sample per mini-enclosure, with a minimum of 5 samples for each space contained by 4 walls and a solid ceiling.

(ii) If more than 5 mini-enclosures are used in a space with 4 walls and a solid ceiling, at least 5 aggressive air samples must be collected. The first 4 air samples must be gathered from those enclosures where the greatest potential for asbestos exposure exists; the fifth sample must be taken in the last mini-enclosure in which asbestos abatement occurred.

(g)(i) Asbestos abatement projects utilizing glove-bags, as described in 29 CFR 1926.58, Appendix G, require a minimum of one aggressive air sample to be collected in the immediate area of each glove bag, with a minimum of 5 air samples collected for each space, contained by 4 walls and a solid ceiling, in which glove-bags are used.

(ii) If more than 5 glove-bags are used in a space contained by 4 walls and a solid ceiling, a minimum of 5 air samples are required for that space. The 5 samples should be gathered from areas where the greatest potential for asbestos exposure exists.

(iii) If glove-bags are used without the use of an additional containment barrier around the work area, aggressive sampling methods are not required.

(e)(h) Analysis for air samples required by this rule must will be done by phase contrast microscopy (PCM) utilizing the National Institute of Occupational Safety and Health 7400 method contained in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987, and by a person who has successfully completed the NIOSH 582 course, "Sampling and Evaluating Airborne Asbestos Dust".

(f)(i) Analysis for air samples required by this rule is to must be done by at a laboratory approved by EPA or, National Institute for Standards and Technology (NIST) accredited by the American Industrial Hygiene Association (AIHA) or a laboratory which participates in the AIHA proficiency analytical testing (PAT) program and has received a "proficient" rating for asbestos PCM samples. For sampling and sampling analysis, a quality assurance program must be implemented as described in the NIOSH 7400 method or in accordance with 29 CFR 1926.58, Appendix A - Quality Control Procedure, 1991 edition. Quality assurance records and PAT results must be submitted, upon request, to the Montana department of health and environmental sciences, occupational and radiological health bureau.

(2)(a) Air samples referenced in subsections (1)(a)-(e).

(h) and (i) of this rule must be collected by an accredited asbestos abatement contractor, asbestos abatement supervisor, an engineer, or an industrial hygienist, or someone who has completed the NIOSH 582 course, "Sampling and Evaluating Airborne Asbestos Dust", none of whom may be who is not employed by, or contractually associated with the asbestos abatement contractor or individual in charge of completing the asbestos abatement project.

(b) This The requirement in subsection (2)(a) does not apply to a holder of an annual permit who receives a permit which contains a condition that contractors contractually associated with the facility will collect air samples but that asbestos health and safety personnel employed by the permit holder will monitor air sampling and ensure that air samples are collected properly. (See ARM 16.42.322(4)).

(3)(a) In the event that the maximum allowable limit for airborne fibers is exceeded, the accredited asbestos abatement contractor or the person in charge of the asbestos abatement project accredited asbestos abatement supervisor shall ensure that further evaluation is conducted on air samples, by PCM method outlined in subsection (1)(e)(h) of this rule following further cleaning or by using TEM analysis as outlined in 40 CFR 763.90(i), 198891 edition.

(b) The individual(s) referred to in subsection (2)(a) above must conduct the air sampling referred to in subsection (3)(a). If the TEM analysis indicates that the air concentration inside is higher than the air concentration outside, as specified in 40 CFR 763.90(i) 3 and 4, 198891 edition, then the accredited asbestos abatement contractor or person in charge of the asbestos abatement project or the accredited asbestos supervisor must repeat the continue the cleaning effort or response action until it is complete. A response action An asbestos abatement project is complete when the requirements of the TEM analysis are met or when the air concentration is below .01 f/cc as determined by the PCM analysis.

(c) The PCM analysis method is contained in 29 CFR 1910 or 29 CFR 1926.58, 198891 edition, or in the NIOSH 7400 method, published in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987.

(d) The department may grant a waiver from subsection (3)(a)-(c) in the event that an environment is chronically contaminated by fibers and it is determined that the asbestos fiber content does not exceed the maximum allowable concentration as outlined in 40 CFR 763.90(i), 198891 edition.

(e)-(f) Remain the same.

(4) The department hereby adopts and incorporates herein by reference the National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, 3rd edition, second supplement, August 1987, which contains a description of the 7400 Analytical Method; 40 CFR 763.90(i) (3) and (4), 198891 edition, which sets forth standards for completion of response actions; 29 CFR 1910, and 29 CFR 1926.58, and 29 CFR 1926.58, Appendix A and G, 198891 edition, which pertain to asbestos standards for general industry, and the construction in-

dustry, and asbestos abatement and quality assurance procedures, respectively. A copy of each can be obtained from the occupational and radiological health bureau at the Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.306 EVALUATION OF ASBESTOS HAZARDS IN LEA SCHOOL BUILDINGS (1) In a LEA school building, the asbestos hazard must be evaluated by the LEA by the appropriate person accredited in an asbestos-type occupation according to the method outlined in 40 CFR 763.85, 198891 edition, (inspections and reinspection); 40 CFR 763.86, 198891 edition, (sampling); 40 CFR 763.87, 198891 edition, (analysis); 40 CFR 763.88, 198891 edition, (assessment); and 40 CFR 763.90, 198891 edition, (response actions).

(2) The department hereby adopts and incorporates herein by reference 40 CFR 763.85 through 40 CFR 763.88, 198891 edition, and 40 CFR 763.90, 198891 edition, which pertain to, respectively, inspections and reinspection, sampling analysis, assessment, and response actions. Copies of each may be obtained from the occupational and radiological health bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.307 CLEARING ASBESTOS ABATEMENT PROJECTS IN LEA SCHOOL BUILDINGS (1) A LEA shall ensure that at the conclusion of any asbestos abatement project performed within a LEA school building, inspections and/or sampling techniques, analytical techniques (PCM and TEM), phasing in of transmission electron microscopy (TEM) analysis, and visual inspection are performed and these techniques and analysis are performed in accordance with 40 CFR 763.90 (i), 198891 edition.

(2) The department hereby adopts and incorporates herein by reference 40 CFR 763.90(i), 198891 edition, which sets forth requirements for completion of response actions, a copy of which may be obtained from the occupational and radiological health bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.309 ACCREDITATION OF ASBESTOS INSPECTOR; ASBESTOS MANAGEMENT PLANNER; ASBESTOS ABATEMENT PROJECT DESIGNER; ASBESTOS ABATEMENT CONTRACTOR; ASBESTOS ABATEMENT SUPERVISOR; AND ASBESTOS WORKER (1) A person seeking accreditation as an asbestos inspector, an asbestos management planner, an asbestos abatement project designer, an asbestos abatement contractor, an asbestos abatement supervisor, or an asbestos abatement worker must:

(a) successfully complete a training course approved by the department, or the United States Environmental Protection Agency (USEPA), according to the table set forth in subsection (2) of this rule and pass an examination approved by the

department; or

(b) have successfully completed, prior to January 1, 1990, ~~the an~~ appropriate asbestos-related training course offered for each occupation listed in subsection (1) of this rule, which course must be approved by the USEPA; and

(c) submit to the department a properly completed application form provided by the department, together with a fee as specified in ARM 16.42.402 and a copy of a certification of satisfactory completion for the appropriate ~~department~~ approved course.

(2) The following asbestos-type occupations must complete the following corresponding training course ~~approved by the department~~:

<u>Asbestos Related Occupation</u>	<u>Certified Course by the Department</u>
asbestos inspector	3-day training course
asbestos management planner	2-day training course
asbestos abatement project designer ...	3-day training course
asbestos abatement contractor	4-day training course
asbestos abatement supervisor	4-day training course
asbestos worker	3-day training course

(3) A person seeking accreditation in an asbestos related occupation by virtue of having attended a course or refresher course approved by the USEPA or another state, shall be subject to an accreditation and accreditation renewal fee surcharge as outlined in ARM 16.42.402.

~~(3)(4)~~ A person seeking accreditation as an asbestos management planner must be an accredited asbestos inspector prior to taking the management planner course.

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

16.42.310 RENEWAL OF ACCREDITATION (1) ~~Except as specified in subsection (2), accreditation~~ Accreditation for each asbestos-type occupation referred to in ARM 16.42.309 must be renewed annually by each accredited person on or before, or up to one year after, the one-year anniversary date of completion of the appropriate course which the person took for accreditation.

~~(2) An accreditation may be renewed within 90 days after the one-year anniversary date referred to in subsection (1) upon submission of a properly completed application form, a copy of a refresher course referred to in ARM 16.42.320, certification of satisfactory completion of the appropriate course, and the approved appropriate fee to the department.~~

(3) Remains the same but is renumbered (2).

(3) If an individual takes the appropriate refresher course after the expiration of the original accreditation, then the new expiration date will be one year from the date of the refresher course.

(4) Each person must submit an application to the department for renewal with the appropriate fee as specified in ARM 16.42.402 and a copy of the certificate documenting the successful completion of the required refresher course for each

discipline as set forth in subsections (5)-(7).

(5) Each applicant for renewal in each asbestos-type occupation, except the asbestos inspector, shall attend a 1-day refresher course for the specific discipline which is approved by the department or the USEPA for the specific discipline.

(6) Asbestos inspectors shall attend a half-day refresher course approved by the department or the USEPA;

(7) Asbestos management planners shall attend the half-day asbestos inspector refresher course plus an additional half-day refresher course on management planning approved by the department or the USEPA.

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

16.42.311 TRAINING COURSE AND EXAMINATION REQUIREMENTS

(1) After January 1, 1990, a person may not offer a training course in the state of Montana providing the knowledge necessary for the accreditation of any asbestos-type occupation unless the department has approved the training course and examinations given as a part of, and at the end of, the course.

(2)-(3) Remain the same.

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

16.42.313 COURSE APPROVAL (1) Remains the same.

(2) Except for the worker course and the refresher courses, at least two approved instructors must conduct all training courses.

(2)-(5) Remain the same but are renumbered (3)-(6).

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

16.42.314 ASBESTOS INSPECTOR'S COURSE (1) Remains the same.

(2)(a)-(j) Remain the same.

(k) Recordkeeping and writing the inspection report, including labeling of samples and keying sample identification to sampling location; sample labeling recommendations; detailing of ACM inventory; photographs of selected sampling areas and examples of ACM condition; and information required for inclusion in the management plan by the Toxic Substances Control Act (TSCA), Title II, section 203 (i)(1), Pub. L. No. 99-519, et. seq., and 40 CFR 763.80 through 40 CFR 763.99, 1988~~91~~ edition.

(1) Regulatory review, including EPA worker protection requirements found at 40 CFR Part 763, subpart G, 1988~~91~~ edition; TSCA Title II, Pub. L. No. 99-519, et. seq.; Occupational Safety and Health Administration (OSHA) asbestos construction standard, 29 CFR 1926.58, 1988~~91~~ edition; OSHA respirator requirements found at 29 CFR 1910.134, 1988~~91~~ edition; the friable ACM in schools rule found at 40 CFR Part 763, subpart F, 1988~~91~~ edition; applicable state and local regulations; and differences in federal/state requirements where they apply and the effects, if any, on public and non-public schools.

(m)-(n) Remain the same.

(3) The department hereby adopts and incorporates by reference EPA 560/5-85-030a October 1985, which sets forth a detailed discussion of the simplified sampling scheme for fri-

able surfacing materials; TSCA Title II, Pub. L. No. 99-519, et. seq., and 40 CFR 763.80 through 40 CFR 763.99, 1988~~91~~ edition, which set forth requirements for the management of asbestos in schools; 40 CFR Part 763, subparts F and G, 1988~~91~~ edition, 29 CFR 1926.58, 1988~~91~~ edition, and 29 CFR 1910.134, 1988~~91~~ edition, which set forth requirements for asbestos worker protection and the management of asbestos in schools. A copy of each may be obtained from the occupational and radiological health bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.315 ASBESTOS MANAGEMENT PLANNERS COURSE (1)

Remains the same.

(2) The course for accreditation of an asbestos management planner must adequately address the following topics and subject matter within each topic:

(a) Remains the same.

(b) Evaluation/interpretation of survey results, including review of the Toxic Substance Control Act (TSCA) Title II requirements for inspection and management plans as given in section 203(i)(1) of TSCA Title II, Pub. L. No. 99-519, et. seq., and 40 CFR 763.85 through 40 CFR 763.93, 1988~~91~~ edition; summarized field data and laboratory results; and comparison between field inspector's data sheet with laboratory results and site survey.

(c)-(f) Remain the same.

(g) Developing an operations and maintenance plan, including purpose of the plan; discussion of applicable USEPA guidance documents; what actions should be taken by custodial staff; proper cleaning procedures; steam cleaning and high efficiency particulate ~~aerosol~~ air (HEPA) vacuuming; reducing disturbance of ACM; scheduling operation and maintenance for off-hours; rescheduling or canceling renovation in areas with ACM; boiler room maintenance; disposal of ACM; in-house procedures for ACM-bridging and penetrating encapsulants; pipe fittings; metal sleeves; polyvinyl chloride (PVC), canvas, and wet wraps; muslin with straps; fiber mesh cloth; mineral wool and insulating cement; discussion of employee protection programs and staff training; and a case study in developing an operation and management plan (development, implementation process, and problems that have been experienced).

(h) Regulatory review, including focusing on the Occupational Safety and Health Administration (OSHA) asbestos construction standard found at 29 CFR 1926.58, 1988~~91~~ edition; the National Emission Standards for Hazardous Air Pollutants (NESHAPS) found at 40 CFR Part 61, subparts A (general provisions) and M (National Emission Standards for Asbestos), 1988~~91~~ edition; EPA Worker Protection requirements found at 40 CFR Part 763, subpart G, 1988~~91~~ edition; TSCA Title II, Pub. L. No. 99-519, et. seq.; and applicable state regulations.

(i) Remains the same.

(j) Assembling and submitting the management plan, in-

cluding management plan requirements in TSCA Title II section 203(i)(1), Pub. L. No. 99-519, et. seq., and 40 CFR Part 763, 1988~~91~~ edition; and the management plan as a planning tool.

(k) Remains the same.

~~(3)-(1)~~ A review of key aspects of the training course.

(m) The department hereby adopts and incorporates by reference TSCA Title II section 203(i)(1), Pub. L. No. 99-519, et. seq., and 40 CFR 763.85 through 40 CFR 763.93, 1988~~91~~ edition, which set forth requirements for inspection and management plans for asbestos in schools; 29 CFR 1926.58, 1988~~91~~ edition; 40 CFR Part 61, subparts A and M, 1988~~91~~ edition; 40 CFR Part 763, 1988~~91~~ edition, subpart G; and TSCA Title II, Pub. L. No. 99-519, et. seq., which set forth requirements for asbestos worker protection, asbestos emissions, and management of asbestos in schools, respectively; and 20 U.S.C. 4011, et. seq., which sets forth requirements for grants and loans under the Asbestos School Hazard Abatement Act. A copy of each may be obtained from the occupational and radiological health bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.316 ASBESTOS ABATEMENT PROJECT DESIGNER'S COURSE

(1) Remains the same.

(2)(a)-(b) Remain the same.

(c) Overview of abatement construction projects, including abatement as a portion of a renovation project; Occupational Safety and Health Administration (OSHA) requirements for notification of other contractors on a multi-employer site, which requirements are set forth at 29 CFR 1926.58, 1988~~91~~ edition.

(d) Safety system design specifications, including construction and maintenance of containment barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lock-out; proper working techniques for minimizing fiber release; entry and exit procedures for the work area; use of wet methods; use of negative pressure exhaust ventilation equipment; use of high efficiency particulate ~~aerosol~~ air (HEPA) vacuums; proper clean-up and disposal of asbestos; work practices as they apply to encapsulation, enclosure, and repair; use of glove bags and a demonstration of glove bag use.

(e)-(q) Remain the same.

(r) Relevant federal, state, and local regulatory requirements, procedures and standards, including:

(i) requirements of the Toxic Substance Control Act (TSCA) Title II, Pub. L. No. 99-519, et. seq., and 40 CFR 763, 1988~~91~~ edition;

(ii) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS), subparts A (general provisions) and M (national emission standard for asbestos), 1988~~91~~ edition;

(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection

found in 29 CFR 1910.134, 1988~~91~~ edition;

(iv) EPA worker protection rule, found at 40 CFR Part 763, subpart G, 1988~~91~~ edition; and

(v) the OSHA asbestos construction standard found at 29 CFR 1926.58, 1988~~91~~ edition.

(s) Remains the same.

(3) The department hereby adopts and incorporates by reference 29 CFR 1926.58, 1988~~91~~ edition, which pertains to OSHA asbestos standards for the construction industry; TSCA Title II, Pub. L. No. 99-519, et. seq.; 40 CFR 763, 1988~~91~~ edition; 40 CFR Part 61, subparts A and M, 1988~~91~~ edition; 29 CFR 1910.134, 1988~~91~~ edition; 40 CFR Part 763, subpart G, 1988~~91~~ edition; and 29 CFR 1926.58, 1988~~91~~ edition, which set forth, respectively, requirements for management of asbestos in schools, asbestos emissions, asbestos worker protection, and asbestos standards for the construction industry. A copy of each may be obtained from the occupational and radiological health bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.317 ASBESTOS ABATEMENT CONTRACTOR'S AND OR SUPERVISOR'S COURSE: (1) Remains the same.

(2)(a)-(h) Remain the same.

(i) All relevant federal, state, and local regulatory requirements, procedures, and standards, including:

(i) requirements of the Toxic Substance Control Act (TSCA) Title II, Pub. L. No. 99-519, et. seq., and 40 CFR Part 763, 1988~~91~~ edition;

(ii) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS), subparts A (general provisions) and M (national emission standard for asbestos), 1988~~91~~ edition;

(iii) the OSHA asbestos construction standard found in 29 CFR 1926.58, 1988~~91~~ edition;

(iv) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found in 29 CFR 1910.134, 1988~~91~~ edition;

(v) EPA worker protection requirements found in 40 CFR Part 763, subpart G, 1988~~91~~ edition.

(j)-(o) Remain the same.

(3) The department hereby adopts and incorporates by reference TSCA Title II, Pub. L. No. 99-519, et. seq.; 40 CFR Part 763, 1988~~91~~ edition; 40 CFR Part 61, subpart A and M, 1988~~91~~ edition; 29 CFR 1926.58, 1988~~91~~ edition; and 29 CFR 1910.134, 1988~~91~~ edition, which set forth, respectively, requirements for asbestos management in schools, asbestos emissions, worker protection, asbestos standards for the construction industry, and asbestos standards for general industry. A copy of each may be obtained from the occupational and radiological health bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.321 ASBESTOS ABATEMENT PROJECT PERMITS (1) No person in charge of an asbestos abatement project may engage in the asbestos abatement contractor or owner of the building where an asbestos abatement project is being conducted may allow an asbestos abatement project to be performed after January 1, 1990 without an asbestos abatement project permit issued by the department. After January 1, 1990, No person in charge of an asbestos abatement project may perform no asbestos abatement contractor or owner of the building where an asbestos abatement project is being conducted may allow work after January 1, 1990 to be performed on asbestos-containing material which is an integral part of a continuous surface equal to or exceeding 3 square feet or 3 linear feet of thermal system insulation asbestos-containing material per calendar year without an asbestos abatement project permit issued by the department.

(2) In order to obtain an asbestos abatement project permit, a person an owner of the building where an asbestos abatement project is being conducted, or the asbestos abatement contractor must submit to the department, by certified mail, all of the following:

(a)-(b) Remain the same.

(c) A signed statement by the owner or the asbestos abatement contractor that all work performed under authorization of the requested permit will be performed in accordance with 29 CFR 1926.58, 198891 edition, including all appendices, and with 40 CFR Part 763, subpart E, 198891 edition, 40 CFR 763.120, 198891 edition, 40 CFR 763.121, 198891 edition, and 40 CFR 763.124, 198891 edition, and 40 CFR Part 61, subpart M, 1991 edition.

(d) A list of accredited asbestos abatement workers and asbestos abatement supervisors who will be performing functions on the project, including their accreditation ID number and course sponsor;

(e) A signed statement by the asbestos abatement contractor or the owner of the building where the asbestos abatement project is being conducted indicating that removed asbestos will be disposed of at an approved asbestos disposal facility, the name and location of the facility, and the entity which has approved the asbestos disposal facility; and

(f) The required fee to be paid to the department for issuance of a permit as set forth in ARM 16.42.401. If the project is based on time and material, an estimated fee must be provided with the initial application;

(g) A project design, designed by a Montana accredited project designer for all asbestos abatement projects greater than 50 square feet or 50 linear feet. At a minimum, the asbestos abatement project design must contain the following information:

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

(ii) a description of the amount of asbestos-containing

material to be removed, encapsulated, enclosed or repaired;

(iii) a description of how the project will involve shutting down and locking out electric power and heating, ventilating, and air conditioning systems;

(iv) information concerning precleaning and removal of objects from the work area;

(v) a schedule for sealing off all critical barriers and openings, 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;

(vii) a description of worker decontamination enclosure system;

(viii) a description of exhaust ventilation systems to be used;

(ix) a description of alternate methods of containment such as glovebags, the removal of the entire asbestos covered pipe or structure, and the construction of mini-enclosures which if used must comply with 40 CFR 763 appendix B to subpart E, 1991 edition and 29 CFR 1926.58 appendix G, 1991 edition;

(x) a description of personal protective equipment and clothing to be worn by employees;

(xi) a description of work practices to be observed by the employees;

(xii) a description of methods to be used to remove, encapsulate, repair or enclose asbestos-containing material;

(xiii) a description of wetting agents, encapsulants and sealants to be used;

(xiv) a description of the air monitoring plan; and

(xv) a description of the waste disposal procedures to be used.

(h) For asbestos abatement projects, (other than LEA school buildings), between 3 square feet or linear feet and 50 square feet or linear feet, the owner or asbestos abatement contractor must submit a complete description of how the project will be performed and what work practices and engineering controls will be used for the project. The description must include the level of respiratory protection, personal protective equipment, critical barriers, work area isolation and type of enclosure, decontamination procedures, and waste labeling and disposal.

(3) All asbestos abatement projects shall be performed in accordance with 29 CFR 1926.58, 1988~~91~~ edition, including all appendices, and with 40 CFR 763.120, 1988~~91~~ edition, and 40 CFR 763.121, 1988~~91~~ edition, and 40 CFR Part 61, subpart M, 1991 edition.

(4)-(8) Remain the same.

(9) The department hereby adopts and incorporates by reference 29 CFR 1926.58, 1988~~91~~ edition, including all appendices; 40 CFR Part 763, subpart E, 1988~~91~~ edition, 40 CFR 763.120, 1988~~91~~ edition, 40 CFR 763.121, 1988~~91~~ edition, and 40 CFR 763.124, 1988~~91~~ edition, which set forth requirements for asbestos standards for the construction industry and worker

protection; and 40 CFR Part 61, subpart M, 1991 edition, which sets forth requirements for transportation and disposal of asbestos-containing material. A copy of each may be obtained from the occupational and radiological health bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.322 ANNUAL PERMITS (1) The owner and/or operator of a facility that maintains an asbestos health and safety program which incorporates standard operating procedures for employees involved in asbestos abatement projects in accordance with 29 CFR 1926.58, 198891 edition, including all appendices, and with 40 CFR 763.120, 198891 edition, 40 CFR 763.121, 198891 edition, and 40 CFR 763.124, 198891 edition, and which facility continuously employs asbestos workers accredited by the department, may apply to the department for an annual permit for the facility. An annual permit authorizes the facility to conduct asbestos abatement projects within the confines of the facility's controlled area during the period for which the permit is in force.

(2) Remains the same.

(3) The owner and/or operator of a facility may apply to the department on its permit application for the right to collect air clearance samples through a contractor who is contractually related to the facility, contrary to the provisions of ARM 16.42.305(2)(a), if the owner and/or operator agrees as a condition of the permit to direct health and safety personnel to monitor air sampling and to ensure that air samples are collected properly.

(4)-(5) Remain the same.

(6)(a)-(b) Remain the same.

(c) A signed statement that all work performed under authorization of the requested annual permit will be performed in accordance with 29 CFR 1926.58, 198891 edition, including all appendices, and with 40 CFR 763.120, 198891 edition, and 40 CFR 763.121, 198891 edition.

(d)-(f) Remain the same.

(7) The department hereby adopts and incorporates by reference 29 CFR 1926.58, 198891 edition, 40 CFR 763.120, 198891 edition, 40 CFR 763.121, 198891 edition, and 40 CFR 763.124, 198891 edition, which set forth, respectively, requirements for asbestos standards for the construction industry and worker protection. A copy of each may be obtained from the occupational and radiological health bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

16.42.323 EMERGENCY ASBESTOS PROJECT PERMITS (1) In an emergency situation where there is an immediate danger to life, health or the environment, property, or facility operation, a person an asbestos abatement contractor or owner of the building where an asbestos abatement project is being conducted

or seeking a permit shall provide the department an application for an asbestos abatement project permit within five days of the initiation of the project. The application shall be accompanied with a description of the emergency situation and the reasons why the permit was not sought prior to initiation of the project. This rule does not apply to a facility operating with a valid annual permit.

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

16.42.324 ASBESTOS ABATEMENT PROJECT CONTROL MEASURES

(1) Remains the same.

(2) On-site air monitoring must be conducted by an accredited asbestos contractor/ or an accredited asbestos abatement supervisor, an engineer or industrial hygienist.

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

16.42.325 RECORDKEEPING (1) A person performing an asbestos abatement project An asbestos abatement contractor or owner of the building where an asbestos abatement project is being conducted who has obtained a permit for an asbestos abatement project for which he is responsible shall retain a record of each the asbestos abatement project(s) and shall make the record available to the department at any reasonable time.

(2) Remains the same.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-513, MCA

16.42.326 INSPECTIONS (1) The owner of the property, building or other structure where the asbestos abatement project is being conducted, or a person performing or in charge of an asbestos abatement project shall:

(a)-(b) Remains the same.

(2)-(4) Remains the same.

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

16.42.401 FEES FOR PERMITS (1) Applicants for permits must pay a permit fee to the department upon application for a permit as follows:

(a) asbestos abatement project permit:

(i) contract volume cost for asbestos abatement range:

If the contract volume cost is: Applicant pays:
\$0-\$3,000 3 4% of contract volume cost
\$3,001-\$10,000 \$15 plus 2-5 3.5% of contract volume cost
\$10,001-\$50,000 ... \$40 plus 2-25 3.25% of contract volume cost
\$50,001-\$100,000 \$165 plus 2 3% of contract volume cost
\$100,001-\$500,000 ... \$665 plus 1-5 2.5% of contract volume cost
greater than \$500,000 . \$3,165 plus 2 2% of contract volume cost

(b) annual permit \$1,000 1,500

(c) annual permit with one outside contractor \$1,500 2,000

(d) additional inspections of asbestos abatement project premises \$300 400

(e) amendments to annual permit \$300 400

(2) For the purposes of calculating the asbestos abatement

permit fee, the contract volume cost shall be based upon the specific itemized contract charges directly associated with conducting the asbestos abatement project. If there is no specific itemization of charges associated with conducting the asbestos abatement project, the total of all of the charges associated with the contract shall be the contract volume cost for the purposes of the asbestos abatement permit fee. The cost of the asbestos abatement project permit fee is not included in the determination of the contract volume cost if the fee is separately itemized in the contract.

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

16.42.402 ACCREDITATION & ACCREDITATION RENEWAL APPLICATIONS (1) All persons seeking accreditation in an asbestos-type occupation or renewal of accreditation in an asbestos-type occupation must pay a fee for accreditation or renewal for each accreditation or renewal as follows:

- (a) asbestos inspector \$100 125
- (b) asbestos management planner \$100 125
- (c) asbestos abatement project designer \$100 125
- (d) asbestos contractor/asbestos abatement supervisor \$100 125
- (e) asbestos worker \$ 25 30

(2) The surcharge for individuals seeking accreditation or accreditation renewal based on attendance of a training course or refresher course that is not Montana approved shall be, as applicable, \$25 plus the accreditation or accreditation renewal fee for (1)(a), (b), (c), and (d) of this rule, and \$10 plus the accreditation or accreditation renewal fee for (1)(e) of this rule.

(3) For accreditation and renewal in more than one discipline with an application for each simultaneously submitted to the department, the fee is \$200 \$250 including the surcharges, if applicable, or the total of the two highest fees including the surcharges, if applicable, or the total of the individual discipline fees, whichever is less.

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

16.42.404 COURSE AUDITS (1) All audits of approved training courses and refresher courses are subject to the following fees, which must be paid by persons offering such courses to the department after the audit:

- (a) asbestos inspector course \$600 1,000
- (b) asbestos management planner course \$425 600
- (c) asbestos abatement project designer course \$600
- (d) asbestos abatement contractor/supervisor course \$1,200 1,000
- (e) asbestos abatement worker course \$600
- (f) two or more courses presented in conjunction \$1,500 1,200
- (g) refresher course \$500 250
- (h) two or more refresher courses presented in conjunction \$ 400

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

16.42.405 PENALTY (1) In addition to all statutory remedies available upon discovering a violation of this subchapter or of sections 75-2-501 through 75-2-514, MCA, the department may initiate a compliance action in the form of a written administrative order, which order shall cite the violation committed, including the provisions violated and the facts alleged to constitute a violation. The order shall state the required corrective action to end the violation, and state any administrative action which is being taken by the

(2) The department, if any, actions which may include suspension, denial, revocation of may suspend, deny, or revoke a person's accreditation if the person has violated all or a portion of Title 75, chapter 2, part 5, a rule promulgated thereunder, a permit provision, or an order, or issuance of an order to stop work on the asbestos abatement project.

(2) If a violation is deemed severe in the opinion of the department, a written order stating the violation and establishing the corrective action may be issued to the asbestos abatement project supervisor at the work site.

(2) violations in a written order are not corrected, or if other requirements of an order issued by the department are not adhered to, the department may seek civil and criminal penalties as provided for in statute.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-514, MCA

4. The department is proposing these amendments to the rules because they are necessary to remove questions of interpretation in the rules, to clarify the department's authority within the scope of authority delegated to it and to enable the program to be managed more effectively and efficiently.

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 Adrian Howe, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than March 11, 1993.

for William J. Robinson
ROBERT J. ROBINSON, Director

Certified to the Secretary of State February 1, 1993.

Reviewed by:

Walter A. Puck
Counsel for the Department

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

In the matter of the amendment of)	NOTICE OF PUBLIC
rules 16.44.106, 16.44.116,)	HEARING FOR PROPOSED
16.44.118, 16.44.120, 16.44.303-)	AMENDMENT OF RULES
16.44.306, 16.44.311, 16.44.351,)	
16.44.402, 16.44.609, 16.44.612,)	
16.44.701, 16.44.702, 16.44.804,)	
16.44.905, 16.44.907, concerning)	
regulation of hazardous waste)	
facilities and generators and)	
identification of hazardous waste)	(Solid & Hazardous Waste)

To: All Interested Persons

1. On March 18, 1993 at 9:00 a.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 bring current rules in line with EPA regulations.

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

16.44.106 APPLICATION FOR PERMIT (1) Remains the same.

(2) When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner must also sign the permit application. Permit applications must comply with the signature and certification requirements of ARM 16.44.~~107~~108.

(3)-(7) Remain the same.

(8) The department may require a permittee or an applicant to submit information in order to establish permit conditions as provided for under ARM 16.44.111(4) and under 75-10-406(8), MCA.

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

16.44.116 MODIFICATION OR REVOCATION AND REISSUANCE

(1) Remains the same.

(2) The following are causes for modification but not revocation and reissuance of permits; the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees:

(a)-(b) Remains the same.

(c) the standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

(d)-(f) Remains the same.

(3)-(5) Remains the same.

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

16.44.118 MINOR MODIFICATIONS OF PERMITS; TEMPORARY AUTHORIZATIONS FOR MODIFICATIONS; AND AUTHORIZATIONS FOR MANAGEMENT OF NEWLY IDENTIFIED WASTES (1) At the request or upon the consent of the permittee, the department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in Table I of this rule, without following the procedures set forth in subchapter 9. Any permit modification not processed under this rule must be made with draft permit and public notice as required in ARM 16.44.116.

TABLE I
LISTING OF MINOR MODIFICATIONS

A.-K. Remains the same.

L. Incinerators, Boilers and Industrial Furnaces

1. Shakedown and trial burn:
 - a. Authorization of up to an additional 720 hours of waste ~~incineration~~ burning during the shakedown period for determining operational readiness after construction;
 - b. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor;
 - c. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor.
2. Substitution of an alternate type of non-hazardous waste fuel that is not specified in the permit.

Note: In the case of modifications not specifically listed in this table, the permittee may request a determination by the department that the modification should be reviewed and approved as a minor modification. If the permittee makes this request, he or she must provide the department with the necessary information to support the requested classification.

(2)-(3) 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 270.14-270.26 except for 270.22(a)(1)(ii), (a)(2), (a)(4) and (a)(6). The correct CFR edition is listed in ARM 16.44.102.

(a)-(f) Remain the same.

(g) 40 CFR 270.20 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 ~~landfills~~ land treatment units;

(h) 40 CFR 270.2 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 units~~ landfills;

(i)-(k) Remain the same.

(l) 40 CFR 270.25 is a federal agency rule setting forth additional equipment information that must be submitted for a permit.

(m)-(n) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, 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) It exhibits any of the characteristics of hazardous waste identified in ARM 16.44.320-16.44.324, except that any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under ARM 16.44.304(2)(d) and any other waste exhibiting a characteristic of hazardous waste identified in ARM 16.44.320-16.44.324 is hazardous only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred or if it continues to exhibit any of the hazardous characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the ~~extraction procedure~~ toxicity characteristics to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I of ARM 16.44.324 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(ii)-(iv) Remain the same.

(2)-(4) Remain the same.

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

16.44.304 EXCLUSIONS (1) Remains the same.

(2) The following are not subject to regulation under this chapter but may be subject to regulation under the provisions of ARM Title 16, chapter 14:

(a)-(c) Remain the same.

(d) waste from the extraction, beneficiation and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by ARM 16.44.1110 for facilities that burn or process hazardous waste. For purposes of this exclusion, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for

leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching. For the purposes of this exclusion, waste from the processing of ores and minerals ~~will include only the following wastes, until the department further modifies this rule after EPA completes a report to congress and a regulatory determination on their ultimate regulatory status:~~

- (i)-(xx) Remain the same.
- (e)-(j) Remain the same.
- (3)-(5) Remain the same.

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

16.44.305 SPECIAL REQUIREMENTS FOR COUNTING HAZARDOUS WASTES (1) In accounting for the quantity of hazardous waste generated for the purpose of determining his proper category, a generator:

- (a) Remains the same.
- (b) must include all hazardous waste that is subject to regulation under this chapter, including wastes regulated under ARM 16.44.306(2) and (3) and 40 CFR Part 266, subparts C and F (incorporated by reference in ARM 16.44.306(4)(5));
- (c)-(e) Remain the same.

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

16.44.306 REQUIREMENTS FOR RECYCLABLE MATERIALS

(1)(a) Hazardous wastes that are recycled will be known as "recyclable materials".

(b) ~~The following recyclable materials are not subject to the requirements of this rule but~~ are regulated (as indicated below) under subparts C through H of 40 CFR Part 266, and all applicable provisions in subchapters 1, 8, 9 and 11 of this chapter:

- (i)-(v) Remain the same.
- (c) Remains the same.
- (2) Remains the same.

(3)(a) Unless exempted in (1)(b) and (1)(c) above, owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts B through L, ~~AA, and BB~~ of 40 CFR Parts 264 and 265 (except subpart H of each Part and except for 40 CFR 264.75 and 40 CFR 265.75), subparts C through G of 40 CFR Part 266, and subchapters 1, 6, 7, ~~and 8, and 11~~ of this chapter. (The recycling process itself is exempt from regulation, except as provided in section (4) of this rule and except as provided in subchapter 11.)

(b) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are required to notify the department of their recycling activities by filing a completed form 8700-12 with the department

and are subject to the requirements of 40 CFR 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies), and are subject to section (4) of this rule, except as provided in section (1) of this rule. Owners or operators of boilers or industrial furnaces used to burn recyclable materials are subject to the requirements of subchapter 11, as indicated in section (1)(b)(ii) of this rule.

(4) Owners or operators of facilities subject to HWM permit requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of 40 CFR 264 or 265.

(4)(5) The department hereby adopts and incorporates by reference subpart O of 40 CFR Part 264, subpart O of 40 CFR Part 265, 40 CFR 265.71, 265.72, and subparts C through G of 40 CFR Part 266. The correct CFR edition is listed in ARM 16.44.102. These federal agency rules refer, respectively, to: standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 264, subpart O); interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 265, subpart O); use of a manifest system for interim status facility owners and operators (40 CFR 265.71), manifest discrepancies (40 CFR 265.72), and recyclable materials (40 CFR Part 266). Subparts B through L, AA, and BB of 40 CFR Parts 264 and 265 are incorporated by reference in ARM 16.44.702 and 16.44.609. The equivalents of 40 CFR 264.75 and 40 CFR 265.75 are set forth in ARM 16.44.703 and 16.44.613, respectively. A copy of these provisions 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, MCA

16.44.311. CRITERIA FOR LISTING HAZARDOUS WASTE (1) The department may list a waste as a hazardous waste only upon determining that the waste meets one of the following criteria:

(a)-(b) Remain the same.

(c) it contains any of the hazardous constituents listed in ARM 16.44.352 ~~unless and~~, after considering ~~any of~~ the following factors, the department concludes that the waste is ~~not~~ capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(i)-(xi) Remain the same.

(2)-(3) Remains the same.

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

16.44.351. REPRESENTATIVE SAMPLING METHODS; TOXICITY CHARACTERISTIC LEACHING PROCEDURE; 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) Remains the same.

(e)(i) "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).

(ii) "Test Methods for Evaluating Solid Waste, Physical/-Chemical Methods", EPA Publication SW-846, third edition (November 1986) as amended by Revision I (December 1987), an EPA publication setting forth standard sampling, extraction, and analytical test methods for the national hazardous waste program (document number 955-001-00000-1). The third edition of SW-846 contains 47 analytical testing methods (listed in 40 CFR 260.11) which are not contained in the second edition of this document.

(2) A copy of Appendix I, Appendix II, Appendix III, and Appendix X of 40 CFR Part 261 and "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", second and third edition as amended by Update I (April 1984) and Update II (April 1985), may be obtained (at established copying charges) 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, MCA

16.44.402 HAZARDOUS WASTE DETERMINATION; APPLICABILITY OF RULES TO GENERATOR CATEGORIES; SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS (1)-(4) Remain the same.

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

(a)-(c) Remain the same.

(d) If a conditionally exempt generator's hazardous wastes are mixed with used oil and if the mixture is destined to be burned for energy recovery or further blended for eventual energy recovery, the mixture is subject to subpart E of 40 CFR Part 266 (incorporated by reference in ARM 16.44.306(4)(5)).

(e) Remains the same.

AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-204, 75-10-405, MCA

16.44.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY PERMITS (INTERIM STATUS) (1) A person who receives a temporary permit under ARM 16.44.605 must comply with the standards and requirements in 40 CFR Part 265, subparts B through and including BB, excluding subparts H and R and 40 CFR 265.75.

(2)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, subparts B through and including W BB, and excluding subparts H and R and 40 CFR 265.75. 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 265.75 is set forth in ARM 16.44.613. Subparts B through Q ~~BB~~ of 40 CFR Part 265 are federal agency rules setting forth 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 units (M), landfills (N), incinerators (O), thermal treatment units (P), chemical, physical and biological treatment units (Q) ~~and requirements for drip pads at wood treating operations (W); air emission standards for process vents (AA); and air emission standards for equipment leaks (BB)~~. A copy of 40 CFR Part 265, subparts B through and including W ~~(BB)~~, excluding subparts H and R, 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

16.44.612. EXCLUSIONS (1) The provisions of this subchapter do not apply to:

~~(1)(a)~~ the owner or operator of a POTW which treats, stores or disposes of hazardous waste;

~~(2)(b)~~ the owner or operator of a ~~refuse disposal facility~~ solid waste management system licensed by the department pursuant to ARM Title 16, chapter 14, subchapter 5, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this subchapter by ARM 16.44.305;

~~(3)(c)~~ the owner or operator of a facility managing recyclable materials described in ARM 16.44.306(1)(b) and (c), except to the extent that requirements of this subchapter are referred to in subchapter 11 of this chapter or in subparts C, F, or G of 40 CFR Part 266 (incorporated by reference in ARM 16.44.306~~(4)~~(5));

~~(4)(d)~~ a generator accumulating waste on-site in compliance with ARM 16.44.415, except to the extent the requirements are included in ARM 16.44.415;

~~(5)(e)~~ a farmer disposing of waste pesticides from his own use in compliance with ARM 16.44.430; or

~~(6)(f)~~ the owner or operator of a "totally enclosed treatment unit" as defined in ARM 16.44.202;

~~(7)(g)~~ the owner or operator of an "elementary neutralization unit" or a "wastewater treatment unit" as defined in ARM 16.44.202;

~~(8)(a)(h)(i)~~ except as provided in subsection (8)(b) of this rule, a person engaged in treatment or containment activities during immediate response to a hazardous waste discharge or an imminent and substantial threat of a hazardous waste discharge.

~~(9)(iii)~~ An owner or operator of a facility otherwise

regulated by this subchapter must comply with all applicable requirements of 40 CFR Part 265, subparts C and D.

~~(e)(iii)~~ Any person who is covered by subsection (8)(a) of this rule and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this subchapter for those activities.

~~(9)(i)~~ a transporter storing manifested shipments of a hazardous waste in containers meeting the requirements of ARM 16.44.410 at a transfer facility for a period of ten days or less;

~~(10)(j)~~ the addition of absorbent materials to waste in a "container", as defined in ARM 16.44.202, or the addition of waste to the absorbent material in a container, provided that these actions occur at the time that waste is first placed in the container and sections 40 CFR 265.17(b), 265.171, and 265.172 are complied with;

~~(11)(k)~~ the disposal of wastes in injection wells; however, where injection wells have associated surface facilities that treat, store or dispose of hazardous waste, such associated surface facilities are subject to the requirements of this subchapter.

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

16.44.701 PURPOSE (1)-(2) Remain the same.

(3) The standards set forth in this subchapter do not apply to:

(a) Remains the same.

(b) owners or operators of ~~refuse disposal facilities~~ solid waste management systems licensed by the department pursuant to ARM Title 16, chapter 14, subchapter 5, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by ARM 16.44.402(5) (special requirements for conditionally exempt generators); and

(c) owners or operators of facilities managing recyclable materials described in ARM 16.44.306(1)(b) and (c), except to the extent that requirements of this subchapter are referred to in subchapter 11 of this chapter or in subparts C, F, or G of 40 CFR Part 266 (incorporated by reference in ARM 16.44.306~~(4)~~(5)).

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, 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 * BB, excluding subpart H and 40 CFR 264.75.

(2)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, subparts B through and including * BB, 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 16.44.703. Subparts B

through ~~§~~ BB, 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 units (M); landfills (N); and incinerators (O);~~ requirements for drip pads at wood treating operations (W); and requirements for miscellaneous units (X); air emission standards for process vents (AA); and air emission standards for equipment leaks (BB). A copy of 40 CFR Part 264, subparts B through and including ~~§~~ BB, 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.

(6) 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~~ 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

16.44.804 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, 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 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404.

(a)-(b) Remain the same.

(c) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes (solid wastes) if applicable under 40 CFR 264.113(d) or 265.113(d). facility structures or equipment, land, or other assets associated with the facility

at the time of partial or final closure.

(d) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes (solid wastes) if applicable under 40 CFR 264.113(d) or 265.113(d), that might have economic value.

(2)-(5) Remain the same.

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

16.44.905 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD (1)-(5) Remain the same.

(6) Public notice of activities described in section (1) of this rule shall be given by the following methods:

(a) by mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this section may waive his or her rights to receive notice for any classes and categories of permits):

(1)-(ii) Remain the same.

(iii) federal and state agencies and other appropriate government authorities, including any affected states or Indian tribes;

(iv)-(vi) Remain the same.

(b)-(d) Remain the same.

(7)-(9) Remain the same.

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

16.44.907 PUBLIC HEARINGS (1) Remains the same.

(2) The department may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3)-(7) Remain the same.

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

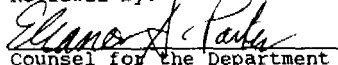
4. The department is proposing these amendments to the rules because they are necessary to bring current rules in line with EPA regulations so that the Montana Hazardous Waste Management Program may be continued to be authorized by EPA.

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 Mark Stahly, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than March 26, 1993.


for ROBERT J. ROBINSON, Director

Certified to the Secretary of State February 1, 1993.

Reviewed by:


Counsel for the Department

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)
of ARM 42.15.121 and 42.17.111)
relating to Taxation of Indian)
Income)
)

NOTICE OF PUBLIC HEARING ON
THE PROPOSED AMENDMENT of ARM
42.15.121 and 42.17.111
relating to Taxation of
Indian Income

TO: All Interested Persons:

1. This proposal was originally noticed as "No Public Hearing Contemplated" on December 24, 1992, at page 2719, 1992 MAR Issue No. 24. However, the Department has determined that it would be in the best interest of the public to conduct a public hearing on this matter. Therefore, a public hearing will be held March 3, 1993, at 1:00 p.m., in the Fourth Floor Conference Room, Sam W. Mitchell Building, Helena, Montana concerning the amendment of ARM 42.15.121 and 42.17.111 relating to taxation of Indian income.

2. The rules as proposed to be amended provide as follows:

42.15.121 TAX STATUS OF INDIANS (1) ~~The term "Indian" is construed to mean an enrolled member of an Indian tribe. An Indian's income is taxable to the same extent as that of non-Indians, subject only to the following exceptions:~~

~~(a) An Indian residing enrolled tribal member who resides on an Indian reservation and is an enrolled member of a tribe which resides on that reservation is not taxable with respect to income derived from sources within the exterior boundaries of an Indian reservation or ceded strip. When income is earned both on and off reservations, it shall be allocated according to the source.~~

~~(b) An Indian, regardless of residence, is not taxable with respect to income derived directly from allotted or restricted lands held in trust by the United States for the Indian's benefit of a tribe.~~

~~(2) An Indian residing outside the exterior boundaries of an Indian reservation has no special exemption other than income derived from allotted or restricted lands, as set forth in subsection (1)(b) of this section.~~

AUTH: 15-30-305 MCA; IMP: 15-30-101(12) MCA.

42.17.111 WHO MUST WITHHOLD AND WHO IS SUBJECT TO WITHHOLDING (1) through (5) remain the same.

(6) Applicable to tax years beginning January 1, 1993, and later. Wages paid to a member of an Indian tribe are subject to withholding unless all of the following conditions are met:

(a) the employee is an enrolled member of a recognized Indian tribe;

(b) a certificate of enrollment is filed by the employee with the employer;

(c) the employee resides on ~~an Indian~~ his or her tribe's reservation and;

(d) the wage is compensation for services performed within the boundaries of ~~an Indian~~ the enrolled member's reservation.

(7) remains the same.

AUTH: 15-30-305 MCA; IMP: 15-30-202 MCA.

3. Amendments to ARM 42.15.121 and 42.17.111 are proposed to clarify that an enrolled member who lives on a reservation other than the reservation of his tribe is taxed in the same manner as a nonmember.

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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 12, 1993.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.



CLEO ANDERSON
Rule Reviewer



MICK ROBINSON
Director of Revenue

Certified to Secretary of State February 1, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING ON
of ARM 42.15.101, 42.15.102,)	THE PROPOSED AMENDMENT of
42.15.104, 42.15.111, 42.15.)	ARM 42.15.101, 42.15.102,
112, 42.15.201, 42.15.202,)	42.15.104, 42.15.111, 42.15.
42.15.203, 42.15.506 and)	112, 42.15.201, 42.15.202,
REPEAL of ARM 42.15.103)	42.15.203, 42.15.506 and
relating to Change of Domicile)	REPEAL of ARM 42.15.103
)	relating to Change of
)	Domicile

TO: All Interested Persons:

1. On March 10, 1993, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendments of ARM 42.15.101, 42.15.102, 42.15.104, 42.15.111, 42.15.112, 42.15.201, 42.15.202, 42.15.203, 42.15.506 and repeal of 41.15.103 relating to change of domicile.

2. The rules as proposed to be amended provide as follows:

42.15.101 DOMICILE DEFINED (1) ~~Domicile is the place where an individual has his true permanent home and his principal establishment. It is the place where a person has voluntarily fixed the habitation of himself and family not for a mere special or limited purpose but with the present intention of making a permanent home, at least until some event shall occur to induce him to adopt some other permanent home. A person is domiciled in the state of Montana if, applying 1-1-215, MCA, Montana is the individual's residence.~~

AUTH: 1-1-215 and 15-30-305 MCA; IMP: 15-30-101(12) MCA.

42.15.102 CHANGE OF DOMICILE (1) and (2) remain the same.

(3) ~~A person who has established a domicile in Montana then temporarily leaves the state to work in another state, is presumed to be a resident of Montana.~~

~~(3)~~ (4) The place of a person's domicile can be determined only in the light of all evidence in each particular case. Intention is evidenced by the person's actions and all pertinent facts relating thereto.

AUTH: 15-30-305 MCA; IMP: 15-30-101(12) MCA.

42.15.104 PERMANENT PLACE OF ABODE (1) A person is a resident for purposes of this tax by reason of maintaining a "permanent place of abode", as that term is used in 15-30-101, MCA, in Montana and not establishing a permanent home residency elsewhere.

(2) remains the same.

AUTH: 15-30-305 MCA; IMP: 15-30-101(12) MCA.

42.15.506 COMPUTATION OF RESIDENTIAL PROPERTY TAX CREDIT FOR ELDERLY (1) When the taxpayer owns the dwelling but rents the land or owns the land and rents the dwelling, he shall add the rent-equivalent tax paid on the rented property to the property tax paid on the owned property. The total shall then be reduced as provided by 15-30-176(4), MCA. The tax credit will be the reduced amount or \$400, whichever is less. Effective for taxable years beginning after December 31, 1982, the maximum allowable credit is \$400.

(2) A taxpayer shall not be entitled to rent-equivalent tax paid on either a rented dwelling or rented land which ~~was~~ is not subject to ad valorem taxes in Montana during the claim period except for those units rented from a state, county or city housing authority.

(3) Effective for taxable years beginning after December 31, 1982, the maximum allowable credit is \$400. When a taxpayer lives in a rest home, the rent allowed in calculation of the property tax credit is the lesser of \$20 per day or the actual rent paid.

(4) Where one spouse lives in a rest home and the other lives at a different address, they are only allowed to take the rent at the rest home or the rent/taxes of the other house but not both.

AUTH: 15-30-305, MCA; IMP: 15-30-176 MCA.

3. The Department does not have any changes to the language in ARM 42.15.102, 42.15.111, 42.15.112, 42.15.201, 42.15.202, or 42.15.203 but it is deleting subsections (12) and (14) to 15-30-101, MCA, which is shown in the implementing section in the histories.

4. The Department proposes to repeal the following rule:

42.15.103 DOMICILE OF WIFE AND CHILDREN, found at page 1505 of the Administrative Rules of Montana.

AUTH: 15-30-305 MCA; IMP: 15-30-101(12) MCA.

5. The Department is proposing the amendment of ARM 42.15.102 to clarify that an individual who temporarily works outside Montana remains a resident of Montana. ARM 42.15.101 and 42.15.104 are amended to clarify domicile. Three items were added to ARM 42.15.506 regarding how to calculate the property tax/rent credit. The first is a housekeeping item to reflect statutory change which allows for rent from housing authorities to be eligible. The second item establishes a maximum rent of \$20 per day or \$600 per month that a person in a rest home will be allowed to claim. The last item provides that only one property tax/rent credit of \$400 may be taken when one spouse is in a rest home and the other lives at a different address. Subsections (12) and (14) in the implementing section of the history are being deleted in ARM 42.15.102, 42.15.111, 42.15.112, 42.15.201, 42.15.202, and 42.15.203 since 15-30-101, MCA, has been amended and the subsections are no longer

relevant. ARM 42.15.103 is being repealed since the language is outdated and no longer applicable.

6. 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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 15, 1993.

7. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.



CLEO ANDERSON
Rule Reviewer



MICK ROBINSON
Director of Revenue

Certified to Secretary of State February 1, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING ON
of ARM 42.2.602; 42.2.603 and)	THE PROPOSED AMENDMENT of ARM
42.2.605 relating to Taxpayer)	42.2.602; 42.2.603 and 42.2.
Appeal Rules)	605 relating to Taxpayer
)	Appeal Rules

TO: All Interested Persons:

1. On March 11, 1993, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.2.602; 42.2.603 and 42.2.605 relating to taxpayer appeal rules.

2. The rules as proposed to be amended provide as follows:

42.2.602 NOTICE TO TAXPAYER (1) If an auditor or agent of the department issues a tax assessment or denies a refund, the department must provide the taxpayer with a notice that clearly states:

(a) through (d) remains the same.

(e) The taxpayer has 30 days from the date the notice was mailed to either notify the ~~department~~ division administrator in writing that he does not agree with the assessment or pay the amount assessed;

(f) through (1) remains the same.

(2) remains the same.

(3) When the taxpayer must respond within a specified time to the notice, the notice shall include a statement in capital letters, bold face, underlined, and at least 14 points type, at the top of the notice giving the taxpayer a warning that action must be taken within the time provided for in the notice. The statement may take the following or similar form: "WARNING YOU MUST RESPOND WITHIN THIRTY DAYS OF THIS ASSESSMENT, OR YOU WILL LOSE YOUR RIGHT TO APPEAL". "If you do not agree with this assessment you must respond within thirty days or you will lose your right to appeal".

AUTH: 15-1-201 MCA; IMP: 15-1-211 MCA.

42.2.603 TAXPAYER OBJECTIONS TO AUDITOR'S ASSESSMENT OR REFUND DENIAL, OR DENIAL OR WAIVER OF PENALTY AND INTEREST

(1) A taxpayer receiving a notice of assessment as provided for in ARM 42.2.602 and who objects to the tax assessment or refund denial, or denial of waiver of penalty and interest, may, within 30 days from the date the notice was mailed, notify the department in writing that he objects to the determination. The notification of objection should be addressed as provided in the notice.

(2) remains the same.

(3) A taxpayer receiving a notice of assessment as provided in ARM 42.2.602 which involves only penalty and interest, who objects to the assessment, may request waiver of the penalty and interest under ARM 42.3.101 through 42.3.114. All objections related to penalty and interest assessments will be first considered under ARM 42.3.101 through 42.3.114 unless the taxpayer specifically requests an informal conference with the division administrator.

(4) If the waiver is not granted, the taxpayer may appeal the decision under the provisions of these rules. Copies of decisions regarding waiver of penalty and interest will not be maintained by the department.

AUTH: 15-1-201 MCA; IMP: 15-1-211 MCA.

42.2.605 DIVISION ADMINISTRATOR'S DECISION (1) remains the same.

(2) The taxpayer may choose to present his reasons for objections in writing, by telephone, or at an informal conference. Regardless of the method or methods chosen by the taxpayer, the objections must be presented within 60 days unless the division agrees to an extension as provided under Section 15-1-211(7) MCA. No official record of telephone calls or informal conferences will be kept. However, the taxpayer or the department with the consent of the taxpayer may record them. Failure to present reasons within 60 days may result in a decision being issued without consideration of the taxpayer's specific objections.

(3) The division administrator has 60 days after the taxpayer has presented his reasons for objection to issue a written decision. The 60 day period will begin when the taxpayer has notified the division that he has fully presented his reasons for objections. The division administrator shall fully explain the basis for the decision. The decision shall include all of the applicable information required for assessments by ARM 42.2.602.

(4) A copy of the decision shall be forwarded to the director's office by the division and maintained in the division director's office for public inspection. However, if the taxpayer has a right of privacy concerning the particular assessment, any and all information which could identify the taxpayer must be masked or struck from the decision in order to protect the privacy of the taxpayer.

(5) remains the same.

AUTH: 15-1-201 MCA; IMP: 15-1-211 MCA.

3. The Department is proposing the amendments to clarify the process by which taxpayers may appeal an assessment of their taxes in accordance with the "Taxpayer Bill of Rights" in Title 25, Chapter 10, Part 7, MCA.

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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than March 19, 1993.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State February 1, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT	NOTICE OF THE PROPOSED
of ARM 42.26.101, 42.26.201,)	AMENDMENT of ARM 42.26.101,
42.26.205, 42.26.206, 42.26.)	42.26.201, 42.26.205, 42.26.
215, 42.26.217, 42.26.224,)	206, 42.26.215, 42.26.217,
42.26.262, 42.26.264, 42.26.)	42.26.224, 42.26.262, 42.26.
265, 42.26.269, 42.26.273,)	264, 42.26.265, 42.26.269,
42.26.275, 42.26.286 and the)	42.26.273, 42.26.275, 42.26.286
REPEAL of ARM 42.26.214;)	and the REPEAL of ARM
42.26.227; 42.26.258; 42.26.)	42.26.214; 42.26.227;
281; and 42.26.291 relating to))	42.26.258; 42.26.281; and
Corporation License Tax)	42.26.291 relating to Corpora-
Multistate Activities)	tion License Tax Multistate
)	Activities

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 16, 1993, the Department of Revenue proposes to amend ARM 42.26.101, 42.26.201, 42.26.205, 42.26.206, 42.26.215, 42.26.217, 42.26.224, 42.26.262, 42.26.264, 42.26.265, 42.26.269, 42.26.273, 42.26.275, 42.26.286 and repeal ARM 42.26.214, 42.26.227, 42.26.258, 42.26.281 and 42.26.291 relating to corporation multistate activities.

2. The Department proposes to repeal the following rules:
42.26.214 DEFINITIONS found at page 42-2617 of the Administrative Rules of Montana. AUTH: 15-31-501 MCA; IMP: 15-31-321 MCA.

42.26.227 PARTNERSHIP DEFINED found at page 42-2621 of the Administrative Rules of Montana. AUTH: 15-31-313 and 15-31-501 MCA; IMP: 15-31-305 MCA.

42.26.258 SALES FACTOR DEFINITIONS found at page 42-2645 of the Administrative Rules of Montana. AUTH: 15-31-313 and 15-31-501 MCA; IMP: 15-31-310, 15-31-311, and 15-31-312 MCA.

42.26.281 APPORTIONMENT OF BUSINESS INCOME found at page 42-2665 of the Administrative Rules of Montana. AUTH: 15-1-201, 15-31-313 and 15-31-501 MCA; IMP: 15-1-601, 15-31-302, 15-31-305, and 15-31-312 MCA.

42.26.291 BUSINESS AND NONBUSINESS INCOME found at page 42-2671 of the Administrative Rules of Montana. AUTH: 15-31-313 and 15-31-501 MCA; IMP: 15-31-303 and 15-31-312 MCA.

3. The rules as proposed to be amended provide as follows:

42.26.101 ALTERNATIVE TAX (1) remains the same.

(2) The election to pay the alternative tax is made by filing a return on Form CLT-4, reporting the dollar amount of Montana gross sales, and paying a tax determined on the basis of 1/2% of the amount of such sales. The \$50.00 minimum tax does

not apply to the alternative tax. The gross receipts from sales made in Montana must be determined according to the provisions of ARM 42.26.255 and 42.26.257. A statement must be attached to the return to the effect that the corporation's only activities in Montana consist of making sales and do not include owning or renting real property or tangible personal property.

AUTH: 15-31-501 MCA; IMP: 15-31-122 MCA.

42.26.201 INTENT (1) and (2) remain the same.

(3) The only exceptions to these allocation and apportionment rules contained in these regulations are set forth in ARM 42.26.261 through 42.26.263 pursuant to the authority of 15-31-312, MCA. Special rules and regulations pertaining to certain industries are included in ARM 42.26.264 through ARM 42.26.294.

(4) remains the same.

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3 MCA.

42.26.202 DEFINITIONS (1) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(1) (2) "Allocation" refers to the assignment of nonbusiness income to a particular state.

(3)(a) "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(i) any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise;

(ii) any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(iii) any amount payable for a delay rental as defined by U.S. Treasury regulations Section 1.612-3(c)(1)(1980) which defines delay rental as follows: A delay rental is an amount paid for the privilege of deferring development of the property and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production.

(b) "Annual rent" does not include:

(i) incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

(ii) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose,

a royalty includes an amount paid to a holder of an interest in real property which constitutes a sharing of current or future production of natural resources from such property, whether denominated as a royalty, advance royalty, rental, or otherwise.

(4) "Annual rental rate" is the amount paid as rental for the property for a 12 month period (i.e., the amount of the annual rent). Where property is rented for less than a 12 month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

(2) (5) "Apportionment" refers to the division of business income between states by the use of a formula containing apportionment factors.

(6) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the department of revenue may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the property. (See ARM 42.26.237.)

(7) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons, to replenish stock or other materials, repair equipment, or to perform any other function necessary to exercise his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(8) "Basis in the hands of the taxpayer" means the taxpayer's federal income tax basis in the asset at the time of sale.

(3) (9) "Business activity" refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.

(10) A "car-mile" is a movement of a unit of car equipment a distance of 1 mile.

(11) The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished

to employees by the taxpayer in return for personal services; provided, that such amounts constitute income to the recipient under federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g. those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code.

(12) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

(13) "Departures" means for purposes of these regulations all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

(14) The term "employee" means any officer of the corporation; or any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(15) "Gross receipts" means the total receipts received by the taxpayer less any expenses attributable to the sale.

(16) A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of 1 mile under its own power.

(17) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(18) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(19) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(20) "Net receipts" means gross receipts minus the basis of the asset in the hands of the taxpayer.

(21) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factory at its fair market value as of the date of acquisition by the taxpayer. (See ARM 42.26.235.)

(22) "Partnership" is defined as an enterprise involving undivided joint ownership and includes but is not limited to joint ventures and trusts with joint beneficiaries.

(23) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(24) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(25) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

(26) "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state.

(27) "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

(28) "Trucking company" means a motor carrier, a motor contract carrier or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation.

(29) "Unitary relationship" means a relationship between members of the water's-edge combined group sufficient to satisfy the definition of a "unitary business" pursuant to 15-31-301, MCA.

(30) The "value" of owned real and tangible personal property shall mean its original cost. (See ARM 42.26.235.)

(31) The "value of rented" real and tangible personal property means the product of 8 times the net annual rental rate. (See ARM 42.26.236.)

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3 MCA.

42.26.205 TWO OR MORE BUSINESSES OF A SINGLE TAXPAYER

(1) A taxpayer may have more than one "trade or business". In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula which takes into consideration the ~~instate~~ in-state and ~~outstate~~ out-of-state factors which relate to the trade or business the income of which is being apportioned.

(2) The determination of whether the activities of the taxpayer constitute a single trade or business will ~~turn~~ depend on the facts in each case. In general, the activities of the taxpayer will be considered a single business if there is evidence to indicate that the segments under consideration are integrated with, dependent upon, or contribute to each other and the operations of the taxpayer as a whole. The following factors are considered to be good indicia of a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a single trade or business:

(a) through (c) remain the same.

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3 MCA.

42.26.206 BUSINESS AND NONBUSINESS INCOME DEFINED

(1) ~~Section 15-31-301(1)~~ 15-31-302(1), MCA, defines "business income" as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

(2) remains the same.

(3) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, gains, operating income, nonoperating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activity activities which are the elements of a particular trade or business. In general, all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activities arising in the regular course of and will constitute integral parts of a trade or business. (See ARM 42.26.207 for more specific examples of the classification of income as business or nonbusiness income; see ARM 42.26.202 and 42.26.205 for further explanation of what constitutes a trade or business.)

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3 MCA.

42.26.207 DETERMINATION OF BUSINESS AND NONBUSINESS INCOME

~~The following are rules for determining whether particular income is business or nonbusiness income:~~

(1) through (5) remain the same.

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3 MCA.

42.26.215 PROCEDURE

(1) To perfect a water's-edge election a taxpayer must file a written election with the department within the first 90 days of the tax year for which the election is to become effective. If the first tax period

for which the election is to become effective is less than 90 days, the taxpayer will have until the end of the tax period to file the election. ~~The written election shall be filed on forms provided by the department. The election form must disclose the taxpayer's identity and a complete listing of all affiliates owned in excess of 50%. No specific forms are required when making the written election.~~

(2) remains the same.

AUTH: 15-31-501 MCA; IMP: 15-31-324 MCA.

42.26.217 DOMESTIC DISCLOSURE SPREADSHEET (1) Electing corporations ~~must~~ may be required to file the domestic disclosure spreadsheet within 6 months of filing the federal income tax return. The disclosure spreadsheet filing must be accomplished on forms proscribed by the department.

AUTH: 15-31-501 MCA; IMP: 15-31-326 MCA.

42.26.236 VALUATION OF RENTED PROPERTY (1)(a) and (b) remain the same.

(2) ~~"Annual rental rate" is the amount paid as rental for the property for a 12 month period (i.e., the amount of the annual rent). Where property is rented for less than a 12 month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis. See ARM 42.26.202 for definitions which apply to valuing rental property.~~

~~(3)(a) "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:~~

~~(i) any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise;~~

~~(ii) any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items;~~

~~(iii) any amount payable for a delay rental as defined by U.S. Treasury regulations Section 1.612-3(c)(1)(1980) which defines delay rental as follows: A delay rental is an amount paid for the privilege of deferring development of the property~~

and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production.

(b) "Annual rent" does not include:

(i) incidental day to day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

(ii) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes an amount paid to a holder of an interest in real property which constitutes a sharing of current or future production of natural resources from such property, whether denominated as a royalty, advance royalty, rental, or otherwise.

(*) (3) remains the same.

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 and 15-31-307 MCA and Title 15, chapter 31, part 3 MCA.

42.26.241 PAYROLL FACTOR IN GENERAL (1) through (3) remain the same.

(4) The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services; provided, that such amounts constitute income to the recipient under federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g. those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code. See ARM 42.26.202 for definitions which apply to valuing rental property.

(5) The term "employee" means

(a) any officer of the corporation or

(b) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act, except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule. AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3 MCA.

42.26.244 NUMERATOR OF PAYROLL FACTOR (1) and (2) remain the same.

(3) ~~The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons; to replenish stock or other materials, repair equipment, or to perform any other function necessary to exercise his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer. See ARM 42.26.202 for definitions which apply to valuing rental property.~~

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3 MCA.

42.26.259 SALE OF TANGIBLE AND INTANGIBLE PROPERTY COMPUTATION OF THE SALES FACTOR (1) Refer to ARM 42.26.202 for definitions applicable to this rule.

(2) If a taxpayer derives receipts from the sale of tangible property or the sale or redemption of intangible property not held primarily for sale to customers in the ordinary course of its trade or business such receipts will constitute sales for inclusion in the sales factor to the following extent:

(a) through (c) remain the same.

AUTH: 15-31-313 and 15-31-501 MCA; IMP: 15-31-310, 15-31-311 and 15-31-312 MCA.

42.26.262 SPECIAL COMPUTATIONS RELATED TO PROPERTY FACTOR

(1) The following special rules are established in respect to the property factor of the apportionment formula:

(a) If the subrents taken into account in determining the net annual rental rate under ARM ~~42.26.256~~ 42.26.236 produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the department or requested by the taxpayer.

(b) remains the same.

(2) remains the same.

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3 MCA.

42.26.264 SPECIAL COMPUTATIONS RELATED TO FREIGHT AND PASSENGER CARRIERS (1) remains the same.

(2) The percentage of miles traveled within Montana to total miles traveled everywhere shall be the percentage used in determining the amount of income attributable to this state. The apportionment formula for such transportation companies shall be computed as follows:

(a) and (b) remain the same.

(c) Revenues will be assigned to this state in the proportion that the miles traveled within the state bear to the total miles traveled everywhere. All other revenue shall be assigned in accordance with the provisions of 15-31-310 and 15-31-311, MCA, and ARM 42.26.251 through ~~42.26.253 and 42.26.257~~ 42.26.259.

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3 MCA.

42.26.265 SPECIAL RULES FOR RAILROADS The following special rules are established in respect to railroads:

(1) remains the same.

(2) For definitions, rules and examples for definitions, rules and examples for determining business and nonbusiness income, see ARM 42.26.206.

(3) Except as modified in this regulation The apportionment factors shall be determined as follows:

(a) the property factor shall be determined in accordance with ARM 42.26.231 through 42.26.237, inclusive;

(b) the payroll factor in accordance with ARM 42.26.241 through 42.26.244; and

(c) the sales factor in accordance with ARM 42.26.251 through ~~42.26.257~~ 42.26.259, inclusive, ~~except as modified in this regulation.~~

AUTH: 15-1-201, 15-31-313, and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chapter 31, part 3, MCA.

42.26.266 THE PROPERTY FACTOR (1) remains the same.

(2) ~~The following definitions~~ See ARM 42.26.202 for definitions that are applicable to the numerator and denominator of the property factor.

(a) ~~"Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions), or, if the property has no such basis, the valuation of such property for interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (See ARM 42.26.235.)~~

(b) ~~"Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.~~

(c) ~~The "value" of owned real and tangible personal property shall mean its original cost. (See ARM 42.26.235.)~~

(d) ~~"Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the department of revenue may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average~~

value of the railroad's property. (See ARM 42.26.237.)

(e) The "value" of rented real and tangible personal property means the product of 8 times the net annual rental rate. (See ARM 42.26.236.)

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(h) A "locomotive mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of 1 mile under its own power.

(i) A "car mile" is a movement of a unit of car equipment a distance of 1 mile.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA; IMP: 15-1-601 and Title 15, chap. 31, part 3, MCA.

42.26.269 THE SALES (REVENUE) FACTOR (1) All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor. (See ARM 42.26.251; 42.26.253). The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with ARM 42.26.254.

(2) and (3) remain the same.

AUTH: 15-1-201, 15-31-313 and 15-31-501 MCA; IMP: 15-1-601 MCA and Title 15, chap. 31, part 3, MCA.

42.26.270 SPECIAL RULES FOR TRUCKING COMPANIES DEFINITIONS

(1) The following definitions See ARM 42.26.202 for definitions that are applicable to the numerator and the denominator of the property factor, as well as other apportionment factor descriptions.

(a) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income year, but the department of revenue may require the averaging of monthly values during the income year or such averaging as is necessary to reflect properly the average value of the trucking company's property. (See ARM 42.26.237).

(b) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(c) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(d) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustment, except for subsequent capital additions,

improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (See ARM 42.26.235)

(e) "Property used during the course of the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(f) "Trucking company" means a motor carrier, a motor contract carrier or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation.

(g) The "value of owned" real and tangible personal property means its original cost. (See ARM 42.26.235)

(h) The "value of rented" real and tangible personal property means the product of eight (8) times the net annual rental rate. (See ARM 42.26.236).

AUTH: 15-31-313 and 15-31-501 MCA; IMP: 15-31-301 MCA.

42.26.273 SALES (REVENUE FACTOR) (1) remains the same.

(2) The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with ARM 42.26.255 ARM 42.26.254 through 42.26.259.

(3) remains the same.

AUTH: 15-31-313 and 15-31-501 MCA; IMP: 15-31-310 and 15-31-311 MCA.

42.26.275 SPECIAL RULES RELATED TO INSTALLMENT SALES

(1) remains the same.

(2) The separate calculation shall be made as follows:

(a) for purposes of the sales factor the gross receipts total net gains from the sale shall be included in the sales factor in the year of the sale unless specifically excluded from the sales factor under another part of ARM 42.26.263(1)(a);

(b) and (c) remain the same.

AUTH: 15-31-501 and 15-31-313 MCA; IMP: 15-31-305 MCA.

42.26.286 AIRLINE REGULATION EXAMPLES (1) Assume the following facts for an airline for the tax year:

(a) through (f) remain the same.

(g) State X has a corporate tax rate of 10%. The airline's tax liability to state X would be determined as follows:

Property Factor:

Numerator		Denominator	
43,200,000	(747s)	432,000,000	(747s)
+ 80,000,000	(747s)	400,000,000	(747s)
+ 10,000,000	(n.t.p.)	200,000,000	(n.t.p.)
133,200,000	+	1,032,000,000	= 12.9%

Sales Factor:

Numerator		Denominator
43,200,000 (747s)		432,000,000 (747s)
+ 80,000,000 (747s)	+	400,000,000 (747s)
<u>123,200,000</u>	+	<u>832,000,000 = 14.8%</u>

Payroll Factor:

Numerator		Denominator
6,000,000 (nonflight)		40,000,000 (nonflight)
+ 8,880,000 (14.8% x 60,000,000 flight)	+	+ 60,000,000 (flight)
<u>14,880,000</u>	+	<u>100,000,000 = 14.88%</u>

Average Ratio Equals ~~(property, payroll and sales factors)~~ the sum of the property, sales and payroll factors divided by 3.

$$(12.9\% + 14.8\% + 14.88\%) \div 3 = \cancel{14.21\%} \quad 14.193\%$$

~~Taxable Income in state X: .14219 x 1,000,000 = \$142,190~~

Taxable Income in state X: .14193 x 1,000,000 = \$141,930

~~Tax Liability to state X: .10 x \$142,190 = \$14,219.00~~

Tax Liability to state X: .10 x \$141,930 = \$14,193.00

(2) Same facts except that paragraphs (a) and (b) are changed to read:

(a) remains the same.

(b) State Y has a corporate tax rate of 6½%. The airline's tax liability to state Y would be determined as follows:

Property Factor:

Numerator		Denominator
25,920,000 (747s)		432,000,000 (747s)
+ 124,000,000 (747s)	+	400,000,000 (747s)
+ 6,000,000 (n.t.p.)	+	200,000,000 (n.t.p.)
<u>155,920,000</u>	+	<u>1,032,000,000 = 15.1085%</u>

Sales Factor:

Numerator		Denominator
25,920,000 (747s)		432,000,000 (747s)
+ 124,000,000 (747s)	+	400,000,000 (747s)
<u>149,920,000</u>	+	<u>832,000,000 = 18.0192%</u>

Payroll Factor:

Numerator		Denominator
2,800,000 (nonflight)		40,000,000 (nonflight)
+ 10,811,400 (18.019% x 60,000,000 flight)	+	+ 60,000,000 (flight)
<u>13,611,400</u>	+	<u>100,000,000 = 13.6114%</u>

Average Ratio Equals ~~(property, payroll and sales factors)~~ the sum of the property, sales and payroll factors divided by 3.

$$(15.1085\% + 18.0192\% + 13.6114\%) \div 3 = 15.5797\%$$

Taxable Income in state Y: .155797 x 1,000,000 = \$155,797

Tax Liability to state Y: .065 x \$155,797 = \$10,127

AUTH: 15-1-201, 15-31-313 and 15-31-501 MCA; IMP: 15-1-601, 15-31-301 through 15-31-312 MCA.


3. Section 2-4-314, MCA, requires each agency to conduct a biennial review of its rules. The amendments of the above rules are the result of this review for the Corporation License Tax Bureau. In conducting this review the Department has determined that many of the rules in this chapter are redundant and some language would be better understood in the body of another rule. Therefore, the language found in ARM 42.26.214; 42.26.227; 42.26.258; 42.26.281 and 42.26.291 has been moved to ARM 42.26.202 and the repeal of those rules is being proposed.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than March 19, 1993.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than March 19, 1993.

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


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State February 1, 1993.

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of rules pertaining to examina-)	8.34.414 EXAMINATIONS AND
tions and reciprocity licenses)	8.34.417 RECIPROCITY
)	LICENSES

1. On December 24, 1992, the Board of Nursing Home Administrators published a notice of proposed amendment of the above-stated rules at page 2686, 1992 Montana Administrative Register, issue number 24.

2. The Board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BY:

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Montana Administrative Register

3-2/11/93

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF ADOPTION OF
imposition of a fee pertaining)	AMENDMENT OF 32.2.401
to inspection of game farm)	DEPARTMENT OF LIVESTOCK
animals)	FEEES, PERMIT FEEES AND
	MISCELLANEOUS FEEES

TO: All Interested Persons:

1. On October 29, 1992, the Board of Livestock published a Notice of the proposed imposition of a fee pertaining to inspection of game farm animals at pages 2348 and 2349, 1992 Montana Administrative Register, Issue number 20.

2. The Board has adopted the rule exactly as proposed.

3. One comment was received from one individual accusing the Board of Livestock of being "panhandlers".

RESPONSE: Section 81-1-102 (2), MCA states "The department shall by rule establish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134". As adopted, this rule is designed to do just that. Most inspection fees for livestock are in that same monetary range.

No other comments were received.

BOARD OF LIVESTOCK
JACK SALMOND, CHAIRMAN

BY: Lon Mitchell
LON MITCHELL,
Rule Reviewer

BY: Lon Mitchell
Lon Mitchell, Staff Attorney
Department of Livestock

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1992. This table includes those rules adopted during the period January 1, 1993 through March 31, 1993 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 December 31, 1992, this table and the table of contents of this issue of the MAR.

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