

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of a rule pertaining) ON THE PROPOSED ADOPTION
to temporary practice permits) OF NEW RULE I TEMPORARY
) PRACTICE PERMITS

TO: All Concerned Persons

1. On October 4, 2000 at 9:00 a.m., a public hearing will be held in the conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Clinical Laboratory Science Practitioners no later than 5:00 p.m., on September 11, 2000 to advise us of the nature of the accommodation that you need. Please contact Becky Salminen, Board of Clinical Laboratory Science Practitioners, Federal Building, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2386; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolcls@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I TEMPORARY PRACTICE PERMITS (1) An applicant for a temporary practice permit must:

- (a) make application to the board on approved application forms;
- (b) provide original college transcripts;
- (c) pay the appropriate fee; and
- (d) be approved to take the first available examination.

(2) A temporary practice permit will not be issued for more than 45 days after the applicant has taken the examination. Only one temporary permit will be issued to an individual.

(3) If the applicant does not register for the first available examination, for any reason, or fails the examination, the temporary practice permit will be void and must be returned to the board office immediately.

Auth: Sec. 37-1-305, MCA
IMP: Sec. 37-1-305, 37-34-201, MCA

REASON: The Board of Clinical Laboratory Science Practitioners is proposing this new rule for clarification of the procedure necessary for an applicant to obtain a temporary practice permit and clarification of validation of a temporary practice permit.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Clinical Laboratory Science Practitioners, Federal Building, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolcls@state.mt.us and must be received no later than 5:00 p.m., September 21, 2000.

5. F. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Clinical Laboratory Science Practitioners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Clinical Laboratory Science Practitioners administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Clinical Laboratory Science Practitioners, Federal Building, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolcls@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
SONJA BENNETT, CHAIRPERSON

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 2000.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to advanced practice nursing, program director and the nurses' assistance program) NOTICE OF PUBLIC HEARING
) ON THE PROPOSED AMENDMENT
) OF ARM 8.32.304 ADVANCED PRACTICE NURSING TITLE,
) 8.32.1110 PROGRAM DIRECTOR,
) 8.32.1601 INTRODUCTION,
) 8.32.1602 DISCIPLINARY TRACK, 8.32.1603 ADMISSION
) CRITERIA - DISCIPLINARY TRACK, 8.32.1604 PROGRAM
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) 8.32.1609 DISCHARGE
) CRITERIA - NON-DISCIPLINARY TRACK, 8.32.1610
) ADMINISTRATION OF THE PROGRAM, 8.32.1611
) CONSULTANT REQUIREMENTS, AND 8.32.1612 CONSULTANT ACTIVITIES

TO: All Concerned Persons

1. On September 25, 2000, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, Fourth Floor, Federal Building, 301 South Park, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., on September 15, 2000, to advise us of the nature of the accommodation that you need. Please contact Barbara Swehla, Board of Nursing, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2341; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolnur@state.mt.us.

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

8.32.304 ADVANCED PRACTICE NURSING TITLE (1) through (2) will remain the same.

(a) ~~American nurses association, academy of nurse practitioners;~~

(b) American association of critical care nurses certification corporation;

(c) American college of nurse-midwives;

(d) American nurses credentialing center;

(e) council on certification of nurse anesthetists;

~~(b) (f) national certification board of pediatric nurse practitioners; and associates,~~

~~(c) association of women's health, obstetric and neonatal nurses,~~

~~(d) American association of nurse anesthetists,~~

~~(e) American college of nurse-midwives,~~

~~(f) association of gerontological nurses,~~

~~(g) American academy of nurse practitioners, and~~

(g) national certification corporation for obstetric, gynecologic and neonatal nursing specialties; and

(h) oncology nursing certification corporation.

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: This rule needs to be amended to clarify the names of certifying bodies that the Montana Board of Nursing accepts as qualification for an advanced practice registered nursing license in Montana. The current rule contains bodies that no longer certify or have changed their name. This amendment will affect all prospective advanced practice registered nurses in Montana.

8.32.1110 PROGRAM DIRECTOR (1) will remain the same.

(2) The director of the baccalaureate program shall possess a master's degree with a major in nursing and a doctorate degree in nursing or a related field from approved programs, with preparation in education and administration.

(a) The board may allow an exception to the educational requirement of a doctorate degree for a period not to exceed one academic year. Such an exception would require the interim director to hold at least a master's degree in nursing from an approved program.

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

Auth: Sec. 37-8-202, 37-8-301, MCA

IMP: Sec. 37-8-301, MCA

REASON: The board is proposing amendments to this rule because it is very difficult to recruit properly qualified individuals for this position and educational institutions may need a period of time to fill such a position.

8.32.1601 INTRODUCTION (1) The nurses' assistance program (NAP) is a specially designed program to assist

~~licensed Montana nurses whose competency may be impaired due to the abuse of drugs or alcohol, so that such nurses can be treated and can return to or continue the practice of nursing in a manner which will benefit the public. The board of nursing, by implementing this nurses' assistance program, will establish two tracks: the disciplinary track (ARM 8.32.1602) and voluntary track (ARM 8.32.1606). The NAP will have two tracks: the disciplinary track and the non-disciplinary track. The NAP will monitor the nurses' rehabilitation process to ensure public safety. Information that relates to the abuse of addictive drugs, alcohol, or any other drug or substance may be reported by the licensee to the NAP in lieu of reporting to the board.~~

Auth: Sec. 37-8-202, MCA
IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing amendments to this rule for clarification purposes and to increase the ability for nurses to self-refer to the NAP.

8.32.1602 DISCIPLINARY TRACK (1) Participation in the nurses' assistance program may be mandated as a part of disciplinary action by the board of nursing or if a complaint against the licensee has been submitted to the board of nursing. ~~A licensee may choose to participate in the disciplinary track of NAP as an alternative to or in conjunction with other administrative proceedings.~~

Auth: Sec. 37-8-202, MCA
IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing amendments to this rule for further clarification of institution of disciplinary track options.

8.32.1603 ADMISSION CRITERIA - DISCIPLINARY TRACK
(1) A licensee may be admitted to the NAP disciplinary track if:
(a) the licensee Any licensed nurse in the state of Montana who has violated the statutes and rules related to nursing practice which involved alcohol and/or drugs and whom the board has stipulated NAP as a part of disciplinary action;
~~(2)~~ (b) the licensee agrees to abide by the terms of NAP; or
(c) the nurse is from another state, has applied for a nursing license in Montana and is mandated by stipulation/final order of that state board of nursing to attend a NAP program.

Auth: Sec. 37-8-202, MCA
IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing amendments to this rule to decrease verbiage and to clarify language for endorsements.

8.32.1604 PROGRAM REQUIREMENTS - DISCIPLINARY TRACK

(1) The program requirements of the NAP disciplinary track are that the licensee shall:

(a) Licensee agrees to evaluations necessary to determine treatment and monitoring needs while a part of the NAP;

(2) (b) Licensee complies with NAP monitoring contract. sign a contract with the NAP and comply with said contract and all requirements as indicated in the NAP participant handbook;

(3) (c) be responsible for Aall costs for treatment and monitoring. will be the responsibility of the licensee.

(4) Licensee actively participates in treatment plan.

(5) All treatment facilities and counseling professionals used in treatment plans must be approved by the board of nursing prior to their use by a licensee.

(6) Quarterly reports from NAP will be presented to the board.

(7) Licensee agrees to act as a nurse advocate to other NAP participants when it is deemed appropriate by NAP and/or the board.

(2) The NAP shall be responsible for:

(a) submitting quarterly reports to the board;

(b) reporting any violations of the NAP contract or any reasonable suspicion that the licensee may not be able to practice safe nursing to the board.

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing amendments to this rule for language clarification and delineation of responsibilities of the licensee, board staff and consultants for the NAP.

8.32.1605 DISCHARGE CRITERIA - DISCIPLINARY TRACK

(1) The licensee shall be discharged from the NAP disciplinary track when the licensee has:

(a) Licensee successfully completed terms of the NAP contract and/or board stipulations and complied with the final order of the board. The board will be notified of successful completion;

(2) Licensee fails (b) failed to comply with the terms of the NAP contract. The NAP will submit a report of failure to comply to the board; or

(3) Licensee fails to show evidence of rehabilitation and ability to function safely as a nurse.

(4) Licensee has committed further offenses against the statutes and rules related to nursing which results in further disciplinary action.

(5) Licensee has violated stipulations and disciplinary actions established by the board which results in suspension or revocation of license.

(c) voluntarily withdrawn from the NAP. The NAP will submit a report to the board.

Auth: Sec. 37-8-202, MCA
IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing amendments to this rule to require notification to the board following an individual's discharge from the NAP to determine if the licensee has complied with the final order of the board or to allow for further board action in the event the licensee has failed to complete the NAP.

8.32.1606 NON-DISCIPLINARY TRACK (1) Participation in the nurses' assistance program (NAP) may be a choice of licensees who volunteer for assistance with alcohol and/or drug use/abuse, or who qualify for enrollment under ARM 8.32.1607, and enroll in lieu of formal disciplinary action. Involvement by the licensee on the non-disciplinary track will remain confidential, provided that the individual complies with all conditions of the program. The non-disciplinary track of the NAP is open to any licensee who identifies a drug/alcohol problem and requests admission to the NAP and to those licensees referred by the board. Licensees may be reported directly to the NAP in lieu of a formal complaint to the board. The identity of participants in the non-disciplinary track of the NAP will remain unknown to the board unless there is a failure to enroll or comply with the requirements of the NAP. Failure to enroll/comply with the NAP will result in a formal complaint to the board by the NAP.

Auth: Sec. 37-8-202, MCA
IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing the amendments to this rule to increase the licensee's ability to self-refer to the NAP.

8.32.1607 ADMISSION CRITERIA - NON-DISCIPLINARY TRACK
(1) A licensee may be admitted to the NAP non-disciplinary track if he/she is:
(a) a licensed nurse or previously licensed nurse in the state of Montana who requests admission;
(b) a licensed nurse from another state who has applied for a nursing license in Montana and is in a similar monitoring program in another state;
(c) a licensee without a previous disciplinary action from any licensing board;
(d) a licensee against whom no notice of proposed board action or similar notice issued by a licensing board is pending; or
(e) a licensee who successfully completed the NAP or similar monitoring program when enrolled.

~~Any licensed nurse in the state of Montana who is involved with alcohol and/or drug use/abuse who desires rehabilitation assistance.~~

~~(2) Licensee agrees to evaluations necessary to determine treatment and monitoring needs prior to admission to NAP.~~

~~(3) Treatment and monitoring needs of the licensee are appropriate for admission into NAP.~~

~~(4) Licensee cooperates with NAP by providing medical information and release of information and liability authorizations.~~

~~(5) Licensee agrees to comply with the NAP treatment plan and monitoring contract.~~

~~(6) Licensee has not had any previous disciplinary action from a licensing board.~~

~~(7) Licensee is not currently facing charges under a notice of proposed board action issued by a licensing board.~~

~~(8) If previously involved in the NAP or any other such assistance program, the individual must have complied in all material respects with such program.~~

~~(9) (2) A Licensee has not had whose nursing practice has involved problems involving death or significant harm to a patient is not eligible for the non-disciplinary track.~~

~~(10) (3) A Licensee has not had evidence of diversion of who has diverted controlled substances or caution legend drugs for purposes of sale or distribution is not eligible for the non-disciplinary track.~~

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing the amendments to this rule to clarify admission criteria in the non-disciplinary track of the NAP and to take compliance language out of the rule and place it in individual licensee contracts.

8.32.1608 PROGRAM REQUIREMENTS - NON-DISCIPLINARY TRACK

(1) Licensee must comply with NAP treatment plan and contract. The requirements of the NAP non-disciplinary track are that the licensee shall:

(a) agree to submit evaluations necessary to determine treatment and monitoring needs while a part of the NAP and agree to sign any waivers of confidentiality or release of information, as requested;

(b) sign the NAP contract and comply with all requirements of that contract; and

(c) be responsible for all costs of treatment and monitoring.

(2) All costs for treatment and monitoring will be the responsibility of the licensee. The NAP shall be responsible for:

(a) submitting quarterly reports to the board with statistical information on non-disciplinary NAP participants; and

(b) reporting to the board any violations of the NAP contract or any reasonable suspicion that the licensee may not be able to practice safe nursing.

~~(3) Licensee actively participates with treatment plan.~~

~~(4) All treatment facilities and counseling professionals used in treatment plans must be approved by the board of nursing prior to their use by a licensee.~~

~~(5) Licensee shall sign a waiver that allows NAP to report noncompliance or the suspected inability to practice safe nursing to the board.~~

~~(6) Licensee agrees to act as a nurse advocate to other NAP participants when it is deemed appropriate by NAP.~~

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing the amendments to this rule to further clarify the licensee's responsibilities and the general requirements of a NAP contract. The amendments also clarify Board staff and NAP consultant responsibilities.

8.32.1609 DISCHARGE CRITERIA - NON-DISCIPLINARY TRACK

(1) Licensee shall be discharged from the NAP non-disciplinary track when:

(a) the licensee successfully completes the program and terms of the NAP contract. NAP;

~~(2) (b) the licensee fails to does not comply with the terms of the NAP. contract and is subsequently reported to the board of nursing. The NAP will submit a report to the board;~~
or

~~(3) (c) the licensee voluntarily removes self withdraws from the NAP. The NAP will submit a complaint to the board.~~

~~(4) If the licensee terminates the NAP contract for any reason, the board will be notified.~~

(2) The licensee may be discharged if he/she violates any of the statutes and rules related to nursing which results in disciplinary action by the board.

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing the amendments to this rule to decrease verbiage, increase clarification and to allow board action for rules violations not pertaining to NAP.

8.32.1610 ADMINISTRATION OF THE PROGRAM (1) The nurses' assistance program will be under the jurisdiction of the board of nursing. The board may contract with a consultant to administer the NAP.

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing the amendment to this rule to correct grammar and for consistency.

8.32.1611 CONSULTANT REQUIREMENTS (1) To be qualified, a consultant must have:

- (a) a license as a registered nurse in Montana with a minimum of a baccalaureate degree in nursing;
- (b) a national or state level certification appropriate for chemical dependency counseling;
- (c) a minimum of ~~two~~ to three years nursing experience;
- (d) two years previous experience related to monitoring health care professionals with substance abuse/dependency and treatment program for chemically dependent health care professionals;
- ~~(e) if recovering from chemical dependency, a minimum of five consecutive years of abstinence;~~
- ~~(f) (e) education in identification, treatment, intervention, and rehabilitation of chemically dependent nurses with substance abuse/dependency; and~~
- ~~(g) (f) knowledge and two years experience in a recognized treatment program for chemical dependency.~~

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing the amendments to this rule to clarify the qualification requirements for a consultant. Language in subsection (1)(e) was deemed to be inappropriate language, in part due to the inability to validate five consecutive years of abstinence. Other amendments were made for clarification and consistency.

8.32.1612 CONSULTANT ACTIVITIES (1) A consultant shall:

- ~~(a) act as liaison between approved treatment programs and providers and the licensees;~~
- ~~(b) (a) carry out all decisions mandated by the board;~~
- (b) submit quarterly activity/statistical reports to the board;
- ~~(c) report NAP participants on the disciplinary track to the board quarterly and statistics of all participants submit quarterly progress reports on licensees enrolled in the disciplinary track of the NAP;~~
- (d) review treatment programs and providers and recommend for approval to the board report licensees in the non-disciplinary track of the NAP to the board who do not comply with the NAP requirements and/or for whom there is reasonable suspicion they may not be able to practice safe nursing;
- ~~(e) report all voluntary track NAP participants who do not meet the terms of their contract;~~
- ~~(f) (e) provide information and consultation to the board upon request;~~

~~(g) establish and maintain contracts with NAP participants;~~

~~(h) (f) review statutes and rules with the executive director and other pertinent issues board and its staff as directed by the board;~~

~~(i) (g) recommend admissions and discharges of participants in the NAP to the board as appropriate; and~~

~~(j) (h) provide documentation of monitoring of all NAP participants.~~

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, MCA

REASON: The Board is proposing the amendments to this rule for clarification purposes and to attempt to be more concise. Some of the items deleted are already covered in other sections.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolnur@state.mt.us and must be received no later than 5:00 p.m., September 25, 2000.

5. F. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Nursing administrative rule making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolnur@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF NURSING
RITA HARDING, RN, MN, PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 2000.

BEFORE THE BOARD OF INVESTMENTS
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 INTERCAP Program) PERTAINING TO THE INTERCAP
) PROGRAM

TO: All Concerned Persons:

1. On September 28, 2000, at 10:00 a.m., a public hearing will be held in the Board of Investments conference room, 2401 Colonial Drive, Helena, Montana, to consider the proposed repeal of rules pertaining to the INTERCAP Program.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on September 21, 2000, to advise us of the nature of the accommodation that you need. Please contact David Ewer, Board of Investments, 2401 Colonial Drive, Helena, Montana 59620-0126; telephone (406) 444-0001; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 449-6579; email dewer@state.mt.us.

3. The rules, found on Administrative Rules of Montana pages 8-3527 through 8-3533, proposed for repeal are as follows:

8.97.910 INTERCAP PROGRAM - PURPOSE Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.911 INTERCAP PROGRAM - ELIGIBLE GOVERNMENT UNIT'S BORROWING AUTHORITY Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.912 INTERCAP PROGRAM - ELIGIBILITY FOR PARTICIPATION Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.913 INTERCAP PROGRAM - ADDITIONAL PROGRAM REQUIREMENTS - INTERCAP-EZ PROGRAM Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.914 INTERCAP PROGRAM - ORIGINATION FEE Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, 17-5-1643, MCA

8.97.915 INTERCAP PROGRAM - LOAN TERMS, INTEREST RATES, FEES AND CHARGES Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.916 INTERCAP PROGRAM - SHORT-TERM LOANS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.917 INTERCAP PROGRAM - GENERAL OBLIGATION BONDED DEBT - DESCRIPTION REQUIREMENTS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.918 INTERCAP PROGRAM - REVENUE OBLIGATION - TAX BACKED REVENUE OBLIGATIONS - DESCRIPTION - REQUIREMENTS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.919 INTERCAP PROGRAM - SPECIAL IMPROVEMENT BOND DEBT - DESCRIPTION - REQUIREMENTS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.920 INTERCAP PROGRAM - REVENUE BONDS SPECIAL DISTRICTS - COUNTY WATER AND SEWER DISTRICTS - VOTED DEBT AND NON-VOTED DEBT - DESCRIPTION - REQUIREMENTS - COUNTY HOSPITAL DISTRICTS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.921 INTERCAP PROGRAM - OTHER LOANS; LIMITS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, 17-5-1611, MCA

REASON: The Board is proposing the above repeals to make the rules more current with usage and expectations of the public. The Municipal Finance Consolidation Act directs the Board to create programs for local and state government to obtain affordable capital. The Act allows, but does not require, the Board to implement rules to govern the Act.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Investments, 2401 Colonial Drive, Helena, Montana 59620-0126, or by facsimile (406) 444-6579 or by email to dewer@state.mt.us, to be received no later than 5:00 p.m., September 28, 2000.

5. David Ewer has been designated to preside over and conduct this hearing.

6. The Board of Investments maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding INTERCAP and other Board of Investments programs. Such written request may be mailed or delivered to the Board of Investments, 2401 Colonial Drive, Helena, Montana 59620, or by facsimile to the office at (406) 444-6579 or by email to dewer@state.mt.us or may be made by completing a request form at any rules hearing held by the Board of Investments.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF INVESTMENTS

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed adoption,	)	ON THE PROPOSED ADOPTION,
transfer and amendment,	)	TRANSFER AND AMENDMENT,
amendment, and repeal of	)	AMENDMENT, AND REPEAL OF
rules relating to standards	)	RULES RELATING TO STANDARDS
of school accreditation	)	OF SCHOOL ACCREDITATION

TO: All Concerned Persons

1. On September 21, 2000, at 4:30 p.m., a public hearing will be held at East Middle School library, 2600 Grand Street, Butte, Montana, to consider the adoption, transfer and amendment, amendment, and repeal of rules relating to standards of school accreditation.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on September 7, 2000, to advise us of the nature of the accommodation that you need. Please contact Pat Reichert, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, telephone: (406)444-3172, FAX: (406)444-2893. A TTD number will be available upon request.

3. Statement of Reasonable Necessity. Section 20-3-106(18), MCA, requires the State Superintendent to recommend standards of accreditation for all schools to the Board of Public Education. Section 20-2-121(7), MCA, requires the Board of Public Education to adopt standards of accreditation and establish the accreditation status of every school in accordance with 20-7-101 and 20-7-102, MCA.

These proposed changes in accreditation rules are necessary because the accreditation standards in their entirety have not been reviewed since they were adopted in 1989. The proposed rule changes are based on recommendations from a task force of parents, educators, higher education representatives, and the Montana School Boards Association, organized by the Office of Public Instruction, who reviewed current accreditation standards over a period of 7 months. Changes were recommended for the following reasons:

- A. Modernize, improve readability and increase consistency in language from accreditation rules adopted in 1989.
- B. Eliminate outdated "effective date" language.
- C. Eliminate the option of a notice of deferral for meeting a standard.

- D. Eliminate rules that duplicate language found in state statute.
- E. Require school districts to develop a five-year comprehensive educational plan.
- F. Clarify assignment status of certified teachers, guidance counselors and principals who are enrolled in Board of Public Education approved internship programs.
- G. Modify the rule on professional development to reflect current research on effective professional development.
- H. Revise to positive language the rule on opportunity and educational equity standard.
- I. Modify standards to encourage Montana students to learn about the distinct and unique heritage of American Indians.
- J. Eliminate program components for services to gifted and talented students.
- K. Differentiate for middle schools and departmentalized 7-8 schools between programs that must be taught every year and those that need to be maintained in balance.
- L. Add encouragement for a board of trustees' policy on parental involvement.
- M. Place as a separate rule the requirements for performance-based accreditation.
- N. Place as a separate rule requirements for qualifications and supervision of instructional aides.

4. The proposed new rules provide as follows:

RULE I PERFORMANCE-BASED ACCREDITATION (1) Performance-based accreditation gives a school district the option of obtaining, for one or more of its schools, accreditation through a process that involves self-evaluation, peer-review and on-site visitations. This method allows a school to meet accreditation standards by showing through its students' work that it provides a quality education. The school improvement plan serves as a basis for assessment of school effectiveness and an impetus for mobilizing improvement efforts.

(2) After engaging in a sustained school improvement effort, a school district, on behalf of one or more of its schools, may apply to the superintendent of public instruction for performance-based accreditation. The board of public education makes the final decision on whether a school is accredited through the performance-based accreditation process. The school improvement process shall incorporate the following six steps or their equivalent:

- (a) Development of a student/community profile;
- (b) Development of a school mission and goals that reflect a locally derived philosophy of education;
- (c) Identification of desired learner results based on the content and performance standards;

(d) Analysis of instructional and organizational effectiveness;

(e) Development and implementation of a school improvement plan; and

(f) Monitoring through self-assessment and visits by peers or teams.

(3) To be granted performance-based accreditation, a school must:

(a) Engage in a continuous schoolwide improvement process;

(b) Host at least two visitations, chaired by a person trained or experienced in the process and selected from an office of public instruction approved list, to seek feedback and validate the school improvement process;

(c) Notify the superintendent of public instruction of the visitation dates and team members. A member of the staff of the office of public instruction shall be a member of the visitation team;

(d) Submit reports of the visitation to the superintendent of public instruction; and

(e) Apply to the superintendent of public instruction for performance-based accreditation by providing documentation of school improvement, including, but not limited to:

(i) visitation reports;

(ii) a school improvement plan;

(iii) evidence of attainment or significant progress toward attainment of the school improvement plan goals; and

(iv) a recommendation from the visitation team that the board of public education grant performance-based accreditation.

(4) After a review in which the school demonstrates successful attainment or significant progress toward achieving the desired learner results, the school may be granted performance-based accreditation for up to six years. The school is subject to peer or team reviews at least every three years. The review shall establish that:

(a) The integrity of the school improvement process is maintained;

(b) The school is making informed, data-driven decisions;

(c) The process is school-based;

(d) All steps of the school improvement process are connected and inform one another;

(e) Committees work collaboratively within and among one another;

(f) The school implements each step appropriately; and

(g) Student learning is central to the entire process, with improvement demonstrated in desired learner results, based on content and performance standards.

(5) A school district, on behalf of one or more of its accredited schools electing this process, may petition the superintendent of public instruction to recommend that the board of public education waive existing standards that interfere with the school improvement plan, excluding

standards stating a statutory requirement or standards pertaining to certification.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

RULE II INSTRUCTIONAL AIDES: QUALIFICATIONS AND SUPERVISION (1) Instructional aides need not be certified; however, the following supervision is required:

(a) Instructional aides assigned due to classroom size or diversity shall be under the direct supervision of a certified teacher. This means that the aide shall be supervised by a certified teacher who is responsible for instruction and assessment of students. The supervising teacher shall be available while the aide is fulfilling his/her responsibilities and shall not be simultaneously assigned to another teaching duty or preparation time.

(b) Instructional aides assigned to assist students with special education needs shall be under the supervision of the teacher or other professional designated as primarily responsible for instructional planning for the student. The designated professional has the responsibility to provide regularly scheduled communication and direction to the instructional aide and not to delegate any activity to the instructional aide that requires professional skill, knowledge and judgment.

(c) Instructional aides assigned to assist students in gaining specialized knowledge not generally available from a properly endorsed teacher shall be supervised by a teacher certified at the proper level. The supervising teacher is responsible for instruction and assessment of students and shall not be simultaneously assigned to another teaching duty or preparation time.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

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

~~10.55.2001~~ 10.55.908 SCHOOL FACILITIES (1) through (5) remain the same.

(6) The board of trustees shall have in writing a policy that defines the use of school facilities and resources. (~~Eff. 7/1/89~~)

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

~~10.55.2002~~ 10.55.909 STUDENT RECORDS (1) Each school shall keep, in secure storage, a permanent file of students' records, ~~which~~ that shall include the name and address of the student, his/her parent or guardian, birth date, academic work

completed, level of achievement (grades, standardized achievement tests), immunization records as per 20-5-406, MCA, and attendance data.

(2) ~~Student records shall be kept in a fire resistant file or vault in the school building or, for rural schools, in the county superintendent's office.~~ The board of trustees shall establish policies and procedures for the use and transfer of student records, which that are in compliance with state and federal laws governing individual privacy. All educational records collected and maintained by a school shall be kept in a confidential manner according to the implementing regulations of the Family Educational Rights and Privacy Act (FERPA) at 34 CFR part 99.

(3) All inactive permanent records from a school that closes shall be sent to the county superintendent or the appropriate county official. ~~(Eff. 7/1/89)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

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

10.55.601 ACCREDITATION STANDARDS: PROCEDURES (1) The board of public education adopts standards of accreditation ~~on~~ upon the recommendation of the state superintendent of public instruction.

(2) The board and the office of public instruction establish procedures and schedules for reviewing the accreditation status of each school annually.

(3) To ensure continuous education improvement, the school district shall develop, implement, evaluate, and revise a five-year comprehensive education plan.

(a) This plan shall include:

(i) a school district level education profile as described in guidance provided periodically by the office of public instruction;

(ii) the school district's educational goals in accordance with ARM 10.55.701;

(iii) a description of planned progress toward implementing all content, performance, and program area standards, in accordance with the schedule in ARM 10.55.603;

(iv) a description of strategies for assessing student progress toward meeting all content and performance standards, in accordance with ARM 10.55.603; and

(v) a professional development component, in accordance with ARM 10.55.714.

(b) By May 1, 2002, the district trustees shall file their adopted five-year comprehensive education plan with the office of public instruction and make their plan available to employees and the public.

(c) The office of public instruction shall develop and implement procedures necessary to monitor and evaluate the

effectiveness of each school district's comprehensive education plan.

(4) To ensure continuous educational improvement and to meet the identified needs of students in every school, every school in the district shall develop and have on file in the district office a comprehensive education plan.

(5) To ensure continuous educational improvement, the office of public instruction shall provide guidance, resources, and evaluation to assist in the implementation of district and school plans to improve teaching and learning for all students.

~~(3)(a) Effective on July 1, 1989, (6) sSchools districts~~ are required to maintain present programs that meet current standards until such standards are superseded. The content and performance standards will supersede model learner goals according to the following schedule:

- ~~(i)(a) Reading -- November 1998;~~
- ~~(ii)(b) Mathematics -- November 1998;~~
- ~~(iii)(c) Science -- October 1999;~~
- ~~(iv)(d) Technology -- October 1999;~~
- ~~(v)(e) Health Enhancement -- October 1999;~~
- ~~(vi)(f) Communication Arts aligned to the reading content and performance standards -- October 1999;~~
- ~~(vii)(g) World Languages -- October 1999;~~
- ~~(viii)(h) Social Studies -- October 2000;~~
- ~~(ix)(i) Arts -- October 2000;~~
- ~~(x) Vocational /Practical Arts--October 2000;~~
- ~~(j) Library media -- October 2000;~~
- ~~(k) Workplace competencies -- October 2000;~~
- ~~(l) Vocational/Practical Arts technical education -- October 2000¹.~~

~~(b)(7) On or before July 1, 2004, A a school has until the end of school year 2003-04 (five years) to district shall align its curriculum to the statewide content and performance standards and program area standards as adopted by the board of public education. A school district should modify its existing curriculum review schedule shall maintain programs to synchronize align with the state's schedule for revising standards.~~

~~(4)(a) Effective on January 1, 1992, schools unable, for financial reasons, to meet the requirements of ARM 10.55.705(1)(d), 10.55.712(1)(a) or 10.55.904(4)(h) may file an initial notice of deferral with the office of public instruction.~~

~~(b) Effective January 1, 1994, schools unable, for financial reasons, to meet the requirements of ARM 10.55.709(2) or (3), 10.55.710(2), 10.55.902(5)(j) or 10.55.903(2)(i) may file an initial notice of deferral with the office of public instruction.~~

~~(c) The notice of deferral must be filed on a form provided by the office of public instruction and approved by the board of public education.~~

~~(d) The notice of deferral must contain the following information:~~

- ~~(i) The standard(s) to be deferred;~~
- ~~(ii) A statement as to why the standard(s) cannot be met and the efforts made by the school to meet the standard(s);~~
- ~~(iii) The school's plan to meet the standard(s) in the future;~~
- ~~(iv) A breakdown of the specific costs associated with the standard(s) to be deferred and the assumptions used to derive these costs.~~
- ~~(e) The notice of deferral must be signed by the chairman of the school board and in districts with superintendents, the superintendent.~~
- ~~(f) Upon the initial filing of a notice of deferral, the standard(s) will be deferred for two school years. If a school files a subsequent notice of deferral on a standard(s) already subject to a deferral, the office of public instruction will review the notice and recommend to the board of public education whether an additional two-year deferral should be granted.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.602 DEFINITIONS For the purpose of this chapter, the following terms apply:

- (1) through (3) remain the same
- (4) "Content standard" means what a all students should know, understand and be able to do in a specific content area, such as reading, mathematics, or social studies.
- (5) remains the same.
- ~~(6) "Distance learning" means instruction which takes place when the learner is distant from the instructor and/or instructional materials.~~
- ~~(7) "Effective schooling practices" refers to the body of knowledge known as "effective schooling practices" and generally means schooling practices which include a clearly defined curriculum; focused classroom instruction and management; firm, consistent discipline; close monitoring of student performance and strong instructional leadership.~~
- ~~(8) "Facilitator" means a person, on-site, either certified or noncertified, who assists students in receiving distance learning instruction.~~
- (9) remains the same, but is renumbered (6).
- ~~(10) "Learner goals," as developed by the local school board, community, and educators and provided to the office of public instruction, are the attitudes, concepts, skills, and knowledge which students are given the opportunity to acquire during their K-12 schooling. The learner goals, as approved by the board, are contained in the June 1996 Montana School Accreditation Manual, and are hereby adopted by reference and incorporated in this rule. A copy may be obtained from the Office of Public Instruction, PO Box 202501, Helena, MT 59620-2501.~~
- (11) remains the same, but is renumbered (7).

~~(12)(8)~~ "Program area standards" means the subject matter Montana school districts are required to offer and the strategies and best proven practices used to instruct. The program area standards include: communication arts, fine arts, health enhancement, mathematics, science, social studies, vocational/~~practical arts~~ technical education, technology, workplace competencies, library media, world languages and guidance.

~~(13)(9)~~ "Assessment" means local assessment used the gathering, organizing, and evaluation of information about student learning in order to monitor and measure the effectiveness of the instructional program.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.604 ALTERNATIVE VARIANCES TO STANDARDS ~~(1)~~—A school may apply to the board of public education through the office of public instruction for permission to use an alternative to any standard, section of standards, or the entire set of standards, excluding standards pertaining to law or certification requirements. To do so, the school shall provide the office of public instruction evidence that the opportunity to meet the accreditation standards' learner goals, the content and performance standards and program area standards are at the core of its curricula—that is, that the school has put in place curriculum and assessment procedures which, at a minimum, give students opportunities to meet the content and performance standards. The board of public education may withdraw its permission of the alternative program at any time if experience shows it no longer provides an educationally sound alternative.

~~(2)~~ Permission to use an approved alternative shall be granted for one year. It is renewable for up to an additional five years without annual approval, if both the school and the board of public education find the one-year pilot to be workable and educationally sound.

~~(3)~~ The school shall include an update on its alternative program(s) in its annual report to the office of public instruction.

~~(4)~~ Approval and renewal of an alternative standard shall be done by the board of public education in open meeting, which provides opportunity for public comment on each school's application for use of the alternative standard.

~~(5)~~ A school or school district may submit, a plan to employ a performance-based accreditation process to the office of public instruction. The basic performance-based process available for school implementation shall incorporate five steps or their equivalent:

- ~~(a)~~ the development of a student/community profile;
- ~~(b)~~ the development of a school mission statement which reflects a locally derived philosophy of education;
- ~~(c)~~ the identification of desired learner results (exit performance standards);

~~(d) the analysis of instructional and organizational effectiveness; and~~

~~(e) the development and implementation of a school improvement plan.~~

~~A school or school district granted approval for a performance-based accreditation shall be subject to an on-site accreditation review at the end of an initial three-year period by a team of individuals selected by the office of public instruction. After a successful initial review, the school shall be subject to accreditation review by a visitation team at minimum five-year intervals. Schools are encouraged to coordinate on-site review with each self-evaluation phase of the process. Accredited schools, electing this formative process may petition the board of public education to waive existing standards except those that are required by law.~~

(1) A school district may apply to the board of public education through the office of public instruction to implement an alternative to a standard or a section of standards, excluding standards stating a statutory criteria, standards pertaining to teacher certification, and content and performance standards as defined by the board of public education and provided in guidance from the office of public instruction.

(a) In its application, the school district shall provide evidence establishing that its alternative is workable and educationally sound in comparison to the intent of the standard(s) that would be waived, and shall establish that the goals of the alternative will meet or exceed the results under the current standard(s).

(b) In its application, the school district shall submit a statement of mission and objectives, and identify formative and summative measures to be used to evaluate the effectiveness of the alternative.

(c) Upon appropriate application, the board of public education shall approve or deny the proposed alternative.

(d) If the board denies the proposed alternative, it shall state in writing why it has done so.

(e) If the board approves the proposed alternative, its initial approval shall be for two years.

(f) During the second year of the initial approval, the board of public education, through the office of public instruction, shall direct an on-site evaluation of the alternative.

(g) If the board finds the alternative is workable and educationally sound in comparison to how the waived standard(s) previously worked in the district, the board shall renew the alternative for five years.

(h) Subject to on-site evaluations every five years, the board may continue to renew the alternative.

(i) A school district may discontinue an approved alternative at any time. If it does so, it shall promptly notify the board of public education in writing.

(2) A school district may apply to the board of public education through the office of public instruction to create a charter school.

(a) A charter school must provide an education that meets or exceeds the requirements of the Montana Constitution, state law, and school accreditation standards.

(b) The board of public education may only grant charters to publicly funded schools or programs under the supervision and control of a locally elected board of trustees in an existing school district.

(c) The procedure by which a school district may apply to create a charter school and by which the board of public education may approve, deny, evaluate, and renew a charter school shall be identical to that outlined in ARM 10.55.604.

(d) To be proposed by a school district and approved by the board of public education, a charter school shall, at a minimum, guarantee the following:

(i) school district governance and control;

(ii) unrestricted, open student access;

(iii) compliance with all health and safety laws;

(iv) teacher certification and endorsement to the same extent as required or provided by state law or accreditation standards;

(v) employee collective bargaining to the same extent as required or provided by state law; and

(vi) a plan for consideration of input by community members and staff as to formation and implementation issues. Consideration of input may be identified by formation of advisory committees involving staff and/or community members, conduct of a properly noticed public meeting for purposes of comment on the formation or operation of the charter school, or any other reasonable means that result in an opportunity for input by staff and community members prior to a decision of significant interest to the public regarding the formation or operation of the charter school.

(e) A school district may discontinue an approved charter school at any time. If it does so, it shall promptly notify the board of public education in writing.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.605 CATEGORIES OF ACCREDITATION (1) Regular accreditation means ~~T~~the school meets the requirement for regular accreditation when has:

(a) ~~i~~Its program reflects learner goals, aligned to the content and performance standards and program area standards;

(b) ~~the staff is e~~Certified staff that is, appropriately assigned, and fully utilized;

(c) ~~the s~~School programs and resources that are adequate;

(d) ~~f~~Facilities that meet appropriate standards; and

(e) ~~the s~~School trustees, staff, parents, and community that work together to provide a quality education.

~~(2) Regular accreditation is for one year.~~

~~(3) Regular accreditation with note of minor deviations is~~ When the school meets most of the regular accreditation standards with minor deviations, but there are deviations from the standards that are of a minor nature these deviations are noted on the annual accreditation status letter as minor citations when considering the school program in its entirety.

~~(4) Regular accreditation with note of minor deviations will be for one year. If deviations are not corrected, the school may be moved to advice status.~~

~~(5)~~(3) Accreditation with advice status means the school exhibits serious and/or numerous deviations from the standards. The school must submit an improvement plan developed by trustees, administrators, teachers, parents, and the community, to the office of public instruction.

~~(6) If a school is on advice status for two years and continues to have serious and/or numerous deviations, it will move to deficiency status.~~

~~(7)~~(4) Deficiency Accreditation with deficiency status assistance is the fourth level for schools and means that the school has been on advice status for at least two years and continues to have serious and/or numerous deviations, or has substantially increased the seriousness of deviations over the previous year.

(a) A school will be accredited with placed on deficiency status if:

~~(a)~~(i) the school employs a noncertified teacher as a teacher an individual who does not have a Montana teaching certificate;

(b) and (c) remain the same, but are renumbered (ii) and (iii).

~~(8)~~(b) The school administrator and the chair of the board of trustees will submit and/or come before the board of public education with an improvement plan and a systematic procedure for correcting the deviations noted. The office of public instruction will facilitate assistance to enable the school to accomplish the goals of the improvement plan and to correct the deviations.

~~(9)~~(5) Nonaccredited status means that if a school is on level four deficiency status and fails to document that it has met its improvement plan, its accreditation may be rescinded.

(6) A school seeking initial accreditation or reinstatement of accreditation shall meet the requirements of regular accreditation outlined in (1). This process shall include an on-site review from the office of public instruction.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.701 BOARD OF TRUSTEES (1) The board of trustees shall ensure that the school district complies with all local, state, and federal laws and regulations. ~~(Eff. 7/1/89)~~

(2) The board of trustees will ~~shall~~ review ~~the state accreditation standards annually and~~ provide in each school building at least one copy of the accreditation standards for staff and public review. (~~Eff. 7/1/89~~)

(3) Each school district shall have in writing and available to the staff and public:

(a) a comprehensive philosophy of education; (~~Eff. 7/1/89~~)

(b) goals ~~which that~~ reflect the district's philosophy of education; (~~Eff. 7/1/89~~)

(c) sequential curricula for each program area ~~which addresses the learner goals that aligns to the content and performance standards~~ and the district's educational goals; (~~Eff. 7/1/2000~~)

(d) policies establishing student assessment procedures ~~which that~~ ensure evaluation of the school's curricula and student learning. These procedures shall specify how and when data are to be collected, analyzed, and reported; (~~Eff. 7/1/91~~)

(e) policies ~~which that~~ delineate the responsibilities of the board, superintendent, and personnel employed by the school district. The trustees shall review these policies annually on a regular basis and make them available to employees and the public; (~~Eff. 7/1/89~~)

(f) a policy on student, parent, and school employee due process rights; (~~Eff. 7/1/89~~)

(g) an equity policy; (~~Eff. 7/1/89~~)

(h) a transfer policy for determining the appropriate placement of incoming students; (~~Eff. 7/1/91~~)

(i) an academic freedom policy; (~~Eff. 7/1/91~~)

(j) a materials selection policy, including a challenge procedure, for all curricular and support materials; (~~Eff. 7/1/91~~)

(k) a copyright policy; (~~Eff. 7/1/91~~)

(l) a policy that defines the use of school facilities and resources. (~~Eff. 7/1/91~~);

(m) a parent involvement policy that encourages:

(i) regular, two-way and meaningful communication between home and school;

(ii) promotion and support of parenting skills;

(iii) that parents play an integral role in assisting student learning;

(iv) that parents are welcome in the school, and that their support and assistance are sought;

(v) parents as full partners in the decisions that affect children and families; and

(vi) community resources be used to strengthen schools, families, and student learning; and

(n) a policy that incorporates the distinct and unique cultural heritage of American Indians and that is aligned with district educational goals.

~~(4) The board of trustees shall evaluate the above policies on a regular basis. (Eff. 7/1/91)~~

~~(5)(4)~~ The board of trustees shall have valid, written contracts with all regularly employed certified administrative, supervisory, and teaching personnel. ~~(Eff. 7/1/89)~~

~~(6)(5)~~ The board of trustees shall have written policies and procedures for regular and periodic evaluation of all regularly employed certified administrative, supervisory, and teaching personnel. The individual evaluated shall have a written copy of the evaluation, the opportunity to respond in writing to the evaluation, and access to his/her files. Personnel files shall be confidential. ~~(Eff. 7/1/89)~~

~~(7)(6)~~ The board of trustees shall ~~consider ways to~~ establish conditions that contribute to a positive school climate and morale by encouraging cooperative and harmonious relationships among the staff members, students, parents, and community. ~~(Eff. 7/1/91)~~

~~(8)(7)~~ To enhance a positive learning environment, the board of trustees ~~should~~ shall:

(a) and (b) remain the same.

~~(9)(8)~~ To ensure continuous education improvement, the district shall ~~conduct a self-evaluation program at least every ten years~~ engage in a continuous school improvement process. ~~(Eff. 7/1/91)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.702 CERTIFICATION AND DUTIES OF DISTRICT SUPERINTENDENT (1) The district superintendent shall:

~~(a)~~ be certified in accordance with state statutes and board of public education rules;

~~(b)~~ be responsible for selecting and assigning all school employees for the administration and supervision of the educational program, subject to the approval of the board of trustees;

~~(c)~~ propose district goals and priorities for improvement, subject to the approval of the board of trustees;

~~(d)~~ oversee curriculum planning and ensure district continuity in implementation; and

~~(e)~~ collect and summarize district-wide information including student performance data. ~~(Eff. 7/1/89)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.703 CERTIFICATION AND DUTIES OF BUILDING LEVEL ADMINISTRATOR: PRINCIPAL (1) The building administrator shall:

(a) remains the same.

~~(b)~~ be considered appropriately assigned if he/she is enrolled in a board of public education approved principal internship program;

~~(c)~~ have a certificate endorsed at the level assigned as an administrator, except where a ~~district superintendent is~~

~~servicing as both high school and elementary administrator one individual serves as the single administrator for the entire district under ARM 10.55.705(1)(a) or (b), where the superintendent may hold either a high school or elementary administrative endorsement. No individual may be assigned a total of more than 100 percent full-time equivalent (FTE);~~

~~(c) through (e) remain the same, but are renumbered (d) through (f).~~

~~(f)(g) be responsible for the effective day-to-day operation of the school, including the management of finances, materials, and human resources. (Eff. 7/1/89)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1) ~~Effective 7/1/92 district superintendents~~ A district superintendent for a combined elementary-high school district or a county high school district or an independent elementary school district shall be assigned as follows:

~~(a) A combined elementary-high school district:~~

~~(i) A full or part-time district superintendent shall be employed for a district with fewer than 9 FTE certified staff.~~

~~(ii) A full or part-time district superintendent shall be employed for a district with 9-29 FTE certified staff. One full-time individual may fulfill the positions of district superintendent and half-time building administrator(s) as defined in ARM 10.55.705 (1). A superintendent that also serves as principal(s) shall devote full-time to administration and supervision.~~

~~(iii) A full-time (1 FTE) district superintendent shall be employed for a district with 300 or more FTE certified staff, or 551 or more students.~~

~~(b) A county high school district:~~

~~(i) A full-time or part-time district superintendent shall be employed for a district with fewer than 9 FTE certified staff.~~

~~(ii) A full or part-time district superintendent shall be employed for a district with 9-29 FTE certified staff. One full-time individual may fulfill the positions of district superintendent and half-time building administrator(s) as defined in ARM 10.55.705 (1). A superintendent that also serves as principal shall devote full-time to administration and supervision.~~

~~(iii) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.~~

~~(c) An independent elementary school district:~~

~~(i) A full or part-time district superintendent shall be employed for a district with fewer than 9 FTE certified staff or the district shall utilize the services of the county superintendent to fulfill the duties of district superintendent as outlined in ARM 10.55.702.~~

~~(ii) A full or part-time district superintendent and a full or half-time building administrator as defined in ARM 10.55.705(1) shall be employed for a district with 9-17 FTE certified staff or the district shall utilize the services of the county superintendent to fulfill the duties of the district superintendent as outlined in ARM 10.55.702. One full-time individual may fulfill the positions of district superintendent and half-time building administrator as defined in ARM 10.55.705 (1). A superintendent that also serves as principal(s) shall devote full-time to administration and supervision.~~

~~(iii) A full or part-time district superintendent shall be employed for a district with 18-29 FTE certified staff. One full-time individual may fulfill the positions of district superintendent and half-time building administrator(s) as defined in ARM 10.55.705(1). A superintendent that also serves as half-time principal shall devote full-time to administration and supervision.~~

~~(iv) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.~~

~~(2) A combined elementary-high school district or a county high school district or an independent elementary school district with 100 or more FTE certified staff shall employ a full-time curriculum coordinator to supervise the educational program. The curriculum coordinator must hold a Class 3 administrative certificate.~~

~~(3) Any district may seek alternatives to the above requirements including sharing a district superintendent (see "Alternative Standard", ARM 10.55.604). Where a district superintendent is shared, one superintendent may serve all the cooperating districts. If a district superintendent is shared within the requirements of ARM 10.55.704, an alternative standard need not be applied for by the district.~~

(a) A full or part-time district superintendent and a full or half-time building administrator as defined in ARM 10.55.705(1)(a) or (b) shall be employed for an independent elementary district with fewer than 18 full-time equivalent (FTE) certified staff or the district shall utilize the services of the county superintendent to fulfill the duties of the district superintendent. One administrator may serve as both superintendent and part-time building(s) administrator as defined in ARM 10.55.705(1)(a) or (b). A superintendent serving under this subsection shall devote full time to administration and supervision not to exceed a total assignment of 100 percent FTE;

(b) A full or part-time district superintendent and a full or half-time building administrator shall be employed for a combined elementary-high school district or a county high school district with fewer than 30 FTE certified staff. A full or part-time district superintendent and a full or half-time building administrator shall be employed for an independent elementary district with more than 18 but fewer than 30 FTE certified staff. One administrator may serve as

both superintendent and part-time building administrator as defined in ARM 10.55.705(1)(a) or (b). A superintendent serving under this subsection shall devote full time to administration and supervision not to exceed a total assignment of 100 percent FTE;

(c) A full-time (1 FTE) district superintendent shall be employed for any district with 30 or more FTE certified staff, or 551 or more students.

(2) A combined elementary-high school district, or a county high school district, or an independent elementary school district with 100 or more FTE certified staff shall employ a full-time curriculum coordinator to supervise the educational program and alignment of standards, assessment, curriculum, instruction, and instructional materials. The curriculum coordinator shall hold a class 3 administrative certificate. Those districts with less than 100 FTE certified staff and no full-time curriculum coordinator shall employ the services of a regional curriculum consortium or a part-time, designated curriculum coordinator.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.705 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF

BUILDING ADMINISTRATORS (1) ~~Beginning 7/1/92~~ ~~s~~School districts shall employ appropriately endorsed building administrators, as follows:

(a) A district superintendent or supervising teacher and county superintendent for schools with ~~less~~ fewer than 9 full-time equivalent (FTE) certified staff-;i

(b) .5 FTE for schools with 9-17 FTE certified staff-;i

(c) through (e) remain the same.

(f) 4 FTE for schools with 1551-2050 students; and

(g) remains the same.

(2) ~~Beginning 7/1/92~~ ~~i~~In schools with more than one building administrator, the first administrator shall be appropriately endorsed as principal. The additional administrators shall have administrative endorsement(s) at the appropriate level(s) and in the area(s) that accurately reflect their supervisory responsibilities. For example, a school may assign properly certified and endorsed curriculum coordinators to supervise the appropriate instructional programs.

(3) ~~Beginning 7/1/92~~ ~~i~~In schools with at least three FTE building administrators who are administratively endorsed, release time of department coordinators or chairpersons may be counted toward additional building administration. Department coordinators or chairpersons counted toward building administration may observe and supervise but shall not formally evaluate classroom instruction.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.706 TEACHER INVOLVEMENT (1) Teachers shall be involved in curriculum development and student assessments and in the promotion of a school climate that enhances student learning, achievement, and well-being. (Eff. 7/1/89)

AUTH: 20-2-114 MCA

IMP: 20-2-121 MCA

10.55.707 TEACHER AND SPECIALIST CERTIFICATION (1) All ~~Teachers~~ shall hold valid Montana teaching certificates. ~~Administrators who teach also shall hold appropriate certificates.~~

(2) and (3) remain the same.

(4) ~~Study hall supervisors need not be certified teachers and guidance counselors who are enrolled in board of public education approved internship programs shall be considered appropriately assigned when teaching or serving as a guidance counselor in the internship area.~~

(5) ~~Instructional aides need not be certified; however, the following supervision is required:~~

(a) ~~Instructional aides assigned due to classroom size or diversity, must be under direct supervision of a certified teacher. This means that the aide must be responsible to a certified teacher who has the legal authority for instruction and assessment of students. The supervising teacher must be available while the aide is fulfilling his/her responsibilities and must not be simultaneously assigned to another teaching duty or preparation time.~~

(b) ~~Instructional aides assigned to assist students with special education needs must be under the supervision of the teacher or other professional designated as primarily responsible for instructional planning for the student. The designated professional has the responsibility to provide regularly scheduled communication and direction to the instructional aide and not to delegate any activity to the instructional aide which requires professional skill, knowledge and judgment.~~

(c) ~~Instructional aides hired to assist students in gaining specialized knowledge not generally available from a properly endorsed teacher shall be supervised by a teacher certified at the proper level. This certified teacher is responsible for instruction and assessment of students and must not be simultaneously assigned to another teaching duty or preparation time.~~

(6) ~~In accordance with state law, salary shall be withheld from certified staff who have not registered their certificates in the office of the county superintendent after their term of service begins. County superintendents shall receive from the schools a list of district professional staff and their assignments and shall advise school districts of professional staff who do not have current registered certificates.~~

(7) ~~All certified staff shall file official transcripts of all college work in the office of their chief school~~

~~administrator. If there is no district superintendent or principal, the county superintendent is the chief school administrator.~~

(8) remains the same, but is renumbered (5).

~~(9) All certified staff holding a provisional (Class 5) certificate will file in the office of the chief administrator the plan of intent from the college where they are completing their program. (Eff. 7/1/89)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.708 TEACHING ASSIGNMENTS (1) Teachers shall be assigned at the levels and in the subjects for which their certificates are endorsed. Exceptions are:

(a) and (b) remain the same.

~~(c) for a clarifications of teaching assignments in grades 5 through 12 departmentalized and secondary settings, see are published in Appendix A of the "Montana School Accreditation and Procedures Manual." published March 1987, or the latest edition by the office of public instruction, which is incorporated in this rule by reference.~~

(2) Certification at the elementary level based on a bachelor's degree entitles the holder to teach in grades K through 8.

(3) No teacher shall have more than 28 clock hours of assigned student responsibility per week except for one-, and two-, and three-teacher schools. (Eff. 7/1/89)

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.709 LIBRARY/MEDIA SERVICES, K-12 (1) ~~Prior to 7/1/94 in high schools, junior high schools, middle schools and 7th and 8th grades funded at high school rates, the full time or part time librarian shall have a teaching certificate with a library endorsement and the library shall be housed in a central location.~~

~~(a) In schools of 100 or fewer students, the librarian shall devote a minimum of 1 1/2 hours or 2 periods per day in the library.~~

~~(b) In schools of 101 to 300 students, the librarian shall spend a minimum of 3 hours or 3 periods per day in the library.~~

~~(c) In junior and senior high schools of 301 to 500 students, the librarian shall spend full time in the library. One library aide shall be employed for each librarian, or the services of a student librarian or volunteer aide shall be available.~~

~~(d) Junior and senior high schools of 501 students shall have a full time librarian and additional librarians at the following ratio:~~

Enrollment	Librarian
500 to 1,000	1.5

1,001 to 1,500	2
1,501 to 2,000	2.5
2,001 to 2,500	3

~~One library aide shall be employed for each librarian, or the services of a student librarian or a volunteer aide shall be available.~~

~~(e) Elementary schools with four or more teachers must assign a teacher with a minimum of nine credit hours in professional library training at a ratio of one full time librarian to 800 students or a minimum of one hour per day, whichever is greater. In school districts employing a certified teacher with a library endorsement, a trained para-professional under the direct supervision of this librarian may be employed to meet this requirement. (Eff. 7/1/89; Repeal 7/1/94)~~

~~(2)(1) Beginning on 7/1/94 t~~The library shall be housed in a central location, and each school shall have a full-time or part-time certified school library/media specialist with a K-12 library/media endorsement at the following ratio as follows:

(a) through (f) remain the same.

~~(3)(2) Beginning 7/1/94 s~~Schools and/or districts of fewer than 125 students shall employ or contract with a certified, endorsed school library/media specialist, or they shall seek alternative ways to provide library/media services, using certified personnel. For example, they may contract for services or receive services from a regional, certified library/media specialist provided through joint efforts of adjacent districts and/or counties.

(a) Alternative services shall include:

(i) instruction in library/media skills;

(ii) administration of a library/media program that meets the district's instructional goals;

(iii) collection, development and management;

(iv) remains the same.

(v) library/media collection management; and

(vi) inservice in the use of new materials resources and equipment.

~~(b) When a school district uses alternatives to meet this standard, it shall submit a description of the alternatives to the office of public instruction and seek approval from the board of public education. (Eff. 7/1/94)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.710 ASSIGNMENT OF GUIDANCE STAFF ~~(1) Prior to 7/1/94 guidance and counseling staff and/or services shall be provided for elementary students. (Eff. 7/1/89; Repeal 7/1/94)~~

~~(2)(1) Beginning 7/1/94, a~~A minimum equivalent of one full-time counselor for each 400 elementary (K-8) students shall be provided. The counselor/student ratio shall be prorated.

~~(3)~~(2) A minimum equivalent of one full-time counselor for each 400 high school students (including grades 7 and 8 if high school funding is received) shall be provided. The counselor/student ratio shall be prorated. ~~(Eff. 7/1/89)~~

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

(a) When a school district uses alternatives to meet this standard, it shall submit a description of the alternatives to the office of public instruction and seek approval from the board of public education. ~~(Eff. 7/1/89)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.712 CLASS SIZE: ELEMENTARY (1) In single grade rooms, the maximum class size shall be:

(a) no more than 20 students in kindergarten and grades 1 through and 2;

(b) remains the same.

(c) no more than 30 students in grades 5 through 8~~7~~.

(2) through (4) remain the same.

(5) Teacher Instructional aides are mandatory when class size or teacher load exceed the standards. An teacher instructional aide ~~must~~ shall be assigned a minimum of 1 1/2 hours per day, per student overload up to six hours.

~~(6) An overload of five (5) students per classroom is considered excessive and shall be noted on the annual fall report.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.713 TEACHER LOAD AND CLASS SIZE: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL, AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) In addition to the school

administrator, the school shall employ a sufficient number of certified FTEs to allow for varying instructional patterns including, but not limited to teaming, core curriculum and departmentalization. Each program offered shall have properly endorsed FTE(s). ~~(Eff. 7/1/89)~~

(2) Individual class size shall not exceed 30 students. ~~(Eff. 7/1/89)~~

(a) Class size limits do not apply to instrumental music or choral groups. ~~(Eff. 7/1/89)~~

~~(b) Health enhancement and typing classes shall have no more than 45 students. (Eff. 7/1/89)~~

~~(c) Health enhancement and typing classes shall have no more than 30 students. (Eff. 7/1/92)~~

~~(d)~~(b) Laboratory/studio class size shall be limited for safety purposes. The number of students shall be determined through consultation with the teacher, considering the number, size and use of laboratory stations. ~~(Eff. 7/1/92)~~

(3) The number of students assigned a teacher per day shall not exceed ~~160~~ 150. ~~(Eff. 7/1/89)~~

- (a) Study hall, regardless of size, shall be counted at 15 students. ~~(Eff. 7/1/89)~~
- (b) Student limits do not apply to instrumental music or choral groups. ~~(Eff. 7/1/89)~~
- (c) Library, guidance, and study hall duties are assigned student responsibilities. However, in cases where a teacher is assigned full time in these areas, the assignment may be for the entire day. ~~(Eff. 7/1/89)~~
- ~~(4) The number of students assigned a teacher per day shall not exceed 150. (Eff. 7/1/92)~~
- ~~(5)(4) Teachers with a significant writing program, as determined by the local board of trustees, shall have a maximum load of 100 students. (Eff. 7/1/92)~~

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

- 10.55.714 PROFESSIONAL DEVELOPMENT ~~(1) As part of a continuous program for instructional and administrative improvement, each school district shall provide a minimum of three days of professional development annually for each certified employee. A day of professional development is defined as six hours of actual contact time. Professional development time may be divided into no less than two hour increments to facilitate delivery of professional development programs.~~
- ~~(2) By April 15 of each year, the school district shall formulate a professional development plan which includes:
 - ~~(a) goals and objectives appropriate to the professional development needs of teachers, administrators, school trustees, and all other school personnel;~~
 - ~~(b) acceptable activities;~~
 - ~~(c) evaluation methods required for each activity in the plan.~~~~
 - ~~(3) The board of trustees shall establish an advisory committee to develop and evaluate the plan. The committee shall include but not be limited to teachers, administrative personnel, and trustees. A majority of the committee shall be teachers.~~
 - ~~(4) The plan shall be on file in the school's administrative office or with the county superintendent. It shall be available to employees and the public. (Eff. 7/1/89)~~
 - (1) By definition, professional development:
 - (a) Focuses on teachers as central to student learning, yet includes all other members of the school community;
 - (b) Focuses on individual, collegial, and organizational improvement;
 - (c) Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;
 - (d) Reflects proven research and practice in teaching, learning, and leadership;

(e) Enables teachers to develop further experience in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;

(f) Promotes continuous inquiry and improvement embedded in the daily life of schools;

(g) Is ongoing and sustained;

(h) Is planned collaboratively by those who will participate in and facilitate that development;

(i) Requires substantial time and other resources;

(j) Is driven by a coherent long-term plan; and

(k) Is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning, and this assessment guides subsequent professional development efforts.

(2) Teachers and specialists shall annually complete a minimum of three pupil instruction related (PIR) days dedicated exclusively to professional development.

(a) A professional development PIR day shall constitute six hours of contact time.

(b) A school district may divide a professional development PIR day into no fewer than two-hour blocks of contact time.

(c) A professional development block may be held on the same day as a pupil instruction day, but a school district shall not schedule a professional development PIR day to convene simultaneously with a pupil instruction day.

(3) Other than school districts, providers of professional development shall be so authorized by, and registered with, the office of public instruction.

(4) By October 15 of each school year, school district trustees shall establish an advisory committee to evaluate the school district's current school year professional development plan and develop and recommend a plan for the subsequent school year.

(a) The advisory committee shall include, but not be limited to, trustees, administrators, and teachers. A majority of the committee shall be teachers.

(b) By April 15 of each school year, school district trustees shall adopt a professional development plan for the subsequent school year based on the recommendation of the advisory committee.

(c) The plan recommended by the advisory committee and adopted by the school district trustees shall outline how, when, and from whom teachers and specialists shall meet their professional development PIR day expectations.

(d) Although the advisory committee's recommendation is advisory, the plan adopted by the school district trustees must include two professional development PIR days in October during which schools must close in order to permit teachers and specialists to attend the annual professional development meetings of state professional associations.

(e) The adopted plan may include alternatives but shall not interfere with or prohibit teacher and specialist attendance at the annual October professional development meetings of state professional associations.

(f) Teachers and specialists who do not attend the annual professional development October meetings of state professional associations or school district plan approved alternative professional development PIR days shall not be paid for the days they are absent.

(g) Teachers, specialists, administrators, and school districts shall not substitute for professional development PIR day purposes professional development opportunities not specifically outlined in the school district's adopted professional development plan.

(h) By May 1 of each school year, the school district trustees shall file their adopted professional development plan with the office of public instruction and make their plan available to employees and the public.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.801 SCHOOL CLIMATE (Beginning 7/1/91)

~~(1) The board of trustees shall consider ways to:~~

~~(a) through (j) remain the same.~~

~~(2) In the area of technology, the board of trustees shall consider ways to:~~

~~(a) provide access to current materials and resources in all program areas and at all levels, including a wide range of up-to-date print and nonprint materials and technical resources which support the curriculum and help students meet the challenges of an information-based society;~~

~~(b) integrate current and appropriate technology into each curricular area as a supplemental tool for instruction and for delivering and accessing information. "Technology" includes but is not limited to computer systems, databases, electronic and other media resources, and telecommunications;~~

~~(c) keep up to date about computer and other appropriate technology and examine technology in terms of how it can help with educational delivery, while recognizing that computer and other appropriate technology is an assistant to rather than the primary deliverer of education;~~

~~(d) encourage teachers to experiment with new computer and other appropriate technology to help make their teaching more effective and efficient;~~

~~(e) when possible, work closely with business and government to keep informed concerning the latest technology.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.802 OPPORTUNITY AND EDUCATIONAL EQUITY (1) The school district shall not discriminate against any student on the basis of sex, race, marital status, national origin, or physical or mental disability in any area of accreditation. This includes programs, facilities, textbooks, curriculum, counseling, library services, and extracurricular activities. It is the purpose of the accreditation standards to guarantee

equality of educational opportunity to each person regardless of sex, race, marital status, national origin, or physical or mental disability. This includes programs, facilities, textbooks, curriculum, counseling, library services, and extracurricular activities.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.55.803 LEARNER ACCESS (1) remains the same.

(2) In developing curricula in all program areas, the board of trustees shall consider ways to:

(a) remains the same.

(b) take into account individual and cultural diversity and differences among learners. Cultural and language differences should be viewed as valuable and enriching resources and should take into account the unique needs of American Indian students and other minority groups;

(c) ~~nurture develop~~ an understanding of the values and contributions of Montana's Native Americans ~~and the unique needs and abilities of Native American students and other minority groups~~ American Indians for all students;

(d) provide learning resources that are culturally relevant, inclusive, and current;

(e) through (g) remain the same.

(h) provide books and materials that reflect authentic historical and contemporary portrayals of American Indians; and

(i) identify, using the school's own criteria, students who may be at risk, ~~or in need of special services, bilingual training or who are otherwise exceptional.~~ (Eff. 7/1/91)

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.55.804 GIFTED AND TALENTED (1) ~~Beginning 7/1/92 the school shall make an identifiable effort to provide educational services to gifted and talented students, which are commensurate with their needs and foster a positive self-image~~ Schools shall provide educational services to gifted and talented students commensurate to their needs.

(2) ~~Such services shall be outlined in a comprehensive district plan which includes:~~

(a) ~~identification of talent areas and student selection criteria according to a written program philosophy;~~

(b) ~~a curriculum which reflects student needs;~~

(c) ~~teacher preparation;~~

(d) ~~criteria for formative and summative evaluation;~~

(e) ~~supportive services;~~

(f) ~~parent involvement.~~ (Eff. 7/1/92)

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.55.805 SPECIAL EDUCATION (1) remains the same.

~~(2) Each school shall use the Montana Special Education Reference Manual as guidance for administering special education programs.~~

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

~~(4) Each school shall be responsible for the following:~~

~~(a)(3) sStudents with disabilities shall be given opportunities to become confident, dignified, and self-sufficient members of society;~~

~~(b) to the maximum extent possible, and when appropriate, students with disabilities are educated with students without disabilities in the district in which they live;~~

~~(c) a student shall receive special education only when documentation shows that the student cannot be appropriately educated in the regular program;~~

~~(d) a current individualized education program is prepared for each student receiving special education.~~

~~(5) Each school district with middle, junior high, 7th and 8th grade budgeted at high school rates or high school(s) shall require the development and use of processes to waive specific learner goals based on individual student needs, performance levels, age, maturity, and assessment of ability. Goals which are viewed as the result of this process must be identified on a student's individualized education program.~~

~~(6)(4) A student who has successfully completed the goals identified on an individualized education program for high school completion shall be awarded a diploma. (Eff. 7/1/89)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.901 BASIC EDUCATION PROGRAM: ELEMENTARY (1) An elementary school shall have an education program aligned to the program areas standards that enables gives students the opportunity to meet the learner goals as defined in ARM ~~10.55.602~~ and the content and performance standards.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.902 BASIC EDUCATION PROGRAM: MIDDLE SCHOOL GRADES

~~(1) A middle school, as defined in ARM 10.13.201, differs from a junior high school because middle school philosophy specifically addresses the unique nature of middle school children by focusing on their intellectual, social, emotional, and physical development. To put such philosophy into practice, a middle school must have flexibility to approach instruction and teaching in a variety of ways, to undertake interdisciplinary work, and to plan blocks of course work deriving from the intellectual, social, emotional, and physical needs of middle school students. (Eff. 7/1/89)~~

~~(2) A middle school shall have an education program that gives students the opportunity to meet the learner goals as~~

~~defined in ARM 10.55.602 in the program areas listed in (5) and the content and performance standards.~~

~~(3) A middle school minimum curriculum shall include the subjects below and maintain them in balance. Critical and creative thinking, career awareness, lifelong learning, and safety will be incorporated in the school program. (Eff. 7/1/89)~~

~~(4) Schools using this standard to incorporate flexibility in quest of a quality program shall document the program with curriculum guides, class schedules, and other means to maintain balance among and within the disciplines outlined below. Such documentation shall be reviewed by the office of public instruction and approved by the board of public education. The middle school curriculum must fall within the continuum of skills that are part of the K-12 program in all disciplines. (Eff. 7/1/89)~~

~~(5) If the middle school program for grades 7 and 8 is funded at high school rates, the program shall include:~~

~~(a) visual arts: including but not limited to art history, art criticism, aesthetic perception, and production;~~

~~(b) English language arts: including but not limited to literature, language study, reading, writing, listening, speaking and thinking;~~

~~(c) health enhancement;~~

~~(d) social studies;~~

~~(e) mathematics: including but not limited to written and mental computation and problem solving;~~

~~(f) music: including but not limited to general, instrumental, and vocal (emphasizing comprehensive music elements, music history, criticism, aesthetic perception, and musical production);~~

~~(g) physical and life sciences;~~

~~(h) vocational/practical arts such as agriculture, business education, home economics, industrial arts, and marketing;~~

~~(i) exploratory courses such as creative writing, dance, drama, photography; (Eff. 7/1/89)~~

~~(j) beginning 7/1/94, in addition, students shall have the opportunity to take a second language.~~

(1) A school with middle grades must have an education program aligned to the program area standards that enables all students to meet the content and performance standards.

(2) In order to receive funding at the high school rate for grades 7 and 8, the program must follow either the middle school philosophy and components described in (3) or the departmentalized philosophy and components (often seen in junior high settings) described in (4).

(3) An officially recognized middle school must be approved by the board of public education upon recommendation of the superintendent of public instruction.

(a) A middle school specifically addresses the unique nature of middle-grade children by focusing on their intellectual, social, emotional, and physical development. To

put such philosophy into practice, a middle school must have flexibility to:

(i) approach instruction, scheduling, and teaching in a variety of ways;

(ii) undertake interdisciplinary work; and

(iii) plan blocks of coursework deriving from the intellectual, social, emotional, and physical needs of middle school students.

(b) Critical and creative thinking, career awareness, lifelong learning, and safety must be incorporated in the school program.

(c) At a minimum, the following program areas shall be required of all students yearly:

(i) communication arts including, but not limited to literature, reading, writing, speaking and listening, media literacy;

(ii) mathematics including, but not limited to written and mental computation and problem solving;

(iii) physical and life sciences; and

(iv) social studies.

(d) At a minimum, the middle school curriculum shall maintain in balance the following required program areas:

(i) visual arts including, but not limited to art history, art criticism, aesthetic perception, and production;

(ii) health enhancement;

(iii) music including, but not limited to general, instrumental, and vocal (emphasizing comprehensive music elements, music history, criticism, aesthetic perception, and musical production);

(iv) vocational technical education such as agriculture, business education, family and consumer sciences, industrial arts, and marketing; and

(v) world languages.

(e) Exploratory courses such as creative writing, dance, drama, photography, and leadership shall be offered as electives to all students.

(4) A junior high or 7-8 school for middle grades must offer an educational program, aligned to the program area standards, that enables all students to meet the content and performance standards. The educational program shall be designed to familiarize students with the high school setting and provide content-specific instruction.

(a) All students shall complete the following program areas each year:

(i) communication arts--1 unit;

(ii) social studies--1 unit;

(iii) mathematics--1 unit;

(iv) science--1 unit; and

(v) health enhancement--1/2 unit.

(b) All students must be allowed to elect from the following program area offerings:

(i) visual arts--1/2 unit;

(ii) music--1/2 unit;

(iii) vocational technical education--1/2 unit; and

(iv) world languages--1/2 unit.

(c) A unit is defined as the equivalent of at least 225 minutes per week for one school year.

(d) Time to pass between classes may be counted toward the standard school day but shall not be counted toward class time.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.904 BASIC EDUCATION PROGRAM OFFERINGS: HIGH SCHOOL

~~(1) The basic education program for each high school shall be at least 16 units of course work that give students the opportunity to meet the learner goals as defined in ARM 10.55.602 in the program areas listed in (2) and the content and performance standards.~~

~~(2) Study areas shall include at least the following:~~

- ~~(a) 4 units of English language arts;~~
- ~~(b) 2 units of mathematics;~~
- ~~(c) 2 units of science;~~
- ~~(d) 2 units of social studies;~~
- ~~(e) 2 units of vocational/practical arts;~~
- ~~(f) 1 unit of fine arts;~~
- ~~(g) 1 unit of health enhancement;~~
- ~~(h) 2 units of electives. (Eff 7/1/89)~~

~~(3)(1) The basic education program, aligned to the program area standards, for each high school grades 9 through 12 shall be at least 20 units of coursework that give enable all students the opportunity to meet the learner goals set forth in the program area standards as defined in ARM 10.55.602 and the content and performance standards.~~

~~(4)(2) Study areas Minimum offerings shall include at least the following:~~

- ~~(a) 4 units of English language arts;~~
- ~~(b) 3 units of mathematics;~~
- ~~(c) 3 units of science;~~
- ~~(d) 3 units of social studies;~~
- ~~(e) 2 units of vocational/practical arts technical education/computer education;~~
- ~~(f) 2 units of fine arts;~~
- ~~(g) 1 unit of health enhancement;~~
- ~~(h) 2 units of second world languages; and~~
- ~~(i) 2 units of electives (Repeal 7/1/92) (Eff. 7/1/92).~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.905 GRADUATION REQUIREMENTS (1) As a minimum, a school district's requirements for graduation shall include a total of 20 units of study that enable all students to meet the required learner goals and the content and performance standards.

~~(2) In order to meet the learner goals as defined in ARM 10.55.602 and the content and performance standards, the~~

following 13 units shall be part of the 20 units required for all students to graduate:

(a) through (e) remain the same.

(f) 1 unit of ~~fine~~ arts;

(g) 1 unit of vocational/~~practical arts~~ technical education/computer education.

(3) Units of credit earned in any Montana high school accredited by the board of public education shall be accepted by all Montana high schools. ~~(Eff. 7/1/89)~~

(4) In accordance with the policies of the local board of trustees, students may be graduated from high school with less than four years enrollment. ~~(Eff. 7/1/89)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.906 CREDIT: HIGH SCHOOL, JUNIOR HIGH AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES HIGH SCHOOL CREDIT

(1) ~~General credits:~~

~~(a)~~ a A high school shall require a minimum of 20 units of credit for graduation, including ninth grade units. A unit of credit shall be given for satisfactory completion of a full-unit course.

~~(b)~~(a) a A unit of credit is defined as the equivalent of at least 225 minutes per week for one year.

~~(c)~~ (b) ~~p~~Passage of time between classes may be counted toward the standard school day but shall not be counted toward class time.

(2) ~~Fractional credit may be given to:~~

(a) a A student who is unable to attend class for the required amount of time may be given fractional credit for partial completion of a course, with the local administrator's permission.

(3) ~~Credit waiver:~~

(a) ~~e~~Each governing authority may waive specific course requirements based on individual student needs and performance levels. Waiver requests shall also be considered with respect to age, maturity, interest, and aspirations of the students and shall be in consultation with the parents or guardians.

(4) ~~Alternative credit:~~

(a) ~~w~~With the permission of the school district trustees, a student may be given credit for a course satisfactorily completed in a period of time shorter or longer than normally required and, provided that the course meets the district's curriculum and assessment requirements, which are aligned with the ~~learner goals and~~ content and performance standards stated in the education program. Examples of possible acceptable course work include accredited correspondence and extension courses, adult education, summer school, work study, specially designed courses and challenges to current courses. Any acceptable program must be consistent with local board policy.

~~(b)~~(a) aAny Montana high school shall accept such units of credit taken with the approval of the accredited Montana

high school in which the student was then enrolled and which appear on the student's official transcript. (Eff. 7/1/89)

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

~~10.55.907 DISTANCE LEARNING (1) Distance learning may be used as part of the instructional program.~~

~~(a) school districts utilizing distance learning are required to report to the office of public instruction via the annual fall report;~~

~~(2) Schools shall meet the following criteria:~~

~~(a) distance learning course(s) meet(s) the learner goals and content and performance standards articulated in the accreditation rules;~~

~~(b) the distance learning classroom environment meets health and safety standards and provides effective access of students to instruction;~~

~~(c) the teachers of distance learning courses are certified and appropriately endorsed in Montana or are eligible for certification and appropriate endorsement from the sending state or resident state and have experience in delivering instruction via distance learning. If the teacher of a distance learning course cannot meet any of the above certification criteria, then the facilitator in the receiving classroom must be certified in Montana at the appropriate level, but not necessarily endorsed in the area of assignment;~~

~~(d) local facilitators, who assist students in receiving the instruction on site, have adequate preservice training and local supervision;~~

~~(e) schools evaluate the course(s), teacher(s) and facilitator(s) according to local school district policy and/or locally negotiated agreements as may be applicable.~~

(1) Distance learning means technology-assisted individual and classroom instruction that connects students and teachers who are physically removed from each other.

(2) This rule applies to instruction that is counted for credit toward promotion and/or graduation.

(3) School districts may receive and/or provide distance learning.

(4) Receiving school districts may use distance learning to supplement instruction or as primary instruction.

(a) School districts receiving distance learning to supplement classroom instruction may utilize distance learning as they would other supplementary classroom resources without restriction.

(b) School districts receiving distance learning as the primary source of classroom instruction shall annually demonstrate in the fall report to the office of public instruction that their distance learning instruction provides students equal opportunity to meet or exceed content and performance standards.

(5) Except as provided in (4)(a), a teacher of distance learning shall hold Montana certification and endorsement in the area of instruction.

(a) In the event a teacher of distance learning is not Montana certified and endorsed in the area of instruction, the receiving school district shall provide a facilitator who is Montana certified but need not be endorsed in the area of instruction.

(b) When a teacher of distance learning is Montana certified and endorsed in the area of instruction, the receiving school district's facilitator need not be certified.

(c) School districts receiving distance learning as the primary source of accredited classroom instruction shall prepare and supervise facilitators.

(6) A distance learning class at each site shall meet class-size standards.

(7) Montana school districts providing distance learning shall annually:

(a) Register with the office of public instruction;

(b) Verify their teachers of distance learning are Montana certified and endorsed in their areas of instruction; and

(c) Demonstrate the students they serve have ongoing contact with their distance learning teachers.

(8) Distance learning providers, other than Montana school districts, shall annually:

(a) Register with the office of public instruction;

(b) Verify the professional qualifications, including Montana teacher certification and endorsement if possessed, of their teachers of distance learning; and

(c) Demonstrate that the students they serve have ongoing contact with their distance learning teachers.

(9) School districts receiving distance learning as a primary source of classroom instruction from a provider other than another Montana school district shall, by July 1 of the year following the instruction, complete and submit an approved evaluation form to the office of public instruction.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1001 DISTRICT'S RESPONSIBILITIES FOR PROGRAM AREA STANDARDS (1) It is the school district's ~~task responsibility~~ to incorporate all required learner goals, as defined in ~~ARM 10.55.602~~, and content and performance standards for reading and mathematics into its curriculum, implementing them sequentially. ~~(At least one component a year, beginning 7/1/91; Eff. 7/1/99.)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.1002 CROSS-CONTENT AND THINKING SKILLS (1) remains the same.

(2) The school district shall develop curricula at all grade levels and in all program areas that encourage students to understand and apply thinking and problem solving skills. The curricula shall allow students to:

(a) through (c) remain the same.

(d) apply the skills of decision making and reasoning.

~~(At least one component a year, beginning 7/1/91; Eff. 7/1/99.)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.1201 FINE ARTS PROGRAM ~~(In accordance with ARM 10.55.603 and ARM 10.55.1001)~~ (1) A basic program in fine arts includes:

(a) through (c) remain the same.

(d) instruction that incorporates fine arts' history, criticism, production, performance, and aesthetics. ~~(Eff. 7/1/89)~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

7. The rules proposed for repeal follow.

10.55.903 BASIC EDUCATION PROGRAM: JUNIOR HIGH AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES found at page 10-792, ARM

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.55.2003 SPECIAL EDUCATION RECORDS found at page 10-808, ARM

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

8. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Office of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501, or by e-mail to opirules@state.mt.us and must be received no later than 5:00 p.m. on October 4, 2000.

9. Geralyn Driscoll has been designated to preside over and conduct the hearing.

10. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to

receive notices regarding standards of school accreditation or other school related rulemaking actions. Such written request may be mailed or delivered to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, telephone number (406) 444-6576, FAX (406) 444-0684.

For purposes of this rulemaking, you may also be placed on the Board's list of interested persons by contacting Pat Reichert, Office of Public Instruction, PO Box 202501, Helena, Montana 59620-2501, telephone number (406) 444-3172.

11. The bill sponsor requirements of 2-4-302, MCA, apply and have been fulfilled. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Kirk Miller
Kirk Miller, Chairman
Board of Public Education

/s/ Geralyn Driscoll
Geralyn Driscoll
Rule Reviewer

Certified to the Secretary of State August 14, 2000.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)
amendment of ARM 16.10.1301,)
16.10.1308, 16.10.1309,)
16.10.1506, 16.10.1522,)
16.10.1524 and 16.10.1525)
pertaining to swimming pools,)
spas and swimming areas)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On September 13, 2000, at 10:00 a.m., a public hearing will be held in Room 306 of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 1, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

16.10.1301 DEFINITIONS For the purposes of this subchapter, the following definitions apply, in addition to those in 50-53-102, MCA:

(1) "Dropoff" means the physical condition where the bottom slope of a designated swim area exceeds 1 foot of vertical drop over a distance of 3 horizontal feet.

~~(1)~~ (2) "Health department" means the department of public health and environmental sciences ~~human services~~ or the local or county health department having jurisdiction over the area in which the public bathing place is located.

~~(2)~~ "Person" means any person, firm, partnership, association, corporation, company, governmental agency, club or organization of any kind.

~~(3)~~ "Public bathing place" means any natural or artificially constructed lake, pond, reservoir, river, stream, dredge cut or similar body of water which is provided with natural or artificially constructed beaches and which is operated as a public swimming or wading area by a person, either free of charge or for a fee and which may or may not be provided with bathhouses, cabanas or houses for use of the public.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-102 and 50-53-103, MCA

16.10.1308 SAFETY REQUIREMENTS (1) The following safety provisions are required:

~~(a) All natural or artificially constructed swimming areas shall have a sanded beach, the slope of which shall be gradual and free from stepoffs and drop offs.~~

(a) (b) Adequate signs Signs, buoys or other markers shall must be placed to mark the depth of water over 3 feet deep and to mark the exterior limits of the designated swimming area; the markers must be located not more than 100 feet apart and be visible to a person of ordinary visual acuity at a distance of not less than 100 feet to mark the depth of water of over 3 feet deep and also to mark the exterior limits of the designated swimming area.

(b) Signs or buoys indicating the existence of a dropoff must be installed at the site of the dropoff.

~~(c) There shall be provided at each Each public bathing area adequate lifesaving equipment consisting must be equipped with lifesaving equipment that consists of not less than one lifesaving ring 15 inches in diameter attached to at least 75 feet of 3/16 inch manila-line, which shall must be hung in a conspicuous place on the beach where it shall and be kept readily available for use.~~

~~(d) Each public swimming area shall also have not less than one square sterned boat with oars and oar locks which shall be used only for lifesaving purposes.~~

(d) The swimming area must be protected from all motorized or wind propelled water craft and their towed devices.

~~(e) Adequate protection shall be provided to exclude all other floating craft such as row boats, motor boats, water skiers, etc. from the swimming area.~~

~~(f) When a use fee is charged, competent lifeguards shall be on duty during all periods when the area is open. One lifeguard station consisting of an elevated chair with an unobstructed clear view of the swimming area shall be provided for each 2,000 square feet of swimming area.~~

~~(g) Adequate staff who are competent in first aid, lifesaving and artificial resuscitation shall be available during swimming periods.~~

(e) In addition to the requirements of ARM 16.10.1309, a designated swimming area that has a diving board and diving area must meet the following lifeguard requirements:

(i) Each such area must have at least one lifeguard regardless of its size, and for those with over 2,000 square feet of swimming area, at least one lifeguard per 2,000 square feet of swimming area or fraction thereof;

(ii) Each lifeguard must be assigned the responsibility and authority for enforcing all safety rules in the swimming area;

(iii) Each lifeguard must be currently certified by either the American red cross or the American heart association in methods of cardiopulmonary resuscitation (CPR), first aid, and

water safety or its equivalent;

(iv) A copy of each lifeguard's CPR certification must be kept on the premises of the swimming area and be available for review and verification during inspections;

(v) Each lifeguard must be at least 15 years of age;

(vi) The required number of lifeguards must be on duty at all times when the swimming area is open during its posted hours of operation; and

(vii) A lifeguard station consisting of an elevated chair with an unobstructed clear view of the swimming area must be provided for each 2,000 square feet or fraction thereof of the swimming area.

(f) A public bathing place without a diving board and diving area need not provide lifeguards if it conspicuously posts at the entrance of the designated swimming area and near the water of the swimming area warning signs that state "NO LIFEGUARD ON DUTY" and "SWIM AT YOUR OWN RISK", or words of equivalent meaning, with clearly legible letters at least 4 inches high. If a lifeguard is provided, the requirements of (1)(e) above must be met.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-103 and 50-53-107, MCA

16.10.1309 DIVING BOARD AND AREA (1) Diving towers, spring boards or diving floats when provided shall must be rigidly constructed and securely anchored.

(2) The minimum depth of water under the end of the diving board and for 12 feet beyond shall must be as follows:

<u>Height of Board in Meters</u>	<u>Depth of Water</u>
0.0 - 2.0	8 1/2 feet
2.1 - 3.0	10 feet
3.1 or more	11 1/2 feet

(3) An area of 13 vertical feet above a diving board, horizontally at least 8 feet behind, 8 feet to each side, and 16 feet forward, measured from the center of the front end of the board, must be unobstructed.

(4) There must be a horizontal separation of at least 10 feet between diving boards, unless the boards are situated less than 1 meter above the water, in which case they must be situated at least 8 feet from each other. If one board is situated less than 1 meter above the water and an adjacent board is situated higher than that, the two boards must be separated by at least 10 feet.

(5) The lifeguard requirements of ARM 16.10.1308(1)(e) must be met.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-103 and 50-53-107, MCA

16.10.1506 CONSTRUCTION AND DESIGN (1) through (3)(k) remain the same.

(4) When a water slide is provided in conjunction with a pool, the slide must be installed according to manufacturer's instructions, be approved by the manufacturer for use with public and privately owned public swimming pools, and meet all applicable building codes.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-103 and 50-53-107, MCA

16.10.1522 BACTERIOLOGICAL AND CHEMICAL QUALITY

(1) Swimming pool and spa waters shall must be maintained with a chemical quality sufficient to prevent levels of bacteria from exceeding 200 bacteria per milliliter as determined by the total standard (35°C) agar plate count, or the presence of more than four coliform bacteria per 100 milliliters by the millipore membrane filter method technique, or show a positive test (confirmed test) for coliform organisms in any of five 10-milliliter portions of a sample when the pool is in use. All samples shall must be collected, dechlorinated, and examined in accordance with the procedures outlined in section 9213 of the Standard Methods for the Examination of Water and Wastewater (APHA, AWA, WPCA WEF). Not more than 2 two consecutive samples in a 1-month period shall may exceed the levels specified.

(2) through (9)(c) remain the same.

(10) The department hereby adopts and incorporates by reference section 9213 of the Standard Methods for the Examination of Water and Wastewater by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Association Environmental Federation (APHA, AWA, WPCA WEF), 15th Edition, 1980, 19th Edition, 1995, which establishes test procedures and what to test for in recreational waters, including swimming pools and public bathing places that are not swimming pools. Copies of section 9213 of the Standard Methods for the Examination of Water and Wastewater (APHA, AWA, WPCA WEF) may be obtained from the Department of Environmental Quality Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box ~~200901~~ 202951, Helena, Montana, ~~59620-0901~~ 59620-2951.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107 and 50-53-115, MCA

16.10.1524 SAFETY (1) through (2)(c) remain the same.

(3) Every privately owned public swimming pool or spa regulated by this subchapter that chooses not to have a lifeguard must conspicuously post at every pool or spa location a warning sign that states "NO LIFEGUARD ON DUTY" or words of equivalent meaning, with clearly legible letters at least 4" inches high. In addition, the sign must state "NONSWIMMERS AND CHILDREN UNDER AGE 14 SHOULD NOT USE THE POOL WITHOUT A RESPONSIBLE ADULT IN ATTENDANCE".

(4) through (5)(b) remain the same.

(6) If a an unlicensed swimming pool or spa is adjacent to

or on the premises of an establishment subject to Title 50, chapters 51 or 52, MCA, required to obtain a license under the authority of 50-53-201, MCA, is not licensed, the swimming pool or spa shall establish must post public notification adjacent to the pool or spa that it is a nonlicensed swimming pool or spa, and that it is not available for use by the public, and must ensure that the public does not use the pool or spa.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107 and 50-53-115, MCA

16.10.1525 EQUIPMENT AND PERSONNEL (1) All equipment used in conjunction with the operation of the swimming pool or spa shall must be approved by the regulatory authority. An experimental installation may be permitted by the regulatory authority, but should the development fail to produce satisfactory results it shall must be replaced with accepted design, equipment, and materials.

(2) Every publicly owned public swimming pool must have a trained lifeguard or lifeguards in complete charge of bathing facilities who shall have authority to enforce all rules of safety. The number of lifeguards required must be based on one per 2,000 square feet of pool area or fraction thereof, with a minimum of one lifeguard at all public pools regardless of size. Lifeguards must be currently certified in American red cross methods of first aid and water safety or its equivalent. Each lifeguard must be at least 15 years of age. Lifeguards shall be on duty at all times when a swimming pool or bathing place is open for use by the bathers.

(2) Every publicly owned public swimming pool must meet the following lifeguard requirements:

(a) The pool must have a trained lifeguard or lifeguards who are in complete charge of the bathing facilities and who have the authority to enforce all safety rules;

(b) The pool must have at least one lifeguard per 2,000 square feet of pool area or fraction thereof, with a minimum of one lifeguard regardless of the size of the pool;

(c) Each lifeguard must be currently certified by either the American red cross or the American heart association in methods of first aid, cardiopulmonary resuscitation (CPR), and water safety or its equivalent;

(d) Each lifeguard must be at least 15 years of age; and

(e) The required number of lifeguards must be on duty at all times when a swimming pool is open for use by bathers.

(3) Owners and operators of pools or spas shall have a designated Each owner or operator of a pool or spa must designate and assign a specific individual in charge of maintaining to maintain safe and sanitary pool conditions in and around the pool or spa.

(4) Every swimming pool shall must be equipped with one backboard and one or more ring buoys having a maximum of 15 to 16 inches inside diameter with a one-fourth 1/4 inch manila line at least equal in length to the maximum width of the swimming pool attached securely to it and kept in good repair. A

shepherd's crook or reaching pole shall must also be provided. In small swimming pools not exceeding 15 feet in width, a ring buoy with a minimum length of 14 feet of manila throwing line attached may be substituted for a shepherd's crook or for a reaching pole with ~~a minimum length of 14 feet~~. Such safety equipment must be accessible for immediate use in the pool area.

(5) When a lifeguard is required, an elevated seat for the lifeguard shall must be provided in areas between the 5 feet depth and the deep water and within 2 feet of the edge of the swimming pool and shall must be high enough to give the lifeguard a complete and unobstructed view of the water.

(6) A guard line separating the shallow portion from the deep portion of the swimming pool shall must be provided across the pool at the 5 foot depth.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

3. The above proposed rule amendments are necessary for the following reasons:

A. The amendments to ARM 16.10.1301 are necessary to avoid a potential conflict with definitions of the same words already included in 50-53-102, MCA, to incorporate the change in the department's name occasioned by the legislature in 1995, and to add a definition of "dropoff" that is needed to indicate under what physical circumstances notice to the public of a hazard is necessary. A slope more gradual than that indicated was not adopted because it is not considered sufficiently abrupt to constitute a danger of drowning. Alternatively, the department did not propose defining "dropoff" as a steeper slope because that would increase risk to the public, since the public would not have notice of less abrupt but still dangerous underwater declines.

B. The amendments to ARM 16.10.1308 are necessary for the following reasons:

(1) Subsection (1)(a) was deleted because the requirement for a sanded beach has no public health or safety impact and dropoffs are now addressed in new subsection (1)(b). Since there is no reasonable distinction between a stepoff and a dropoff, any reference to "stepoff" was deleted. New subsection (1)(b) is necessary to ensure that the public is aware of sudden dropoffs; failing to require some kind of sign leaves the public vulnerable to risk by unknowingly and suddenly stepping into deeper water.

(2) In subsection (1)(c), a rescue tube was added as an equipment alternative to a ring buoy; the addition is necessary because rescue tubes have become standard and widely utilized and accepted lifesaving equipment, often in preference to lifesaving rings. The other proposed changes to existing subsections (1)(b) and (c) are not substantive but are intended

only to make the provisions easier to read and be understood. In addition, in subsections (1)(b) and (c) [now proposed to be subsections (1)(a) and (c)], the word "adequate" has been deleted because the term is too vague, is not defined, and is not needed because the remaining language is sufficient to indicate what precisely is required.

(3) Subsection (1)(d) was deleted as a safety measure because small boats often capsize or flip over when used in a rescue attempt, and it is preferable to swim out to a person in trouble with a rescue tube or ring buoy, the latter being pieces of equipment that will be required to be on site and immediately available for emergency use.

(4) In existing subsection (1)(e) [now proposed to be (1)(d)], "adequate" once again has been deleted because the term is too imprecise to be helpful as a standard. The subsection was reworded in order to be more precise and clear, yet inclusive of the intent to prevent motorized and wind-driven water craft from entering the swimming area. The substantive requirements remain unchanged.

(5) Subsection (1)(f) is proposed to be eliminated because, in determining if public safety requires a lifeguard, whether a fee is charged is irrelevant. It was replaced by new subsection (1)(e), which prescribes lifeguard requirements for areas with diving boards, and new subsection (1)(f), which requires warning signs if no lifeguard is provided. The latter sign requirement is necessary to ensure the public is aware of the fact that there is no lifeguard and is increasingly cautious on its own behalf. Deletion of the lifeguard requirement (for areas without diving boards) altogether while retaining a warning sign requirement is considered acceptable by the department while still reasonably protecting public safety because, unlike in most swimming pools, usage of public bathing places, such as ponds and lakes, is usually sporadic, with a less intense bather load than is customary in artificial pools. The deletion is also necessary to remove a requirement that has proved a burden to the operators of such bathing places, particularly those publicly owned, that the department considers to substantially outweigh the slight increase in protection of the public that the requirement provides. For the same reasons, the requirements of (1)(g) are proposed for deletion. The proposed amendment to ARM 16.10.1308 does not negate the continuing requirement in ARM 16.10.1525 that publicly owned public swimming pools, as opposed to "public bathing places", provide lifeguards.

(6) New subsection (1)(e) is necessary because of the added and substantial risk inherent in the use of diving boards, and failure to require lifeguards would allow unreasonable risk to the public. The number of lifeguards required, given the square footage of swimming area to be policed, while a swimming area is open is the same as that for swimming pools and is found

from long experience to be the maximum area that one lifeguard can reasonably police. The elevated chair per lifeguard is consistent with a parallel requirement already existing in rules governing swimming pools and is necessary to provide the guards an unobstructed view of the swimming area. Deleting either standard would compromise the safety of swimmers, and requiring more lifeguards would be an added burden to those responsible for the area without appreciably adding to public safety. The minimum age for a lifeguard at 15 is necessary in order to avoid a conflict with the requirements of the Red Cross, which does not certify lifeguards younger than that. Red Cross or American Heart Association-certified CPR status for lifeguards is also necessary to ensure someone is on hand to administer the most likely needed first aid in cases of diving accidents. It also parallels the training standard established by the legislature for CPR certification in 50-53-107(2)(b), MCA. Since the legislature found that standard reasonable in terms of protection of public safety in swimming pools, the department found it reasonable to adopt the same safety standard for public bathing places that are not pools. On site documentation of that status is also necessary to enable the department or county health officials to easily ensure during inspections that staff on hand are adequately trained. If the documentation were not so readily available, it would be difficult to prove that a non-complying swimming area had non-certified personnel at the time of inspection. Finally, since the lifeguard is the only staff person required to be on site, the lifeguard necessarily must be assigned the job of enforcing safety rules for the swimming area.

C. The standards for spacing of diving boards in ARM 16.10.1309 are necessary to incorporate the most currently accepted national safety standards for pools and diving areas adopted by the American National Standards Institute on behalf of the National Spa and Pool Institute. Failure to include such standards would put divers at risk of injury. As for subsection (5) of ARM 16.10.1309, because lifeguard requirements occur in both ARM 16.10.1308 and 16.10.1309(5), subsection (5) duplicates and cross-references to the lifeguard requirements of ARM 16.10.1308 in order to alert the reader of ARM 16.10.1309 that there are additional requirements in ARM 16.10.1308.

D. The proposed addition to ARM 16.10.1506 of new subsection (4) was necessary to provide safety measures for water slides, which are becoming increasingly common and have not been heretofore addressed in the rules. Injury or even death may be caused by inadequate installation of a water slide or by the use of a water slide not intended by the manufacturer for use in publicly or privately owned public swimming pools. The standards chosen are regarded as the minimum requirements any reasonable installer would meet and are therefore not unduly burdensome. In addition, the requirement that applicable state and local building standards must be met is necessary to doubly ensure that slides are safe, especially in cases where the slide

is second-hand and manufacturer instructions may not be available.

E. The proposed amendments to ARM 16.10.1522 are needed for the following reasons:

The reference to the "millipore" filter method in subsection (1) is a reference to a brand name, whereas the more appropriate reference is to the "membrane filter technique", which is not limited to a particular brand but is outlined in the manual referenced in the rule. Only the particular section of the manual pertaining to swimming areas is now incorporated by reference since only that section applies to the analyses in question and the provision of copies of one section is much easier and less costly than either providing a copy of the entire manual by the department or requiring a pool owner to get a copy from the original publisher. In addition, the address from which the manual section may be obtained was changed from the Department of Environmental Quality to the department's Food and Consumer Safety Section in order to shift the burden of providing copies to the program responsible for administration of the swimming area rules. Finally, the manual itself was updated to the most current available version to incorporate the standards nationally accepted as the best for swimming areas. To incorporate an earlier version would essentially utilize a standard less protective of public health than the updated version.

F. The proposed amendments to ARM 16.10.1524 are necessary for the following reasons:

(1) The added language in subsection (3) is needed to reflect the fact that a privately-owned swimming pool or spa may opt to have a lifeguard, even though 50-53-107, MCA, allows them to do without a lifeguard if the required sign and CPR requirements are met. To leave the subsection without the proposed addition in effect requires such a pool or spa to have signs indicating there is no lifeguard even if a lifeguard is in fact provided.

(2) The amendments to subsection (6) were made to avoid the inference that a pool that the law clearly requires to be licensed can avoid the licensure requirement simply by posting a sign. The provision was always intended to address the situation where, for instance, a public accommodation or campground has a pool on the premises that is intended strictly for family or staff use or is otherwise closed to the public, but which guests might assume were also available for their use; subsequently, those guests might endanger themselves by using a pool that does not meet the safety and health standards required of a public pool. The added language is needed to make that intent clear.

G. The proposed amendments to ARM 16.10.1525(2) regarding

lifeguard requirements are necessary to ensure someone is on hand to administer the most likely needed first aid in cases of pool-related accidents, which includes cardiopulmonary resuscitation (CPR). Allowing CPR certification by either the Red Cross or the American Heart Association parallels the training standard established by the legislature for CPR certification in 50-53-107(2)(b), MCA, a standard that applies to pools without lifeguards. Because it makes no sense to require a CPR-trained person to be on site at a pool without a lifeguard, but to allow a lifeguard to go without such training, the CPR training requirement was added to their required training. Since the legislature has recognized in 50-53-107(2)(b), MCA, that the CPR certifications of the Red Cross and the American Heart Association are equivalent, the rule is proposed to be amended to allow certification by either organization as well.

The deletion of the phrase "with a minimum length of 14 feet" in subsection (4) is necessary to eliminate a phrase that makes no sense where it occurs and apparently represents an editing error.

H. Other proposed changes in the rules are strictly editing measures rather than substantive changes, made for increased ease of reading and in order to conform to format standards set by the Secretary of State.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on September 21, 2000. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State August 14, 2000.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.70.401,	)	ON PROPOSED AMENDMENT
37.70.402, 37.70.406,)	
37.70.407, 37.70.408,)	
37.70.601, 37.70.607,)	
37.70.901, 37.70.902,)	
37.71.401 and 37.71.404)	
pertaining to the low income)	
energy assistance program)	
(LIEAP) and the low income)	
weatherization assistance)	
program (LIWAP))	

TO: All Interested Persons

1. On September 13, 2000 at 11:00 a.m., a public hearing will be held in Room 306 of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 1, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.70.401 DEFINITIONS ~~(1)~~ (7) A "hHousehold" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(a) An unborn child may not be counted as a member of the household.

~~(2)~~ (1) "Annual gross income" means all non-excluded income including but not limited to wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, workers' compensation, unemployment compensation, and capital gains received by the members of the household in the 12 months immediately preceding the month of application.

(a) For households with self-employment income, annual

gross income means annual gross receipts minus self-employment deductions.

(3) (2) "Annual gross receipts" apply applies to households with income from self-employment and means all income before any deductions, including any non-excluded income not from self-employment, which was received by members of the household in the 12 months immediately preceding the month of application.

(4) (10) "Medical and dental deductions" mean all medical and dental payments for allowable costs, as described in ARM 37.70.407(4), made by members of the household in the 12 months immediately preceding the month of application.

(a) Medical and dental deductions shall not include medical payments by the household which are reimbursable by a third party.

(5) (14) "Self-employment deductions" means all costs, excluding depreciation costs, necessary for the creation of any income from self-employment.

~~(6) For households with self-employment income, annual gross income means annual gross receipts minus self-employment deductions.~~

(7) (4) "Elderly" means a person who is 60 years of age or older.

(8) (6) "Handicapped household" means a household in which resides at least one person who has been determined disabled by the federal social security administration under Title II or Title XVI of the Social Security Act.

(9) (3) "Dependent care expenses" means all payments for care provided to a dependent household member in the 12 months immediately preceding the month of application to enable a household member to maintain or seek employment or educational activities.

~~(10) (11) "Member receiving supplemental security income (SSI), aid to families with dependent children (AFDC), indigent assistance as provided in 53-2-804, MCA or TANF-funded cash assistance or county or tribal general assistance (GA)" means any member of a household whose needs are included in the SSI, AFDC TANF-funded cash assistance, indigent assistance or tribal GA grant or any person whose income and resources are considered in determining eligibility for those programs.~~

(5) "Eligible energy costs" means costs of the various types of energy supplied by the household's fuel vendors. Energy delivered by the household's fuel vendors prior to October 1 are ineligible for payment under the current year's program. Provided, however, that eligible energy costs may include energy delivered prior to October 1 for applications filed after September 30, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable.

(8) "Licensed group-living situation" means a facility that is licensed by the department or another appropriate agency in the state and in which housing is provided on a long-term or permanent basis to individuals or households, including but not

limited to community homes for persons with developmental disabilities licensed under 53-20-305, MCA; community homes for persons with severe disabilities licensed under 52-4-203, MCA; or youth care facilities licensed under 41-3-1142, MCA.

(9) "LC" means local contractor.

(12) "Mobile home" means a single wide trailer or mobile home only.

(13) "Multi-family unit" means a building which contains two or more shelter or rental units for living purposes. For purposes of the program, a duplex and a home with a basement apartment are considered multi-family units.

(15) "Shelters" mean a dwelling unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another, including transients, students, or other individuals seeking short-term or non-permanent living situations.

(16) "Single family unit" means a building which contains a single shelter or rental unit for living purposes. For purposes of the program, a double wide trailer or mobile home is considered a single family unit.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.402 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS (1) Except as provided below elsewhere in this rule, households which consist solely of members receiving supplemental security income, aid to families with dependent children, indigent assistance as provided in 53-2-804, MCA TANF-funded cash assistance or county or tribal general assistance are automatically financially eligible for low income energy assistance benefit awards.

(2) Households which consist of members receiving SSI, AFDC, TANF-funded cash assistance or county or tribal general assistance and other individuals whose income and resources were not considered in determining eligibility for SSI, AFDC, TANF-funded cash assistance or general assistance are not automatically eligible for low income energy assistance but must meet the financial requirements set forth in this subchapter rule.

(3) Individuals living in licensed group-living situations or shelters, including recipients of SSI, AFDC, TANF-funded cash assistance or county or tribal general assistance, are not eligible for low income energy assistance.

(4) through (7) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.406 TABLES OF INCOME STANDARDS (1) The income standards in the table in (2) below are the 1999 2000 U.S. government office of management and budget poverty levels for households of different sizes. This table applies to all

households, including self-employed households.

(a) Households with annual gross income at or below 125% of the 1999 2000 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the 1999 2000 poverty level are ineligible for low income energy assistance.

(2) Annual income standards for all households:

Family Size	Poverty Guideline	125 Percent	150 Percent
One	\$ 8,240 \$ 8,350	\$10,300 \$10,438	\$12,360 \$12,525
Two	11,060 11,250	13,825 14,063	16,590 16,875
Three	13,880 14,150	17,350 17,688	20,820 21,225
Four	16,700 17,050	20,875 21,313	25,050 25,575
Five	19,520 19,950	24,400 24,938	29,280 29,925
Six	22,340 22,850	27,925 28,563	33,510 34,275
Additional member add	2,820 2,900	3,525 3,625	4,230 4,350

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.407 CALCULATING INCOME (1) Excluded from income are the following types of unearned income and deductions:

(a) through (h) remain the same.

(i) all monies awarded to Indian tribes by the Indian claims commission or court of claims as authorized by P.L. 92-254, 93-134, 92-254, 94-540, and 94-114, 97-408 or other applicable awards as provided in public law;

(j) through (t) remain the same.

(2) Out-of-pocket dependent care expenses as defined in ARM 37.70.401(9) may be deducted from income only if:

(a) the household's annual gross income is between 125% and 150% of the 1999 2000 U.S. government office of management and budget poverty level for the particular household size;

(b) and (c) remain the same.

(3) Medical and dental costs may be deducted from income only if:

(a) the household's annual gross income is between 125% and 150% of the 1999 2000 U.S. government office of management and budget poverty level for the particular household size;

(b) through (x) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.408 RESOURCES (1) The following non-business resources shall make a family unit ineligible when in total they exceed \$5,000 for a single person, \$7,500 for a couple, and \$500 for each additional member to a maximum of \$10,000 per household are counted in determining a household's eligibility:

(a) and (b) remain the same.

(c) checking/savings accounts; and
(d) market value of stocks or bonds and/or other negotiable resources; and

(e) the equity value of real property which is not the family home.

(2) A household having The equity value in business property in excess of \$12,500 shall be ineligible of the household's business assets is counted in determining eligibility.

(3) The value of the family home and the proceeds from the sale of the family home shall be excluded are not included as a resource.

(4) In fiscal year 2000, a household will be eligible if its total countable non-business resources do not exceed \$7,750 for a single person, \$11,625 for two persons and an amount equal to \$11,625 plus \$775 for each additional household member, up to a maximum of \$15,500 per household. In addition, the household may have business assets whose equity value does not exceed \$12,500.

(5) The dollar limitations on non-business resources listed elsewhere in this rule shall be adjusted annually by the department on July 1 beginning in calendar year 2001 by increasing each limitation by an amount equal to the limitation amount for the previous year, multiplied by the lesser of:

(a) the percentage increase in the consumer price index (all items, United States city average) for the most recent calendar year completed before the beginning of the year for which the determination is being made; or

(b) 3%.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.601 BENEFIT AWARD MATRICES (1) Definitions:

(a) "LC" means local contractor.

(b) "Single family unit" means a building which contains a single shelter or rental unit for living purposes. For purposes of the program, a double wide trailer or mobile home is considered a single family unit.

(c) "Multi-family unit" means a building which contains two or more shelter or rental units for living purposes. For purposes of the program, a duplex and a home with a basement apartment are considered multi-family units.

(d) "Mobile home" means a single wide trailer or mobile home only.

(2) (1) The benefit matrices in (2)(d) (1)(d) and (2)(e) (1)(e) are used to establish the benefit payable to an eligible household for a full winter heating season (October thru April). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) Except as provided in (2)(b) (1)(b), the benefit payable to an eligible household will be computed by multiplying the applicable amount in the table of base benefit levels found in (2)(d) (1)(d) by the applicable matrix amount in the table of income/climatic adjustment multipliers found in (2)(e) (1)(e).

(b) A household whose gross annual income is above 125% of the 1999 2000 poverty level but is eligible for benefits because of dependent care deductions and/or medical and dental deductions provided in ARM 37.70.407(3) and (4) will receive a benefit which is 40% of the maximum benefit.

(c) and (d) remain the same but are renumbered (1)(c) and (1)(d).

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$321	\$ 489 <u>421</u>	\$ 420 <u>512</u>	\$ 344 <u>457</u>	\$287 <u>275</u>	\$262 <u>251</u>
TWO	467	711 <u>612</u>	610 <u>745</u>	500 <u>665</u>	418 <u>400</u>	381 <u>365</u>
THREE	637 <u>636</u>	969 <u>834</u>	831 <u>1,015</u>	681 <u>906</u>	569 <u>545</u>	520 <u>498</u>
FOUR	876	1,334 <u>1,147</u>	1,144 <u>1,396</u>	937 <u>1,247</u>	783 <u>750</u>	715 <u>685</u>

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$272	\$ 414 <u>356</u>	\$ 355 <u>433</u>	\$ 365 <u>486</u>	\$243 <u>232</u>	\$222 <u>212</u>
TWO	409	623 <u>536</u>	534 <u>653</u>	550 <u>732</u>	365 <u>350</u>	334 <u>320</u>
THREE	601 <u>600</u>	915 <u>787</u>	784 <u>958</u>	808 <u>1,074</u>	536 <u>514</u>	490 <u>469</u>
FOUR	702 <u>701</u>	1,069 <u>919</u>	916 <u>1,119</u>	944 <u>1,255</u>	627 <u>600</u>	572 <u>548</u>

(iii) MOBILE HOME

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$271	\$412 <u>355</u>	\$354 <u>432</u>	\$304 <u>404</u>	\$242 <u>232</u>	\$221 <u>212</u>
TWO	396	603 <u>518</u>	517 <u>631</u>	444 <u>591</u>	354 <u>339</u>	323 <u>310</u>

THREE	525	799	685	589	469	429
		<u>687</u>	<u>837</u>	<u>783</u>	<u>449</u>	<u>410</u>
FOUR	586	892	765	657	524	478
		<u>767</u>	<u>934</u>	<u>874</u>	<u>502</u>	<u>458</u>

(e) remains the same but is renumbered (1)(e).

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.607 METHOD OF PAYMENT (1) ~~Definitions:~~

~~(a) "Eligible energy costs" means costs of the various types of energy supplied by the household's fuel vendors. Energy delivered by the household's fuel vendors prior to October 1 are ineligible for payment under the current year's program.~~

~~(i) Notwithstanding the above, eligible energy costs may include energy delivered prior to October 1 for applications filed after September 30, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable.~~

~~(2) (1) For eligible households that are billed for energy costs directly by the fuel vendor:~~

~~(a) remains the same but is renumbered (1)(a).~~

~~(b) The amount of the benefit or adjusted award remaining after the application of (2)(a) (1)(a) will be paid by check directly to the fuel vendor and will be applied by the fuel vendor against any unpaid, including any future, eligible energy costs of the household in accordance with the department-provided vendor application and contract. Any credit balance in excess of \$50 attributable to the benefit or adjusted award after April 30 must be returned to the department.~~

~~(c) Application for new benefits for the current heating season will not be processed until benefits the credit balances for each of the household's fuel vendors attributable to previous years' program awards total less than \$50.~~

~~(d) remains the same but is renumbered (1)(d).~~

~~(3) through (4)(a) remain the same but are renumbered (2) through (3)(a).~~

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.901 EMERGENCY ASSISTANCE (1) Emergency assistance under the low income energy assistance program may be provided to an eligible household in the following circumstances only when such circumstances present an imminent a serious, immediate threat to the health and safety of the household:

~~(a) and (b) remain the same.~~

~~(c) hazardous or potentially hazardous conditions exist in the household's home heating system, primary home water heating and/or space heating systems and safety modifications to the systems are required; or~~

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

(3) The household is responsible, at its own expense, for documenting that circumstances exist which present a serious, immediate threat to the household as defined in (1)(a) through (d). The local contractor may, however, in its discretion and subject to the priorities and restrictions specified in its contract with the department, assist the household in identifying and documenting such circumstances, if the local contractor has the expertise and resources to do so.

~~(3)~~ (4) Emergency assistance payments may be made on behalf of the eligible household for actual costs necessary to alleviate the emergency. However, no emergency assistance payments will be made for costs which are the liability of a third party, unless the household assigns to the department in writing its rights to such third party payments. Emergency assistance payments are limited to a total of \$250 per household in a 12 month period commencing on the first of October immediately preceding the date of the request for emergency assistance, except as follows:

(a) remains the same but is renumbered (4)(a).

(b) An eligible household may receive emergency assistance payments which total more than \$250 in a 12 month period without prior authorization as required in ~~(3)(a)~~ (4)(a), if services are necessary to alleviate a life threatening emergency and the department is notified of the type and actual cost of services within 48 hours after the services are rendered.

~~(4)~~ (5) Subject to the provisions of ~~(5)~~ (6), after a household has requested emergency assistance and provided proof that it is financially and otherwise eligible for such assistance, the contractor shall provide some form of assistance to resolve the emergency:

(a) and (b) remain the same but are renumbered (5)(a) and (5)(b).

~~(5)~~ (6) The time limits contained in ~~(4)(a)~~ (5)(a) and (b) for provision of emergency assistance do not apply in a geographical area affected by a disaster or emergency as designated in ~~(5)(a)~~ (6)(a) and (b), as long as the designation is in effect, if the secretary of the U.S. department of health and human services determines that the disaster or emergency makes compliance with the time limits impracticable. This exception to the time limit applies when:

(a) and (b) remain the same but are renumbered (6)(a) and (6)(b).

(7) The identification, removal, and/or abatement of asbestos is not an allowable use of emergency assistance funds.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.902 SUPPLEMENTAL ASSISTANCE (1) To the extent funds are available, one-time supplemental assistance to pay an outstanding energy bill for home energy costs incurred during the current heating season in an amount up to \$150 is available

to households which have received LIEAP benefits pursuant to ARM 37.70.601 for the current heating season, subject to the following conditions:

(a) and (b) remain the same.

(c) It is the responsibility of the fuel vendor and/or the LIEAP household to provide all documentation necessary to process the request; and

(d) The household must have paid at least 5% of its LIEAP calculated income, as defined in ARM 37.70.407, toward its primary and/or secondary home energy costs within the 12 consecutive months immediately preceding the date of the request; and

~~(e) The outstanding bill must be for home energy costs incurred between October 1 and April 30 of the current heating season.~~

(2) through (2)(c) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.71.401 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM, DEFINITIONS (1) remains the same.

(2) "Weatherization services" means improvements, repairs or other modification made to a dwelling for the purpose of reducing a household's energy burden.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.71.404 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM, ELIGIBILITY (1) Those pPersons eligible for the low income energy assistance program (LIEAP) and who meet the requirements of ARM 37.71.601 are eligible for the low income weatherization program.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

3. Income requirements for a household to be eligible for the Low Income Energy Assistance Program (LIEAP) are based on the household's income in relation to the federal poverty levels published annually by the U.S. Office of Management and Budget (OMB). ARM 37.70.406 currently provides that households with income at or below 125% of the 1999 federal poverty level for a household of that size are eligible for LIEAP on the basis of income. ARM 37.70.406 also contains income standards expressed in dollar amounts for different sized households based on the 1999 poverty levels. ARM 37.70.407 specifies certain deductions from income counted in determining eligibility but specifies that these deductions are applicable only to households with gross annual income between 125% and 150% of the 1999 poverty level. ARM 37.70.601 contains matrices of benefit amounts which are based on a number of factors, such as the household's type

of dwelling and method of heating. Another factor used to determine benefit amount is the household's income computed as a percentage of the 1999 poverty level.

The federal poverty levels are updated annually to take into account increases in the cost of living. The amendment of ARM 37.70.406, 37.70.407 and 37.70.601 is necessary to provide that the 2000 poverty levels recently published by the OMB will be used in computing LIEAP eligibility and benefit amount for the upcoming LIEAP fiscal year, which begins on October 1, 2000.

A definition of the term "licensed group-living situation" is being added to ARM 37.70.401, which contains definitions of terms used in the LIEAP rules. A definition is necessary because ARM 37.70.402 provides that individuals living in licensed group-living situations are not eligible for LIEAP benefits, but the rules previously did not define that term, leaving the extent of this prohibition unclear. Additionally, ARM 37.70.402 is being amended to provide that individuals living in shelters as well as in group-living situations cannot receive LIEAP benefits. The purpose of LIEAP is to help low income individuals and families pay their home heating bills, which increases the amount of disposable funds they have for other living essentials. Individuals living in shelters, like persons living in licensed group-living situations, have no direct out-of-pocket costs for heating their homes, and thus they do not need help to pay home heating costs. This policy is consistent with the policy expressed in subsection (6) of ARM 37.70.402, which prohibits residents of publicly subsidized housing whose heating costs are included in their rent and whose rent is a fixed portion of their income from receiving LIEAP benefits. A definition of "shelters" is being added to the definitions rule, ARM 37.70.401.

Additionally, several definitions currently in ARM 37.70.601 are being moved to ARM 37.70.401. This change is necessary because it is confusing to have some definitions in a separate definitions rule and others contained in the rule to which the definitions pertain. There is no change in the substance of the definitions which are being moved.

Subsection (1) of ARM 37.70.402 currently states that households which consist solely of members receiving certain types of public assistance are automatically eligible for LIEAP benefits except "as provided below." This does not specify whether the exceptions to the general rule are spelled out later in this rule or later in the subchapter. Therefore, the word "below" is being deleted and the phrase "elsewhere in this rule" is being substituted to add specificity. Additionally, the term "Aid to Families with Dependent Children" is being deleted in this rule and throughout the LIEAP rules and the term "TANF-funded cash assistance" is being substituted, because the AFDC program has been replaced by the Temporary Assistance of Needy

Families (TANF) program due to the passage of the federal welfare reform bill, the Personal Responsibility and Work Opportunity Act of 1996. Similarly, due to the elimination of the state general relief program by the Montana Legislature in 1995, ARM 37.70.402 is being amended to specify that recipients of county or tribal general assistance are considered recipients of public assistance who may automatically qualify for LIEAP benefits.

ARM 37.70.407 provides that certain types of income are excluded in calculating a household's income. Subsection (1)(i) provides for the exclusion of monies awarded to Indian tribes pursuant to certain federal statutes but does not list Public Law 97-408, which states that per capita distributions to the Assiniboine Tribe of the Fort Belknap and Fort Peck communities may not be counted as income or a resource for purposes of public assistance programs. A reference to this particular statute is being added because some applicants for LIEAP are members of the Assiniboine Tribe in those communities. The phrase "or other applicable awards as provided in public law" is being added to provide for the exclusion of payments made under laws which may be passed in the future or which are already in effect but of which the Department is presently unaware and which require the exclusion of such payments in determining eligibility for public assistance.

ARM 37.70.408(1) currently provides that a family unit is ineligible when its total resources exceed \$5,000 for a single person, \$7,500 for a couple, and certain specified limits up to a maximum of \$15,500 for larger households. The term "household" is now being substituted for the term "family unit" in subsection (1) for the sake of consistency, because the term "household" is the term used throughout the LIEAP rules and is the term defined in the LIEAP definitions rule, ARM 37.70.401. The resource limits are also being increased to account for inflation which has occurred since these limits were established. Additionally, at the suggestion of the contractors who determine eligibility for LIEAP, this rule is being amended to provide for annual adjustments to the resource limit to reflect decreased buying power caused by inflation. The rule as amended provides for annual adjustments based on increases in the consumer price index, but not to exceed 3% per annum.

Additionally, subsection (2) of ARM 37.70.408 currently provides that a household is ineligible if the household has business property with an equity value in excess of \$12,500 but does not specifically state that a household may have business assets with this value in addition to non-business resources up to the limits stated in subsection (1). Subsections (1) and (2) are being revised and subsection (4) is being added to clarify that the household may have countable business assets worth \$12,500 or less plus personal assets which do not exceed the specified maximum values for each size household.

Another substantive change is being made to ARM 37.70.408 in that subsection (1)(e) is being added to provide that the equity value of real property which is not the family home and is not held for business purposes will be counted as a non-business resource. The Department has determined there is no reasonable basis for continuing to exclude such property in determining eligibility for LIEAP benefits, as such property could be liquidated if necessary to help the household meet its energy needs. This change will also make LIEAP's policy consistent with that of other assistance programs such as Food Stamps, Medicaid, and FAIM, Montana's TANF-funded cash assistance program, which all count real property which is not the family home as an available resource.

The definition of eligible energy costs currently in ARM 37.70.607(1) remains unchanged but is being moved to the definitions rule, ARM 37.70.401. Subsection (2)(c) currently states that applications for new benefits, i.e., benefits for the new heating season, will not be processed until benefits from the previous year total less than \$50. This provision is being rewritten to specify that the Department determines whether the previous year's benefits are depleted by verifying the household's credit balance with its fuel vendor or vendor. The rule as amended will therefore provide that a new application will not be processed until the household's credit balance with its fuel vendor or vendors totals less than \$50. This does not represent a change in policy but is merely a clarification.

Several changes are being made to ARM 37.70.901 governing LIEAP emergency assistance. The purpose of emergency assistance, as distinguished from regular LIEAP benefits or supplemental benefits, is not to help households with their routine heating costs but to address emergency situations which create a serious and immediate danger to the household. An example would be a malfunctioning heating system which is emitting dangerous fumes. A recent request for emergency assistance to replace a part of a heating system thought to contain asbestos has prompted the Department to amend this rule to make clearer what threats to a household's health and safety are covered. Although the rule does not currently state that emergency funds are not available to remove asbestos from homes, it was never intended that LIEAP funds be used for this purpose. Normally the presence of asbestos in a home would pose a long-term threat to the household members' health rather than creating an immediate threat as required for emergency assistance. However, the Department considers it necessary to specifically exclude the use of LIEAP emergency assistance funds for asbestos-related purposes because use of LIEAP money for this purpose could result in the rapid depletion of LIEAP funds.

The Department is also amending the rule to specify that the threat to the household's health and safety must be serious

because it was never intended that this program would be used to rectify conditions which pose only a routine, minor risk to the household. A recent request for LIEAP emergency assistance for a condition which the Department does not consider to be a serious threat has called attention to the need to clarify this point.

Similarly, in a recent case an applicant for emergency assistance asked the Department to pay the costs of determining whether an imminent threat to the household's health and safety existed. ARM 37.70.901 does not currently require the Department to pay for such costs but also does not explicitly state that the Department is not required to do so. In some cases the Department's LIEAP contractor may be able to determine whether a threat exists or it may be appropriate for the Department to pay a third party to inspect or test the applicant's heating system. However, the Department should not be obligated to pay for such services in cases where there is no reasonable likelihood that a serious threat exists. Therefore, it is necessary to amend the rule to specify that the Department does not have to bear the cost of determining whether an emergency exists.

ARM 37.70.901(1)(c) currently provides that emergency assistance may be available to alleviate a threat created by a hazardous condition in a household's home heating system, i.e., its space heating system. The Department has determined that threats due to hazardous conditions in a household's water heating system as well as its space heating system should be covered, as defects in the water heating system can be equally dangerous to the household's health and safety. Subsection (1)(c) is also being amended to specify that only hazardous conditions in the household's primary space or water heating systems can qualify a household for emergency assistance. This change was suggested at a round table meeting of LIEAP contractors. The Department is adopting this policy because emergency assistance funds should be used only to alleviate problems with the household's primary sources of water and/or space heat. Problems with a household's secondary home water and/or space heating systems do not constitute an emergency since the home's primary systems are capable of meeting the household's needs without using the secondary system.

Two minor changes are being added to the rules governing the Low Income Weatherization Assistance Program (LIWAP). Although the term "weatherization services" is used throughout the LIWAP rules, the term is not defined. Therefore it is necessary to add a definition of "weatherization services" to ARM 37.71.401, the LIWAP definitions rule. ARM 37.71.404 currently states that persons eligible for LIEAP are eligible for LIWAP. This is not correct. A person who is eligible for LIEAP meets the financial eligibility requirements to receive LIWAP but will not be eligible for weatherization services if the person's home has

been weatherized after September 30, 1985 with U.S. Department of Energy funds or after January 1, 1995 with LIEAP or Montana Power Company free weatherization funds, as specified in ARM 37.71.601(1). Therefore ARM 37.71.404 is being amended to state that a person who is eligible for LIEAP and who meets the requirements of ARM 37.71.601 is eligible for LIWAP.

4. These rule changes will be applied retroactive to October 1, 2000. The Department was not able to calculate the matrixes until the federal appropriation level was ensured. The use of the 2000 poverty levels to determine eligibility benefits for applicants for LIEAP because the 2000 levels are higher than the 1999 levels.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on September 21, 2000. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State August 14, 2000.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)
amendment of ARM 46.20.106)
pertaining to mental health)
services plan eligibility)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On September 13, 2000, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 1, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.20.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) An individual is eligible for covered services under the plan if:

(a) the individual is a youth with a serious emotional disturbance or an adult with a severe disabling mental illness; and the family of which the individual is a member has a total family income, without regard to other family resources, at or below 150% of the most recently published federal poverty level (FPL); and

(b) the individual has been denied medicaid eligibility, is ineligible for medicaid by virtue of being a patient in an institution for mental diseases, or has applied for medicaid and the application is pending. An individual who meets medicaid eligibility requirements but does not apply for medicaid is not eligible to receive services under the plan; and

(c) the individual is under the age of 19 years and the individual is enrolled in or has been denied enrollment in Montana children's health insurance program (CHIP), as established in ARM Title 37, chapter 79.

(2) through (11)(a)(ii) remain the same.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131, 53-6-701 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 53-2-201, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

3. The proposed amendment will make permanent the temporary emergency rule adopted July 31, 2000 which added a new provision to the eligibility requirements for the Mental Health Services Plan (MHSP). It required MHSP applicants under 19 years of age, in addition to existing MHSP requirements, to be first enrolled in CHIP or denied enrollment in CHIP prior to a determination of eligibility for MHSP.

The proposed amendment would delete the provision in the temporary emergency rule that persons under 19 years of age enrolled in the MHSP as of July 31, 2000 would have sixty days after mailing of a written notice by the Department to enroll in or be denied enrollment in CHIP. The time necessary for public comment and public hearing for adoption of this rule means that the sixty day notice period for enrolled MHSP beneficiaries will have expired before adoption of a final permanent rule.

The proposed amendment will ensure that MHSP children, virtually all of whom are potentially eligible for CHIP, will be covered by the CHIP program. In addition to ensuring that these children, all of whom have identified health problems, can receive treatment for all aspects of their illness, this change will ensure that the MHSP program pays only for mental health services beyond those covered under CHIP. It will also allow the Department to obtain federal financial participation at the rate of 80% of treatment costs for all mental health services to eligible children.

Because of imminent and substantial budget deficits in State Fiscal Year 2000, the Department is required to make substantial, immediate adjustments to MHSP eligibility and benefits in order to reduce the cost of the program to a level consistent with appropriations. Current budget projections by the Department indicate that mental health program costs for State fiscal year 2001 will exceed appropriated funding by approximately \$4.2 million. In the absence of immediate eligibility changes the Department would be required to make deep reductions in the scope of MHSP services. As a result, a significant number of children and adults with severe and disabling mental illnesses would no longer have coverage for the costs of their mental health treatment. The Department finds that the lack of coverage would pose an imminent danger to the public health and welfare because the affected persons would not receive necessary mental health treatment.

The Department believes the savings resulting from this rule will allow the Department to avoid an immediate reduction of the upper income limit for the MHSP program and may mitigate the

need for such reductions or other cost-cutting measures in the future. To achieve the same savings, MHSP eligibility would have to be reduced from 150% of the federal poverty level to 120% of poverty. Such a reduction would result in over 700 individuals losing MHSP eligibility. All of these are children who have been identified as having a serious emotional disturbance or adults who have been identified as having a severe and disabling mental illness.

This rule amendment will also allow the Department to avoid immediate suspension of new MHSP enrollments for an indefinite period. Such a measure would also leave a significant number of seriously mentally ill individuals without treatment.

The alternatives to this rule would be to reduce the upper income limit for the MHSP program from 150% of the federal poverty level to 120% of poverty and to suspend enrollment indefinitely. These measures were identified by the Department as having the potential to achieve the cost reductions required with the least negative impact on the system of care.

The Department rejected the other options because they would have had potentially severe impacts on the individuals who would have been dropped from service. Without adequate and appropriate treatment, mentally ill individuals will suffer exacerbation of symptoms and a deterioration in their ability to function within the community, posing a certain and imminent risk of harm to the health and safety of those individuals, as well as to the safety of their families and communities.

The Department anticipates that the alternative measures would have saved approximately \$4.1 million in State Fiscal Year 2001. The individuals affected would obviously not have been able to pay for the services no longer covered by MHSP because they do not have the resources to do so. However, the other options would have had a substantial health and financial impacts on the individuals and families affected and upon county and local governments. The Department estimates the fiscal impact of this rule amendment will be an overall cost savings to the Mental Health Access Plan of \$4.3 million over the next 12 months.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on September 21, 2000. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State August 14, 2000.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of Rules I through VIII, the	)	ON PROPOSED ADOPTION,
transfer and amendment of ARM	)	TRANSFER, AMENDMENT AND
16.10.201, 16.10.202,	)	REPEAL
16.10.203, 16.10.204,)	
16.10.206, 16.10.207,)	
16.10.208, 16.10.209,)	
16.10.210, 16.10.212,)	
16.10.213, 16.10.214,)	
16.10.215, 16.10.216,)	
16.10.217, 16.10.218,)	
16.10.219, 16.10.220,)	
16.10.221, 16.10.222,)	
16.10.223, 16.10.225,)	
16.10.226, 16.10.227,)	
16.10.228, 16.10.229,)	
16.10.230, 16.10.231,)	
16.10.232, 16.10.236,)	
16.10.238, 16.10.239,)	
16.10.240, 16.10.241,)	
16.10.242, 16.10.243,)	
16.10.251 and the repeal of)	
ARM 16.10.205, 16.10.233,)	
16.10.234 and 16.10.235)	
pertaining to food)	
regulations)	

TO: All Interested Persons

1. On the following dates, times and locations, public hearings will be held to consider the proposed adoption, transfer, amendment and repeal of the above-stated rules:

Sept. 13, 2000, 8:30 a.m. Civic Center Gibson Room, 2nd floor #2 Park Drive S. Great Falls, Montana	Sept. 14, 2000, 8:30 a.m. Yogo Inn Gypsum Room 211 E. Main Lewistown, Montana
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Sept. 15, 2000, 8:30 a.m. Elks Club main floor conference room 309 2nd Ave. S. Glasgow, Montana	Sept. 18, 2000, 8:30 a.m. DPHHS Auditorium basement 111 N. Sanders Helena, Montana
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Sept. 20, 2000, 9:00 a.m. VA Hospital, Auditorium 210 S. Winchester Miles City, Montana	Sept. 21, 2000, 8:30 a.m. Community Health Center 2nd floor Billings, Montana
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(use nursing home door on east side)

Sept. 22, 2000, 9:00 a.m.
Bozeman Public Library
1st floor conference room
2020 E. Lamme
Bozeman, Montana

Sept. 27, 2000, 9:00 a.m.
Courthouse conference room
main floor
723 5th Ave. E.
Kalispell, Montana

Sept. 28, 2000, 10:00 a.m.
Missoula Public Library
downstairs conference room
301 E. Main
Missoula, Montana

Sept. 29, 2000, 9:00 a.m.
Community Center
multipurpose room
25 W. Front St.
Butte, Montana

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 1, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. General Rationale:

These proposed changes aim to update the existing rules, which have remained the same since 1979. The existing rules do not take into account current scientific developments used in preventing food borne illnesses. These updates were devised by a task force composed of food service establishments, operators, food industry representatives, county sanitarians, a state legislator, and the state Department of Public Health and Human Services Food and Consumer Safety Section staff. The task force met on August 6, 1997; December 3, 1997; March 19, 1998; June 10, 1998; September 24, 1998; June 5, 2000 and June 20, 2000.

The Task Force's proposed updates are based on the 1997 and 1999 versions of the U.S. Department of Health and Human Services' Food Code (National Technical Information Service Publications PB97-133656 and PB99-115925). The Food Code was drafted with input from the various federal agencies that regulate food safety and the food industry. It is not a federal law, but is used as a reference guide by retail food service establishments, institutional food services, and regulatory agencies responsible for overseeing food safety. Many Food Code provisions have been adopted by other states as part of their regulations.

The Task Force felt the Food Code presented the best substance for updating the food service establishment rules. In doing so, the Task Force elected to insert the substantive content of Food Code into the existing state rules in an effort to create a more readable and usable set of rules for food service operators.

In the rule language that has remained unaltered, the term

"shall" was replaced with "must" to comply with current rule drafting standards. The changes do not alter the rules' meanings because both "shall" and "must" connote mandatory duties on food service establishments.

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

RULE I HIGHLY SUSCEPTIBLE POPULATION (1) In a food service establishment that serves a highly susceptible population, the following food items may not be served:

- (a) unpasteurized juice and dairy products;
- (b) raw animal food such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;
- (c) partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and

(d) raw seed sprouts in a ready-to-eat form.

(2) Pasteurized shell eggs or pasteurized liquid, frozen or dry eggs or egg products must be substituted for raw shell eggs in the preparation of:

- (a) foods such as caesar salads, hollandaise or bearnaise sauces, mayonnaise, egg nogs, ice creams, and egg-fortified beverages; and

(b) recipes in which more than one raw shell egg is broken and the eggs are combined.

(3) Subsection (2) of this rule does not apply if:

(a) the raw eggs are combined immediately before cooking for one consumer's serving at a single meal; are cooked as specified in ARM 16.10.207(4)(a); and are served immediately, as in the case of an omelet, souffle or scrambled eggs; or

(b) the raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as cake, muffins or bread.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

Rule I Rationale

This proposed rule provides special food safety precautions necessary to protect those who are particularly vulnerable to food borne illness and for whom the implications of such illness can be dire. These provisions are aimed at those highly susceptible people defined in ARM 16.10.203(31)--those persons who are more likely than others to experience food borne diseases because they have weak immunity systems. This population includes older adults living in health care facilities, and children of preschool age under custodial care in such settings as day care facilities.

Subsection (1)(a) prohibits the serving of unpasteurized juice and dairy products. There are documented cases of food borne illnesses associated with the consumption of such products.

Unpasteurized juices have been documented to be contaminated with microorganisms such as Cryptosporidium, E. coli, Salmonella, and Vibrio cholera. Such organisms can be fatal to highly susceptible people.

Subsection (1)(b) and (c) restrict serving raw or partially cooked food of animal origin. The prohibition against serving raw animal foods is needed because illness-causing pathogens are not destroyed in the cooking process. Likewise, Salmonella often survives traditional preparation techniques. It survives in a lightly cooked omelet, French toast, stuffed pasta, and meringue pies. Therefore, special added precautions need to be in place for those most susceptible to food borne illnesses.

Subsection (1)(d) prohibits serving raw seed sprouts. Since 1995, this food item has been recognized as a source of food borne illness in the U.S., warranting their prohibition when serving highly susceptible people.

Subsection (2) is needed to avert the spread of Salmonella enteritidis found in raw egg shells. Following the preparation precautions stated in (3) protects highly susceptible people from contracting food borne illnesses relating to Salmonella enteritidis.

RULE II VARIANCES (1) A food service establishment may request a variance to waive or modify requirements of this subchapter by petitioning the local health authority.

(2) The local health authority may grant a variance by modifying or waiving the requirements of this chapter if in the opinion of the local health authority a health hazard will not result from the variance.

(3) If a variance is granted, the local health authority may require any of the following information for its records on the food establishment:

(a) a statement by the petitioner of the proposed variance from this subchapter's requirements, citing the relevant rule numbers;

(b) a rationale by the petitioner explaining how the potential public health hazards addressed by the relevant rules will be alternatively addressed by the proposal; and

(c) a hazard analysis and critical control point plan (HACCP) from the petitioner requesting the variance that includes the information required for a HACCP plan and its relevance to the variance requested.

(4) The petitioner may ask for approval from the department if the local health authority denies the variance, or the local health authority does not exist or is absent. For department approval, the petitioner shall submit the information required in (3)(a) through (c) of this rule.

(5) The recipient of a variance must demonstrate to the regulatory authority conformance with approved procedures through compliance with the HACCP plan, if one is required, or procedures that are submitted and approved as a basis for the

variance.

AUTH: Sec. 50-50-103, MCA
IMP: Sec. 50-50-103, MCA

Rule II Rationale

This proposed rule permits the granting of variances from the food regulations when deemed appropriate, giving the individual circumstance of the food service establishment that applies for one. This rule provides flexibility within the system. There may be new and innovative ways to prepare foods safely. This rule allows industry and regulatory authorities to devise methods of protecting food safety in a way that may not be described in the remaining rules.

RULE III SUBMISSION OF A HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) PLAN (1) A HACCP plan must be submitted to the regulatory authority for the following processes:

- (a) smoking or curing food;
- (b) using food additives as a method of food preservation rather than as a method of flavor enhancement; or
- (c) packaging food using a reduced-oxygen packaging unless the regulatory authority finds that a barrier to Clostridium botulinum exists.

(2) For reduced-oxygen packaging that contains no barrier to Clostridium botulinum, the food service establishment shall follow an approved HACCP plan that contains the information specified under [Rule IV] and that does the following:

- (a) identifies the food to be packaged;
- (b) limits the food packaged to a food that does not support the growth of Clostridium botulism because it complies with one of the following:
 - (i) has an aw of 0.91 or less;
 - (ii) has a pH of 4.6 or less;
 - (iii) is a meat product cured at a food processing plant regulated by the U.S. department of agriculture using a combination of nitrites, nitrates, and salt that at the time of processing consists of 120 mg/L or higher concentration of sodium nitrite and a brine concentration of at least 3.50% and is received in an intact package; or
 - (iv) is a food with a high level of competing organisms such as raw meat or raw poultry;
- (c) specifies methods for maintaining food at 41°F (5°C) or below;
- (d) describes how the packages must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to maintain the food at 41°F (5°C) or below and to discard the food within 14 calendar days of its packaging if it is not served for on-premises consumption;
- (e) limits the shelf life to no more than 14 calendar days from packaging to consumption or to the original manufacturer's "sell by" or "use by" date, whichever occurs first;

- (f) includes operational procedures that do the following:
 - (i) prohibits contacting food with bare hands;
 - (ii) identifies a designated preparation area;
 - (iii) identifies a method of minimizing cross-contamination of raw foods with ready-to-eat foods;
 - (iv) restricts access to processing equipment to only trained food employees familiar with the potential hazards of the operation; and
 - (v) delineates cleaning and sanitization procedures for food-contact surfaces;
- (g) describes the training program that ensures that the individual responsible for the reduced-oxygen packaging operation understands the following:
 - (i) concepts required for a safe operation;
 - (ii) equipment and facilities; and
 - (iii) procedures specified in (2)(f) of this rule and [Rule IV](1)(d)].
- (h) except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced-oxygen packaging method.

AUTH: Sec. 50-50-103, MCA
IMP: Sec. 50-50-103, MCA

Rule III Rationale

The acronym HACCP stands for Hazard Analysis and Critical Control Point, which is a prevention-based food safety system. HACCP systems are designed to prevent the occurrence of potential food safety problems by assessing the inherent risks attributable to a product or a process and then determining the necessary steps that will control the identified risks.

Essentially, a HACCP system identifies specific food borne hazards - biological, chemical, or physical properties - that can adversely affect the safety of the food product. This hazard analysis serves as the basis for establishing critical control points (CCPs). CCPs identify those points in the process that must be controlled to ensure the safety of the food. Critical limits are then established that describe the appropriate parameters that must be met for each CCP. Monitoring and verification steps are included in the system to ensure that potential risks are controlled. The hazard analysis, critical control points, critical limits, and monitoring and verification steps are documented in a HACCP plan.

Subsection (1) defines when a HACCP plan is required. Three food processes are proposed to come under this new requirement: smoking or curing food; using food additives as a method of food preservation rather than as a flavor enhancer; and reduced oxygen packaging that has no barrier to *Clostridium botulinum*. All of these processes carry a significant public health risk if not done correctly. A properly developed and implemented HACCP

plan provides significant assurances that these foods will be safe for the consumer.

Subsection (2) details the requirements for information to be provided in plans for reduced oxygen packaging of foods that contain no barrier to *Clostridium botulinum*. Foods that are improperly processed and subjected to reduced oxygen packaging are prone to growth of pathogens that survive and grow in low oxygen environments and refrigeration temperatures (like *C. botulinum*). This rule is necessary to assure that foods processed by this method do not pose a significant public health risk.

RULE IV CONTENTS OF A HACCP PLAN (1) A food establishment that is required to submit a HACCP plan must develop, within 30 days of receiving notice of the requirement, a HACCP plan that contains the following information:

(a) a categorization of the types of potentially hazardous foods that are specified in the menu, such as soups and sauces, salads, and solid foods in bulk, such as meat roasts, or of other foods that are specified by the regulatory authority;

(b) a flow diagram by specific food or category identifying critical control points and providing information on the following:

(i) ingredients, materials, and equipment used in the preparation of that food; and

(ii) formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

(c) food employee and supervisory training plan that addresses the food safety issues of concern;

(d) a statement of standard operating procedures for the plan under consideration, including clearly identifying the following:

(i) each critical control point;

(ii) the critical limits for each critical control point;

(iii) the method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;

(iv) the method and frequency for the person in charge to verify routinely that the food employee is following standard operating procedures and monitoring critical control points;

(v) action to be taken by the person in charge if the critical limits for each critical control point are not met; and

(vi) records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

(e) additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA.

Rule IV Rationale

This proposed rule establishes the minimum requirements for contents of a HACCP plan when one is required. This rule is necessary to assure a consistent application of HACCP principles and approaches statewide. Eliminating steps in HACCP plans can provide an inferior and sometimes dangerous food safety system. When a HACCP plan is properly designed and implemented, as required by this rule, the HACCP plan will be successful in preventing unsafe foods from reaching consumers and causing food borne illness.

RULE V MOBILE FOOD SERVICE (1) Mobile food services must comply with all requirements of this subchapter unless otherwise specified in this rule.

(2) Mobile food services must provide only single-service articles for use by the consumer.

(3) Mobile food services requiring a water system must have a potable water system under pressure and must be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and hand washing, in accordance with ARM 16.10.217. Additionally:

(a) The water inlet must be located so that it will not be contaminated by waste discharge, road dust, oil, or grease; be kept capped unless being filled; and be provided with a transition connection of a size or type that will prevent its use for any other service;

(b) All water distribution pipes or tubing must be constructed and installed in accordance with ARM 16.10.219.

(4) If liquid waste results from the operation of a mobile food service, the waste must be stored in a retention tank that is of at least 15% larger capacity than the water supply tank. Additionally:

(a) Liquid waste may not be discharged from the retention tank when the mobile food service is in motion;

(b) All connections on the vehicle for servicing mobile food service waste disposal facilities must be of a different size or type than those used for supplying potable water to the unit;

(c) The waste connection must be located lower than the water inlet connection to preclude contamination of the potable water system;

(d) The liquid waste retention tank, where used, must be thoroughly flushed and drained during the servicing operation;

(e) All liquid waste must be discharged to a sanitary sewage disposal system in accordance with ARM Title 17, chapter 38, subchapter 1.

(5) A mobile food service must report as needed to a servicing area for supplies, cleaning and maintenance, unless otherwise allowed by the local health authority.

(6) A mobile food service may have an approved water hauler and a licensed septic pumper service the unit. The approved water hauler and licensed septic pumper must be in compliance with ARM Title 17, chapter 38, the rules of the

Montana department of environmental quality.

(7) A mobile food service need not comply with the requirements in ARM 16.10.215 regarding cleaning and sanitizing equipment and utensils, if the mobile food service serves:

(a) only food prepared, packaged in individual servings, and transported and stored under conditions meeting the requirements of this subchapter;

(b) beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment; or

(c) frankfurters.

(8) The local health authority may:

(a) impose additional requirements to protect against health hazards related to the conduct of the mobile food service;

(b) prohibit the sale of some or all potentially hazardous food; or

(c) when no health hazard will result, waive or modify requirements of this subchapter.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

Rule V Rationale

This rule contains most of the requirements of ARM 16.10.233 and 16.10.234, which are proposed to be repealed. The principal change from the current rules is the removal of the requirement that mobile units return daily to a commissary for servicing. Instead, this rule describes safe handling of water and food, and describes appropriate disposal of sewage. This rule allows for a variety of operating plans for mobile food service units, and it more accurately reflects how those units currently function in the market place.

RULE VI PUSHCARTS (1) Pushcarts must operate in accordance with [Rule V (37.110.256)(1) through (4) and (6) through (8)].

(2) Additionally, pushcarts must have a servicing area which must include at least an overhead protection for any supplying, cleaning, or servicing operation. Within the servicing area, there must be a location provided for the flushing and drainage of liquid wastes separate from the location provided for potable water servicing and for the loading and unloading of food and related supplies. A servicing area is not required when only packaged food is placed on the pushcart.

(3) The servicing area must be constructed and equipped as follows:

(a) The surface of the servicing area must be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and must be maintained in good repair, kept clean, and be graded to drain;

(b) The construction of the walls and ceilings of the servicing area is exempted from the requirements of ARM

16.10.226;

(c) Potable water servicing equipment must be installed according to ARM 16.10.217 and 16.10.219 and must be stored and handled in a way that protects the water and equipment from contamination;

(d) The liquid waste retention tank, where used, must be thoroughly flushed and drained during the servicing operation, and all liquid waste must be discharged to a sanitary sewerage disposal system in accordance with ARM Title 17, chapter 38, subchapter 1.

AUTH: Sec. 50-50-103, MCA
IMP: Sec. 50-50-103, MCA

Rule VI Rationale

This rule reiterates the current requirements for pushcarts described in ARM 16.10.233, 16.10.234 and 16.10.235, which are slated for repeal.

The servicing area requirements in (2) and (3) are needed to make it clear that servicing areas do not have to meet all the requirements of the subchapter regarding walls, floors and ceilings. Without this specific rule, servicing areas for pushcarts would have to meet all requirements of the subchapter, which, in the case of pushcarts, may not be necessary to protect public health.

RULE VII SEMIPERMANENT FOOD SERVICE ESTABLISHMENT (1) Semipermanent food service establishments must comply with this subchapter and [Rule V(1) through (8)].

(2) Additionally, semipermanent food service establishments must be located within 200 feet of a restroom facility for food employees. The restroom facility must be accessible during all hours of operation.

AUTH: Sec. 50-50-103, MCA
IMP: Sec. 50-50-103, MCA

Rule VII Rationale

Semipermanent food services have been added to this rule because of their increasing proliferation in Montana. These establishments usually operate as coffee drive-thru's, ice cream stands, and snow cone stands. The current rules do not address these establishments. The establishments are not on permanent foundations and are not connected to conventional water and sewage systems to qualify as standard food establishments. They are also not mobile to warrant their regulation as mobile establishments. This proposed rule is designed to accommodate semipermanent establishments' operation in a safe manner.

RULE VIII PERISHABLE FOOD VENDING MACHINES
(1) Perishable food vending machines must comply with all

requirements of this subchapter.

(2) Additionally, all foods, beverages and ingredients offered for sale through perishable food vending machines must be manufactured, processed and prepared in a fixed food service establishment that complies with this subchapter or subchapter 3 regarding food manufacturing establishments.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

Rule VIII Rationale

This proposed rule regulates vending machines that dispense perishable foods that are not contained in original manufacturer's packaging. This rule provides for the safe equipment cleaning, and the safe preparation of the vended food to protect the health of the consuming public. The existing rules for vending machines contained in ARM Title 16, chapter 10, subchapter 4 are intended to be repealed after the revisions to this subchapter are adopted.

4. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

16.10.201 [37.110.201] INTRODUCTION (1) This is a subchapter regulating food service establishments that serve prepared food and drink to the public, as provided in Title 50, chapter 50, MCA.

~~(1) (2) This is a subchapter defining defines food, potentially hazardous food, food service establishment, mobile food unit service, semipermanent food service establishment, temporary food service establishment, regulatory authority, utensils, equipment, etc.; providing provides for the sale of only sound, safe, properly labeled food; regulating regulates the sources of food; establishing establishes sanitation standards for food, food protection, food service operations, food service personnel, food service and utensils, sanitary facilities and controls, and other facilities; requiring requires licenses for the operation of food service establishments; regulating regulates the inspection of such establishments; providing provides for the examination and condemnation of food; providing provides for enforcement of this subchapter, and the fixing of penalties. Those rules of this subchapter which deal with "building regulations" as that term is defined in 50-60-101, MCA, become effective when approved by the department of administration and submitted to the secretary of state for filing as part of the state building code.~~

(3) All food service establishments must comply with all appropriate building construction standards as set forth by 50-60-101, MCA and all applicable administrative rules as adopted by the department of commerce in ARM Title 8.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.201 Rationale

Subsection (1) was added to clarify that the ensuing rules cover food services establishments, and cites to the statutes that regulate them.

Subsection (2) add "semipermanent food service establishments" of which [Rule VI] covers.

Subsection (3) has been reworded from the existing language, and was separately subsectioned to comply with current rule format.

16.10.202 [37.110.202] PURPOSE (1) This subchapter shall be liberally construed and applied to promote its underlying purpose which is to prevent and eliminate conditions and practices which endanger public health.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.202 Rationale

Earmarking was added to conform to rule drafting standards.

16.10.203 [37.110.203] DEFINITIONS For the purpose of this subchapter:

(1) "Adulterated" means a food:

(a) that bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; or

(b) that bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by laws or rules or in excess of such tolerance if one has been established; or

(c) that consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption;

(d) that has been processed, prepared, packed or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(e) that is in whole or in part a product of a diseased animal, or an animal which has died otherwise than by slaughter;

(f) whose container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(g) or as otherwise determined to be "adulterated" under the Montana Food, Drug and Cosmetic Act, 50-31-202, MCA (~~Montana Food, Drug and Cosmetic Act~~).

(2) "Approved" means acceptable to the regulatory authority based on its determination ~~as to conformance of conformity~~ with appropriate standards and good public health

practice safe food manufacturing and processing methods.

~~(3) "Closed" means fitted together snugly leaving no openings large enough to permit the entrance of vermin.~~

(3) "Aw" means water activity which is a measure of the free moisture in a food and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

(4) "Beverage" means a liquid for drinking, including water.

(5) "Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the federally-regulated national shellfish sanitation program.

(6) "Code of Federal Regulations (CFR)" means the compilation of general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

(7) "Comminuted" means reduced in size by methods that include chopping, flaking, grinding, or mincing; fish or meat products that are reduced in size and restructured or reformulated, such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

~~(4) "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged or stored.~~

(8) "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment, and does not offer the food for resale;

~~(5) (9) "Corrosion resistant material" means those materials a material that maintain their maintains an easily cleanable original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal sanitizing solutions, and other conditions-of-use environment.~~

(10) "Critical control point" means part of a food safety evaluation process, such as a HACCP plan, where loss of control may result in an unacceptable health risk.

(11) "Critical item" means a provision of this subchapter that, if violated, is more likely than other violations to contribute to food contamination, illness, or environmental degradation.

(12) "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk so that the identified food safety hazard may not occur.

(13) "Department" means the department of public health and human services.

(14) "Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

~~(6)~~ (15) "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods a surface whose material, design, construction, and installation allows effective removal of soil by normal cleaning methods.

(16) "Easily movable" means any item that:

(a) weighs 50 pounds (23 kilograms) or less; is mounted on casters, gliders, or rollers; or is provided with a mechanical means requiring no more than 50 pounds (23 kilograms) of force to safely tilt a unit of equipment for cleaning; and

(b) has no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(17) "EPA" means the federal environmental protection agency.

~~(7) "Employee" means any person working in a food service establishment who transports food or food containers, who engages in food preparation or service, or who comes in contact with any food utensils or equipment.~~

~~(8) "Establishment" means a "food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer."~~

~~(9)~~ (18) "Equipment" means items, other than utensils, used in the operation of a food establishment, including stoves, ovens, ranges, hoods, slicers, mixers, meat blocks, tables, boxes counters, refrigerators, sinks, dishwashing machines, steam tables, similar items other than utensils, used in the operation of a food service establishment proof boxes and freezers.

(19) "Exotic species" means an animal that comes from or that is commonly found in another part of the world or in a foreign country. Cattle, sheep, swine, goats, and poultry are not considered exotic species.

(20) "Fish" means edible forms of aquatic animal life other than birds or mammals, encompassing both fresh and saltwater forms, and including molluscan shellfish and crustaceans.

~~(10)~~ (21) "Food" means an a raw, cooked, or processed edible substance, beverage, or ingredient used, intended for use, or for sale in whole or in part for human consumption."

(22) "Food borne disease outbreak" means illness experienced by two or more persons after ingestion of a common food which an epidemiological analysis implicates as the source of the illness, a single case of illness from botulism, or chemical poisoning.

~~(11)~~ (23) "Food contact surfaces" means those surfaces of equipment and or utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back into or onto food or surfaces normally in contact with food.

(24) "Food employee" means an individual working with

unpackaged food, food equipment or utensils, or food-contact surfaces.

(12) (25) "Food manufacturing establishment" means a "commercial establishment and buildings or structures in connection with it, used to manufacture or prepare food for sale for human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants." ; a food manufacturing establishment does not provide food directly to a consumer, and does not include a food service establishment as defined in this rule.

(13) "Food processing establishment" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include food service establishment, retail food store or commissary operation.

(26) "Food service establishment" means an operation defined in 50-50-102(8), MCA, and includes an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption in a mobile, stationary, temporary, semipermanent or permanent facility or location; where consumption is on or off the premises and regardless of whether there is a charge for the food. Food establishment does not include:

(a) an establishment, vendor, or vending machine that sells or serves only non-perishable foods;

(b) an establishment that offers only prepackaged foods that are not potentially hazardous;

(c) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(d) a food processing plant;

(e) a kitchen in a private home if the food is prepared for sale or service at a function such as a religious or charitable organization's bake sale;

(f) a private home that receives catered or home-delivered food; or

(g) a private organization serving food to only its members.

(14) "Food service establishment" means a "fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged, non-perishable foods in their unbroken original containers or a private organization serving food only to its members."

(27) "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, poultry, fish or ratites such as ostrich, emu, and rhea; but includes mammals such as reindeer, elk, deer, antelope, water

buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat, and nonaquatic reptiles such as land snakes.

(28) "HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis critical control point principles developed by the national advisory committee on microbiological criteria for foods.

(29) "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

~~(15)~~ (30) "Hermetically sealed container" means a container that is designed and intended made to be secure against the entry of microorganisms and in the case of low acid canned foods, to maintain the commercial sterility of its content after processing.

(31) "Highly susceptible population" means a group of persons who are more likely than other populations to experience food borne disease because they have weak immune systems; including older adults in a facility that provides health care or assisted living services, such as a hospital or nursing home; and children of preschool age in a facility that provides custodial care, such as a day care center.

(32) "Injected meat" means meat that has been manipulated, such as through tenderizing or inserting juices, that allows infectious or toxigenic microorganisms to be introduced from the meat's surface to its interior.

~~(16)~~ (33) "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

~~(17)~~ (34) "Law" means applicable federal, state, and local statutes, ordinances, rules and regulations.

(35) "License" means a document issued by the department that authorizes a person or persons to operate a food service establishment, mobile food service establishment, or temporary food service establishment.

(36) "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments, including cloth gloves.

(37) "Local health authority" means a local board of health established in accordance with Title 50, chapter 2, MCA, and its employees, or the local health officer or the local sanitarian.

(38) "Meat" means the flesh of animals used as food, including the dressed flesh of cattle, swine, sheep, goats, bison, and other edible animals, except fish and poultry, that is offered for human consumption.

(39) "Mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

~~(18)~~ "Misbranded" means the use of any written, printed, graphic matter upon or accompanying food or containers of food which violates 50-31-203, MCA, Montana Food, Drug and Cosmetic Act, or any other applicable local, state, and federal labeling requirements.

~~(19)~~ (40) "Mobile food unit service" means a vehicle-mounted food service establishment designed to be readily movable.

(41) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops, or their edible portions, but does not include the shucked adductor muscle of the scallop used alone.

(42) "Other authorized persons" means those persons working in a food service establishment that are allowed on the premises by the licensee or person in charge.

~~(20)~~ (43) "Packaged" means bottled, canned, cartoned, or securely wrapped, but does not include the wrapper, carry-out box, or other nondurable container used to protect the food during service and receipt of the food by the consumer.

~~(21)~~ (44) "Perishable food" means any food of such type or in such condition as may spoil.

(45) "Perishable food vending machine" means a self-servicing device that, upon insertion of a coin, paper currency, token, card, or key, dispenses packaged perishable food.

~~(22)~~ (46) "Person" means an "person individual, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment."

~~(23)~~ (47) "Person in charge" means the individual present in the food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any food employee present is the person in charge.

(48) "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination that are used to maintain or enhance a person's health, hygiene, or appearance, including medicines, first aid supplies, cosmetics, and toiletries such as toothpaste and mouthwash.

(49) "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution, with values between 0 and 7 indicating acidity, values between 7 and 14 indicating alkalinity, and the value of 7 considered neutral.

(50) "Physical facilities" means the structure and interior surfaces of a food establishment, including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

~~(24)~~ (51) "Potentially hazardous food" means: any perishable food that consists in whole or in part of milk and milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less

(a) a food that is a natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic micro-organisms;

(ii) the growth and toxin production of Clostridium botulism; or

(iii) in raw shell eggs, the growth of Salmonella enteritidis;

(b) a food of animal origin that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons; and garlic and oil mixtures;

(c) potentially hazardous food, which does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a water activity (aw) value of 0.85 or less;

(iii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 75°F, [24°C];

(iv) a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which a variance granted by the department is based upon laboratory evidence demonstrating that rapid and progressive growth of infectious and toxigenic micro-organisms or the slower growth of Clostridium botulinum cannot occur.

(52) "Poultry" means any domesticated birds, such as chickens, turkeys, ducks, geese, or guineas, whether live or dead.

(53) "Premises" means the physical facility, its contents, and the contiguous land or property under the control of the license holder; whether it is a stand-alone facility or whether it is only one component of a larger organization, such as a health care facility, hotel, motel, school, recreational camp, or prison.

~~(25)~~ (54) "Pushcart" means a non-self-propelled vehicle limited to serving non-potentially hazardous food, or a commissary-wrapped wrapped food prepared beforehand in an approved food service establishment maintained at proper temperatures, or limited to the preparation and serving of frankfurters and dairy products.

(55) "Ratites" means birds such as ostrich, emu, and rhea.

(56) "Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food service establishment or the consumer, and that is reasonably expected to be consumed in that form.

~~(26)~~ (57) "Reconstituted" means dehydrated food products recombined combined with water or other liquids.

(58) "Reduced-oxygen packaging" means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21% oxygen, including altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging, including sous vide.

(59) "Refuse" means solid waste not carried by water through the sewage system, including discarded organic matter, garbage, trash, and other waste materials resulting from the operation of a food establishment.

~~(27)~~ (60) "Regulatory authority" means the Montana

department of public health and environmental sciences human services or the local health authority, established in accordance with Title 50, chapter 2, MCA, and their employees, or the local health officer and/or the local sanitarian.

~~(28)~~ (61) "Safe temperature" ~~as applied to perishable and potentially hazardous foods~~ means temperatures of ~~45°F (7°C)~~ 41°F (5°C) or below and ~~140°F (60°C)~~ 135°F (57.2°C) or above for perishable and potentially hazardous foods; 42°F (5.5°C through 7°C) may also be considered safe if existing equipment cannot maintain 41°F (5°C) or below and food storage and display is reduced to a maximum of 4 days for ready-to-eat foods.

~~(29)~~ (62) "Safe materials" means articles manufactured from or composed of materials which may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials used are food additives or color additives as defined in ~~50-31-103(3)(13)~~ (8) and (22), MCA, of the Montana Food, Drug, and Cosmetic Act, they are "safe" only if they are used in conformity with regulations established pursuant to section 409 or 706 of the applicable sections of the federal Food, Drug and Cosmetic Act. Other materials are "safe" only if, as used, they are not food additives or color additives as defined in ~~50-31-103(3)(13)~~ (8) and (22), MCA, of the Montana Food, Drug, and Cosmetic Act and are used in conformity with all applicable regulations of the federal food and drug administration.

~~(30)~~ (63) "Sanitization" means ~~effective bactericidal treatment by a process that provides enough the application of accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logarithms, which is equal to 99.999% reduction of representative food borne disease microorganisms.~~

~~(31)~~ (64) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

(65) "Semipermanent stands" means those establishments which are not mobile and are not on permanent foundations.

(66) "Servicing area" means an operation base location to which a mobile food service, food transportation vehicle or pushcart returns regularly for maintenance such as vehicle and equipment cleaning, discharge of liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(67) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may contain chemicals in solution.

(68) "Shellstock" means raw, in-shell molluscan shellfish.

(69) "Shucked shellfish" means molluscan shellfish that have one or both shells removed.

~~(32)~~ (70) "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks and other similar articles intended that are designed and constructed for one-time, one-person use and then discarded.

(71) "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded, including waxed paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications for multiuse utensils in ARM 16.10.212 and 16.10.213.

(72) "Smooth" means food contact surfaces or nonfood contact surfaces that are easily cleanable and free of breaks, open seams, cracks, chips, pits, and similar imperfections, including floors, walls, or ceilings that have an even or level surface with no roughness or projections that make it difficult to clean.

(73) "Support animal" means a trained animal, such as a seeing eye dog, that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.

~~(33)~~ (74) "Tableware" means all multiuse eating, and drinking, and serving utensils for table use, including such as flatware, which includes {knives, forks, and spoons}; and hollowware, which includes bowls, cups, serving dishes, tumblers and plates.

(75) "Temperature measuring device" means a thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

~~(34)~~ (76) "Temporary food service establishment" means a food service establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.

~~(35)~~ (77) "Utensil" means any a food contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; and food temperature measuring devices or service of food.

(78) "Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this subchapter if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

~~(36)~~ "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

(79) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

(80) "Water supply" means a safe, accessible, and adequate source of water that meets requirements in Title 75, chapter 6, MCA and ARM Title 17, chapter 38 applicable to public water systems.

(81) "Whole muscle intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.203 Rationale

The definition of "food employee" found at (24) was added to distinguish between those persons involved in the preparation and serving of food, and others in the establishment who do not have contact with food. The distinction is needed because contamination of food served to the public is more likely to come from food employees than other non-food employees working in the establishment. The ensuing rules elaborate on the hygiene and food handling for food employees.

The definition of "other authorized persons" found at (42) was added to allow for regulating all non-food persons working in the food service establishment in order to protect food from contamination. This definition would include all non-food employees such as hosts, contractors, vendors, and volunteers.

The definition of "safe temperatures" found at (61) was modified to reflect the current national standards for cold and hot holding. The proposed temperatures of 41°F or below for cold storage, and 135°F or above for hot holding, have been scientifically proven to be effective in destroying or eliminating the growth of pathogens that may contaminate food.

Subsection (61) also contains an exception for cold storage to be between 42°F and 45°F to accommodate a food establishment's existing equipment that may not reach 41°F. The Task Force felt this modification was needed so as not to require all operators to replace their existing equipment. As a trade-off to maintain food safety, the requirement of a shorter storage period was added. Subsection (61) serves as a reference through the rules when their provisions require safe food temperatures.

The remaining definitions were changed to conform to current food establishment practices. The terms that were eliminated were either replaced with more accurate terms or were rendered obsolete given current food service establishment practices. These proposed changes are needed so the public can clearly decipher the ensuing rules.

16.10.204 [37.110.204] FOOD SUPPLIES (1) Food shall ~~must~~ be in sound condition, free from spoilage, filth, adulteration or other contamination and shall ~~must~~ be safe for human consumption. Food shall ~~must~~ be obtained from sources that comply with the applicable requirements of the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA all laws relating to food and food labeling which include, but are not limited to, laws of the federal food and drug administration (FDA); environmental protection agency (EPA), United States department of agriculture (USDA), Montana department of livestock; Montana department of agriculture; and the Montana

Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA. The use of food in hermetically sealed containers that was not prepared in a licensed food processing manufacturing establishment is prohibited. Food prepared in a private home may not be used or offered for human consumption in a licensed food service establishment.

(2) Fluid milk and fluid milk products used or served shall must be pasteurized and shall must meet grade A quality standards. Dry milk and dry milk products shall must be made from pasteurized milk and milk products.

(3) Fresh and frozen shucked shellfish (oysters, clams or mussels), shall must be packed in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number. Shell stock and shucked shellfish shall must be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams or mussels) shall must be identified by an attached tag which states the name and address of the original shell stock processor, the kind and quantity of shell stock and the interstate certification number issued by the state or foreign shellfish control agency. Shell stock tags or labels must be retained for 90 days from the date the container is emptied. Molluscan shellfish that are recreationally caught must not be received for sale or service.

~~(4) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hardboiled, peeled eggs commercially prepared and packaged may be used.~~

(4) Only grade B eggs or better with shell intact without cracks, or pasteurized liquid, frozen, or dry eggs or dry egg products must be used.

(5) Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under ARM 16.10.207(8)(b) must be obtained from a supplier that freezes the fish or must be frozen on the premises as specified in ARM 16.10.207(8)(b).

(6) Fish may not be received for sale or service unless they are commercially and legally caught and harvested.

(7) Game animals and exotic species may be received for sale or service if raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction. The inspection of game animals and exotic species must include an antemortem and postmortem examination by a veterinarian.

(8) Ice for use as a food or a cooling medium must be made from drinking water which complies with the requirements in ARM 16.10.217. After use as a cooling medium, ice may not be used as food.

(9) Receiving temperature of refrigerated, potentially hazardous food must be 41°F (5°C) or below unless otherwise required by law.

(10) Potentially hazardous food that is labeled frozen and

shipped frozen by a food processing plant must be received frozen.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.204 Rationale

Proposed changes to this rule expand the list of food items that are required to be obtained from regulated sources. Obtaining food from regulated sources is a primary line of defense in controlling food borne illnesses. Pathogenic microorganisms may be present in the breeding stock of farm animals, in feeds, in the farm environment, in waters used for raising and freezing aquatic foods, and in soils and fertilizers in which plant crops are grown. Chemical contaminants that may be present in field soils, fertilizers, irrigation water, and fishing waters can be incorporated into food plants and animals. Also, at all stages of production, food is susceptible to contamination. It is therefore critical to ensure that, after harvesting and processing, the food is not adulterated. A universal method in ensuring that food is obtained from approved sources and is not adulterated during processing is to ensure compliance with all laws relating to food and food labeling, as described in this rule.

Subsection (1) contains the removal of the terms "spoilage" and "filth", and replaces them with the more accurate term "adulteration".

Subsection (1) also adds proposed language prohibiting food prepared in a private home from being used or offered to the public. Food must be purchased from commercial supplies under regulatory control. Home kitchens, with their varieties of food and open entry to humans and pet animals, are frequently implicated in the microbial contamination of food. The home kitchen's limited capacity for maintaining food at proper temperatures may result in considerable microbial growth and toxin production by microorganisms introduced through the diverse sources of contamination. Of special concern is the lethal toxin of *Clostridium botulinum*, an organism whose spores are found throughout the environment. Even slightly under processed, low-acid food which is canned may be dangerous because spoilage microbes are killed and there are no signs to warn consumers that botulinum spores have developed toxin. Controlled, commercially sterile food preparation is therefore required for food provided to the public.

Subsection (3) adds the requirement that shell stock tags or labels for molluscan shellfish be retained for 90 days from the date their container is emptied. This requirement assists with safety concerns associated with molluscan shellfish. Pathogens, both viruses and bacteria, are found in waters from which molluscan shellfish are harvested which can cause disease in

consumers. Pathogens from the harvest area are of particular concern in molluscan shellfish because: 1. environments in which molluscan shellfish grow are commonly subject to contamination from sewage, which may contain pathogens, and to naturally occurring bacteria which may also be pathogenic; 2. molluscan shellfish filter and concentrate pathogens that may be present in surrounding waters; and 3. molluscan shellfish are often consumed whole, either raw or partially cooked. Pathogens, such as *Vibrio vulnificus*, *Vibrio parahaemolyticus*, *Vibrio cholerae*, and *Listeria monocytogenes* that may be present in low numbers at the time that molluscan shellfish are harvested, may increase to more hazardous levels if they are exposed to time/temperature abuse.

Keeping identification tags or labels, as required in (3), assists with protecting public health. Accurate source identification of the harvesting area, harvester, and dealers must be contained on molluscan shell stock identification tags so that if a shellfish-borne disease outbreak occurs, the information is available to expedite the epidemiological investigation and regulatory action. Accurate records that are maintained in a manner that allows them to be readily matched to each lot of shell stock provide the principal mechanism for tracing shell stock to its original source. If an outbreak occurs, regulatory authorities must move quickly to close affected growing areas or take other appropriate actions to prevent further illnesses. Records must be kept for 90 days to allow time for hepatitis A virus infections, which have an incubation period that is significantly longer than other shellfish-borne diseases, to come to light. The 90 day requirement is based on the following considerations:

Shelf-life of the product	14 days
Incubation period	56 days
Medical diagnosis and confirmation	5 days
Reporting	5 days
Epidemiological investigation	10 days
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Total	90 days

Subsection (3) further prohibits serving recreationally-caught shellfish. The FDA administers the National Shellfish Sanitation Program, and routinely audits the states' classification of shellfish harvesting areas to verify that none pose a threat to public health. Patrolling of closed shell fishing waters minimizes the threat of illegal harvesting, or "bootlegging", from closed waters. Bootlegging is a criminal activity and a major factor in shellfish-borne illnesses. Purchases from certified dealers that adhere to FDA controls assist in keeping risks to the public's health at a minimum.

Subsection (4) proposes to eliminate language regarding egg quality and replace it with language that reflects current egg quality standards (that of Grade B eggs or better). Grade

levels are determined by the class, quality and condition of a representative sample of eggs that are being graded. Grade B or better means a class of eggs that meet standards set forth and governed by USDA. This subsection assures that eggs that are used come from a regulated source to protect the public from bacteria associated with inferior quality.

Subsections (5) and (6) have been added to assure the use of fish other than molluscan shellfish originate from safe, regulated sources. Fish can contain species-related hazards such as pathogens, parasites, natural toxins, histamine, chemicals, and drugs, all of which may harm consumers. Since 1997, all processors of fish are required by 21 CFR 123, Fish and Fishery Products and 21 CFR Part 1240, Control of Communicable Diseases, to conduct a hazard analysis of their operation, identify each hazard that is reasonably likely to occur, and implement a plan to control each identified hazard. Obtaining fish from approved sources that are subject to these laws assures their safety.

Subsection (7) requires game animals and exotic species used in food service establishments to have undergone a regulatory inspection before use. Wild game animals may be carriers of viruses, rickettsiae, bacteria, or parasites that cause illness (zoonoses) in humans. Some of these diseases can be severe to humans. In addition to the risk posed to consumers of game that is not subject to an inspection, there is risk to those who harvest and prepare wild game because they may contract infectious diseases such as rabies or tularemia. The requirement for game animals to be inspected by a regulatory authority helps alleviate these public health concerns.

Subsection (8) deals with the source of ice for human consumption. Freezing does not invariably kill microorganisms but in fact may preserve them, leading to food borne illnesses. Therefore, ice that comes into contact with food to cool it or that is used directly for consumption must be as safe as drinking water that is periodically tested and approved for consumption.

Subsection (9) requires the food shipped from a supplier be protected from temperature abuse during shipment. Temperature is one of the prime factors that control the growth of bacteria in food. Proper refrigeration helps assure that many types of pathogens and spoilage bacteria are prevented from multiplying to significant levels.

Subsection (10) requires frozen potentially hazardous food to be received frozen from the supplier. Freezing prevents microbial growth in foods, but usually does not destroy all microorganisms. Uncontrolled thawing during shipping provides an opportunity for surviving bacteria to grow to harmful numbers and/or produce toxins. If the food is then refrozen after shipment, significant numbers of bacteria and/or all preformed

toxins may be preserved.

16.10.206 [37.110.206] FOOD STORAGE AND PROTECTION

(1) ~~Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean, covered container except during necessary periods of preparation or service. Container covers shall be impervious and non-absorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.~~

(2) ~~Containers of food shall be stored a minimum of six inches above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:~~

(a) ~~Metal pressurized beverage containers and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture; and~~

(b) ~~Containers may be stored on dollies, racks or pallets, provided such equipment is easily movable.~~

(3) ~~Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by the Montana state fire marshal or his authorized agent. The storage of food in toilet rooms or vestibules is prohibited.~~

(4) ~~Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross-contamination from food requiring washing or cooking.~~

(5) ~~Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice.~~

(6) ~~Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar or flour not stored in the product container or package in which it was obtained shall be stored in a container identifying the food by common name.~~

(1) Food must be stored as follows to prevent potential contamination:

(a) Food must be stored in a clean, dry location where it is not exposed to contamination and is at least 6 inches (15 centimeters) above the floor.

(b) Food in packages and working containers may be stored less than 6 inches (15 centimeters) above the floor if it is stored on case lot handling equipment, such as dollies, racks, or pallets.

(c) Pressurized beverage containers; food in waterproof containers, such as bottles or cans in cases; and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

(d) Food may not be stored in toilet rooms; dressing rooms; garbage rooms; mechanical rooms; under sewer lines that are not shielded to intercept potential drips; under leaking water lines, including leaking automatic fire sprinkler heads;

under lines on which water has condensed; under open stairwells; or under other sources of contamination.

(e) Food packages must be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(f) Working containers holding food or food ingredients that are removed from their original packages, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar, must be identified with the common name of the food. The labeling must be on the container or on a nondetachable lid. Those containers holding food that can be readily and unmistakably recognized, such as dry pasta, need not be identified.

(g) Packaged food may not be stored in direct contact with water or undrained ice if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the water or ice.

(h) Whole raw fruits or vegetables, cut raw vegetables such as celery or carrot sticks, cut potatoes, and tofu may be immersed in ice or water.

(i) Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

(2) Packaged and unpackaged food must be protected from cross-contamination by:

(a) cleaning and sanitizing equipment and utensils as specified under ARM 16.10.215;

(b) storing food removed from its original container or package in a clean and sanitized covered container. Covers must be impervious and nonabsorbent, except that clean laundered linens or napkins may be used for lining or covering containers of bread or rolls. Quarters or sides of meat or whole and uncut processed meats may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat;

(c) cleaning hermetically sealed containers of food of visible soil before opening;

(d) storing damaged, spoiled, or recalled products being held for credit, redemption, or return in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles;

(e) separating fruits and vegetables, before they are washed as specified under ARM 16.10.207(3) from ready-to-eat food;

(f) separating raw animal foods during storage, preparation, holding, and display from raw ready-to-eat food, including other raw animal food such as fish for sushi or molluscan shellfish; other raw ready-to-eat food, such as vegetables; and cooked ready-to-eat food;

(g) separating types of raw animal foods from each other, such as beef, fish, lamb, pork, and poultry, during storage, preparation, holding, and display by any of the following methods:

(i) using separate equipment for each type;

(ii) arranging raw animal products by cooking temperature, with those products requiring lower cooking temperatures at the

top and those products requiring higher cooking temperatures at the bottom;

(iii) arranging each type of food in equipment so that cross-contamination of one type with another is prevented; or

(iv) preparing each type of food at different times or in separate areas.

~~(7) (3) Enough conveniently located refrigeration facilities or effectively insulated facilities shall must be provided to assure the maintenance of potentially hazardous food at required temperatures 41°F (5°C) during storage except as specified in ARM 16.10.203(61). Each mechanically refrigerated facility storing potentially hazardous food shall must be provided with a numerically scaled indicating thermometer temperature measuring device, accurate to ±3°F (±1.5°C), located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometer temperature measuring devices, accurate to ±3°F (±1.5°C) may be used in lieu of indicating thermometer temperature measuring devices.~~

~~(8) Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45°F (7°C) or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container so that the cooling period shall not exceed four hours. Potentially hazardous foods to be transported shall be prechilled and held at a temperature of 45°F (7°C) or below unless maintained in accordance with (11) and (12) of this rule.~~

(4) The cooling of potentially hazardous food must be accomplished in the following manner:

(a) Cooked potentially hazardous food must be cooled as a continuous process:

(i) from 135°F (57.2°C) to 70°F (21°C) within 2 hours; and

(ii) from 70°F (21°C) to 41°F (5°C), or below, within 4 hours.

(b) Potentially hazardous food must be cooled to 41°F (5°C) or below, except as specified in ARM 16.10.203(61), within 4 hours if prepared from ingredients at ambient temperatures, such as reconstituted foods and canned tuna.

(c) A potentially hazardous food received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier must be cooled to 41°F (5°C) or below, or to a temperature specified on the manufacturer's label, within 4 hours.

(d) Cooling must be accomplished in accordance with the time and temperature criteria specified in (4)(a) through (c) of this rule using one or more of the following methods based on the type of food being cooled:

(i) placing the food in shallow pans;

(ii) separating the food into smaller or thinner portions;

(iii) using rapid cooling equipment;

(iv) stirring the food in a container placed in an ice water bath;

- (v) using containers that facilitate heat transfer;
- (vi) adding ice as an ingredient; or
- (vii) other effective methods.

(e) When placed in cooling or cold holding equipment, food containers in which food is being cooled must be arranged in the equipment to provide maximum heat transfer through the container walls and must be loosely covered. However, food may be uncovered if it is protected from overhead contamination during the cooling period to facilitate heat transfer from the surface of the food.

~~(9) (5) Frozen food shall must be kept frozen and should be stored at a temperature of 0°F (-18°C) or below.~~

~~(10) Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head. Ice used for cooling stored food and food containers shall not be used for human consumption.~~

~~(11) (6) Enough conveniently located hot food storage facilities shall must be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food shall must be provided with a numerically scaled indicating thermometer temperature measuring device, accurate to ±3°F (± 1.5°C) located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometer temperature measuring devices, accurate to ±3°F (± 1.5°C) may be used in lieu of indicating thermometers. Where it is impractical to install thermometer temperature measuring devices on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer temperature measuring device must be available and used to check internal food temperature.~~

~~(12) (7) The internal temperature throughout potentially hazardous foods requiring hot storage shall must be 140°F (60°C) 135°F (57.2°C) or above except during necessary periods of preparation. Potentially hazardous food to be transported shall must be held at a temperature of 140°F (60°C) 135°F (57.2°C) or above unless maintained in accordance with ~~(8) (3) and (4)~~ of this rule.~~

(8) In the event of a fire, flood, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the regulatory authority. Upon receiving notice of this occurrence, the regulatory authority shall take whatever action that it deems necessary within its statutory authority to protect the public health.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.206 Rationale

This title of the rule adds "food protection". Subsections (1) through (6) and (8) of the original rule have been deleted and reworded in other ensuing subsections for better readability. Subsection (10) of the original rule regarding ice has been deleted because it is covered in ARM 16.10.204(8).

Subsection (1) is proposed to require safe food storage. Pathogens can contaminate and grow in food that is not stored properly. Not adhering to (1)(a) through (d) may subject stored food to drips of condensate and drafts of unfiltered air which can be sources of microbial contamination. Subsections (1)(a) through (d) are also necessary because moist conditions can promote microbial growth. The requirement of storing food off the floor in (1)(a) through (c) is proposed because shoes may carry contamination onto the floors of food preparation and storage areas. (1)(d) is needed because trace amounts of refuse or waste can contaminate improperly stored food in rooms used for toilet facilities, dressing, storing garbage or tools, or housing machinery.

Subsection (1)(f) requires proper labeling and packaging of foods. The possibility of product contamination increases whenever food is exposed outside of their packages. Changing the containers for machine-vended potentially hazardous food allows microbes to possibly contaminate the food. Pathogens can be present on the hands of the individual packaging the food, the equipment used, or on the exterior of the original packaging. Also, many potentially hazardous foods are vended in hermetically sealed packages to ensure product safety. Once the original seal is broken, the food is vulnerable to contamination. Clearly labeling the food allows for it to not be commingled with non-food products in the food service establishment, thereby preventing cross contamination.

Subsections (1)(g) through (i) regulate food storage in ice or water. Ice that has been in contact with unsanitized surfaces or raw animal foods may contain pathogens and other contaminants. If the same ice is used as a food ingredient, it could contaminate the final product. Packages that are not watertight may allow entry of water that has been exposed to unsanitary exterior surfaces, causing food contamination. Unpackaged foods that are stored or displayed on ice, such as fresh fish, may increase the potential for microbial elements because, as the ice melts, pathogens from one food may be carried into another. Not continually draining melting ice increases the potential for contamination.

Subsection (2) is proposed to prevent cross contamination of food stored together.

Subsection (2)(d) is needed because food that is inadequately packaged or contained in damaged packaging could become contaminated by microbes, dust, or chemicals introduced by products or equipment stored in close proximity or by persons

delivering, stocking, or opening packages or overwraps. Inappropriate packaging may lead to food contamination through the presence of contaminants outside the containers.

Subsection (2)(e) is needed for storage of raw fruits and vegetables because pathogenic organisms and chemicals may be present on the exterior surfaces, leading to contamination of other foods stored with them. Once fruits and vegetables are washed, the pathogenic organisms and chemicals are removed, allowing them to be stored with other food items.

Subsections (2)(f) and (g) require raw animal foods be separated from each other because required cooking temperatures to kill microbes vary depending on the food item. The reason for raw animal food separation is to prevent cross contamination between the species of meats. Pathogens are different for each species of meat. For example, *Camphlobacter* and *Salmonella* bacteria can be primarily found in chicken but not in beef, and *E. coli* may be present in beef, but not in chicken.

Subsection (3) changes the cold food storage temperature, as elaborated by the rationale under ARM 16.10.203(61). The temperature change is needed to prevent the growth of bacteria such as *Yersinia* and *Listeria* in food.

Subsection (4) deals with cooling potentially hazardous food. If food is not cooled in accordance with (4), pathogens may grow to sufficient numbers, causing food borne illness.

Subsection (5) proposes to eliminate the 0°F or below requirement for frozen food. The correct storage temperature of frozen food varies depending on the moisture content of each food item. What is important is that the frozen food be stored frozen. If food is not kept frozen, pathogens can grow, and many may be preserved even if the food is properly frozen after being held at an unsafe temperature.

Subsection (8) contains exact language found in the original provision of ARM 16.10.205(9). ARM 16.10.205 is slated for repeal.

~~16.10.207 [37.110.207] FOOD PREPARATION (1) Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination. Sinks used for the preparation of foods:~~

~~(a) shall must be cleaned and sanitized as required by ARM 16.10.215(13)(f) immediately before beginning the preparation of the food; and~~

~~(b) may not be used for hand washing or waste water disposal.~~

~~(2) Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.~~

~~(3) Potentially hazardous foods requiring cooking shall be~~

cooked to heat all parts of the food to a temperature of at least 140°F (60°C) except that:

(a) Poultry, poultry stuffings, stuffed meats and stuffings containing meat shall be cooked to heat all parts of the food to a temperature of at least 165°F (74°C) with no interruption of the cooking process.

(b) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150°F (66°C).

(c) Rare roast beef shall be cooked to an internal temperature of at least 130°F (55°C) and rare beef steak shall be cooked to a temperature of 130°F (55°C) unless otherwise ordered by the immediate consumer.

(4) Reconstituted dry milk and dry milk products may be used only in instant desserts and whipped products, or for cooking and baking purposes.

(5) Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

(6) Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to 165°F (74°C) or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and similar hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(7) Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one gallon in capacity and cooled to 45°F (7°C) or below within 4 hours after preparation.

(8) Metal stem-type numerically scaled indicating thermometers, accurate to 92°F (1°C) shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods.

(2) Food employees shall adhere to the requirements in ARM 16.10.210 in the preparation of food.

(3) Raw fruits and vegetables must be thoroughly washed in potable water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form. Fruits and vegetables may be washed by using chemicals approved by the EPA. Any sink used to wash, prepare, store, or soak food must be indirectly connected to the sewer through an airgap.

(4) The following are requirements for the destruction of organisms of public health concern:

(a) Raw animal foods such as eggs, fish, poultry, meat, and foods containing these raw animal foods, must be cooked to heat all parts of the food to the following minimum internal temperatures as measured by temperature measuring devices for the specified times listed below:

<u>Item</u>	<u>Temperature</u>	<u>Time</u>
<u>Fish and meat</u>	<u>145°F (63°C)</u>	<u>for 15 sec</u>
<u>Shell eggs individually ordered for immediate service</u>	<u>145°F (63°C)</u>	<u>for 15 sec</u>

<u>Bulk style on buffet or hot line</u>	<u>155°F (68°C)</u>	<u>for 15 sec</u>
<u>Pork products</u>	<u>145°F (63°C)</u>	<u>for 3 min</u>
<u>Comminuted (ground) beef and fish,</u>	<u>145°F (63°C)</u>	<u>for 3 min</u>
<u>exotic game, and injected meats</u>	<u>150°F (66°C)</u>	<u>for 1 min</u>
<u>(Choose any one)</u>	<u>155°F (68°C)</u>	<u>for 15 sec</u>
<u>Poultry, wild game, stuffed fish,</u>		
<u>stuffed meat, stuffed pasta,</u>		
<u>stuffed poultry, stuffed ratites,</u>		
<u>or stuffing containing fish, meat,</u>		
<u>poultry, or ratites</u>	<u>165°F (74°C)</u>	<u>for 15 sec</u>

(b) Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts such as ham must be cooked:

(i) in an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature;

<u>Oven type</u>	<u>Roast size: under 10 pounds</u>	<u>over 10 pounds</u>
<u>Still dry oven</u>	<u>350°F (177°C)</u>	<u>250°F (121°C)</u>
<u>Convection oven</u>	<u>325°F (163°C)</u>	<u>325°F (163°C)</u>
<u>High humidity</u>	<u>250°F (121°C)</u>	<u>250°F (121°C)</u>

(>90% for 1 hour); and

(ii) as specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

<u>Cooking temperature</u>	<u>holding time</u>
<u>130°F (54°C)</u>	<u>121 minutes</u>
<u>132°F (56°C)</u>	<u>77 minutes</u>
<u>134°F (57°C)</u>	<u>47 minutes</u>
<u>136°F (58°C)</u>	<u>32 minutes</u>
<u>138°F (59°C)</u>	<u>19 minutes</u>
<u>140°F (60°C)</u>	<u>12 minutes</u>
<u>142°F (61°C)</u>	<u>8 minutes</u>
<u>144°F (62°C)</u>	<u>5 minutes</u>
<u>145°F (63°C)</u>	<u>3 minutes</u>

(c) Subsections (4)(a) and (b) do not apply to raw animal foods such as eggs, fish, poultry, meat, and foods containing these raw or partially cooked animal foods, that are served or offered for sale in a ready-to-eat form upon consumer request.

(d) A raw or undercooked whole muscle intact beef steak may be served or offered for sale in a ready-to-eat form if:

(i) the food service establishment serves a population that is not a highly susceptible population; and

(ii) the steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above, and a cooked color change is achieved on all external surfaces.

(e) Fruits and vegetables that are cooked for hot holding

must be cooked to a temperature of 135°F (57.2°C).

(5) Raw animal foods cooked in a microwave oven shall be:

(a) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(b) covered to retain surface moisture;

(c) heated to a temperature of a least 165°F (74°C) in all parts of the food; and

(d) allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(6) Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus may be served at any temperature.

(7) Reheating for hot holding must be done as follows:

(a) Except as specified in (4)(b) through (e), potentially hazardous food that is cooked, cooled, and reheated for hot holding must be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) for 15 seconds.

(b) Potentially hazardous food reheated in a microwave oven for hot holding must be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) and the food is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.

(c) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the plant, must be heated to a temperature of at least 140°F (60°C) for hot holding.

(d) Reheating for hot holding must be done rapidly and the time the food is between the temperature 41°F and 165°F may not exceed 2 hours.

(e) Remaining unsliced portions of roasts of beef that are cooked as specified under ARM 16.10.207(4)(b) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under ARM 16.10.207(4)(b).

(8) The following are approved methods of parasite destruction by freezing:

(a) Except as specified in (8)(b) of this rule, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish that is served in ready-to-eat form must be frozen throughout to a temperature of:

(i) -4°F (-20°C) or below for 168 hours (7 days) in a freezer; or

(ii) -31°F (-35°C) or below for 15 hours in a blast freezer.

(b) If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (bluefin tuna, southern), *Thunnus obesus* (bigeye tuna), or *Thunnus thynnus* (bluefin tuna, northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified in (8)(a) of this rule.

(9) Potentially hazardous food may not be held at temperatures above 45°F (7°C) for refrigerated food, or below 135°F (57.2°C) for heated food, for more than:

(a) 4 hours, including the time needed for preparation for cooking;

(b) the time it takes under refrigeration to lower the food temperature to 45°F (7°C); or

(c) the time specified in the cooling criteria in ARM 16.10.206(4).

~~(9)~~ (10) Potentially hazardous foods shall must be thawed:

(a) in refrigerated units at a temperature not to exceed 45°F (7°C) 41°F (5°C), or as specified in ARM 16.10.203(61); or

(b) under potable running water of a temperature of 70°F (22°C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow for a period of time that does not allow thawed portions of ready-to-eat food to rise above 45°F (5°C), or as specified in (9) of this rule; or

(c) in a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) as part of the conventional cooking process.

(11) Food must be protected from:

(a) contamination that may result from the addition of:

(i) unsafe or unapproved food or color additives; and

(ii) unsafe or unapproved levels of approved food and color additives;

(b) application of sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B-1; or

(c) service or selling of food specified in (11)(b) of this rule that is treated with sulfiting agents before receipt by the food service establishment, except that grapes need not meet this subsection.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.207 Rationale

Proposed revisions to this rule implement updated requirements for safe food preparation in accordance with current food industry standards and scientific knowledge for pathogen destruction.

Subsection (1) requires that a separate sink be used for food preparation and not for use for hand washing, utensil washing, or waste water disposal. If the sink is used for functions other than food preparation, such as washing wiping cloths or washing and thawing foods, contamination of food can occur. Mop water and similar liquid wastes are contaminated with microorganisms and other filth which may lead to the contamination of food that is later prepared in the sink.

Subsection (2) clarifies what is expected of food employees before food preparation, as specified in ARM 16.10.210.

Subsection (3) requires raw fruits and vegetables be washed with potable water. Pathogenic organisms and chemicals may be present on the exterior surfaces of raw fruits and vegetables. Washing them removes the majority of organisms and chemicals present. If non-drinking water is used, the fruits and vegetables may become contaminated, leading consumers to contract illnesses and diseases.

Subsection (3) further adds restrictions on using chemicals to wash fruits and vegetables. Toxic or undesirable residues could be present in or on the food if unapproved chemicals are used in washing or approved chemicals are applied in excessive concentrations.

Subsection (4) updates cooking temperatures of raw animal foods based on current scientific evidence for the effective destruction of pathogens. This proposed provision takes into consideration the many factors present in the thermal destruction of microorganisms. Thermal destruction is determined by the microorganisms' ability to survive heat. Different species of microorganisms have different susceptibilities to heat.

Cooking, to be effective in eliminating pathogens, must be adjusted to a number of factors. These include:

1. the anticipated level of pathogenic bacteria in the raw product, and the initial temperature of the food;
2. the food's bulk, with respect to the cooking time needed;
3. the food's characteristics, such as fat content, since heat penetrates into different foods at different rates; and
4. the humidity within the cooking vessel and the moisture content of the food, since moisture aids in the destruction of pathogens.

Food held at a sufficient temperature for the specified time kills microorganisms. Also, cooking to bring all parts of the food up to the required temperature for the correct length of time kills a sufficient number of pathogens to render it safe.

Subsection (5) is a new provision dealing with cooking raw animal foods in microwave ovens. The rapid increase in food temperature resulting from heating foods in a microwave oven does not provide the same cumulative time and temperature relationship necessary for the destruction of microorganisms as do conventional cooking methods. In order to achieve comparable lethality, temperature must reach 165°F (74°C) throughout the food and then the food must be allowed to stand covered for 2 minutes after microwave heating to allow thermal equalization and exposure to occur.

Subsection (6) allows for the immediate service of previously cooked and refrigerated items at any temperature, upon consumer request. This does not pose a significant risk to the health of the consumer due to the short period of time that the food will be out of temperature control before being consumed, as long as the food has been properly cooked, cooled and refrigerated prior to serving.

Subsection (7) specifies safe procedures for reheating food for hot holding. When food is cooked, cooled, and reheated in a food establishment, there is an increased risk from contamination caused by personnel, equipment, procedures, or other factors. If food is held at improper temperatures for enough time, pathogens have the opportunity to multiply to dangerous numbers. Proper reheating, as stated in (7), provides a major degree of assurance that pathogens will be eliminated.

Subsection (8) provides for the destruction of parasites through freezing the fish before service as an alternative public health control to that which is provided by adequate cooking. Subsection (8)(b) reflects information provided to the FDA Office of Seafood, the Fish and Fishery Hazards and Controls Guide, which lists certain species of tuna as not being susceptible to parasites of concern. Therefore, these species of tuna are exempted from the freezing requirements for other fish species that are consumed raw.

Subsection (9) sets out the maximum amount of time a food item may be kept outside of safe temperature limits without posing a risk to consumers' health. Bacterial growth and/or toxin production can occur if potentially hazardous food remains in the temperature "danger zone" of 45°F to 135°F too long. Up to a point, the rate of growth increases with an increase in temperature within this zone.

Subsection (10) adopts the requirements for thawing to prevent microbial growth. Although freezing prevents microbial growth in foods, it usually does not destroy all microorganisms. Improper thawing provides an opportunity for surviving bacteria in frozen foods to grow to harmful numbers.

Subsection (11) has been added to assure protection of food from unsafe, unapproved or excessive levels of food or color additives. Use of unapproved additives or excessive levels of approved additives can result in food borne illnesses, including allergic reactions. For example, many adverse reactions have occurred because of the indiscriminate use of sulfites to retard browning of fruits and vegetables or to cause ground meat to look redder or fresher.

16.10.208 [37.110.208] FOOD DISPLAY AND SERVICE (1) Cold Potentially ~~potentially~~ hazardous food shall ~~must~~ be kept at an internal temperature of 45°F (7°C) 41°F (5°C), or as specified in ARM 16.10.203(61), or below, or and hot potentially hazardous

food must be kept at an internal temperature of 140°F (60°C) 135°F (57.2°C) or above during display and service, except that rare roast beef shall be held for service at a temperature of at least 130°F (55°C).

~~(2) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one pint in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. Where a bulk dispenser for milk and milk products is not available and portions of less than ½ pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than ½ gallon capacity.~~

~~(3) Cream or half-and-half shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.~~

~~(4) Nondairy creaming or whitening agents shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.~~

~~(5) Condiments, seasonings and dressings for self-service use shall be provided in individual packages, from dispensers, or from containers protected in accordance with (10) of this rule.~~

~~(6) Condiments provided for table or counter service shall be individually portioned, except that catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use shall be provided in individual packages or in pour-type dispensers.~~

~~(7) (2) Ice for consumer use shall must be dispensed only by food employees with scoops, tongs, or other ice-self-dispensing utensils or through automatic self service ice-dispensing equipment. Ice-dispensing utensils shall must be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall must be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air gap. Liquid water drain lines may not pass through an ice machine or ice storage bin.~~

~~(8) To avoid unnecessary manual contact with food, suitable dispensing utensils shall be used by employees or provided to consumers who serve themselves. Between uses during service, dispensing utensils shall be:~~

~~(a) stored in the food with the dispensing utensil handle extended out of the food; or~~

~~(b) stored clean and dry; or~~

~~(c) stored in running water; or~~

~~(d) stored either in a running water dipper well, or clean and dry in the case of dispensing utensils and malt collars used in preparing frozen desserts.~~

~~(9) Once served to a consumer, portions of leftover food shall not be served again except that packaged food, other than potentially hazardous food, that is still packaged and is still~~

in sound condition, may be reserved.

~~(10) Food on display shall be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protector devices, display cases, or by other effective means. Enough hot or cold food facilities shall be available to maintain the required temperature of potentially hazardous food on display.~~

~~(11) Re-use of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement.~~

(3) Food must be protected from contamination by equipment, utensils, and wiping cloths by:

(a) preventing contact with probe-type price or identification tags;

(b) preventing contact with wiping cloths that do not meet the requirements in ARM 16.10.215(6) through (8);

(c) preventing contact with surfaces of utensils and equipment that are not cleaned and sanitized;

(d) ensuring utensils are stored properly during pauses in food preparation or dispensing, as follows:

(i) except as specified in (3)(b), in the food with their handles above the top of the food and the container;

(ii) in food that is not potentially hazardous with their handles above the top of the food in containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(iii) in running water of sufficient velocity to flush particulates to the drain, if the utensils are used with moist food such as ice cream or mashed potatoes;

(iv) in a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or

(v) cleaning, sanitizing, and drying between uses.

(4) In equipment that dispenses or vends liquid food or ice in unpackaged form:

(a) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food must be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food.

(b) The delivery tube, chute, and orifice must be protected from manual contact and be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(i) located in an outside area that does not afford the protection of an enclosure against rain, windblown debris, insects, rodents, and other contaminants; and

(ii) available for self-service during hours when it is not under the full-time supervision of a food employee.

(c) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment must be designed to prevent contact with the lip contact surface of glasses or cups that are refillable.

(5) Molluscan shellfish life-support system display tanks

that are used to store and display shellfish that are offered for human consumption must be operated and maintained to ensure that:

(a) water used with fish other than molluscan shellfish does not flow into the molluscan tanks;

(b) the safety and quality of the shellfish as they were received are not compromised by use of the tank; and

(c) the identity of the source of the shell stock is retained as specified in ARM 16.10.204(3).

(6) Date marking and disposition of ready-to-eat potentially hazardous food must be handled in the following manner:

(a) Refrigerated, ready-to-eat, potentially hazardous food prepared and held for more than 24 hours in a food establishment must be clearly marked at the time of preparation to indicate the "sell by" date, "best if used by" date, or the date by which the food must be consumed which is, including the day of preparation:

(i) 7 calendar days or less from the day that the food is prepared, if the food is maintained at 41°F (5°C) or less; or

(ii) 4 calendar days or less from the day the food is prepared, if the food is maintained between 42° and 45°F (5.5° and 7°C).

(b) A container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant must be clearly marked to indicate the date by which the food must be consumed:

(i) 7 calendar days or less after the original container is opened, if the food is maintained at 41°F (5°C) or less; or

(ii) 4 calendar days or less from the day the original container is opened, if the food is maintained between 42°F and 45°F (5.5°C and 7°C).

(c) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control that is activated at a temperature of:

(i) 41°F (5°C) or below must be discarded if not sold within 7 days; or

(ii) between 42°F and 45°F (5.5°C and 7°C) must be discarded if not sold within 4 days.

(d) The requirements in (6)(a) and (b) of this rule do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(7) Time is allowable as a public health control.

(a) Time only, rather than time in conjunction with temperature, may be used as the public health control for a working supply of potentially hazardous food before cooking or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, if the following requirements are met:

(i) the food is marked or otherwise identified with the time within which it must be cooked, served, or discarded;

(ii) the food is served or discarded within 4 hours from the time when the food is removed from temperature control;

(iii) food in unmarked containers or packages, or for which the time expires, is discarded; and

(iv) written procedures are maintained in the food establishment and made available to the regulatory authority upon request to ensure compliance with (7)(a)(i) through (iii) of this rule and ARM 16.10.206 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

(b) Once time is implemented as a control measure for potentially hazardous food, no other measures may be substituted.

(8) Food on display for self-service by the consumer must be protected from contamination by:

(a) use of packaging; counter, service line, or salad bar food guards; display cases; or similarly effective means;

(b) providing suitable utensils or effective dispensing methods for self-service operations for ready-to-eat foods;

(c) protecting condiments by using:

(i) dispensers that are designed to provide protection;

(ii) food display units provided with proper dispensing utensils;

(iii) original containers designed for dispensing; or

(iv) individual packages or portions; and

(d) not allowing food that has been served or sold and in the possession of a consumer and that is unused or returned by the consumer to be offered again as food for human consumption. However, food that is not potentially hazardous, such as crackers and condiments, in an unopened original package and maintained in sound condition may be reserved or resold to that population that is not classified as highly susceptible;

(e) not allowing self-service consumers to use soiled tableware, including single-service articles, to obtain additional food from display and serving equipment. However, cups and glasses may be reused if refilling is a contamination free process. A sign similar to the one shown must be posted to inform the consumer of this requirement: "CONSUMER: Please obtain clean tableware before obtaining additional food."

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.208 Rationale

Subsection (1) contains changes to the temperatures required for display and service of food as specified in ARM 16.10.203(61).

The original provisions of (2) through (6) and (8) through (11) were deleted entirely, or rewritten in other areas of the rule. New technology and processing methods have rendered the deleted provisions obsolete, therefore they are no longer considered significant health issues.

Subsection (2) contains new language prohibiting liquid water drains from passing through an ice machine or ice storage bin.

The new language is proposed to minimize the possibility of contaminating ice with contaminated waste waters.

Subsection (3) is proposed to prevent food contamination from equipment, utensils, and wiping cloths. Subsection (3)(a) is needed because probe-type price or product identification tags used for one food item can cause microbial, chemical, or physical cross contamination when the tags are placed in other food items. Subsection (3)(b) is needed because soiled wiping cloths, especially when moist, can become breeding grounds for pathogens that could be transferred to food if they come in contact with food or food contact surfaces. Subsections (3)(c) and (d) are needed regarding the cleaning and sanitizing of utensils. Pathogens can be transferred to food from utensils that have been stored on surfaces which have not been cleaned or sanitized. Some pathogenic microorganisms survive for considerable periods of time. Food that comes into contact directly or indirectly with surfaces that are not cleaned and sanitized is liable to such contamination.

Subsection (4) provides standards for safe food practices regarding dispensing equipment. Pathogenic microorganisms can survive outside the body for considerable periods of time. Food that comes in contact directly or indirectly with surfaces that are not clean and sanitized is liable to such contamination. Pathogens can be transferred to food from utensils that have been stored on surfaces which have not been cleaned and sanitized. This proposed rule aims to eliminate this kind of cross contamination.

Subsection (5) adopts standards regarding molluscan shellfish tanks. Shellfish are filter feeders. They can absorb pathogenic microorganisms that may be present in the tank water. Due to the number of shellfish and the limited volume of water used, display tanks may allow concentration of pathogenic viruses and bacteria. Since many people eat shellfish either raw or lightly cooked, the potential for increased levels of pathogenic microorganisms in shellfish held in display tanks is of concern. The requirements in (5) regarding display and care of shellfish tanks helps alleviate these public health concerns.

Subsection (6) is a new provision regarding date marking and discarding ready-to-eat foods that are potentially hazardous and require refrigeration. Refrigeration prevents food from becoming a hazard by significantly slowing the growth of most microbes. However, the growth of some bacteria, such as *Listeria monocytogenes*, although significantly slowed, is not stopped by refrigeration, because over a period of time, this and other organisms may increase to hazardous levels in ready-to-eat foods. The date by which the food must be consumed takes into consideration the differences in growth of *Listeria monocytogenes* at 41°F (5°C) and 45°F (7°C). Based on scientific evidence, ready-to-eat, potentially hazardous food may be safely stored at 41°F (5°C) a total of 7 days or at 45°F (7°C) a total

of 4 days. Therefore, the period of time allowed before consumption is shortened for food in refrigerators incapable of maintaining food at 41°F (5°C) but capable of maintaining it at 45°F (7°C). Food which is prepared and held, or prepared, frozen, and thawed must be controlled by date marking to ensure its safety based on the total amount of time it was held at refrigeration temperature, and the opportunity for *Listeria monocytogenes* to multiply, before freezing and after thawing.

Subsection (7) permits potentially hazardous food to be held without temperature control as long as the time held does not exceed 4 hours. In 4 hours, scientific evidence shows that pathogen growth or toxin production will be within acceptable limits in foods. Beyond 4 hours, the risk of pathogen growth and toxin production is increased. For added assurances, (7) requires that operators keep charts for the regulatory authority to review to maintain compliance if time is used as a public health control.

Subsection (8) is a new provision aimed at preventing potential food contamination of displayed food for consumer self-service. During display, food can be contaminated even when there is no direct hand contact. Microbes can be conveyed considerable distances in air currents through fine sprays and aerosols. These may originate from people breathing or sneezing, water sprays directed at drains, or condensate from air conditioners. Self service operations for ready-to-eat foods also provide an opportunity for contamination by consumers. The risk of contamination can be reduced by supplying clean utensils and dispensers as provided in (8).

Subsection (8)(c), regarding the protection of condiments, is needed because unpackaged condiments can be exposed to contamination by consumers who could be suffering from diseases transmittable through food. Once condiments are contaminated and passed on to other consumers, subsequent consumers may be exposed to pathogens.

Subsection (8)(d) is needed to assure that food that is unused or returned by a consumer is not re-offered to another consumer. Food can serve as a means of person-to-person transmission of diseases such as the Hepatitis A virus. Any unpackaged food, even bakery goods in a bread basket that are not potentially hazardous and not eaten, can become vehicles for transmitting pathogenic microorganisms.

16.10.209 [37.110.209] FOOD TRANSPORTATION (1) During transportation, food and food utensils shall must be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be overwrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering operations, food shall must meet the

requirements of this subchapter relating to food protection and food storage.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.209 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

16.10.210 [37.110.210] PERSONNEL FOOD EMPLOYEES (1) No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, diarrheal illness or acute gastrointestinal illness or an acute respiratory infection, shall work in a food service establishment in any capacity in which there is likelihood of such person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other persons. Food employees experiencing persistent sneezing, coughing or runny nose that causes discharges from the eyes, nose or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

~~(2) Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, or using the toilet. Employees shall keep their fingernails clean and trimmed.~~

~~(3) The outer clothing of all employees shall be clean. Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.~~

~~(4) Employees shall consume food only in designated dining areas. An employee dining area shall not be so designated if consuming food there may result in contamination of other food, equipment, utensils, or other items needing protection.~~

~~(5) Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in areas used for equipment or utensil washing or for food preparation. Employees shall use tobacco only in designated areas. An employee tobacco-use area shall not be designated for that purpose if the use of tobacco there may result in contamination of food, equipment, utensils, or other items needing protection.~~

~~(6) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.~~

~~(7) (2) Employees Food employees and other authorized persons shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food service establishment.~~

~~(3) Food employees shall clean their hands in a hand washing facility that conforms to the requirements in ARM 16.10.221.~~

(4) Food employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm running water after any of the following activities:

(a) immediately before engaging in food preparation, including working with exposed food, clean equipment and utensils and unwrapped single-service and single-use articles;

(b) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(c) when switching between working with raw foods and working with ready-to-eat foods;

(d) after handling soiled equipment or utensils;

(e) after coughing, sneezing, using a handkerchief or disposable tissue;

(f) after using the toilet room;

(g) after eating, drinking or using tobacco;

(h) after touching bare human body parts other than clean hands and clean, exposed portions of arms;

(i) after caring for or handling support animals; or

(j) after engaging in other activities that contaminate the hands.

(5) If used, chemical hand sanitizers must:

(a) have active antimicrobial ingredients that are listed as safe and effective for application to human skin as an antiseptic handwash pursuant to the U.S. food and drug administration's regulations for over-the-counter health-care antiseptic drug products; or

(b) have only components that are:

(i) regulated for the intended use as food additives as specified in 21 CFR 178; or

(ii) generally recognized as safe for the intended use in contact with food within the meaning of the federal Food, Drug, and Cosmetic Act, section 201(s); and

(c) be applied only to hands and arms that are cleaned with a cleaning compound in a hand washing facility by thoroughly rubbing together the surfaces of their lathered hands and arms and thoroughly rinsing with clean water;

(d) If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified in (5)(a) through (c) of this rule, use must be:

(i) followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or

(ii) limited to situations that involve no direct contact with food by the bare hands;

(e) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100mg/L chlorine.

(6) Food employees in a food establishment shall adhere to the following requirements to prevent contamination of food:

(a) minimize contact with exposed ready-to-eat food with bare hands by using utensils such as deli tissue, spatula, tongs, single-use gloves or dispensing equipment;

(b) minimize contact of bare hands and arms with exposed food that is not in a ready-to-eat form;

(c) use single-use gloves for only one task, such as working with ready-to-eat food or with raw animal food; use them for no other purpose; and discard them when they are damaged or soiled or when interruptions occur in the food operation;

(d) use clean slash-resistant gloves with ready-to-eat foods that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface or are covered with a smooth, durable, nonabsorbent glove, or single-use glove;

(e) use a utensil only once to taste food that is to be sold or served.

(7) Food employee practices must conform to the following requirements:

(a) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(b) Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.

(c) While preparing food, food employees may not wear jewelry on their arms and hands except a simple wedding band.

(d) Food employees shall wear clean outer clothing. If uniforms are not provided, clean outer coverings must be worn over clothing or the employee shall change to clean clothing if their clothing is soiled.

(e) Food employees may eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils and linens; unwrapped single-service and single-use articles; or other items needing protection cannot occur. However, a food employee may drink from a closed beverage container if the container is handled to prevent contamination of the food employee's hands, the container; exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

(f) Food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair. The hair restraints must be designed and worn to effectively keep hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single service and single-use articles.

(8) Persons unnecessary to the food establishment operation may not be allowed in the food preparation, food storage, or warewashing areas, except as allowed by the person in charge if steps are taken to ensure that exposed food, clean equipment, utensils and linens; and unwrapped single-service and single-use articles are protected from contamination.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.210 Rationale

The name of this rule was changed to reflect the rule's emphasis on food employees, those who participate in the preparation and

service of food. Changes to this rule reflect current food industry standards in preventing food contamination by food employees.

Subsection (1) contains additional proposed language to prevent food contamination from discharges of employees' eyes, noses, and mouths. These discharges can directly contaminate exposed food, equipment, utensils, linens, and single-service and single-use articles.

The original provisions in (2) through (6) have been eliminated. Their substances have been modernized and incorporated in the newly-proposed subsections.

Subsection (3) proposes requirements for effective hand washing. Effective hand washing is essential to minimize the likelihood of hands becoming a vehicle of cross contamination. It is important that hand washing be done only at a properly equipped hand washing facility in order to help ensure that food employees effectively clean their hands. Requirements for hand washing facilities are found at ARM 16.10.221.

Subsection (4) proposes when employees must wash their hands. Hands may become contaminated when food employees engage in specific activities listed in (4). Unsanitary personal practices such as scratching the head, placing the fingers in or about the mouth or nose, and indiscriminate and uncovered sneezing or coughing may result in food subsequently being contaminated if employees do not wash their hands afterwards.

Subsection (5) is intended to ensure that chemical hand sanitizers applied to the hands are both safe and effective when applied to human skin; and a safe food additive when applied to bare hands that will come into direct contact with food. This rule also sets requirements for the appropriate use of hand sanitizers to minimize potential contamination of food subsequently handled.

Subsection (6) provides additional guidelines for safe food handling by employees. According to information from FDA, infected food employees are the source of contamination in approximately one in five food borne disease outbreaks reported in the United States. Most of these outbreaks involve enteric, i.e., fecal-oral agents. These are organisms that employees may shed in their stools at the time the food is prepared. Because of poor or nonexistent hand washing procedures, workers can spread these organisms to the food. In addition, infected cuts, burns, or boils on hands can result in contamination of foods.

Subsection (6) further encourages employees to not handle ready-to-eat foods with their bare-hands. Although the frequent hand washing requirement in (4) reduces contamination of food, strict monitoring of employees in their hand washing may not in itself prevent food contamination. As a final barrier, (6) discourages

bare hand contact with ready-to-eat food (i.e., food that is edible without washing or is not subsequently subjected to a pathogen kill step), and it encourages the use of suitable utensils such as spatulas, tongs, single-use gloves, or dispensing equipment. This procedure assures a decreased likelihood of infecting consumers. As an additional precaution, (6)(c) requires frequent changes of single-use gloves to keep gloves from becoming vehicles for transferring microbes to the food.

Subsection (6)(d) covers the use of slash-resistant gloves in food handling. Slash-resistant gloves are not easily cleaned and sanitized. Their use with ready-to-eat foods could cause contamination. (6)(d)'s requirement minimizes contamination through requiring the gloves to be made of certain materials to prevent embedded contaminants from being transferred onto the food, or by placing a single-use glove over it before handling ready-to-eat food.

Subsections (7)(a) and (b) set sanitation requirements for employees' fingernails. The provisions are necessary because improperly maintained fingernails can contaminate food. Ragged fingernails may harbor pathogenic organisms. Dirt under the fingernails or pieces of fingernails may break off into the food, especially when artificial nails are worn. Toxic nail polish may also flake off into the food.

Subsection (7)(c) prohibits employees wearing jewelry during food preparation. Items of jewelry such as rings, bracelets, and watches may collect soil and the construction of the jewelry may hinder routine cleaning. As a result, the jewelry may act as a reservoir of pathogenic organisms transmissible through food. An additional hazard associated with jewelry is the possibility that pieces of the item or the whole item itself may fall into the food being prepared. Hard foreign objects in food may cause medical problems for consumers, such as chipped and/or broken teeth and internal cuts and lesions.

Subsection (7)(d) requires employees to wear clean clothing. Dirty clothing may harbor diseases that are transmissible through food. Food employees who inadvertently touch their dirty clothing may contaminate their hands resulting in contamination of food. Food may also be contaminated through direct contact with dirty clothing.

Subsection (7)(e) prohibits employees from eating, drinking, or smoking in food preparation areas. This requirement ensures the safety of the food, prevents the introduction of foreign objects into the food, and minimizes the possibility of transmitting disease through food. Smoking or eating by employees in food preparation areas is prohibited because of the potential that the hands, food, and food contact surfaces may become contaminated.

Subsection (7)(e) allows employees to drink in food preparation areas under certain circumstances. Food preparation areas such as hot grills may have elevated temperatures and the excessive heat in these areas may present a medical risk to the workers as a result of dehydration. Consequently, employees are allowed to drink from closed containers that are carefully handled.

Subsection (7)(f) requires covering of employee hair. Consumers are particularly sensitive to food contaminated by hair. Hair can be both a direct and indirect vehicle of contamination. Food employees may contaminate their hands when they touch their hair. A hair restraint keeps dislodged hair from ending up in the food and may deter employees from touching their hair.

Subsection (8) restricts unauthorized persons from being near food and food contact surfaces. Any individual present in areas of a food establishment where food and food contact items are exposed presents a potential contamination risk. By controlling who is allowed in those areas and when visits are scheduled and by assuring that all authorized persons in the establishment, such as delivery, maintenance and service personnel, and pest control operators, comply with the requirements, the person in charge establishes an important barrier to food contamination.

16.10.212 [37.110.212] MATERIALS FOR EQUIPMENT AND UTENSILS (1) ~~Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, or taste, nor contribute to the contamination of food.~~

(1) Equipment and utensils must be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(2) Cast iron may not be used for utensils or food contact surfaces of equipment except as a surface for cooking. However, cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(2) (3) If solder is used, it shall must be composed of safe materials and be corrosion resistant. Solder and flux containing lead in excess of 0.2% may not be used on surfaces that contact food.

(3) Hard maple or equivalently nonabsorbent material that meets the general requirements set forth in section (1) of this rule may be used for cutting blocks, cutting boards, salad bowls, and baker's tables. Wood may be used for single-service articles, such as chop sticks, stirrers, or ice cream spoons. The use of wood as a food contact surface under other circumstances is prohibited.

(4) Use of wood is limited as follows:

(a) Except as specified in (4)(b) through (e) of this

rule, wood and wood wicker may not be used as a food contact surface.

(b) Hard maple or an equivalently hard, close-grained wood may be used for:

(i) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and non-single-service chopsticks; and

(ii) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 230°F (110°C) or above.

(c) Whole uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(d) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(i) untreated wood containers; or

(ii) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800.

(e) Wood may be used for single-service articles, such as chopsticks, stirrers and ice cream spoons.

(5) Cutting surfaces such as cutting blocks and boards that are subject to scratching and scoring must be resurfaced if they can no longer be effectively cleaned and sanitized, or be discarded if they are not capable of being sanitized.

~~(4) (6) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping and distortion, and that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in (1) of this rule, are permitted for repeated use.~~

~~(5) (7) Mollusk and crustacea shells may be used only once as a serving container. Further re-use of such shells for food service is prohibited.~~

~~(6) (8) Re-use of single-service articles is prohibited.~~

(9) Ceramic, china, crystal utensils, and decorative utensils, such as hand painted ceramic or china, that are used in contact with food must be lead-free or contain levels of lead not exceeding the following limits:

Lead Content in Utensils

<u>Utensil Category</u>	<u>Description</u>	<u>Maximum Lead</u>
<u>hot beverage mugs</u>	<u>coffee mugs</u>	<u>0.5 mg/L</u>
<u>large hollowware</u>	<u>bowls > 1.16 Qt/[1.1L]</u>	<u>1 mg/L</u>
<u>small hollowware</u>	<u>bowls < 1/16 Qt/[1.1L]</u>	<u>2.0 mg/L</u>
<u>flat utensils</u>	<u>plates, saucers</u>	<u>3.0 mg/L</u>

(10) Copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine; and may not be used for a fitting

or tubing installed between a backflow prevention device and a carbonator.

(11) Galvanized metal may not be used for utensils or food contact surfaces of equipment that are used for beverages, acidic food, and moist food.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.212 Rationale

The proposed changes to this rule adopt standards that are more current regarding the different materials approved for use in food equipment and utensils, and the materials' potential for contamination of food.

Subsection (1) requires equipment and utensils be designed and constructed to be durable and capable of retaining their original characteristics. This requirement assures that such items can continue to fulfill their intended purpose for the duration of their life expectancy and maintain their easy cleanability. If the equipment and utensils cannot maintain their original characteristics, they may become difficult to clean, allowing for the harborage of pathogenic microorganisms. Equipment and parts must be designed and constructed so that they do not break and end up in food as foreign objects or present injury hazards to consumers.

Subsection (2) contains language limiting the use of cast iron equipment. Cast iron is an alloy of iron and heavy metals which may leach into food if left in contact with acidic foods for extended periods of time. Heavy metal poisoning has resulted from such use. The temporary or incidental contact that results from using cast iron as a cooking surface and for dispensing utensils used as part of an uninterrupted, short-term process is acceptable because of the brief contact time involved.

Subsection (3) limits use of equipment and utensils containing solder. Solder is a material that is used to join metallic parts and is applied in the melted state to solid metals. Solder may be composed of tin and lead alloys. Lead has been linked to many health problems especially among young children. Consequently, the amount of lead allowed in food equipment is subject to limitation.

Subsection (4) restricts the use of wood equipment and utensils. The limited acceptance of the use of wood as a food contact surface is determined by the nature of the food and the type of wood used. Moist foods may cause the wood surface to deteriorate and the surface may become difficult to clean. Close grained hardwood cutting boards, such as hard maple are approved surfaces for cutting boards due to the fact that they are easily cleaned and sanitized. Open grained woods that may be softer in density are not approved for cutting boards because they become

scratched and scored more easily and may be more difficult to clean and sanitize. Wood that is treated with preservatives may result in illness due to the migration of the preservative chemicals to the food; therefore, only specific preservatives are allowed as specified in (4)(d)(i). Subsection (4)(e) allows the use of wood in certain single-service items. These items are disposed of after one use, and they do not pose a serious health risk.

Subsection (5) regulates cutting surfaces. Surfaces such as cutting boards and blocks that become scratched and scored may be difficult to clean and sanitize. As a result, pathogenic microorganisms transmissible through food may build up or accumulate. These microorganisms may be transferred to foods that are prepared on such surfaces.

Subsection (9) adds requirements on the use of ceramic, china, and crystal in food preparation. Historically, lead has been used in the formulation and/or decoration of these types of utensils. Specifically, lead-based paints that were used to decorate the utensils have caused high concentrations of lead to leach into the food they contain. Lead poisoning continues to be an important public health concern due to the seriousness of associated medical problems. Lead poisoning is particularly harmful to the young and has caused learning disabilities and medical problems among individuals who have consumed high levels. The allowable levels of lead listed in (9) are specific to the type of utensil, based on the average contact time and properties of the foods routinely stored in each item listed.

Subsection (10) limits use of equipment and utensils containing copper and copper alloys. High concentrations of copper are poisonous and have caused food borne illness. When copper and copper alloy surfaces contact acidic foods, copper may leach into the food. Backflow prevention devices in beverage dispensing machines that are constructed of copper and copper alloys can cause, and have resulted in, the leaching of both copper and lead into carbonated beverages.

Subsection (10) also regulates brass. Brass is an alloy of copper and zinc and contains lead which is used to combine the two elements. Historically, brass has been used for items such as pumps, pipe fitting, and goblets. Copper, zinc and lead found in brass are subject to leaching when they contact acidic foods, and food poisoning has resulted from such contact.

Subsection (11) governs the use of galvanized metal. Galvanized means iron or steel coated with zinc, a heavy metal that may be leached from galvanized containers into foods that are high in water content. The risk of leaching increases when acidic foods contact the galvanized container, leading to the contamination of the food.

16.10.213 [37.110.213] EQUIPMENT AND UTENSIL DESIGN AND

FABRICATION (1) All equipment and utensils, including plasticware, shall must be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.

(2) Food contact surfaces shall must be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food contact surface only if the surface is heated, such as in grills, griddle tops, and skillets. Threads shall must be designed to facilitate cleaning; ordinary "v" type threads are prohibited in food contact surfaces, except that in equipment such as ice makers or hot oil cooking equipment and hot oil filtering systems, such threads shall must be minimized.

(3) Equipment containing bearings and gears requiring unsafe lubricants shall must be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food contact surfaces. Only food-safe lubricants shall must be used on equipment designed to receive lubrication of bearings and gears on or within food contact surfaces.

(4) Tubing and cold plates conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice provided such tubing is fabricated from safe materials, is grommeted at entry and exit points to preclude moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units shall must not pass through the ice machine or the ice storage bin unless the tubes are properly shielded or separated from the potable ice.

(5) Sinks and drainboards shall must be self-draining.

(6) Unless designed for in-place cleaning, food contact surfaces shall must be accessible for cleaning and inspection:

(a) without being disassembled; or

(b) by disassembling without the use of tools; or

(c) by easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench kept available near the equipment.

(7) Equipment intended for in-place cleaning shall must be so designed and fabricated so that:

(a) cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(b) cleaning and sanitizing solutions will contact all interior food contact surfaces; and

(c) the system is self-draining or capable of being completely evacuated.

(8) Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall must have sealed electrical wiring, switches, and connections.

~~(9) Indicating thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to $\pm 2^{\circ}\text{F}$ (1°C).~~

(9) Temperature measuring devices are required in all food establishments and must meet the following requirements:

(a) may not have sensors or stems constructed of glass, except that temperature measuring devices with glass sensors or stems that are encased in a shatterproof coating, such as candy thermometers, may be used;

(b) must have a numerical scale, printed record, or digital readout in increments no greater than 2°F (1°C);

(c) must be designed to be easily readable;

(d) devices that are used to check food temperatures must be scaled only in Celsius or scaled only in Fahrenheit or dually scaled in Celsius and Fahrenheit and must be accurate to ±2°F (±1°C);

(e) devices that are used to measure ambient air and water temperature that are scaled in Celsius or dually scaled in Celsius and Fahrenheit must be designed to be easily readable and accurate to ±3°F (±1.5°C) at the use range;

(f) in a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device must be located to measure the air temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit;

(g) cold or hot holding equipment used for storing or displaying potentially hazardous food must be designed to include and must be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display; and

(h) subsection (9) does not apply to equipment such as heat lamps, cold plates, bainsmarie, steam tables, insulated food transport containers, and salad bars when the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment.

(10) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning shall must be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall must be of such material and in such repair as to be easily maintained in a clean and sanitary condition. Unfinished wood is not acceptable as a non-food contact surface in areas utilized for food preparation, equipment, or utensil washing.

(11) Hoods shall must be installed at or above all commercial type deep fat fryers, broilers, fry grills, steam-jacketed kettles, hot-top ranges, ovens, barbecues, rotisseries, dishwashing machines, and similar equipment which produce comparable amounts of steam, smoke, grease, or heat.

(12) Ventilation hoods and devices shall must be designed to prevent grease or condensation from collecting on walls and ceilings, and from dropping into foods or onto food contact surfaces.

(13) Filters or other grease extracting equipment shall must be readily removable for cleaning and replacement if not designed to be cleaned in place.

(14) Hoods, filters, hood fire extinguishing equipment and other ventilation system items shall must be kept clean.

(15) Equipment that was installed in a food service establishment prior to the effective date of this rule, and that does not fully meet all of the design and fabrication requirements of this rule, shall will be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are non-toxic. Replacement equipment and new equipment acquired after the effective date of this rule shall must meet the requirements of this subchapter.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.213 Rationale

The proposed revisions in this rule provide additional requirements for equipment and utensil design and fabrication.

Subsection (4) regulates tubing and cold plate cooling devices used in beverage dispensing equipment. Beverage tubing installed in contact with ice may result in condensate and drippage contaminating the ice as the condensate moves down the beverage tubing. Beverage tubing and cold plate cooling devices are problematic to clean, leading to inadequate cleaning of the ice bin. Because of the high moisture environment, mold and algae may form on the surface of the ice bins and any tubing or equipment stored in the bins. Liquid waste drain lines passing through ice machines and storage bins present a risk of contamination due to potential leakage of the waste lines and the possibility that contaminants will gain access to the ice through condensation migrating along the exterior of the lines.

Subsection (9)(a) restricts the use of glass temperature measuring devices in order to prevent glass breakage in the food they come in contact with. Temperature measuring devices that are made of glass tubing must be encased in a shatter proof tubing to prevent glass breakage.

Subsection (9)(b) through (d) ensure that temperature measuring devices are appropriately scaled to ensure uniformity and provide accurate readings. Under (9)(a), a temperature measuring device used to measure the air temperature in a refrigeration unit is not required to be as accurate as a food temperature measuring device because the unit's temperature fluctuates with repeated opening and closing of the door. Accuracy in measuring internal food temperatures is of more significance, as reflected in the proposed requirement under (9)(c).

Subsection (9)(e) requires temperature measuring devices to be designed to be clearly readable. The importance of maintaining potentially hazardous foods at the specified temperatures requires easy readability. The inability to accurately read a temperature measuring device could result in food being held at

unsafe temperatures.

Subsection (9)(f) requires the proper placement of temperature measuring devices in storage equipment for accurate temperature readings. Temperature measuring devices must be placed in a location that represents the actual storage temperature throughout the unit to help ensure that all potentially hazardous foods being stored meet the minimum temperatures required in other areas of the subchapter.

Subsection (9)(g) further requires a permanent temperature measuring device on hot and cold holding equipment used for potentially hazardous food. A permanent device is required because of the potential growth of pathogenic microorganisms should the temperature of the unit exceed temperature requirements listed in other provisions of this subchapter. In order to facilitate routine monitoring of the unit, the device must be visible. The inability to accurately read a temperature measuring device could result in food being held at unsafe temperatures.

Subsection (9)(h) provides an exception to requiring a temperature measuring device for certain types of equipment. It is difficult and impractical to permanently mount a temperature measuring device on the equipment listed in (9)(h). The futility of attempting to measure the temperature of unconfined air such as with heat lamps and, in some cases, the brief period of time the equipment is used for a given food negate the usefulness of ambient temperature monitoring at that point.

16.10.214 [37.110.214] EQUIPMENT INSTALLATION AND LOCATION

(1) Equipment General equipment, including ice makers and ice storage equipment, shall may not be located under exposed or unprotected sewer lines or water lines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by the Montana state fire marshal or his the fire marshal's authorized agent.

(2) Equipment that is placed on tables or counters, unless portable, shall must be sealed to the table or counter or elevated on legs to provide at least a 4-inch clearance between the table or counter and equipment and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(a) (3) Equipment is portable within the meaning of (2) of this rule if:

(i) (a) it is small and light enough to be moved easily by one person; and

(ii) (b) it has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(3) (4) Floor-mounted equipment, unless readily movable, shall must be:

(a) sealed to the floor;

(b) installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or

(c) elevated on legs to provide at least a 6-inch clearance between the floor and equipment, except that vertically mounted floor mixers may be elevated to provide at least a 4-inch clearance between the floor and equipment if no part of the floor under the mixer is more than 6 inches from cleaning access.

~~(4)~~ (5) Equipment is easily movable if:

(a) it is mounted on wheels or casters; and

(b) it has no utility connection or has a utility connection that disconnects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.

~~(5)~~ (6) Unless sufficient space is provided for easy cleaning between, behind and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall must not be more than 1/32 inch; or if exposed to seepage, the equipment shall must be sealed to the adjoining equipment or adjacent walls or ceilings.

~~(6)~~ (7) Aisles and working spaces between units of equipment and walls shall must be unobstructed and of sufficient width to permit food employees and other authorized persons to perform their duties readily without contamination of food or food contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies shall must be positioned to provide accessibility to working areas.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.214 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

Clarification was added to subsection (7) by delineating food employees and other authorized persons to cover all personnel who may be in the food preparation area.

16.10.215 [37.110.215] EQUIPMENT AND UTENSIL CLEANING AND SANITATION (1) Tableware shall must be washed, rinsed, and sanitized after each use.

(2) To prevent cross contamination, kitchenware and food contact surfaces of equipment shall must be washed, rinsed, and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and the food contact surfaces of equipment shall must be washed, rinsed, and sanitized at

intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

(4) The food contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall must be cleaned at least once a day, ~~except that this shall . This requirement does not apply to hot oil cooking equipment and hot oil filtering systems.~~ The food contact surfaces of all cooking equipment shall must be kept free of encrusted grease deposits and other accumulated soil.

(5) Non-food contact surfaces of equipment shall must be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used for wiping food spills on tableware, such as plates or bowls being served to the consumer, shall must be clean, dry and used for no other purpose.

~~(7) Moist cloths or sponges used for wiping food spills on kitchenware and food contact surfaces of equipment shall be clean and rinsed frequently in one of the sanitizing solutions permitted in (9) through (15) of this rule and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.~~

~~(8) Moist cloths or sponges used for cleaning non-food contact surfaces of equipment such as counters, dining table tops and shelves shall be clean and rinsed as specified in section (7) of this rule, and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.~~

(7) Moist cloths used for wiping food spills on food contact and nonfood contact surfaces of equipment must be laundered as required, stored in a chemical sanitizer and maintain sanitizing strength at the point of use.

(8) Dry or moist cloths that are used with raw animal foods must be kept separate from cloths used for other purposes, and the moist cloths used with raw animal foods must be kept in a separate sanitizing solution.

(9) Sponges may not be used in contact with cleaned and sanitized or in-use food contact surfaces.

~~(9)~~ (10) For manual washing, rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall must be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall must be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall must be washed manually or cleaned through pressure spray methods.

~~(10)~~ (11) Drainboards or easily movable dish tables of adequate size shall must be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall must be located so as not to interfere with the proper use of the dishwashing facilities.

~~(11)~~ (12) Equipment and utensils shall must be preflushed or pre-scraped and, when necessary, presoaked to remove gross

food particles and soil.

~~(12)~~ (13) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing shall must be conducted in the following sequence manner:

(a) ~~Sinks shall~~ Sinks must be cleaned prior to use.;

(b) Equipment and utensils shall must be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.;

(c) Equipment and utensils shall must be rinsed free of detergent and abrasives with clean water in the second compartment.;

(d) Equipment and utensils shall must be sanitized in the third compartment according to one of the methods included in ~~(13)(a) through (d)~~ (14)(a) through (g) of this rule.

~~(13)~~ (14) The food contact surfaces of all equipment and utensils shall must be sanitized by:

(a) immersion for at least 1/2 minute in clean, hot water at a temperature of at least 170°F (77°C); or

(b) immersion for at least 1 minute in a clean solution containing at least 50 parts per million but not more than 200 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75°F (24°C); or

(c) immersion for at least 1 minute in a clean solution containing at least 12.5 parts per million but not more than 25 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F (24°C); or

(d) using a quaternary ammonium compound solution by following manufacturer's instructions;

~~(d)~~ (e) immersion in a clean solution containing any other chemical sanitizing agent approved by the department EPA that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75°F (24°C) for 1 minute; or

~~(e)~~ (f) treatment with steam free from unsafe materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined and raises the surface temperature to 160°F (72°C) or above; or

~~(f)~~ (g) rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under ~~(13)(d)~~ (14)(e) of this rule in the case of equipment too large to sanitize by immersion.

~~(14)~~ (15) When hot water is used for sanitizing, the following facilities shall must be provided and used:

(a) An an integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F (77°C); and

(b) A a numerically scaled indicating thermometer temperature measuring device, accurate to 93°F—(2°C) ±3°F (1.5°C), convenient to the sink for frequent checks of water temperature; and

(c) Dish dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

~~(15)~~ ~~(16)~~ When chemicals are used for sanitization, they shall must not have concentrations higher than the maximum permitted by the department in (14), and a test kit or other device that accurately measures the parts per million concentration of the solution shall must be provided and used.

~~(16)~~ ~~(17)~~ Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall must be properly installed and maintained in good repair. Machines and devices shall must be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall must be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall must be properly installed and maintained.

~~(17)~~ ~~(18)~~ The pressure of final rinse water supplied to spray-type dishwashing machines shall must not be less than 15 nor more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A 1/4 inch IPS valve shall must be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

~~(18)~~ ~~(19)~~ Machine or water line mounted numerically scaled indicating thermometers temperature measuring devices, accurate to ~~93°F (2°C)~~ ±3°F (1.5°C), shall must be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

~~(19)~~ ~~(20)~~ Rinse water tanks shall must be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall must be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.

~~(20)~~ ~~(21)~~ Drainboards shall must be provided and be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall must be so located and constructed so as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of soiled utensils or the use of easily movable dish tables for the storage of clean utensils following sanitization.

~~(21)~~ ~~(22)~~ Equipment and utensils shall must be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of the dishwashing machine operation. Equipment and utensils shall must be placed in racks, trays, or baskets, or on conveyors, in a way that food contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

~~(22)~~ (23) Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used, provided:

(a) The temperature of the wash water shall may not be less than 120°F (49°C);

(b) The wash water shall must be kept clean.

(c) Chemicals added for sanitization purposes shall be automatically dispensed;

(d) Utensils and equipment shall must be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration;

(e) The chemical sanitizing rinse water temperature shall may not be not less than 75°F (24°C) nor or less than the temperature specified by the machine's manufacturer;

(f) Chemical sanitizers used shall must be approved by the department EPA;

(g) A test kit or other device that accurately measures the parts per million concentration of the solution shall must be available and used.

~~(23)~~ (24) Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall must be kept clean and water shall must be maintained at not less than the temperature stated below:

(a) Single-tank, stationary-rack, dual-temperature machine:

Wash temperature 150°F (66°C)

Final rinse temperature 180°F (83°C)

(b) Single-tank, stationary-rack, single-temperature machine:

Wash temperature 165°F (74°C)

Final rinse temperature 165°F (74°C)

(c) Single-tank, conveyor machine:

Wash temperature 160°F (72°C)

Final rinse temperature 180°F (83°C)

(d) Multi-tank, conveyor machine:

Wash temperature 150°F (66°C)

Pumped rinse temperature 160°F (72°C)

Final rinse temperature 180°F (83°C)

(e) Single-tank, pot, pan, and utensil washer (either stationary or moving rack):

Wash temperature 140°F (60°C)

Final rinse temperature 180°F (83°C)

(25) Machines using hot water for sanitizing must achieve a utensil surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator.

~~(24)~~ (26) All dishwashing machines shall must be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

~~(25)~~ (27) After sanitization, all equipment and utensils shall must be air dried.

(28) Food service establishments using a dishwashing machine shall provide a manual dish washing facility described in ARM 16.10.215(10) or provide a plan acceptable to the

regulatory authority to adequately clean, rinse and sanitize utensils, in case the dishwashing machine is not functional.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.215 Rationale

Subsection (7) has been revised regarding the cleaning of wiping cloths. Soiled wiping cloths, especially when moist, can become breeding grounds for pathogens that could be transferred to food. Any wiping cloths that are not dry (except those used once and then laundered) must be stored in a sanitizing solution at all times, with the proper sanitizer concentration in the solution to kill pathogens so subsequent use of the cloths will not lead to contaminating food contact surfaces. Subsection (7) further requires the sanitizer be of sufficient strength at the time the wiping cloths stored in the solution are used. Wiping cloths soiled with organic material can overcome the effectiveness of, and neutralize, the sanitizer. The sanitizing solution must be changed as needed to minimize the accumulation of organic material and sustain proper concentration.

Subsection (8) is a new rule provision for wiping cloths used with raw animal foods in order to prevent cross contamination with other food and food contact surfaces.

Subsection (9) prohibits the use of sponges on food contact surfaces. Sponges are difficult, if not impossible, to clean once they have been in contact with food particles and contaminants that are found in the use environment. Because of their construction, sponges provide harborage for any number and variety of microbiological organisms, many of which may be pathogenic.

Subsections (14)(b) and (c) list proper sanitizer concentrations needed for effective sanitizing without the solution becoming too toxic. The effectiveness of chemical sanitizers can be directly affected by the temperature, pH, concentration of the sanitizer solution used, and hardness of the water. Therefore, it is critical to sanitization that the sanitizer is used properly and the solution meets the minimum concentration levels listed in (14)(b) and (c) to effectively kill microorganisms. Although chemical sanitizers need to be of sufficient strength, the strength must not be too potent to cause toxicity, therefore (14)(b) and (c) specify the maximum concentration levels for sanitizers.

Subsection (14)(d) allows the use of quaternary ammonium compound solutions for sanitization as long as they are used in accordance with the manufacturers' instructions. This provision was added to cover these solutions which are commonly used in bars and taverns.

Subsections (14)(e) and (23)(f) change the requirement that the department approve chemical sanitizers. This function currently falls under the authority of the EPA.

Subsection (25) establishes 160°F utensil surface temperature as the minimum requirement for dish machines utilizing hot water to sanitize utensils. This temperature has been scientifically proven to be effective in destroying microorganisms on utensil surfaces.

Subsection (28) provides the requirement for a backup system for cleaning and sanitizing equipment and utensils in the event of mechanical failure of a dishwashing machine. This provision is needed to assure proper cleaning and sanitization of equipment and utensils.

16.10.216 [37.110.216] EQUIPMENT AND UTENSIL STORAGE

(1) Cleaned and sanitized equipment and utensils shall must be handled in a way that protects them from contamination. Spoons, knives, and forks shall must be touched only by their handles. Cups, glasses, bowls, plates and similar items shall must be handled without contact with inside surfaces or surfaces that contact the user's mouth.

(2) Cleaned and sanitized utensils and equipment shall must be stored at least 6 inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means contaminants. The food contact surfaces of fixed equipment shall must also be protected from contamination. Equipment and utensils shall may not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

(3) Utensils shall must be air dried before being stored or shall must be stored in a self-draining position.

(4) Glasses and cups shall must be stored inverted. Other stored utensils shall must be covered or inverted, wherever practical. Facilities for the storage of knives, forks, and spoons shall must be designed and used to present the handle to the food employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations shall must protect these articles from contamination and present the handle of the utensil to the consumer.

(5) Single-service articles shall must be stored at least 6 inches above the floor in closed cartons or containers which protect them from contamination and shall may not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

(6) Single-service articles shall must be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.

(7) Single-service knives, forks, and spoons packaged in bulk shall must be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks

and spoons are prewrapped or prepackaged, holders shall must be provided to protect these items from contamination and present the handle of the utensil to the consumer.

(8) The storage of food equipment, utensils or single-service articles in toilet rooms or vestibules is prohibited.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.216 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

In (2), the term "means" was changed to "contaminants" to eliminate vagueness.

16.10.217 [37.110.217] WATER SUPPLY (1) Enough potable water for the needs of the food service establishment shall must be provided from a source constructed and operated in accordance with Title 75, chapter 6, MCA, and ARM Title ~~16~~ 17, chapter ~~20~~ 38, subchapters ~~2 and 4~~ 1 and 2, applicable to public water and wastewater systems.

(2) All potable water not provided directly by pipe to the food service establishment from the source shall must be transported in a bulk water transport system in accordance with ARM Title ~~16~~ 17, chapter ~~20~~ 38, subchapter 3 5, Water Hauled for Cisterns.

(3) Bottled and packaged potable water shall must be obtained from a source that complies with (1) above and shall must be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall must be dispensed from the original container.

(4) Water under pressure at the required temperatures shall must be provided to all fixtures and equipment that use water.

(5) Steam used in contact with food or food contact surfaces shall must be free from any unsafe materials or additives.

(6) A reservoir that is used to supply water to a device such as a produce mister must be:

(a) maintained in accordance with manufacturer's specifications; and

(b) cleaned in accordance with manufacturer's specifications or according to the following procedures, whichever is more stringent:

(i) cleaning at least once a week by:

(A) draining and complete disassembly of the water and aerosol contact parts;

(B) brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;

(C) flushing the complete system with water to remove the detergent solution and particulate accumulation; and

(D) rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L hypochlorite solution.

~~(6) (7) The department hereby adopts and incorporates by reference ARM Title 16 17, chapter 20 38, subchapters 2, 3, and 4 1, 2 and 5, which are department Montana department of environmental quality rules setting forth, respectively, maximum contaminant levels allowed in public drinking water supplies, requirements for the equipment and operation of systems for hauling water for cisterns, and plan review requirements for public water and wastewater systems. Copies of ARM Title 16 17, chapter 20 38, subchapters 2, 3, and 4 1, 2 and 5 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620 Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951.~~

(8) Food service establishments with existing water systems that will not be changed or modified in their uses may not be subject to some or all of the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38. These water systems must comply with the applicable laws and approval conditions that were in place at the time of the systems' approval. Also, these systems must comply with current monitoring, reporting, and drinking water quality requirements. Information on any of the requirements of this rule may be obtained from the Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.217 Rationale

Subsections (1) and (2) have been changed regarding the ARM references. Title 16, chapter 20, subchapter 4, was transferred to Title 17, chapter 38, subchapters 1 and 2; and Title 16, chapter 2, subchapter 3, was transferred to Title 17, chapter 38, subchapter 5 in 1996 after the creation of the Montana Department of Environmental Quality. The Montana Department of Health and Environmental Sciences was dissolved in 1995, and its Food and Consumer Safety Section was incorporated into the Department of Public Health and Human Services (DPHHS) at that time. All water quality enforcement duties were transferred to the newly formed Department of Environmental Quality.

Subsection (6) deals with potential contamination of food by water vapors. Water reservoirs that have poor water exchange rates, such as reservoirs for some humidifiers or aerosol or misting devices, and that are directly or indirectly open to the atmosphere, may be contaminated with respiratory pathogens such as *Legionella pneumophila*. This organism is extremely infectious and can be transmitted through very small droplets of

a mister or humidifier. It is important that the cleaning and maintenance requirements in (6) be scrupulously followed to prevent the reservoir from colonizing this bacterium.

Subsection (7) contains changes to ARM references. ARM Title 16, chapter 20, subchapters 2, 3 and 4, was transferred to ARM Title 17, chapter 38, subchapters 1, 2 and 5 in 1996. The name of the Department of Health and Environmental Sciences was changed to its current name of the Department of Public Health and Human Services.

Subsection (8) is a new provision for existing water systems that are not changed or modified in their uses. These systems are regulated by the public water laws that existed at the time the systems were approved by the state. The Montana Department of Environmental Quality may have other laws that must be currently complied with regardless of when the system has been approved. Subsection (8) provides the Department of Environmental Quality's address for food service operators to contact.

16.10.218 [37.110.218] SEWAGE (1) All sewage, including liquid waste, shall must be disposed of by a public sewerage system or by a sewage treatment and disposal system constructed and operated in accordance with Title 75, chapter 6, MCA, and ARM Title ~~16~~ 17, chapter ~~20~~ 38, subchapter ~~4~~ 1, plans for public water and wastewater systems. Non-water-carried sewage disposal facilities are prohibited, except as permitted by ARM 16.10.236(10) of ~~this subchapter~~ pertaining to temporary food service establishments or as permitted by the regulatory authority in remote areas or because of special situations.

(2) The department hereby adopts and incorporates by reference ARM Title ~~16~~ 17, chapter ~~20~~ 38, subchapter ~~4~~ 1 which is a set of department Montana department of environmental quality rules setting forth plan review requirements for public water and wastewater systems. A copy of ARM Title ~~16~~ 17, chapter ~~20~~ 38, subchapter ~~4~~ 1 may be obtained from the ~~Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620~~ Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) Food service establishments with existing sewage systems that will not be changed or be modified in their uses may not be subject to some or all of the provisions of Title 75, chapter 6, MCA and ARM Title 17, chapter 38. These systems comply with the applicable state and local laws and approval conditions that were in place at the time of the systems' approval. The Montana department of environmental quality may have other laws and regulations that apply. Information or any of the requirements of this rule may be obtained from the Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.218 Rationale

Changes to the ARM references have been made regarding the regulations of waste water. ARM from Title 16, chapter 20, subchapter 4 was transferred to ARM Title 17, chapter 38, subchapter 1 in 1996. The name of the Department of Health and Environmental Sciences has been changed to the Department of Public Health and Human Services.

Subsection (3) was added to cover food service establishments that have existing sewage systems that have not been changed or modified. These systems are regulated by the public water laws that existed at the time the systems were approved by the state and/or the local authority. The Montana Department of Environmental Quality may have other laws that must be currently complied with regardless of when the system has been approved. Subsection (3) provides the Department of Environmental Quality's address for food service operators to contact.

16.10.219 [37.110.219] PLUMBING (1) Plumbing shall must be installed and maintained in a manner which prevents cross-connections between the potable water supply and any non-potable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.

(2) A non-potable water system is permitted only for purposes such as air conditioning and fire protection and only if the system is installed according to law and the non-potable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any non-potable water system shall must be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system shall must be installed to preclude the possibility of backflow. Devices shall must be installed to protect against backflow and back siphonage at all fixtures and equipment where an air gap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall may not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall must be located to be easily accessible for cleaning.

(5) If used, garbage grinders shall disposals must be installed to preclude potential cross-connections between sewer and potable water systems. Garbage grinders shall disposals must be maintained in a clean and sanitary manner at all times.

(6) Except for properly trapped open sinks, there may not be no a direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.219 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

In (5), "garbage grinders" was replaced with the currently-used term "garbage disposals".

16.10.220 [37.110.220] TOILET FACILITIES (1) Toilet facilities shall must be provided for food employees and other authorized persons. These toilet facilities shall must be conveniently located and readily accessible to food employees and other authorized persons during all times the establishment is in operation.

(a) Conveniently located as related to toilet facilities shall mean located in the same building as the food service establishment within 200 feet by a normal pedestrian route of all locations of the food service operation and not more than one floor-to-floor flight of stairs.

(2) Employees Food employees, other authorized persons and customers may use the same toilet facilities provided that patrons may use them without entering the food storage, food preparation, or food service areas or the dishwashing or utensil storage areas of the establishment.

(3) When customer facilities are provided, they shall must be maintained in good repair and be kept clean at all times.

(4) Food service establishments which must use privy type toilets shall must be evaluated on an installation-by-installation basis.

(5) Toilets and urinals shall must be designed to be easily cleanable.

(6) Toilet fixtures shall must be kept clean and in good repair.

(7) Toilet rooms shall must be completely enclosed, and shall must have tight-fitting, self-closing doors. Such doors shall may not be left open except during cleaning or maintenance. If vestibules are provided, they shall must be kept in a clean condition and good repair.

(a) The lack of doors on toilets serving large numbers of people such as sports arenas shall must be evaluated on a case-by-case basis.

(8) A supply of toilet tissue in a wall-hung or protected container shall must be provided at each toilet at all times. Easily cleanable receptacles shall must be provided for waste materials. Such receptacles shall must be emptied at least once a day, and more frequently when necessary to prevent excessive accumulation of waste material.

(9) All toilet rooms shall must be vented to the outside. In addition, mechanical ventilation shall must be provided in new or newly remodeled toilet rooms.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.220 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

The words "Food employees, other authorized persons" were added to conform to the language in ARM 16.10.203.

16.10.221 [37.110.221] LAVATORY HAND WASHING FACILITIES

(1) ~~Lavatories shall~~ Hand washing facilities must be constructed, installed, and maintained to facilitate cleaning.

(2) Customers are prohibited from entering the food preparation, food service, food storage or utensil washing areas to use ~~lavatories~~ hand washing facilities.

(3) ~~Lavatories~~ Hand washing facilities for food employees shall must be located within the area or areas where food is prepared or served and in utensil washing areas.

(a) The number and location of ~~lavatories~~ hand washing facilities in the areas will be determined by the convenience of the ~~lavatory~~ hand washing facility to the food employees.

(4) ~~Lavatories~~ Hand washing facilities located outside and immediately adjacent to toilet rooms may also serve the food preparation, food service or utensil washing areas if convenient.

(5) Utility Service sinks and utensil washing sinks may be used as ~~lavatories~~ hand washing facilities if properly located, equipped, maintained, and continuously available for hand wash washing.

(6) Sinks used for food preparation or ~~for equipment or utensil washing~~ or curbed cleaning sinks used for mop water disposal shall may not be used for hand washing.

(7) Each ~~lavatory~~ hand washing facility shall must be provided with ~~hot and cold water tempered~~ warm running water by means of a mixing valve or combination faucet. Any self-dispensing, slow-closing, or metering faucet used shall must be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited.

(a) ~~The Montana Energy Code specifies hot water conservation design features.~~

(8) A supply of hand-cleansing soap or detergent shall must be available at each ~~lavatory~~ hand washing facility.

(9) A supply of sanitary disposable towels in a wall-hung or protected container, clean continuous towel system or a hand drying device providing heated air shall must be conveniently located near each ~~lavatory~~ hand washing facility. Common towels are prohibited. When disposable towels are used, easily cleanable waste receptacles must be conveniently located near the hand washing facility.

(10) ~~Lavatories~~ Hand washing facilities, soap dispensers,

hand drying devices and all related fixtures shall must be kept clean and in good repair.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.221 Rationale

The term "lavatory" was changed to "hand washing" to more accurately describe these facilities.

Subsection (7) has been changed regarding the temperature requirement for hot water in hand washing facilities. Warm water is more effective than cold water in removing the fatty soils encountered in kitchens. An adequate flow of warm water will cause soap to lather and aid in flushing soil quickly from the hands. An inadequate flow or temperature of water may lead to poor hand washing practices by food employees.

Subsection (9) changes the wording of "sanitary" towels to "disposable" towels, a more accurate term. Subsection (9) also allows the addition of a clean continuous towel system for drying hands. Waste receptacles at hand washing lavatories are required for the collection of disposable towels so that the paper waste will be contained, and will not contact food directly or indirectly.

16.10.222 [37.110.222] GARBAGE AND REFUSE (1) Garbage and refuse shall must be kept in durable, easily cleanable, insect proof and rodent proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and they may be used for storage inside the food service establishment.

(2) Containers used in food preparation and utensil washing areas shall must be kept covered after they are filled or when not in active use.

(3) Containers stored outside the establishment, and dumpsters, compactors and compactor systems shall must be easily cleanable, shall must be provided with tight-fitting lids, doors or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall must be in place at all times, except during cleaning.

(4) There shall must be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(5) Soiled containers shall must be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, including hot water and detergent or steam, shall must be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall must be disposed of as sewage.

(6) Garbage and refuse on the premises shall must be stored in a manner to make them inaccessible to insects and

rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(7) Garbage or refuse storage rooms, if used, shall must be constructed of easily cleanable, nonabsorbent, washable materials, ~~shall~~; be kept clean, ~~shall~~; be insect-proof and rodent-proof; and shall be large enough to store the garbage and refuse containers that accumulate.

(8) Outside storage areas or enclosures shall must be large enough to store the garbage and refuse containers that accumulate and shall must be kept clean. Garbage and refuse containers, dumpsters and compactor systems located outside shall must be stored on or above a smooth surface of nonabsorbent materials such as concrete or machine-laid asphalt that is kept clean and maintained in good repair.

(9) Garbage and refuse shall must be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(10) Where garbage or refuse is burned on the premises, it shall must be done by controlled incineration that prevents the escape of particulate matter in accordance with the Montana Clean Air Act and rules, 75-2-101, et seq., MCA and associated administrative rules. Areas around incineration facilities shall must be clean and orderly.

~~(11) Persons applying for a new establishment license must as a condition precedent to licensing obtain from the department a certificate indicating that all solid waste generated by the establishment is being disposed in an approved solid waste disposal site. Application for such a certificate shall be made to the department's Solid Waste Management Bureau, Department of Health and Environmental Sciences.~~

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.222 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

Subsection (11) was deleted from the rules because the Department of Environmental Quality no longer certifies solid waste disposal sites.

16.10.223 [37.110.223] INSECT AND RODENT CONTROL

(1) Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall must be utilized. The premises shall must be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(2) Devices that are used to electrocute flying insects

must be designed to have escape-resistant trays. Devices that are used to electrocute flying insects and that may impel insects or insect fragments or to trap insects by adherence must be installed so that:

(a) the devices are not located within 5 feet of a food preparation area; and

(b) dead insects and insect fragments are prevented from being impelled onto or falling on exposed food, clean equipment, utensils, and lines, and unwrapped single-service and single-use articles.

(3) Dead or trapped birds, insects, rodents and other pests must be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

(4) Rodent bait must be contained in covered, tamper-resistant bait stations.

(5) Tracking powder pesticide may not be used in a food service establishment. A nontoxic tracking powder such as talcum or flour may be used, but may not contaminate food, equipment, utensils, linens, and single-service articles.

(2) (6) Openings to the outside shall must be effectively protected against the entrance of rodents. Outside openings shall must be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall must be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall must be tight-fitting and free of breaks. Screening material shall must not be less than 16 mesh to the inch.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.223 Rationale

The proposed additions to this rule reflect the current methods used to rid food service establishments of insects and other pests.

Subsection (2) regulates the use of electrocution devices used to control flying insects. Insect electrocution devices are considered supplemental to good sanitation practices for controlling the presence of flies and other insects in a food establishment. However, improper design of the devices and dead insect collection trays could allow dead insect parts and injured insects to escape, rendering the device itself a source of contamination. Furthermore, exposed food and food contact surfaces must be protected from contamination by insects or insect parts. Installation of the device over food preparation areas or in close proximity to exposed food and/or food contact surfaces could allow dead insects and/or insect parts to be impelled by the electric charge, fall, or be blown from the device onto food or food contact surfaces.

Subsection (3) requires trapped pests to be disposed of properly to prevent contamination of food and food contact surfaces. Insects and other pests are capable of transmitting disease. Effective measures must be taken to control their presence in food establishments. Dead rodents, birds, and insects must be removed promptly from the facility to ensure clean and sanitary facilities and to prevent the carcasses from attracting other pests.

Subsection (4) requires bait to be contained in covered bait stations. Open bait stations may result in the spillage of poisonous bait and tracking powder in the food establishment. Also, pests may transport the potentially toxic bait throughout the establishment. Consequently, the bait may end up on food contact surfaces and ultimately in the food being prepared or served.

Subsection (5) restricts the type of tracking powder pesticides used. The use of tracking powder pesticides presents the potential for the powder to be dispersed throughout the establishment leading to direct or indirect contamination of food being prepared. This contamination could adversely affect both the safety and quality of the food. Therefore, (5) requires the powder to be non-toxic, and prohibits the powder from contacting food and food contact surfaces.

16.10.225 [37.110.225] FLOORS (1) Floors and floor coverings of all food preparation, food storage, and utensil washing areas, and the floors of all walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms and vestibules shall must be constructed of smooth, durable material such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair. ~~Nothing in this rule shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.~~ Anti-slip floor covering in areas necessary for safety reasons may be used.

(2) Carpeting, if used as a floor covering, shall must be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in food preparation, equipment washing and utensil washing areas where it would be exposed to large amounts of grease and water, in food storage areas, and toilet room areas where urinals or toilet fixtures are located.

(3) The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.

(4) Properly installed, trapped floor drains shall must be provided in floors that are water-flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Such floors shall must be constructed only of sealed concrete, terrazzo, ceramic tile or similar materials, and shall must be graded to drain.

(5) Mats and duckboards shall must be of nonabsorbent,

grease resistant materials and of such size, design, and construction as to facilitate their being easily cleaned. Duckboards shall may not be used as storage racks.

(6) In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile or similar flooring materials, and where water-flush cleaning methods are used, the junctures between walls and floors shall must be covered and sealed. In all other cases, the juncture between walls and floors shall may not present an open seam of more than 1/32 inch.

(7) Exposed utility service lines and pipes shall must be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.225 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

Subsection (1) contains rewording on the acceptance of anti-slip floor coverings. The rewording was felt to read better than the original sentence.

16.10.226 [37.110.226] WALLS AND CEILINGS (1) Walls and ceilings, including doors, windows, skylights, and similar closures, shall must be maintained in good repair.

(2) The walls, including nonsupporting partitions, wall coverings, and ceilings of walk-in refrigerating units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules shall must be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall must be finished and sealed to provide an easily cleanable surface.

(3) Studs, joists, and rafters shall may not be exposed in walk-in refrigerating units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules. If exposed in other rooms or areas, they shall must be finished to provide an easily cleanable surface.

(4) Exposed utility service lines and pipes shall must be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall may not be unnecessarily exposed on walls or ceilings in walk-in refrigerating units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules.

(5) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall must be easily cleanable and shall must be

maintained in good repair.

(6) Wall and ceiling covering materials shall must be attached and sealed so as to be easily cleanable.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.226 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

16.10.227 [37.110.227] CLEANING PHYSICAL FACILITIES

(1) Cleaning of floors and walls, except emergency cleaning of floors, shall must be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall must be kept clean. ~~Only dustless methods of cleaning floors and walls shall be used,~~ Floors and walls must be cleaned by dustless methods, such as vacuum cleaning, wet cleaning, or the use of dust arresting sweeping compounds with brooms.

(2) In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain shall must be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of lavatories hand washing facilities, utensil washing or equipment washing, or food preparation sinks for this purpose is prohibited.

(3) When utility service sinks are used as a lavatory hand washing facility, such sinks shall must be located to prevent potential contamination of food or food contact surfaces of equipment and utensils.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.227 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

The term "lavatory" was changed to "hand washing facility," a more accurate term which complies with the proposed wording in ARM 16.10.207. In (1), the language of requiring dustless methods of cleaning was reworded for clarity.

16.10.228 [37.110.228] LIGHTING (1) Permanently fixed artificial light sources shall must be installed to provide at least 20 50 foot-candles of light on all food preparation surfaces and at equipment or utensil washing work levels.

(2) Permanently fixed artificial light sources shall must

be installed to provide, at a distance of 30 inches from the floor:

(a) at least 20 foot-candles of light in utensil and equipment storage areas and in lavatory and toilet areas; and

(b) at least 10 foot-candles of light in walk-in refrigerating units, dry food storage areas, and in all other areas. This ~~shall also include~~ requirement includes dining areas during cleaning operations.

(3) Shielding to protect against broken glass falling onto food ~~shall~~ must be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service, and display facilities, and facilities where utensils and equipment are cleaned and stored.

(4) Infrared or other heat lamps ~~shall~~ must be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.228 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

16.10.229 [37.110.229] VENTILATION (1) All rooms ~~shall~~ must have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. When vented to the outside, the system may not create an unsightly, harmful or unlawful discharge.

(2) Intake and exhaust air ducts ~~shall~~ must be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

(3) In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors or fumes originate ~~shall~~ must be mechanically vented to the outside.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.229 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

16.10.230 [37.110.230] DRESSING ROOMS AND LOCKER AREAS

(1) If food employees and other authorized persons routinely change clothes within the establishment, rooms or areas ~~shall~~ must be designated and used for that purpose. These designated rooms or areas ~~shall~~ may not be used for food preparation, storage or service, or for utensil washing or storage.

(2) Enough lockers or other suitable facilities shall must be provided and used for the orderly storage of food employee and other authorized person's clothing and other belongings. Lockers or other suitable facilities may must be located only in the designated dressing rooms or in food storage rooms, or areas containing only completely packaged food or packaged single-service articles.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.230 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

"Food employees and other authorized persons" was added to conform to the proposed definition of those terms found in ARM 16.10.203.

16.10.231 [37.110.231] TOXIC MATERIALS (1) There shall be present in food service establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents. This rule does not apply to packaged poisonous or toxic materials that are for retail sale.

~~(2) Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to law for easy identification of contents.~~

(2) Containers of poisonous or toxic materials and personal care items must bear a legible manufacturer's label.

(3) Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies must be clearly and individually identified with the common name of the material.

~~(3) (4) Poisonous or toxic materials consist of the following categories:~~

~~(a) insecticides and rodenticides pesticides;~~

~~(b) detergents, sanitizers, related cleaning or drying agents, caustics, acids, polishes, and other chemicals; ;~~

~~(c) substances necessary for the operation and maintenance of the establishment such as nonfood-grade lubricants and personal care items that may be deleterious to health; and~~

~~(d) substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.~~

~~(4) (5) Each of the two categories set forth in (3) above shall be stored and physically located separate from each other. All poisonous or toxic materials shall must be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall may not be stored above food, food equipment, utensils or single-service articles, except that this~~

requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations as long as storage requirements are followed as outlined on the manufacturer's label or a material safety data sheet, and containers are properly labeled.

~~(5)~~ (6) Bactericides Sanitizers, cleaning compounds or other compounds intended for use on food contact surfaces shall may not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to food employees or other persons.

~~(6)~~ (7) Poisonous or toxic materials shall may not be used in a way that contaminates food, equipment, or utensils, ; nor in a way that constitutes a hazard to food employees or other persons, ; ~~nor in a way other than in full compliance with the~~ or in a way that is contrary to the manufacturers' labeling. A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food. Drying agents used in conjunction with sanitization must contain only components that are approved by the EPA.

~~(7)~~ (8) Personal medications shall not be stored in food storage, preparation or service areas. Only those medicines necessary for the health of food employees and other authorized persons are allowed in a food establishment. Medicines for food employees and other authorized person's use must be labeled as specified in ARM 16.10.231(2) and located to prevent the contamination of food, equipment, utensils, linens, and single-service articles. This rule does not apply to medicines that are stored or displayed for retail sale.

~~(8)~~ (9) First-aid supplies shall must be stored in a way that prevents them from contaminating food and food contact surfaces.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.231 Rationale

The proposed changes to this rule deal with toxic materials such as cleaning supplies, pesticides, personal care items, and other substances used in the maintenance of food service establishments and personnel. The storage of poisonous and toxic materials in accordance with this rule's requirements ensures that food, equipment, utensils, linens, and single-service and single-use articles are properly protected from contamination.

Subsections (1) and (8) exempt materials and medications sold for retail sale at the food service establishments, such as convenience or grocery stores that sell items other than food.

Subsection (2) has been rewritten to require toxic materials be stored in original containers with legible manufacturer's labels. Prominent and distinct labeling on original packages helps ensure that poisonous and toxic materials are properly

used. Without this requirement, food and food contact surfaces can be accidentally contaminated, which in turn may lead to serious illnesses for consumers.

Subsection (3) adds the requirement that toxic materials removed from the original bulk packaging and placed in working containers be clearly identified with the common name of the material. Examples of working containers are cleaners and sanitizers taken from bulk supplies and placed in portable containers for cleaning purposes. Identification of these containers with the common name of the material helps prevent the dangerous misuse of the contents and potential contamination of food.

Subsection (4) expands the definition of toxic materials. In (4)(a), the terms "insecticides and rodenticides" were replaced with the more accurate term "pesticides".

Subsection (4)(c) adds substances used for maintenance such as non-food-grade lubricants and personal care items, and was added to further clarify acceptable substances in food service establishments. The expanded list acknowledges that food service establishment's have other toxic substances which were not listed in the current rule as written.

Subsection (4)(d) was added to identify substances not necessary for the operation and maintenance of food service establishments. Preserving food safety depends in part on the appropriate and proper storage and use of poisonous or toxic materials that are necessary to the maintenance and operation of the food establishment. Even those that are necessary can pose a hazard if they are used in a manner that contradicts the intended use of the material as described by the manufacturer on the material's label.

Subsection (7) adds the requirement that food not be stored in containers previously used for toxic materials. Use of poisonous or toxic material containers to store, transport, or dispense food is prohibited because of the potential for contamination of the food. The risk of serious health consequences to anyone consuming food stored in these containers coupled with the lack of confidence that all of the material could or would be removed in the wash and sanitizing procedures are reasons for prohibiting this practice.

Subsection (8) allows only medicines necessary to preserve the health of employees at the food service establishment. Unnecessary medications present an unnecessary risk, may be improperly stored, and may lead to contamination of food. There are, however, circumstances that require employees or children in a day care center to have personal medications on hand in the establishment. Furthermore, some medications may require refrigerated storage. Subsection (8) requires that the necessary medicines be clearly labeled as such and stored away

from areas that could lead to possible food contamination.

16.10.232 [37.110.232] PREMISES (1) Food service establishments and all parts of property used in connection with their operations shall must be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of food service establishments shall must be surfaced with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall must be graded to prevent pooling and shall must be kept free of litter.

(3) Only articles necessary for the operation and maintenance of the food service establishment shall must be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and utensil washing areas is prohibited.

(5) No Any operation of a food service establishment shall may not be conducted in any room used as living quarters, or sleeping quarters or other non-food operations. Food service operations shall must be separated from any living or sleeping quarters by complete partitioning and with solid self-closing doors.

(6) Laundry facilities in a food service establishment shall must be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation. If such items are laundered on the premises, an electric or gas dryer shall must be provided and used.

~~(7)~~ (a) Separate rooms shall must be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

~~(b)~~ A mechanical washer and dryer is not required if on-premise laundering is limited to wiping cloths. The wiping cloths may be laundered in a warewashing or food preparation sink that is cleaned before and after use. If air-dried, the cloths must be dried in a location that prevents the contamination of food, equipment, utensils and linens.

~~(8)~~ (7) Clean clothes and linens shall must be stored in a clean place and protected from contamination until used.

~~(9)~~ (8) Soiled clothes and linens shall must be stored in non-absorbent containers or washable laundry bags until removed for laundering.

~~(10)~~ (9) Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall must be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall must be stored in an orderly manner for the cleaning of that storage location.

~~(11)~~ Live animals, including birds and turtles, shall be excluded from within the food service operational premises and from adjacent areas under the control of the license holder. This exclusion does not apply to edible fish, crustacea, shellfish, or to fish in aquariums. Patrol dogs accompanying security or police officers, or guide dogs accompanying blind or deaf persons shall be permitted in dining areas.

(10) Except as specified in (11), live animals are prohibited from the premises of a food establishment.

(11) Live animals may be allowed in the following situations if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles will not occur:

(a) edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(b) patrol dogs accompanying police or security officers in offices and dining rooms, sales and storage areas, and sentry dogs running loose in outside fenced areas;

(c) in areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist a food employee or other person who is disabled, are controlled by the disabled food employee or disabled person and are not allowed to be on seats or tables;

(d) live or dead fish bait that is stored so that contamination of food, clean equipment, utensils and linens, and unwrapped single-service and single-use articles will not occur; and

(e) pets in the common dining areas of group residences at times other than during meals if:

(i) a partition of self-closing doors separate the common dining areas from food storage or food preparation areas;

(ii) condiments, equipment and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(iii) dining areas including tables, countertops and similar surfaces are effectively cleaned before the next meal service.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.232 Rationale

Subsection (6)(b) exempts food service establishments from providing laundry facilities when only wiping cloths are being laundered. This provision is to promote clean wiping cloth use and to facilitate cleaning to prevent the spread of pathogenic microorganisms to food and food contact surfaces. Subsection (6)(b) also provides guidelines on cleaning wiping cloths so as to not contaminate food and food contact surfaces while they are laundered. It allows the cloths to be washed in clean warewashing or food preparation sinks, and allows them to be air-dried in a manner that does not cause food contamination.

Subsections (10) and (11) deal with animals being on the premises. Subsection (10) prohibits animals except for the circumstances listed in (11). Animals need to be restricted because they carry disease-causing organisms and can transmit pathogens to humans through direct and indirect contamination of food and food contact surfaces. Animals shed hair continuously,

and they may deposit liquid or fecal waste, creating the need for more frequent and rigorous cleaning efforts.

Subsection (11) permits the presence of animals in certain circumstances, e.g., Guide Dogs for people with disabilities (which must be allowed pursuant to the federal Americans with Disabilities Act), and pets in residential facilities. Subsection (11) was added to recognize the special circumstances animals may be present.

16.10.236 [37.110.236] TEMPORARY FOOD SERVICE ESTABLISHMENTS (1) A temporary food service establishment shall must comply with the requirements of this subchapter, except as otherwise provided in this rule. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this subchapter.

(2) ~~These provisions Subsections (3) through (14) of this rule~~ are applicable whenever a temporary food service establishment is permitted, under the provisions of (1) of this rule, to operate without complying with all the requirements of this rule subchapter.

(3) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall must be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs or fish is prohibited. This prohibition does not apply to any potentially hazardous food that has been prepared and packaged under conditions meeting the requirements of this subchapter, is obtained in individual servings, is stored at a temperature of ~~45°F (7°C)~~ 41°F (5°C) or below, or as specified in ARM 16.10.203(61), or at a temperature of ~~140°F (60°C)~~ 135°F (57.2°C) or above in facilities meeting the requirements of this subchapter, and is served directly in the unopened container in which it was packaged.

(4) Ice that is consumed or that contacts food shall must be made under conditions meeting the requirements of this subchapter. The ice shall must be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall must be held in these bags until it is dispensed in a way that protects it from contamination.

(5) Equipment shall must be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.

(6) Food contact surfaces of equipment shall must be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall must be provided, as necessary, to prevent contamination.

(7) All temporary food service establishments without effective facilities for cleaning and sanitizing tableware shall must provide only single-service articles for use by the consumer.

(8) Enough potable water shall must be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for hand washing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

(9) Storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall may not be stored in direct contact with ice.

(10) All sewage, including liquid waste, shall must be disposed of by a lawfully constructed and operated public sewage disposal system, by approved portable toilet units with acceptable final waste disposal, or by properly constructed pit privies.

(11) A convenient hand washing facility shall must be available for food employee hand washing. This facility shall must consist of, at least, warm running water, soap, and individual paper towels.

(12) Floors shall be constructed of concrete, asphalt, tight wood, or other similar cleanable material kept in good repair. Dirt or gravel, when graded to drain, may be used as subflooring when covered with clean, removable platforms or duckboards, or covered with wood chips, shavings or other suitable materials effectively treated to control dust.

(13) Ceilings shall must be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall must be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall must be solid or screened and shall must be self-closing. Screening material used for walls, doors, or windows shall must be at least 16 mesh to the inch.

(14) Counter service openings shall must not be larger than necessary for the particular operation conducted. These openings shall must be provided with tight-fitting solid or screened doors or windows or shall must be provided with fans installed and operated to restrict the entrance of flying insects. Counter service openings shall must be kept closed, except when in actual use.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.236 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

Subsection (3) has been updated regarding the safe temperature requirements found in ARM 16.10.203.

16.10.238 [37.110.238] LICENSES (1) No person shall operate a food service establishment who does not have a valid license issued to him by the department. Only a person who complies with the requirements of this subchapter shall be entitled to receive or retain such a license. Licenses are not transferable. A valid license shall must be posted in every food service establishment.

(2) Any person desiring to operate a food service establishment shall make written application for a license on forms provided by the department. Such application shall must include the name and address of each applicant, the location and type of the proposed food service establishment.

(3) Prior to approval of an application for a license, the regulatory authority or the local health department sanitarians shall inspect the proposed food service establishment to determine compliance with the requirements of this subchapter.

(4) ~~The Montana department of health and environmental sciences shall~~ The department will issue a license to the applicant if an inspection by a state or local health officer or sanitarian reveals that the proposed food service establishment complies with all applicable requirements of this subchapter.

(5) The department may, after providing opportunity for hearing, revoke a license for serious or repeated violations of any of the requirements of this subchapter or for interference with the department or other authorized persons in the performance of duty.

(6) Prior to revocation, the department shall will notify, in writing, the holder of the license or the person in charge, licensee of the specific reason(s) for which the license is to be revoked and that the license shall be revoked at the end of the ten days following service of such notice unless a written request for hearing is filed with the department by the holder of the license within such 10-day period following service. The notice will further provide for the licensee the opportunity to request an administrative hearing in front of the department within 10 business days after the receipt of the notice. If no request for hearing is filed within the 10-day period, the revocation of the license becomes final.

(7) ~~Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to cancellation of the license for that violation.~~ The licensee may submit to the department an acceptable plan of correction within 10 business days after receiving the department's notice of revocation. Such an acceptable plan of correction will be a bar to canceling the license.

(8) A notice provided for in this rule is properly served when it is delivered to the holder of the license, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the license. A copy of the notice shall will be filed in the records of the department.

(9) The hearing provided for in this rule ~~shall~~ will be conducted by the department at a time and place designated by it pursuant to Title 2, chapter 4, subchapter 6, MCA of the Montana Administrative Procedure Act regarding contested cases and ARM 37.5.117. The department shall make a final finding based upon the complete hearing record and shall sustain, modify or rescind any notice or order considered in the hearing. ~~A written report of the hearing decision shall be furnished to the holder of the license by the department. The department will furnish a written report of the hearing decision to the licensee.~~

(10) Whenever a revocation of a license has become final, the holder of the revoked license may make written application for a new license.

(11) Obtaining the license referred to in (1) of this rule does not relieve the applicant from satisfying applicable requirements for obtaining and maintaining from other federal, state or local agencies. These may include, but are not limited to:

- (a) a building code permit permits and inspections;
- (b) a plumbing permit; or fire and life safety inspections;
- (c) an electrical permit private or public water supply system or sewage treatment systems permits or inspections; or
- (d) occupational health and safety requirements.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, 50-50-201, 50-50-202, 50-50-203, 50-50-204, 50-50-205, 50-50-206, 50-50-207, 50-50-208, 50-50-209, 50-50-210, 50-50-211, 50-50-212, 50-50-213, 50-50-214 and 50-50-215, MCA

16.10.238 Rationale

Subsection (4) was changed to reflect the fact that the Department of Public Health and Human Services currently issues licenses, and the Department of Health and Environmental Sciences is now defunct. The definition of the "department" exists under ARM 16.10.203(13).

Subsections (6) and (7) were reworded for clarity without any substantive changes.

Subsection (9) adds a reference to the Montana Administrative Procedure Act in order to provide clearer notice to the public as to what procedure is used for the hearings.

Subsection (11) updates the list of other regulatory authorities that food service establishments must adhere to. Other agencies must review and approve safety or permit requirements before the food service establishment can operate. Subsection (11) provides an updated list of other agencies whose requirements must be met.

16.10.239 [37.110.239] INSPECTIONS (1) The local health

officer or a sanitarian or sanitarian-in-training employed by or contracted with the local board of health ~~shall~~ must perform an inspection of each food service establishment within the jurisdiction of the local board of health at least twice every 12 months unless that schedule is modified by signed agreement with the department. Additional inspections of the food service establishment ~~shall~~ must be performed as often as necessary for the enforcement of this subchapter.

(2) The local health officer, local health department sanitarian or sanitarian-in-training, or an authorized representative of the department, after proper identification, must be permitted to enter any food service establishment at any reasonable time for the purpose of making inspections to determine compliance with this subchapter and must be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.

(3) Whenever an inspection of a food service establishment is made, the findings must be recorded on an inspection form authorized by the department. The inspection report form ~~shall~~ must summarize the requirements of this subchapter and ~~shall set forth a weighted point value for each requirement.~~ Inspection remarks must be written to reference the item violated and ~~shall~~ must state the correction to be made. ~~The rating score of the establishment will be the total of the weighted point values for all violations subtracted from 100.~~ A copy of the completed inspection report form must be furnished to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form is a public document that must be made available for public review or distribution upon payment of copying costs to any person upon request.

(4) The completed inspection report form ~~shall~~ must specify a reasonable period of time for the correction of the violations found and correction of the violations ~~shall~~ must be accomplished within the period specified, in accordance with the following provisions:

(a) All critical item violations of ~~4 or 5 point weighted items~~ shall ~~must~~ be corrected as soon as possible, but in any event, within 10 days following inspection. Critical items include the following:

(i) ARM 16.10.203(61); 16.10.204(1); 16.10.206(2), (4) and (7); 16.10.207(4), (5), (7), (8), (9), and (11); 16.10.208(1), (3), (6), (7) and (8)(d); 16.10.210(1), (4), (6) and (7)(e); 16.10.212(10) and (11); 16.10.213(9)(a); 16.10.215(1), (2), (3), (13)(d), (14), (15), (23), (24), (25), and (28); 16.10.217(1), (3) and (6); 16.10.218(1); 16.10.219(1), (2), (3) and (6); 16.10.221(3); 16.10.223(1), (4) and (5); 16.10.231(1), (2), (3), (5), (6), (7), (8) and (9); 16.10.232(10); 16.10.236(3), (8), (10) and (11); 16.10.240(4); 16.10.242(1); [Rule I](1) and (2); [Rule II](5); [Rule III]; [Rule IV]; [Rule V](3) and (4); and [Rule VI](3)(c) and (d);

(b) All 1 or 2 point weighted items other violations which are the remaining food establishment rules not mentioned in (4)(a) and (4)(a)(ii) shall ~~must~~ be corrected as soon as

possible, but in any event, by the time of the next routine inspection;

~~(c) When the rating score of the establishment is less than 60, the establishment shall initiate corrective action on all identified violations within 48 hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.~~

~~(d) (c) In the case of temporary food service establishments, all violations shall must be corrected within 24 hours.~~

(5) The inspection report shall must state that failure to comply with any time limits for corrections of critical item violations may result in cessation of food service operations.

(6) In the case of ~~4 and 5 point weighted~~ critical items, the local health officer, sanitarian, or sanitarian-in-training must conduct a follow-up inspection to check for correction compliance and record the results on an inspection form authorized by the department.

AUTH: Sec. 50-50-103, 50-50-301 and 50-50-305, MCA

IMP: Sec. 50-50-301, 50-50-302, 50-50-305, MCA

16.10.239 Rationale

Subsections (3) through (6) contain changes to help clarify the areas of the inspection process that have the most importance in achieving public health protection. A clear distinction between critical and other type violations is necessary to steer attention to the most important health issues for immediate correction. As defined in ARM 16.10.203(11), a critical item is a violation that is more likely than other violations to contribute to food contamination, illness, or environmental degradation. The critical item emphasis in (3) through (6) changes the point system inspection to better address public health concerns, and aims to be an easier process to deal with for both inspectors and food service establishment operators. The list of critical items found at (4)(a) parallel the critical items enumerated in the U.S. Food Code.

16.10.240 [37.110.240] EXAMINATION AND CONDEMNATION OF FOOD

(1) The owner or person in charge shall allow the regulatory authority to examine and sample food within the establishment at all reasonable times as is necessary for the enforcement of this subchapter and 50-31-509 and 50-31-510, MCA.

(2) If the regulatory authority finds or has probable cause to believe that food it has examined or sampled is adulterated or misbranded, it shall detain or embargo the food by affixing a tag to it which shall ~~prohibit~~ prohibits its removal or use until permission is given by the regulatory authority or a court.

(3) If the regulatory authority finds that the food is not adulterated or misbranded, it shall authorize its release; however, if it finds that it is adulterated or misbranded, it shall petition a justice court, city court, or district court

for an order condemning the food and authorizing its destruction.

(4) If the regulatory authority finds that a perishable food is "unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe," the regulatory authority shall immediately "condemn or destroy the article or in any other manner render the article unsalable as human food."

AUTH: Sec. 50-50-103 and 50-50-303, MCA
IMP: Sec. 50-50-103 and 50-50-509, MCA

16.10.240 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

The term "shall prohibit" was replaced with "prohibits" for better readability.

16.10.241 [37.110.241] REVIEW OF PLANS (1) Whenever a food service establishment is constructed or remodeled and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall must be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall must indicate the proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this subchapter. No A food service establishment shall may not be constructed or remodeled, nor shall and any existing building may not be converted into a food service establishment, except in accordance with plans and specifications approved by the regulatory authority.

(2) An existing building may not be used as a food service establishment and the use of one type of establishment may not change to another type of establishment without the prior approval of the regulatory authority.

(3) When a proposal to use an existing building as an establishment or to change the use from one type of establishment to another involves structural modification, plans meeting the requirements of (1) of this rule must be submitted to the regulatory authority for review and approval. If no structural modification is involved, the regulatory authority may waive the requirement for submission of plans if an inspection by the regulatory authority indicates that the proposed establishment meets the requirements of this subchapter.

(4) Individuals Persons operating food establishments are reminded that the plans and specifications must also be approved

by the local or state building official having jurisdiction.

(5) Whenever plans and specifications are required by (1) of this rule to be submitted to the department, the regulatory authority shall inspect the food service establishment prior to the start of operations, to determine compliance with the approved plans and specifications and with the requirements of this subchapter.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

16.10.241 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

16.10.242 [37.110.242] SUSPECTED DISEASE TRANSMISSION--: PROCEDURE (1) When the regulatory authority has reasonable cause to suspect possible disease transmission by an a food employee of a food service establishment, it may secure a morbidity history of the suspected food employee or make any other investigation as indicated and shall take appropriate action in accordance with ARM 16.28.301. The department may require any or all of the following measures:

(a) ~~The~~ the immediate exclusion of the food employee from employment in food service establishments;

(b) ~~Restriction~~ restriction of the food employee's services to some area of the establishment where there would be no danger of transmitting disease;

(c) ~~Adequate~~ adequate medical and laboratory examination of the food employee and of other employees authorized persons and of his and their body discharges.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103 and 50-50-105, MCA

16.10.242 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

In (4), the term "individuals" was replaced with the less vague term "persons operating food establishments."

16.10.243 [37.110.243] MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or indicate in writing to the department that each food establishment within the jurisdiction of the local board

will be inspected at least twice every 12 months as specified in ARM 16.10.239(1). meet each of the following requirements:

(2) Requests for cooperative agreements must contain the current risk analysis information required by the department.

(3) All local boards of health must meet the following criteria regardless of the existence or absence of a cooperative agreement:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in standardized food service inspection techniques. The department is responsible for making training and standardization review available on a periodic basis;

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) If a preliminary inspection is required under ARM 16.10.241, the food service establishment is inspected for compliance with this subchapter within 10 days after receiving notice from the department or the establishment that such a preliminary inspection is needed;

(ii) Each food service establishment within the jurisdiction of the local board of health is inspected at least twice every 12 months, or on the schedule specified in a signed agreement with the department;

(iii) All the requirements of ARM 16.10.239 are complied with;

(iv) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department;

(v) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

~~(2)~~ (4) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under ~~(1)~~ (3)(a) and (b) above shall may result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: Sec. 50-50-305, MCA

IMP: Sec. 50-50-305, MCA

16.10.243 Rationale

Subsection (1) contains additional language to clarify the options open to local jurisdictions to qualify for reimbursement from the department.

Subsection (2) contains new language to clarify what must be submitted with an application for a cooperative agreement with

the department.

Subsection (3) further clarifies that the minimum performance standards apply to all local jurisdictions.

The basis for adopting the proposed language in (1) through (3) is contained at 50-50-305(1), MCA. This statute enables the department to adopt rules regarding local health authorities' minimum performance requirements to qualify for reimbursement. Subsections (1) through (3) assures to the department that food service rules are being properly monitored by local health authorities.

16.10.251 [37.110.251] SEPARABILITY (1) If any provision or application of any provision of this subchapter is held invalid, that invalidity shall not affect other applications of this subchapter all other valid provisions remain in effect.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.251 Rationale

No substantive changes have been made, however in the rule language the word "shall" was replaced with "must" to comply with current bill drafting standards.

OPTIONS CONSIDERED:

The Food Code Task Force considered the following options:

1. Leaving the food service establishment regulations as they exist without revision. This option was rejected because the current regulation does not reflect current food safety practice. The Task Forces's goal was to update these regulations.

2. Adopting the Federal Model Food Code verbatim. This option was rejected by the Task Force members because:

(a) the department lacked statutory authority to adopt some of the Food Code's requirements;

(b) some provisions of the Food Code conflicted with Montana's laws and rules on communicable disease protection;

(c) some of the Food Code's enforcement provisions were regarded as being too onerous for food service operators and the regulating authorities that would have to enforce them; and

(d) the Task Force wished to maintain the familiar format of Montana's current regulations.

3. Not having any food regulations at all. This option was rejected because food establishments serving the public require health and safety regulations so the public does not contract food borne illness. The public health burden from food borne disease is great. Each year millions of people become ill, and

thousands die from the complications.

5. The rules, 16.10.205 on page 16-325, 16.10.233 on page 16-352, 16.10.234 and 16.10.235 on page 16-353 of the Administrative Rules of Montana are proposed to be repealed.

AUTH: Sec. 50-50-103, MCA

IMP: Sec. 50-50-103, MCA

ARM 16.10.205 is being repealed; its content has been relocated in 16.10.206.

ARM 16.10.233 through 16.10.235 as proposed to be repealed have been rewritten as [Rules V and VI]. The current language and organization of these rules was considered confusing and difficult to implement.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on October 10, 2000. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Health Policy and Services Division, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State August 14, 2000.

BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT AND
of rules pertaining to) ADOPTION
applicants registered in)
another state, qualifications)
for Montana branch office,)
examinations, individual seals,)
unprofessional conduct, and)
fees, and the adoption of rules))
pertaining to definitions,)
business entity practice,)
emergency use of architects)
and application for licensure)
by examination)

TO: All Concerned Persons

1. On May 25, 2000, the Board of Architects published a notice of the proposed amendment and adoption of the above-stated rules at page 1268, 2000 Montana Administrative Register, issue number 10. The hearing was held on June 20, 2000.

2. The Board has amended ARM 8.6.406, 8.6.409, 8.6.412, and 8.6.413 exactly as proposed.

3. The Board has amended ARM 8.6.405 and 8.6.407 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.6.405 LICENSURE OF APPLICANTS WHO ARE REGISTERED IN ANOTHER STATE (1) and (2) same as proposed.

(3) All applicants who are registered in another state or any foreign jurisdiction approved by the board and who were licensed in their respective jurisdiction prior to January 1, 1966, shall submit evidence of having successfully completed an NCARB-approved seismic exam or other board approved component. An applicant who is registered in another state or any foreign jurisdiction approved by the board and who meets all requirements except the seismic force exam, must successfully complete only that exam to satisfy licensure requirements.

8.6.407 EXAMINATION (1) same as proposed.

(2) All eligibility requirements shall have been verified by the council record and have been satisfied in accordance with the NCARB handbook for interns and architects. The handbook is available through the National Council of Architectural Registration Boards, ~~1735 New York Avenue, N.W.,~~ 1801 K Street NW, Suite 1100, Washington, D.C. 20006 or the Montana board of architects and is adopted and incorporated herein by reference.

(3) and (3)(a) same as proposed.

(b) meet the alternate education criteria outlined in the ~~national council of architectural registration boards (NCARB)~~ education standards. The handbook is available through the National Council of Architectural Registration Boards, ~~1735 New York Avenue, N.W., 1801 K Street NW, Suite 1100~~, Washington, D.C. 20006, or the Montana board of architects.

(4) through (7) same as proposed.

4. The Board adopted NEW RULE I (ARM 8.6.420) DEFINITIONS, NEW RULE III (ARM 8.6.422) EMERGENCY USE OF ARCHITECTS, NEW RULE IV and (ARM 8.6.423) LICENSURE OF APPLICANTS BY EXAMINATION exactly as proposed.

5. The Board adopted NEW RULE II (ARM 8.6.421) BUSINESS ENTITY PRACTICE as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE II (ARM 8.6.421) BUSINESS ENTITY PRACTICE

(1) same as proposed.

(2) Nothing shall prevent a partnership (including a registered limited liability partnership), limited liability company or corporation (including a professional corporation) from performing or holding itself out as able to perform any of the services involved in the practice of architecture; provided, that two-thirds of the general partners (if a partnership), two-thirds of the managers (if a limited liability company), or two-thirds of the directors (if a corporation) are registered under the laws of any United States jurisdiction or any foreign jurisdiction approved by the board as architects or engineers and that one-third of the general partners, managers or directors are registered as architects in Montana.

6. The Board received one comment. The comment received and the Board's response are as follows:

COMMENT NO. 1: One commentor stated that subsection (2) of New Rule II needed clarification where it states that "one-third are registered as architects in Montana" so that people know what the board is referring to.

RESPONSE: The Board reviewed and discussed the comment and voted to amend the language in New Rule II for clarification purposes.

BOARD OF ARCHITECTS
GENE VOGL, PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 2000.

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

In the matter of the adoption) NOTICE OF ADOPTION
of a rule pertaining to)
appraisal reviews)

TO: All Concerned Persons

1. On March 30, 2000, the Board of Real Estate Appraisers published a notice of the proposed adoption of the above-stated rule at page 785, 2000 Montana Administrative Register, issue number 6. The hearing was held April 21, 2000.

2. The Board adopted NEW RULE I (ARM 8.57.422) APPRAISAL REVIEW as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (ARM 8.57.422) APPRAISAL REVIEW (1) same as proposed.

(2) Implementation of disciplinary proceedings necessitates a standard 3 review before action can be taken.

3. The Board received three comments. The comments received and the Board's response are as follows:

COMMENT NO. 1: One commentor suggested that the rule be written in such a way as to spell out the exemptions for the application only.

RESPONSE: The Board concurs with that suggestion and has added subsection (2) for clarification purposes.

COMMENT NO. 2: One commentor requested that the Board not weaken the integrity of USPAP.

RESPONSE: The Board believes that with the adoption of this rule change the integrity of USPAP is upheld and the citizens of Montana are better protected.

COMMENT NO. 3: One commentor suggested that a change be made in USPAP and that a certified appraiser who serves on a tax appeal board for the Department of Revenue be exempt from USPAP.

RESPONSE: The Board considered the comment and determined that it was beyond the purview and authority of the board.

BOARD OF REAL ESTATE APPRAISERS
ROGER JACOBSON, CHAIRPERSON

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 2000.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to)
applications, temporary)
permits, examinations and)
licensure of out-of-state)
applicants)

TO: All Concerned Persons

1. On June 29, 2000, the Board of Veterinary Medicine published a notice of the proposed amendment of the above-stated rules at page 1544, 2000 Montana Administrative Register, issue number 12.

2. The Board has amended ARM 8.64.502 exactly as proposed.

3. The Board has amended ARM 8.64.501, 8.64.503, and 8.64.509 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.64.501 APPLICATION REQUIREMENTS (EXAMINATION)

(1) same as proposed.

(2) All applicants must:

(a) pass the NAVLE at or above the designated passing standard established by the national examination entity as approved by the board ~~national board examination committee~~; or

(b) same as proposed.

(3) and (4) same as proposed.

8.64.503 EXAMINATION FOR LICENSURE (1) and (1)(a) same as proposed.

(b) ~~the North American veterinary licensing examination (NAVLE)~~ pursuant to the requirements set forth in ARM 8.64.501, which must have been passed at or above the designated passing standard established by the national examination entity as approved by the board ~~national board examination committee~~. The scores must be received by the board from the official score reporting agency; and

(c) same as proposed.

(2) same as proposed.

8.64.509 LICENSURE OF OUT-OF-STATE APPLICANTS (ENDORSEMENT) (1) and (1)(a) same as proposed.

(b) The candidate has passed:

(i) ~~the North American veterinary licensing examination~~ NAVLE at or above the designated passing standard established by the national examination entity as approved by the board ~~national board examination committee~~;

(ii) and (iii) same as proposed.

(c) through (h) same as proposed.

4. The Board received three comments. The comments received and the Board's response are as follows:

COMMENT NO. 1: One comment was received asking if the proposed rule change would preclude endorsement applicants, who were licensed in other states prior to the administration of the National Board Examination (in 1954), from licensing via the endorsement method.

RESPONSE: The Board responded that it has required endorsement candidates to have taken the National Board Examination and the Clinical Competency Test (CCT) or a state competency exam (in place of the CCT) since the inception of licensure by endorsement. As the Board no longer conducts its own state veterinary exam, the public's health, safety, and welfare is best assured by licensure of competent veterinarians by requiring, at a minimum, the National Board Examination and a competency based test.

COMMENT NO. 2: One comment was received that the proposed amendment to ARM 8.64.509(1)(g) seemed incongruent. The commentator questioned the licensure of an applicant who failed a practical exam in another state.

RESPONSE: The Board responded that the proposed amendment excludes an endorsement applicant who has failed the veterinary practical licensing exam in this state. (Emphasis added.) It appears that this proposed amendment may have been misread. The Board intends that an applicant who failed the Montana State Practical exam not be allowed to circumvent the examination requirements by licensing through the endorsement method. The public would be better assured of competency by requiring passing national exam scores obtained within the last 62 months.

COMMENT NO. 3: It had come to the Board's attention that the National Board Examination Committee, which is the current national organization that designates the passing standard for the national exam, is changing its name. It was questioned whether the specific name of this organization should be in the Board's rules as it is in the proposed rule change.

RESPONSE: The Board responded that "National Board Examination Committee" should be replaced in the proposed rule by the phrase "the national examination entity as approved by the Board." This change in wording will prevent the necessity of additional rule changes for any future name change to this organization.

BOARD OF VETERINARY MEDICINE
KENNETH BROWN, DVM, PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 2000.

BEFORE THE DIVISION OF BANKING
AND FINANCIAL INSTITUTIONS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF A NEW
of a new rule pertaining to the) RULE PERTAINING TO THE
investments by banks to promote) INVESTMENTS BY BANKS TO
the public welfare) PROMOTE THE PUBLIC WELFARE

TO: All Concerned Persons

1. On June 29, 2000, the Division of Banking and Financial Institutions published a notice of proposed adoption at page 1549, 2000 Montana Administrative Register, issue number 12.

2. The Division has adopted new rule I (8.80.113) exactly as proposed.

3. No comments or testimony were received.

DIVISION OF BANKING AND
FINANCIAL INSTITUTIONS

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 2000.

BEFORE THE TRAVEL PROMOTION
AND DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF A
of a rule pertaining to the) RULE PERTAINING TO THE
Travel Promotion and Develop-) TRAVEL PROMOTION AND
ment Division) DEVELOPMENT DIVISION

TO: All Concerned Persons

1. On April 27, 2000, the Travel Promotion and Development Division published a notice of proposed amendment at page 993, 2000 Montana Administrative Register, issue number 8.
2. The Division has amended ARM 8.119.101 exactly as proposed.
3. No comments or testimony were received.

TRAVEL PROMOTION AND
DEVELOPMENT DIVISION

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 2000.

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT OF
amendment of ARM 24.26.215,) ARM 24.26.215, AND THE
regarding remands from the) ADOPTION OF ONE NEW RULE
Board, and the adoption of)
one new rule regarding merger)
of labor organizations)

TO: All Concerned Persons

1. On June 15, 2000, the Board of Personnel Appeals published notice at page 1473 of the 2000 Montana Administrative Register, Issue No. 11, to consider the amendment and adoption of the above-captioned rules.

2. On July 7, 2000, a public hearing was held in Helena concerning the proposed amendments and new rule at which oral and written comments were received. No additional written comments were received prior to the closing date of July 14, 2000. No member of the public commented on the proposed amendments to ARM 24.26.215.

3. The Board of Personnel Appeals met on August 10, 2000, to consider the comments and testimony received on the proposed new rule. The following is a summary of the comments received, along with the Board's response to those comments:

Comment 1: A representative of the Montana Education Association and the Montana Federation of Teachers ("MEA-MFT") spoke and presented written testimony in favor of proposed NEW RULE I.

Response 1: The Board thanks the MEA-MFT for its comments in support of NEW RULE I.

Comment 2: A representative of the Montana School Boards Association ("MSBA") spoke in favor of proposed NEW RULE I.

Response 2: The Board thanks the MSBA for its comments in support of NEW RULE I.

4. The Board amends ARM 24.26.215 exactly as proposed.

5. The Board adopts NEW RULE I exactly as proposed:

NEW RULE I (24.26.651) MERGERS AND CONSOLIDATIONS

6. The amendments and new rule are effective August 25, 2000.

/s/ KEVIN BRAUN

Kevin Braun
Rule Reviewer

/s/ JACK HOLSTROM

Jack Holstrom, Presiding Officer
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State: August 14, 2000.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of amendment of) NOTICE OF TEMPORARY
a temporary emergency rule) EMERGENCY AMENDMENT
as it pertains to the)
producer floor pricing of)
class I milk)

TO: All Concerned Persons

1. The board of milk control believes the following reasons support implementation of a temporary emergency amendment to ARM 32.24.301:

(a) That if the producer class I floor price, to be effective September 1, 2000, is implemented, approximately 37% of the Montana milk producers will not be able to profitably market their milk, as Meadow Gold Dairies intends to purchase its raw milk supply from out-of-state if Montana milk is priced higher than surrounding areas.

(b) That if the board does not act immediately to avert or remedy this situation, caused in part by imminent implementation of the class I producer floor price, the Montana consumers' right to an adequate and continuous supply of wholesome class I milk could be seriously jeopardized and other injuries and disruptions to the milk industry could occur.

(c) Therefore, as these conditions were not foreseeable and cannot be averted or remedied any other way, the board intends to adopt the following temporary emergency amendment. The rule as amended will be mailed to all licensed producers, processors and commenting parties and published as a temporary emergency amendment in Issue No. 16 of the 2000 Montana Administrative Register.

2. The milk control bureau will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the milk control bureau no later than 5:00 p.m. on the date set for rulemaking (a standard rulemaking procedure will take place sometime within the next 120 days). Please contact Marlys Mattfeldt, PO Box 202001, Helena, Montana, 59620-2001; telephone 406-444-2875; TDD 1-800-253-4091; fax 406-444-1432.

3. The temporary emergency amendment is effective August 14, 2000.

4. The text of the temporary emergency amendment is as follows: (text of present rule with matter to be stricken

interlined and new matter added, then underlined)

32.24.301 PRICING RULES

(1) through (4) remain the same.

(5) The minimum class I price per hundredweight at 3.5% butterfat which shall be paid to producers by distributors in the state of Montana, shall be the monthly federal order price according to 7 CFR 1000.50(a) through (c) plus a Montana class I location differential of \$2.55. ~~If the resulting computation is below \$15 per hundredweight, the location differential of \$4.30 will be utilized and compared to a \$15 after effect. The lower of the 2 numbers will become the minimum monthly announced Montana class I price.~~

(5)(a) through (9) remain the same.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

5. The rationale for the temporary emergency amendment is as set forth in paragraph 1.

6. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency amendment.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Milk Control Bureau, 301 N. Roberts Street - Room 236, PO Box 202001, Helena, MT 59620-2001.

8. The milk control bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding milk issues. Such written request may be mailed or delivered to the Milk Control Bureau, 301 N. Roberts Street - Room 236, PO Box 202001, Helena, MT 59620-2001.

9. The business and labor interim committee has been notified of the amendment of this temporary emergency rule.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State August 14, 2000.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 37.86.1101 pertaining to)
outpatient drugs definitions)

TO: All Interested Persons

1. On June 29, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 1624 of the 2000 Montana Administrative Register, issue number 12.

2. The Department has adopted the rule ARM 37.86.1101 pertaining to outpatient drugs definitions as proposed.

3. No comments or testimony were received.

4. Necessary system changes which were needed in order to provide retroactive application of the change in estimated acquisition costs have not been completed by the Department. Thus retroactive application of this rule amendment is not possible. As retroactive application of the rule is not possible, the Department has withdrawn the July 1, 2000 application date. The rule will be effective the day after publication in accordance with the Montana Administrative Procedure Act (MAPA).

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State August 14, 2000.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE
Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, Public Retirement Systems, and
Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2000. This table includes those rules adopted during the period April 1, 2000 through June 30, 2000 and any proposed rule action that was 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 March 31, 2000, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1999 and 2000 Montana Administrative Registers.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in July 2000, appear. Vacancies scheduled to appear from September 1, 2000, through November 30, 2000, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 8, 2000.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JULY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Aging Advisory Council (Public Health and Human Services)			
Ms. Wesleta Branstetter	Governor	Mackay	7/18/2000
Billings			7/18/2003
Qualifications (if required):	public member		
Ms. Eloise England	Governor	reappointed	7/18/2000
Heart Butte			7/18/2003
Qualifications (if required):	public member		
Mr. Joseph W. Upshaw	Governor	Feller	7/18/2000
Helena			7/18/2003
Qualifications (if required):	public member		
Board of Barbers (Commerce)			
Mr. Terrance Luff	Governor	Buckmaster	7/26/2000
Billings			7/1/2003
Qualifications (if required):	practicing barber		
Board of Cosmetologists (Commerce)			
Mr. Wendell Petersen	Governor	reappointed	7/1/2000
Missoula			7/1/2004
Qualifications (if required):	licensed cosmetologist		
Board of Crime Control (Justice)			
Chief Robert Jones	Governor	Shortell	7/20/2000
Great Falls			1/1/2001
Qualifications (if required):	representing police chiefs		
Board of Funeral Service (Commerce)			
Mr. John Michelotti	Governor	reappointed	7/1/2000
Billings			7/1/2005
Qualifications (if required):	mortician engaged in a crematory operation		

BOARD AND COUNCIL APPOINTEES FROM JULY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Hearing Aid Dispensers (Commerce)			
Ms. Cindy Burk Helena	Governor	reappointed	7/1/2000 7/1/2003
Qualifications (if required):	hearing aid dispenser without a master's degree		
Dr. Paul J. Byorth Billings	Governor	reappointed	7/1/2000 7/1/2003
Qualifications (if required):	otolaryngologist		
Ms. Beckie Hoffmann Butte	Governor	Anderson	7/1/2000 7/1/2003
Qualifications (if required):	hearing aid dispenser without a master's degree		
Ms. Marlene Tash Dillon	Governor	reappointed	7/1/2000 7/1/2003
Qualifications (if required):	public member		
Board of Landscape Architects (Commerce)			
Mr. Stacey Robinson Billings	Governor	Foley	7/17/2000 7/1/2004
Qualifications (if required):	landscape architect		
Board of Nursing (Commerce)			
Ms. Vickie Badgley Stevensville	Governor	reappointed	7/26/2000 7/1/2004
Qualifications (if required):	licensed practical nurse		
Ms. Alma Gretchen McNeely Bozeman	Governor	Ballantyne	7/26/2000 7/1/2004
Qualifications (if required):	registered nurse/educator		

BOARD AND COUNCIL APPOINTEES FROM JULY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Pharmacy (Commerce) Mr. Robert Mann Plentywood Qualifications (if required): pharmacist	Governor	Hedman	7/18/2000 7/1/2005
Board of Public Accountants (Commerce) Mr. Russell Fillner Helena Qualifications (if required): certified public accountant	Governor	Solem	7/19/2000 7/1/2005
Board of Regents of Higher Education (Education) Ms. Jessica Kobos Missoula Qualifications (if required): student representative	Governor	Fritz	7/1/2000 7/1/2001
Board of Research and Commercialization Technology (Commerce) Mr. Gordon Belcourt Billings Qualifications (if required): Native American	Governor	reappointed	7/17/2000 7/1/2002
Board of Sanitarians (Commerce) Ms. Denise Moldroski Livingston Qualifications (if required): registered sanitarian	Governor	reappointed	7/1/2000 7/1/2003
Board of Veterinary Medicine (Commerce) Ms. Mary Hinebauch Miles City Qualifications (if required): public member	Governor	reappointed	7/18/2000 7/31/2005
Dr. Linda Kauffman Stevensville Qualifications (if required): veterinarian	Governor	Yarborough	7/18/2000 7/31/2005

BOARD AND COUNCIL APPOINTEES FROM JULY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Water Well Contractors (Natural Resources and Conservation)			
Mr. Kevin Haggerty Bozeman	Governor	reappointed	7/17/2000 7/1/2003
Qualifications (if required): licensed water well contractor			
Commission on Community Service (Governor's Office)			
Ms. Nancy Coopersmith Helena	Governor	reappointed	7/26/2000 7/1/2003
Qualifications (if required): representing K-12 education			
Mr. George Dennison Missoula	Governor	reappointed	7/26/2000 7/1/2003
Qualifications (if required): representing higher education			
Ms. Jan Kalgaard Helena	Governor	reappointed	7/26/2000 7/1/2003
Qualifications (if required): representing youth human services			
Mr. Donald Kettner Glendive	Governor	Ramirez	7/26/2000 7/1/2003
Qualifications (if required): representing private citizens			
Ms. Wanda Raining Bird Harlem	Governor	Bixby	7/26/2000 7/1/2002
Qualifications (if required): representing tribal government			
Major John Walsh Helena	Governor	reappointed	7/26/2000 7/1/2003
Qualifications (if required): representing the Department of Military Affairs			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)			
Mr. Pat Ellis Bozeman	Governor	reappointed	7/17/2000 7/1/2004
Qualifications (if required): public member			
Ms. Lois A. Menzies Helena	Governor	reappointed	7/17/2000 7/1/2004
Qualifications (if required): state treasurer			
Family Support Services Advisory Council (Public Health and Human Services)			
Ms. Denise King Helena	Governor	Gillespie	7/17/2000 9/14/2000
Qualifications (if required): representing Medicaid/Childrens Services			
Health Care Advisory Council (Public Health and Human Services)			
Ms. Nancy Taylor Townsend	Governor	Taylor	7/20/2000 6/30/2001
Qualifications (if required): representative of Region 4			
Montana Historical Society Board of Trustees (Historical Society)			
Mr. Burton O. Bosch Havre	Governor	Burke	7/1/2000 7/1/2005
Qualifications (if required): public member			
Ms. Ana Brenden Scobey	Governor	reappointed	7/1/2000 7/1/2005
Qualifications (if required): public member			
Mr. Tim Fox Helena	Governor	Hayne	7/1/2000 7/1/2005
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Mint Committee (Agriculture)			
Mr. Clyde Fisher	Governor	reappointed	7/1/2000
Columbia Falls			7/2/2002
Qualifications (if required): representative of the mint industry council			
Mr. Bill Kleinhans	Governor	Clarke	7/1/2000
Somers			7/1/2003
Qualifications (if required): mint grower			
Mr. Ken Smith	Governor	Tutvedt	7/1/2000
Kalispell			7/1/2003
Qualifications (if required): mint grower			
Organ Donor Awareness Task Force (Public Health and Human Services)			
Ms. Pamela Meyer	Governor	Meyer	7/17/2000
Lame Deer			3/23/2002
Qualifications (if required): Native American representative			
Peace Officers Standards and Training Advisory Council (Justice)			
Chief Mark Tymrak	Governor	Jones	7/20/2000
Bozeman			2/14/2002
Qualifications (if required): representing the Police Chiefs Association			
State Banking Board (Commerce)			
Mr. James Drummond	Governor	reappointed	7/1/2000
Bozeman			7/1/2003
Qualifications (if required): officer of a state bank and representing large size banks			
Ms. Barbara Skelton	Governor	reappointed	7/1/2000
Billings			7/1/2003
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Emergency Response Commission (Military Affairs) Mr. David A. Galt Helena Qualifications (if required): public member	Governor	Rouse	7/20/2000 10/1/2003
Teachers' Retirement Board (Administration) Mr. Tim Ryan Great Falls Qualifications (if required): public member	Governor	reappointed	7/2/2000 7/1/2004
Tourism Advisory Council (Commerce) Mr. Ed Henrich Fairmont Qualifications (if required): representing Goldwest Country	Governor	reappointed	7/19/2000 7/1/2003
Ms. Donna Madson West Yellowstone Qualifications (if required): representing Yellowstone Country	Governor	reappointed	7/19/2000 7/1/2003
Mr. Timothy Prather Red Lodge Qualifications (if required): representing Yellowstone Country	Governor	reappointed	7/19/2000 7/1/2003
Mr. Clark Whitehead Lewistown Qualifications (if required): representing a federal agency and Russell Country	Governor	reappointed	7/19/2000 7/1/2003
Mr. Richard J. Young Poplar Qualifications (if required): representing Missouri River Country and tribal government	Governor	reappointed	7/19/2000 7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2000 through November 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Health Care Board (Commerce) Dr. Michael Bergkamp, Helena Qualifications (if required): naturopath	Governor	9/1/2000
Board of Outfitters (Commerce) Mr. Robin Cunningham, Gallatin Gateway Qualifications (if required): fishing outfitter	Governor	10/1/2000
Board of Psychologists (Commerce) Ms. JoAnn Witt, Carter Qualifications (if required): public member	Governor	9/1/2000
Eastern Montana State Veterans Cemetary Advisory Council (Military Affairs) Mr. James F. Jacobsen, Helena Qualifications (if required): none specified	Director	11/10/2000
Mr. Tony Harbaugh, Miles City Qualifications (if required): Custer County Sheriff's Office	Director	11/10/2000
Family Support Services Advisory Council (Public Health and Human Services) Ms. Jackie Jandt, Helena Qualifications (if required): addictive and mental disorders representative	Governor	9/14/2000
Ms. Barbara Stefanic, Laurel Qualifications (if required): representing public preschool service providers	Governor	9/14/2000
Ms. Sharon Wagner, Helena Qualifications (if required): representing services for children with special health care needs	Governor	9/14/2000
Ms. Sylvia Danforth, Miles City Qualifications (if required): representing Part C contractors	Governor	9/14/2000

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2000 through November 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont. Ms. Gwen Beyer, Polson Qualifications (if required): representing families of children with disabilities	Governor	9/14/2000
Ms. Millie Kindle, Malta Qualifications (if required): representing families of children with disabilities	Governor	9/14/2000
Mr. Ted Maloney, Missoula Qualifications (if required): representing the public	Governor	9/14/2000
Ms. Sue Forest, Missoula Qualifications (if required): representing higher education/personnel preparation	Governor	9/14/2000
Ms. Beth Kenny, Helena Qualifications (if required): representing families of children with disabilities	Governor	9/14/2000
Mr. John Holbrook, Helena Qualifications (if required): representing technical expertise on private insurance issues	Governor	9/14/2000
Ms. Chris Volinkaty, Missoula Qualifications (if required): representing Part C contractor agencies	Governor	9/14/2000
Mr. Dan McCarthy, Helena Qualifications (if required): representing Office of Public Instruction	Governor	9/14/2000
Ms. Sandi Marisdotter, Helena Qualifications (if required): representing Part C contractor agencies	Governor	9/14/2000
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) Mr. David Herrera, Billings Qualifications (if required): public member	Governor	11/23/2000

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2000 through November 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont. Ms. Pam Bragg, Helena Qualifications (if required): public member	Governor	11/23/2000
Ms. Rita Munzenrider, Lolo Qualifications (if required): public member	Governor	11/23/2000
Ms. Verbena Savior, Poplar Qualifications (if required): public member	Governor	11/23/2000
Mr. Frank Gary, Butte Qualifications (if required): public member	Governor	11/23/2000
Ms. Teresa Louise Dunn, Whitefish Qualifications (if required): public member	Governor	11/23/2000
Ms. Geraldine (Jeri) Snell, Miles City Qualifications (if required): public member	Governor	11/23/2000
Dr. Paul Kathrein, Great Falls Qualifications (if required): public member	Governor	11/23/2000
Mr. Steven C. Yeakel, Helena Qualifications (if required): public member	Governor	11/23/2000
Sen. John Bohlinger, Billings Qualifications (if required): legislator	Governor	11/23/2000
Historical Preservation Review Board (Historical Society) Mr. Kirk Michels, Livingston Qualifications (if required): architectural historian	Governor	10/1/2000

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2000 through November 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Preservation Review Board (Historical Society) cont. Mr. Dennis L. Deppmeier, Billings Qualifications (if required): historical architect	Governor	10/1/2000
Lewis and Clark Bicentennial Commission (Historical Society) Ms. Jeanne Eder, Dillon Qualifications (if required): enrolled member of a Montana Indian Tribe	Governor	10/1/2000
Ms. Edythe McCleary, Hardin Qualifications (if required): public member	Governor	10/1/2000
Mr. John G. Lepley, Fort Benton Qualifications (if required): public member	Governor	10/1/2000
Montana Historical Records Advisory Council (Historical Society) Mr. Timothy Bernardis, Crow Agency Qualifications (if required): public member	Governor	9/14/2000
Ms. Ellen Crain, Butte Qualifications (if required): public member	Governor	9/14/2000
Ms. Kathryn Otto, Helena Qualifications (if required): state archivist	Governor	9/14/2000
Mr. Robert M. Clark, Helena Qualifications (if required): public member	Governor	9/14/2000
Montana Vocational Rehabilitation Council (Public Health and Human Services) Ms. Arlene Templer, St. Ignatius Qualifications (if required): none specified	Director	11/30/2000

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2000 through November 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. Harry Woll, Kalispell Qualifications (if required): none specified	Director	9/23/2000
Mr. LaMonte Schnur, Townsend Qualifications (if required): none specified	Director	9/23/2000
Mr. Dennis Perry, Choteau Qualifications (if required): none specified	Director	9/23/2000
Ms. Marjorie Schuler, Carter Qualifications (if required): none specified	Director	9/23/2000
Mr. Bob McNeill, Dillon Qualifications (if required): none specified	Director	9/23/2000
Mr. Kerry Kovanda, Columbus Qualifications (if required): none specified	Director	9/23/2000
Mr. W. Ralph Peck, Helena Qualifications (if required): none specified	Director	9/23/2000
Mr. Don Walker, Glendive Qualifications (if required): none specified	Director	9/23/2000
Mr. Robert Carlson, Butte Qualifications (if required): none specified	Director	9/23/2000
Mr. Ray Ditterline, Bozeman Qualifications (if required): none specified	Director	9/23/2000

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2000 through November 30, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. Dennis Cash, Bozeman Qualifications (if required): none specified	Director	9/23/2000
SABHRS Executive Council (Administration) Mr. Terry Johnson, Helena Qualifications (if required): Tier 1	Director	10/29/2000
Mr. Tony Herbert, Helena Qualifications (if required): Tier 1	Director	10/29/2000
Mr. William Salisbury, Helena Qualifications (if required): Tier 2	Director	10/29/2000
Water and Wastewater Operators Advisory Council (Health and Environmental Sciences) Mr. Lee Leivo, Big Fork Qualifications (if required): wastewater plant operator	Governor	10/16/2000