MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 13
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed Amendment of ARM 24-3.9(2)-P9116, Rule 17 and Rule 25, Dealing with Pre-hearing Procedure Before the Montana Human Rights Commission and with the Appeal of a Hearing Examiner's Proposed Order to the Montana Human Rights Commission	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 24-3.9(2)-P9116, Rule 17 and Rule 25, Dealing with Pre-hearing Procedure Before the Montana Human Rights Commission and with the Appeal of a Hearing Examiner's Proposed Order to the Montana Human Rights Commission

To: All Interested Persons:

1. On August 21, 1979, at 1:30 p.m., a public hearing will be held in Room 300 of the Steamboat Block, Helena, Montana, to consider the Amendment of ARM 24-3.9(2)-P9116.

2. The proposed Amendments will be to Rules 17 and 25 of the above - stated rule and will read as follows: (new matter underlined, deleted matter interlined)

"Rule 17. Contested Cases, Informal Disposition, Pre-hearing Conference. In any contested case a formal proceeding may be waived pursuant to MCA 2-4-603. ~~Section 82-4209-(4)-provides-for-informal-disposition-of-any-contested-cases-where-not-precluded-by law,-by-stipulation,-agreed-statement,-or-consent-order-(delete-"or-default").--For-default,-see-Rule-16; see-also-Rules-24-3.9(2)-P9076-and-24-3.9(2)-P9077.~~

~~Parties-may-agree-to-the-result.--To-this-end the-Commission-may-hold-one-or-more-informal-conferences-on-notice-to-all-parties.--(Delete-last-sentence of-this-paragraph.)~~

In any contested case, an informal pre-hearing conference may be used to consider motions, define issues, determine witnesses, agree upon stipulations, or any other valid purpose reasonably intended to prepare a case for hearing. ~~The-Commission-may-appoint-a-hearing-examiner-for-the-purpose-of-conducting a-pre-hearing-conference-or-resolving-any-other-pre-hearing-matters.~~ The Commission, or hearing examiner if one has been appointed, may require the parties to take part in a pre-hearing conference and/or to assist in preparing a Pre-hearing Order. The pre-hearing conference will be held when and where the Commission or hearing examiner decides, and may be held by phone. If a Pre-hearing Order is issued, it shall control the subsequent course of the action, unless modified to prevent manifest injustice.

Rule 25. Contested Cases, Proposed Orders. If a hearing examiner conducted the hearing and a majority of the Commission members have not read the record, a written proposed order, including findings of fact and

conclusions of law, shall be served upon each of the parties, or their attorneys, if they are represented by private counsel, and on the Division. ~~An opportunity to file exceptions, present briefs, and make oral arguments to the officials who are to render the decision shall be granted to all parties adversely affected and to the Division. Section 82-4212.~~ If dissatisfied with the hearing examiner's proposal, a party or the Division may file exceptions within twenty (20) days of the date of the proposed order, or ten (10) days after the filing of exceptions by the other party or the Division, whichever period is longer.

If a party is the first to file exceptions to any of the hearing examiner's findings of fact, that party shall at the time of filing said exceptions request a written transcript as provided by Rule 22, ARM 24-3.9 (2)-P9116, or else indicate that such a written transcript shall be filed within forty (40) days after the date of the hearing examiner's proposed order, unless otherwise ordered by the Commission.

Briefs in support thereof may be filed with any exceptions; however, when exceptions include exceptions to findings of fact, a brief in support thereof need not be filed until twenty (20) days after the filing of the written transcript. Responsive briefs may be filed within ten (10) days after initial briefs, and reply briefs may be filed within (10) days after that.

For the purposes of this Rule, all filing shall be at the Commission's Office in Helena and shall be deemed complete when the original is either personally served or placed in the mail and copies are served or mailed to all adverse parties.

The Commission must give the opportunity for oral argument to all parties adversely affected and to the Division only when there is no written transcript made of the proceedings before the hearing examiner. If a majority of the Commission has read the record, then oral arguments will be heard only upon request of the Commission. MCA 2-4-621 (RCM 82-4212).

Other than the above Amendments, the remainder of ARM 24-3.9 (2)-P9116 remains the same.

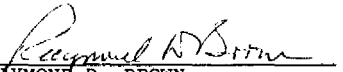
3. The Commission is proposing Amendment of the above Rule to implement recent Amendments to MCA 2-4-601, 2-4-603, and 2-4-621 (RCM 82-4209 and 82-4212), and to clearly define Pre-hearing Procedures before the Commission and procedures to be used before the Commission in order to make exceptions to a hearing examiner's proposed decision.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

5. Karen Townsend, Room 300, Steamboat Block, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204(64-315 RCM 1947). **IMP - Same**

HUMAN RIGHTS COMMISSION
KAREN TOWNSEND, CHAIR

BY: 
RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, July 3, 1979.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the cancellation of notice of public hearing relating to the extraordinary handling of reactor cows with unweaned calves	)	NOTICE OF CANCELLATION OF PUBLIC HEARING (Brucellosis Reactor Cows With Unweaned Calves)

TO: All Interested Persons

This is a notice of cancellation of a public hearing set for July 17, 1979, relating to Brucellosis reactor cows with unweaned calves that was published in 1979 Montana Administrative Register page 519-520, Issue 11.

This hearing will be reset at a later date and will be published in the Montana Administrative Register.

ROBERT G. BARTHELMESS, Chairman
Board of Livestock

by: JAMES W. GLOSSER, D.V.M.
Animal Health Division
Administrator & State Veterinarian

Certified to the Secretary of State July 3, 1979

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the cancellation of notice of public hearing of the amendment of ARM 32-2.14(1)-S1400 through 32-2.14(1)-S1440 and the adoption of additional new rules relating to aerial hunting of predatory animals.)	NOTICE OF CANCELLATION OF PUBLIC HEARING (Aerial Hunting of Predatory Animals)

TO: All Interested Persons

This is a notice of cancellation of a public hearing set for July 18, 1979, relating to the subject of Aerial Hunting of Predatory Animals that was published in 1979 Montana Administrative Register page 521-525, Issue 11.

This hearing will be reset at a later date and will be published in the Montana Administrative Register.

Robert G. Barthelmess
ROBERT G. BARTHELMESS, Chairman
Board of Livestock

by Les Graham
LES GRAHAM
Brands-Enforcement Division
Administrator

Certified to the Secretary of State July 3, 1979

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER of the Proposed) Amendment of ARM 40-3.54(18)-) S54100 concerning emergency) medical technicians - basic)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.54(18)-S54100 EMERGENCY MEDICAL TECHNICIANS - BASIC

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 11, 1979, the Board of Medical Examiners proposes to amend ARM 40-3.54(18)-S54100 by adding a new subsection regarding application, examination and recertification fees for emergency medical technicians - basic.

2. The amendment as proposed will add a new subsection (8) and renumber the current subsection (8) and (9) as (9) and (10) respectively. The proposed amendment will read as follows: (new matter underlined)

"40-3.54(18)-S54100 EMERGENCY MEDICAL TECHNICIANS - BASIC.....(8) <u>All application, examination and recertification fees are nonrefundable once deposited in the earmarked revenue account.</u>"

3. The Board is proposing the amendment because the expenses of administering the application and examination are incurred upon receipt of the application and therefore represents an expenditure to the Board whether the applicant takes the examination or completes the licensing process. Many applicants initiate the application for examination, which is then fully processed, but at the time the examination is scheduled, the applicant fails to appear. The expenses are incurred and must be paid by the Board of Medical Examiners even if this happens.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Medical Examiners, Lalonde Building, Helena, Montana 59601, no later than August 9, 1979.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Medical Examiners, Lalonde Building, Helena, Montana 59601 no later than August 9, 1979.

6. If the Board receives requests for a public hearing on the proposed amendments for 10% or 25 or more of those persons directly affected by the proposed amendment or the Administrative Code Committee of the Legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the Board to make the proposed amendment is based on section 50-6-203 MCA (69-7008 R.C.M. 1947). The proposed amendment implements the same section.

BOARD OF MEDICAL EXAMINERS
JOHN C. SEIDENSTICKER, M.D.
PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, July 3, 1979.

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

In the matter of the adoption of a rule restricting recipient of Medicaid access to certain Medicaid providers.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE RESTRICTING ACCESS TO MEDICAL SERVICES

TO: All Interested Persons:

1. On August 16, 1979, at 9:00 a.m., a public hearing will be held in the Auditorium of the Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the adoption of a rule which will restrict recipients of Medicaid who are overutilizing medical services to obtaining medical services from specified providers.

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

3. The proposed rule provides as follows:

RULE I RESTRICTION OF ACCESS TO MEDICAL SERVICES

(1) A recipient of Medicaid may be restricted to obtaining medical services from specified providers only if the Medical Assistance Bureau determines that the individual is overutilizing medical services which are covered by the Medicaid Program.

(2) "Overutilization" means use of physician services, drugs, emergency room care or any other medical services covered by the Medicaid Program when the individual's condition does not warrant the service or frequency of services.

(3) The designated Professional Review Organization may review the medical services received by individuals eligible for medical assistance. The findings of the designated Professional Review Organization shall be used by the Medical Assistance Bureau in decisions related to overutilization.

(4) Suspected cases of overutilization may be referred to the Medical Assistance Bureau by any provider of medical services, employee of any Department of Public Welfare, the designated Professional Review Organization, or any interested person.

(5) Individuals will be notified in writing within ten days of the date at the intended action that medical services which are to be paid for by the Medicaid Program will be restricted.

(6) The Medical Assistance Bureau will determine the providers that an individual can use, and the restrictions on services. The individual will have an opportunity to state the providers they prefer. The list of designated providers will be in effect until the individual notifies the Bureau in writing that he/she wishes to change providers. The Bureau will have thirty (30) days to take action on the request.

(7) All individuals restricted will be reviewed at appropriate intervals by the Medical Assistance Bureau.

(8) The individuals will have the right to appeal in accordance with ARM 46-2.2(2)-P211 et. seq.

4. The Department is proposing this rule because recipients of Medicaid have been overutilizing medical services. Recipients do not benefit because overutilization does not contribute to their better health. Providers do not benefit because their time is taken up with those individuals who do not need their care. The Medicaid Program suffers because Medicaid dollars are spent for unnecessary care. The proposed rule will help with cost containment within the Medicaid Program and promote appropriate medical care for recipients of Medicaid.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

6. The Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Section 53-6-113, MCA (71-1511(6), R.C.M. 1947). The proposed rule implements Section 53-6-104, MCA (71-1514, R.C.M. 1947).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 2, 1979.

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

In the matter of the amendment of Rule 46-2.10(14)-S11230 pertaining to residency requirements	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(14)-S11230 NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On August 13, 1979, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(14)-S11230 which pertains to residency requirements for state or county financial responsibility.

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

46-2.10(14)-S11230 RESIDENCY ~~REQUIREMENTS FOR STATE OR COUNTY FINANCIAL RESPONSIBILITY~~ (1) There are no residency requirements for applicants or recipients of Aid to Families with Dependent Children. ~~except that the following requirements will govern for matching funds purposes.~~

(2) Delete in entirety.
(3) Delete in entirety.
(4) Delete in entirety.
(5) Delete in entirety.
(6) Delete in entirety.

3. The proposed amendment responds to changes in state law made by the Montana Legislature. Sec. 4, Ch. 450, L. 1979, removes the requirement that the department pay the county share of public assistance for one year. Subsections 2 through 6 are deleted because they repeat statutory language.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59601 no later than August 9, 1979.

5. The authority of the Department to make the proposed amendment is based on section 53-4-212, MCA, (71-503, R.C.M.). The implementing authority is based upon Title 53, Chapter 4, Part 2, MCA (Title 71, Chapter 5 R.C.M.).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 2, 1979.

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

In the matter of the amendment of Rule 46-2.10(14)-S10980(1)(b) Procedure Followed in Processing Application.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(14)-S10980(1)(b) Aid to Dependent Children Procedure Followed in Processing Application. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On August 13, 1979, the Department of Social and Rehabilitation Services proposes to amend rule 46-2.10(14)-S10980 which pertains to procedure followed in processing applications for aid to dependent children assistance.

2. Rule 46-2.10(14)-S10980, subsection (1)(b) as proposed to be amended provides as follows:

~~(v) Residence for purposes of state or county financial participation.~~

~~(vi)~~ (v) Employment and Work Registration.

~~(vii)~~ (vi) The child is living in the home of a specified relative.

~~(viii)~~ (vii) The child is deprived of parental support.

~~(aa)~~ (A) Applicant and recipient, as a condition of eligibility for AFDC, must furnish his or her social security numbers to the county welfare department. If they do not have a social security number, the applicant or recipient must help in obtaining a number. There will be no denial, delay or discontinuance of assistance pending issuance of a social security number. The applicant or recipient must be notified that the social security number will be utilized in administration of AFDC program.

~~(ab) As a condition of eligibility for AFDC (of the parent but not the child) applicants and recipients must assign child support rights to the Montana State Department of Social and Rehabilitation Services by signing an EA-32, Assignment of Collection of Support Payments, and EA-16 shall be sent to the Department of Revenue, Child Support and Fraud Investigation Unit, Mitchell Building, Helena, Montana, within two (2) working days after approval for assistance.~~

~~(ac) As a condition of eligibility for AFDC (of the parent but not the child) applicants or recipients must cooperate in establishing paternity and obtaining child support, assist in locating the absent parent and cooperate in obtaining other payments or property due to applicant or recipient.~~

~~(ad)~~ (B) AFDC assistance for children whose parents are determined to be ineligible for failure to assign child support rights or to cooperate in establishing paternity or in obtaining child support, shall be provided in the form of protective payments. If, at a later time the parent agrees to cooperate in obtaining child support or establishing paternity, the family will be returned to regular AFDC payments.

~~(ae) The state must disregard 40% of the first $50.00 paid each month in support by the absent parent.~~

~~(ix)~~ (viii) Relative responsibility.

~~(x)~~ (ix) Institutionalization.

~~(xi)~~ (x) Non-duplication of assistance.

3. The proposed rule is being amended by deleting subsections that were eliminated by the 1979 Montana Legislature. Sections 3 and 4, Ch. 450, L. 1979, eliminated residency requirement for state or county financial participation. Ch. 612, L. 1979 has enacted a statutory procedure for obtaining support from absent parents so subsection (1)(b)(viii)(ab),(ac) and (ae) are no longer applicable and therefore deleted.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the the Office of Legal Affairs, Department of Social and Rehabilitation Services, Box 4210, Helena, MT 59601, no later than August 9, 1979.

5. The authority of the Department to make the proposed amendment is based on Section 53-4-212, MCA, (71-503, R.C.M.). The proposed amendment implements Title 53, Chapter 4, Part 3, MCA (Title 71, Chapter 5, R.C.M.).

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 2, 1979.

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

In the matter of the repeal of rule 46-2.10(18)-S11450 pertaining to reimbursement for skilled nursing and intermediate care services.	)))))))	NOTICE OF THE REPEAL OF RULE 46-2.10(18)-S11450 PERTAINING TO MEDICAL ASSISTANCE, NURSING HOME CARE PROVIDER REIMBURSEMENT. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 13, 1979, the agency proposes to repeal rule ARM 46-2.10(18)-S11450 pertaining to nursing home care provider reimbursement.

2. The rule as proposed to be repealed can be found on page 46-94.7H of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because the agency has adopted new nursing home reimbursement rules that are currently in effect and which supersede this rule. The new reimbursement rules as adopted were published in the Montana Administrative Register, issue No. 6, 1979, pages 333 through 358, and can be found in the Administrative Rules of Montana on pages 46-94.7H through 46-94.7Z.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than August 10, 1979.

5. The authority of the agency to make the proposed repeal is based on 53-6-113, MCA (71-1511(6), R.C.M.). The implementing authority is 53-6-141, MCA (71-1517, R.C.M.)

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 2, 1979.

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

In the matter of the adoption of rules pertaining to property limitations and the repeal of ARM Rule 46-2.10(14)-S11210	))))))	NOTICE OF PROPOSED ADOPTION OF A RULE PERTAINING TO PROPERTY LIMITATIONS AND REPEAL OF ARM RULE 46-2.10(14)-S11210. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 13, 1979, the State Department of Social and Rehabilitation Services proposes to adopt a rule pertaining to property limitations and repeal ARM Rule 46-2.10(14)-S11210.

2. The rule proposed to be repealed can be found on pages 46-77 and 46-77.1 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE 1 PROPERTY LIMITATIONS (1) General Rule: In determining eligibility for AFDC, the department will evaluate property resources which are currently available to a household unit requesting or receiving assistance, and will apply the limitations set out in this rule. Property resources in excess of the limitations established in this rule will disqualify the household unit for AFDC assistance.

(2) Definitions: For purposes of this rule, the following definitions apply:

(a) "Property Resources" means real or personal, tangible or intangible assets owned by members of the household unit.

(b) "Home" means the household unit's principle residence.

(c) "Household unit" means all family members residing together for whom AFDC is sought or received.

(d) "Equity Value" means the gross amount any member of the household unit would receive upon the sale of a property resource minus the amount of any enforceable lien, encumbrance, or security interest, reasonable sales costs, and transfer taxes.

(e) "Currently available property resources" means assets which any member of the household unit has a legal right and reasonable practical ability to liquidate for cash market value.

(3) "General Property Resources Limitation": The equity value of all currently available property resources owned by members of the household unit will be counted in the process of determining eligibility for assistance, unless such property resources are specifically excluded by this section.

(4) "Property Resources Exclusions": The following property resources are specifically excluded from treatment as currently available property resources:

(a) The equity value, not to exceed $26,000, of a home.

(b) The equity value, not to exceed $26,000, for income producing property resources, if such property resources produce a return that is reasonable for similar property resources in the community. Income from such property resources, less all costs necessarily incurred in producing the income, shall be deducted from the assistance payments.

(c) One vehicle for family transportation. An additional vehicle may be excluded if equity value does not exceed $1500 and if the vehicle is necessary for medical, educational or employment purposes.

(d) Household goods, clothing, other essential personal effects and home produce and livestock for family use and consumption only.

(e) Essential tools for a trade, or equipment needed for employment.

(f) Equipment necessary for securing or producing food.

(g) Any other property resources not excluded in (4)(a) through (4)(g) of this section not to exceed $1500 in equity value.

4. This proposed rule completely revises the Department's eligibility limitations on property owned by applicants for or recipients of AFDC. It is intended to replace ARM 46-2.10(14)-S11210 which is being repealed.

The proposed rule achieves five major objectives:

I. It makes equity the basis for valuing property owned by members of an AFDC household unit. This change formally establishes by regulation the Department's informal interpretation of the existing rule. It also has the desireable effect of updating current property limitation ceilings for the impact of inflation.

II. It clarifies the meaning of "currently available" property by setting a standard of practical liquidity for market value.

III. It simplifies the administration of the property limitations by removing unnecessary distinctions between real and personal property. In the past, these distinctions had presented problems in appropriately excluding mobile homes, which are personalty, under the real property standard for houses.

IV. It eliminates any ceiling for the first vehicle kept by the household unit for transportation. This change again

recognizes the impact of inflation. In addition, it reduces the incentive for recipients to maintain a low equity value in a car or truck rather than paying off the financing used to acquire a vehicle.

V. It brings AFDC property limitations into harmony with similar limitations for other assistance programs (Food Stamps, Medicaid) thus easing administration.

5. Interested parties may submit their data, views, arguments, or requests for an oral hearing concerning the proposed adoption and repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than August 9, 1979. A Public Hearing will be scheduled if requested by 10% or 25 of the persons directly affected by the rules.

6. The authority of the department to make the proposed rule is based on Section 53-4-212, MCA (Section 71-503, R.C.M. 1947). The implementing authority is based on Section 53-4-231, MCA (Section 71-504, R.C.M. 1947).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 3, 1979.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules concerning compensatory time and overtime for state employees.	) NOTICE OF ADOPTION OF RULES ARM 2-2.14(60)-S14850) THROUGH 2-2.14(60)-S14880) PERTAINING TO COMPENSATORY) TIME AND OVERTIME

TO: All Interested Persons

1. On March 15, 1979, the Department of Administration published notice of the proposed adoption of rules concerning compensatory time and overtime for State employees at pages 206-209 of the 1979 Montana Administrative Register, issue number 5.

2. The agency has adopted the rules with the following changes: 2-2.14(60)-S14860 (Rule II) Definitions. All definitions remain the same as noticed except for additional information to (f) Workweek, which reads as follows: The workweek need not coincide with the calendar week - it may begin any day of the week and any hour of the day. Refer to the Administrative Rules of Montana, 24-3.14BII(6)-S1480.

2-2.14(60)-S14870 (Rule III) Policy (b) Overtime: remains the same as noticed except for additional information, which reads as follows: Non-Exempt employees may be allowed time off within the same workweek to maintain a forty (40) hour week. However, no employee shall be required to accept time off during the same workweek in lieu of overtime payments. The employee must concur with management's allowance to take such time off.

(c) Compensatory Time: (i) second sentence will read as follows: When assigning necessary work in excess of 40 hours to an employee with the maximum hours already accrued, the excess hours ~~must be used by the next January 1 or July 1 (whichever accommodates the peak work load period), or be lost.~~ are not forfeited if taken ninety (90) calendar days from the last day of the calendar year in which the excess was accrued. (c) Compensatory Time: (ii) first sentence has been expanded to read as follows: Upon receipt of a reasonable and timely request, the employer shall allow an employee compensatory time off to avoid forfeiture of compensatory time ~~according to~~ as in (i) above., when determined according to the best interest of the state and each employee.

(f) Qualifying Hours: (ii) Overtime: will read as follows: All hours worked are paid at least regular time; ~~however, only those.~~ All hours the employee is present at work during a workweek are considered for the purpose of calculating overtime payments. Absent time in a pay status, including holidays, ~~paid and unpaid leaves are not counted toward the 40-hour workweek maximum.~~ and paid leaves, is counted as hours worked for the purpose of calculating a 40-hour workweek.

(g) Records: (ii) Overtime: the second sentence will read as follows: The fractional increment may be rounded off ~~to the nearest few minutes or nearest one-tenth or quarter hour~~, provided that over a period of time this does not result in the failure to compensate the employee for the entire time actually worked.

The agency has numbered the Rule ARM 2-2.14(60)-S14850 through 2-2.14(60)-S14880.

(3) A public hearing on the rules was held May 31, 1979, at 7:30 p.m. in the Department of Social and Rehabilitation Services auditorium. Oral comments were received at the hearing and written comments were received both before and after the hearing. Specifically, the comments received were regarding hours considered for computation of compensatory time and overtime: 1. Compensatory time and overtime to be based on (A) hours worked in excess of 40 in a workweek or (B) hours worked in excess of 8 in a workday. 2. Overtime to be computed based on (A) hours worked or (B) hours in a pay status.

A representative of the Montana Public Employees Association opposed the rule in the area of the 40-hour workweek as opposed to the 8-hour workday and suggested the need for flexibility in scheduling for certain state employees.

A representative of the Montana Federation of Teachers, AFL-CIO was concerned particularly about secretarial and clerical employees in situations when they can work forty hours within a workweek and the concept of the eight-hour day is taken away.

These concerns were taken into account, as were suggested changes by other agencies, and were found to have merit enough to warrant adoption in the final rules.

4. The agency has adopted the rules because of the critical need to provide compensatory time and overtime procedures for state employees. Adoption of these Rules will assure fair and consistent administration of compensatory time and overtime for those employees required to work in excess of 40 hours in a workweek.

DAVID LEWIS, DIRECTOR
DEPARTMENT OF ADMINISTRATION

BY: Roy B. Sayles
DEPUTY DIRECTOR

Certified to the Secretary of State July 2, 1979.

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

In the matter of the repeal of rule ARM 16-2.14(2)-S14210 and the adoption of rule ARM 16-2.14(2)-S14215, a rule for regulating food service establishments	NOTICE OF THE REPEAL OF RULE ARM 16-2.14(2)-S14210 AND THE ADOPTION OF RULE ARM 16-2.14(2)-S14215 REGULATING FOOD SERVICE ESTABLISHMENTS

TO: All Interested Persons

1. On January 25, 1979, the Department of Health and Environmental Sciences published notice of proposed repeal of rule ARM 16-2.14(2)-S14210 and the adoption of a new rule ARM 16-2.14(2)-S14215 concerning food service establishments at page 18 of the 1979 Montana Administrative Register, issue number 2. The public hearing on the proposed agency action originally scheduled for February 26, 1979 was postponed and re-noticed on March 29, 1979 at page 286 of the 1979 Montana Administrative Register, issue number 6.

2. The Department has repealed rule ARM 16-2.14(2)-S14210 and adopted the proposed rule ARM 16-2.14(2)-S14215 with the following changes:

16-2.14(2)-S14215 FOOD SERVICE ESTABLISHMENTS

(1) Introduction. This is a rule defining food, potentially hazardous food, food service establishment, mobile food unit, temporary food service establishment, regulatory authority, utensils, equipment, etc.; providing for the sale of only sound, safe, properly labeled food; regulating the sources of food; establishing sanitation standards for food, food protection, food service operations, food service personnel, food service and utensils, sanitary facilities and controls, and other facilities; requiring licenses for the operation of food service establishments; regulating the inspection of such establishments; providing for the examination and condemnation of food; providing for enforcement of this rule, and the fixing of penalties. Those sections of this rule which deal with "building regulations" as that term is defined in section ~~69-2105(2), R.C.M. 1947~~ 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.

(2) Purpose. This rule shall be liberally construed and applied to promote its underlying purpose which is to prevent and eliminate conditions and practices which endanger public health.

(3) Definitions. For the purpose of this rule:

(a) "Adulterated" means a food:

(i) that bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; or

(ii) 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

(iii) that consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption;

(iv) that has been processed, prepared, packed or held under ~~insanitary~~ unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(v) that is in whole or in part a product of a diseased animal, or an animal which has died otherwise than by slaughter;

(vi) whose container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(vii) or as otherwise determined to be "adulterated" under section ~~27-710, R.C.M. 1947~~ 50-31-202, MCA (Montana Food, Drug and Cosmetic Act).

(b) "Approved" means acceptable to the regulatory authority based on its determination as to conformance with appropriate standards and good public health practice.

(c) "Closed" means fitted together snugly leaving no openings large enough to permit the entrance of vermin.

(d) "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged or stored.

(e) "Corrosion resistant" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions-of-use environment.

(f) "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.

(g) "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.

(h) "Establishment" means a "food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer."

(i) "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meat blocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, similar items other than utensils, used in the operation of a food service establishment.

(j) "Food" means "an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption."

(k) "Food contact surfaces" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.

(l) "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."

(m) "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.

(n) "Food service establishment" means a "fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, 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." (Emphasis added.)

(o) "Hermetically sealed" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its content after processing.

(p) "Kitchenware" means multi-use utensils other than tableware used in the storage, preparation, conveying or serving of food.

(q) "Law" means federal, state, and local statutes, ordinances, rules and regulations.

(r) "Misbranded" means the use of any written, printed, graphic matter upon or accompanying food or containers of food which violates section ~~27-711, R.C.M. 1947~~ 50-31-203, MCA, Montana Food, Drug and Cosmetic Act, or any other applicable local, state, and federal labeling requirements.

(s) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.

(t) "Packaged" means bottled, canned, cartoned, or securely wrapped.

(u) "Perishable food" means any food of such type or in such condition as may spoil.

(v) "Person" means a "person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment"

(w) "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 employee present is the person in charge.

(x) "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 (aW) value of 0.85 or less.

(y) "Pushcart" means a non-self-propelled vehicle limited to serving non-potentially hazardous food or a commissary-wrapped food maintained at proper temperatures or limited to the preparation and serving of frankfurters.

(z) "Reconstituted" means dehydrated food products recombined with water or other liquids.

(aa) "Regulatory authority" usually means the Montana State Department of Health and Environmental Sciences and its employees unless a written agreement has been entered into between the Department and the local health officials, in which case "regulatory authority" shall include the county health officials, the local health officer or local sanitarian or other authorized representative. The Department's Food and Consumer Safety Bureau in Helena may be contacted at 449-2408 to determine if a particular local health department has primary enforcement authority under this rule.

(ab) "Safe temperature" as applied to perishable and potentially hazardous foods means temperatures of 45° F. (7° C.) or below and 140°F. (60° C.)or above.

(ac) "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 sections ~~27-702(t) or (u), R.C.M. 1947,~~ 50-31-103 (3)(13), 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 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 sections ~~27-702(t) or (u), R.C.M. 1947~~ 50-31-103 (3)(13), 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.

(ad) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(ae) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

(af) "Single service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks and other similar articles intended for one-time, one-person use and then discarded.

(ag) "Tableware" means all multi-use eating and drinking utensils including flatware (knives, forks, and spoons).

(ah) "Temporary food service establishment" means a food service establishment that operates at a fixed location for a period of time of not more than fourteen consecutive days in conjunction with a single event or celebration.

(ai) "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

(aj) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

(4) Separability. If any provision or application of any provision of this rule is held invalid, that invalidity shall not affect other applications of this rule.

(5) Food Supplies.

(a) General. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food in hermetically sealed containers that was not prepared in a licensed food processing establishment is prohibited.

(b) Special requirements.

(i) Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards as established by law. Dry milk and dry milk products shall be made from pasteurized milk and milk products.

(ii) Fresh and frozen shucked shellfish (oysters, clams or mussels), shall 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 issued according to law. Shell stock and shucked shellfish shall 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 be identified by an attached tag which states the name and address of

the original shell stock processor, the kind and ~~quality~~ quantity of shell stock and the interstate certification number issued by the state or foreign shellfish control agency.

(iii) 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 hard-boiled, peeled eggs commercially prepared and packaged may be used.

(6) Food Protection.

(a) General. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, and overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be 45° F. (7° C.) or below or 140° F. (60° C.) or above as provided in this rule.

(b) Emergency occurrences. 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 to protect the public health.

(7) Food Storage.

(a) General.

(i) 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 nonabsorbent, 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.

(ii) 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.

(iii) 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 law. The storage of food in toilet rooms or vestibules is prohibited.

(iv) 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.

(v) Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice.

(vi) 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.

(b) Refrigerated storage.

(i) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to ± 3° F. (2° C.), located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers, accurate to ± 3° F. (2° C.) may be used in lieu of indicating thermometers.

(ii) 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 subsection (7)(c) of this rule.

(iii) Frozen food shall be kept frozen and should be stored at a temperature of 0° F. (-18° C.) or below.

(iv) 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.

(c) Hot storage.

(i) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food shall be provided with

a numerically scaled indicating thermometer, accurate to ± 3° F. (2° C.) located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to ± 3° F. (2° C.) may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.

(ii) The internal temperature ~~of~~ throughout potentially hazardous foods requiring hot storage shall be 140° F. (60° C.) or above except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of ~~104°~~ 140° F. (60° C.) or above unless maintained in accordance with subsection (7)(b)(ii) of this rule.

(8) Food Preparation.

(a) General. 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.

(b) Raw fruits and raw vegetables. Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.

(c) Cooking potentially hazardous foods. 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:

(i) 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.

(ii) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150° F. (66° C.).

(iii) 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.

(d) Dry milk and dry milk products. Reconstituted dry milk and dry milk products may be used only in instant desserts and whipped products, or for cooking and baking purposes.

(e) Liquid, frozen, dry eggs and egg products. Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

(f) Reheating. 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.

(g) Nondairy products. 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 four hours after preparation.

(h) Product thermometers. Metal stem-type numerically scaled indicating thermometers, accurate to + 2° 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.

(i) Thawing potentially hazardous foods. Potentially hazardous foods shall be thawed:

(i) In refrigerated units at a temperature not to exceed 45° F. (7° C.); or

(ii) 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; or

(iii) 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

(iv) As part of the conventional cooking process.

(9) Food Display and Service.

(a) Potentially hazardous foods. Potentially hazardous food shall be kept at an internal temperature of 45° F. (7° C.) or below or at an internal temperature of 140° F. (60° 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.)

(b) Milk and cream dispensing.

(i) 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 1/2 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 1/2 gallon capacity.

(ii) 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.

(c) Nondairy product dispensing. 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.

(d) Condiment dispensing.

(i) Condiments, seasonings and dressings for self-service use shall be provided in individual packages, from dispensers, or from containers protected in accordance with subsection (9)(h) of this rule.

(ii) 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.

(e) Ice dispensing. Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice-self-dispensing utensils or through automatic self service, ice-dispensing equipment. Ice-dispensing utensils shall 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 be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air gap.

(f) Dispensing utensils. 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:

(i) Stored in the food with the dispensing utensil handle extended out of the food; or

(ii) Stored clean and dry; or

(iii) Stored in running water; or

(iv) 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.

(g) Reservice. 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 re-served.

(h) Display equipment. 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.

(i) Re-use of tableware. 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.

(10) Food Transportation.

(a) General. During transportation, food and food utensils shall 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 meet the requirements of this rule relating to food protection and food storage.

(11) Personnel.

(a) Employee health. 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.

(b) Personal cleanliness. 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.

(c) Clothing.

(i) The outer clothing of all employees shall be clean.

(ii) Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

(d) Employee practices.

(i) General.

(A) 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.

(B) 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.

(C) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(D) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food service establishment.

(12) Materials for Equipment and Utensils.

(a) General. Multi-use 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.

(b) Solder. If solder is used, it shall be composed of safe materials and be corrosion resistant.

(c) Wood. Hard maple or equivalently nonabsorbent material that meets the general requirements set forth in subsection (12)(a) 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.

(d) Plastics. 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, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dish-washing methods, and which meet the general requirements set forth in subsection (12)(a) of this rule, are permitted for repeated use.

(e) Mollusk and crustacea shells. Mollusk and crustacea shells may be used only once as a serving container. Further re-use of such shells for food service is prohibited.

(f) Single service. Re-use of single service articles is prohibited.

(13) Equipment and Utensil Design and Fabrication.

(a) General. All equipment and utensils, including plastic-ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.

(i) Food-contact surfaces shall 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 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 be minimized.

(ii) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be

used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(iii) Tubing 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 not pass through the ice machine or the ice storage bin.

(iv) Sinks and drainboards shall be self-draining.

(b) Accessibility. Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(i) Without being disassembled; or

(ii) By disassembling without the use of tools; or

(iii) 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.

(c) In-place cleaning. Equipment intended for in-place cleaning shall be so designed and fabricated that:

(i) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(ii) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(iii) The system is self-draining or capable of being completely evacuated.

(d) Pressure spray cleaning. Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

(e) Thermometers. Indicating thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to $\pm$ 2° F. (1° C.).

(f) Non-food-contact surfaces. 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 be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall 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.

(g) Ventilation hoods.

(i) Hoods shall 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.

(ii) Ventilation hoods and devices shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dropping into foods or onto food-contact surfaces.

(iii) Filters or other grease extracting equipment shall be readily removable for cleaning and replacement if not designed to be cleaned in place.

(iv) Hood, filters, hood fire extinguishing equipment and other ventilation system items shall be kept clean.

(v) Construction requirements for hood systems are available from the Building Codes Division, Department of Administration.

(h) Existing equipment. 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 section, shall 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 meet the requirements of this rule.

(14) Equipment Installation and Location.

(a) General. Equipment, including ice makers and ice storage equipment, shall 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 law.

(b) Table mounted equipment.

(i) Equipment that is placed on tables or counters, unless portable, shall 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.

(ii) Equipment is portable within the meaning of subsection (14)(b) of this rule if:

(A) It is small and light enough to be moved easily by one person; and

(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.

(c) Floor-mounted equipment.

(i) Floor-mounted equipment, unless readily movable, shall be:

(A) Sealed to the floor; or

(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 six inches from cleaning access.

(ii) 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.

(iii) 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 not be more than 1/32 inch; or if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls or ceilings.

(d) Aisles and working spaces. Aisles and working spaces between units of equipment and walls shall be unobstructed and of sufficient width to permit employees 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 be positioned to provide accessibility to working areas.

(15) Equipment and Utensil Cleaning and Sanitization.

(a) Cleaning frequency.

(i) Tableware shall be washed, rinsed, and sanitized after each use.

(ii) To prevent cross-contamination, kitchenware and food-contact surfaces of equipment shall be washed, rinsed, and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(iii) 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 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.

(iv) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day; except that this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

(v) Non-food-contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(b) Wiping cloths.

(i) Cloths used for wiping food spills on tableware, such as plates or bowls being served to the consumer, shall be clean, dry and used for no other purpose.

(ii) 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 subsection (15)(c) of this rule and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

(iii) 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 subsection (15)(b)(ii) of this rule, and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

(c) Manual cleaning and sanitizing.

(i) 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 be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.

(ii) Drainboards or easily movable dish tables of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.

(iii) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

(iv) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing shall be conducted in the following sequence:

(A) Sinks shall be cleaned prior to use.

(B) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.

(C) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.

(D) Equipment and utensils shall be sanitized in the third compartment according to one of the methods included in subsection (15)(c)(v)(A) through (D) of this rule.

(v) The food-contact surfaces of all equipment and utensils shall be sanitized by:

(A) Immersion for at least one-half minute in clean, hot water at a temperature of at least 170° F. (77° C.); or

(B) Immersion for at least one minute in a clean solution containing at least 50 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 one minute in a clean solution containing at least 12.5 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) Immersion in a clean solution containing any other chemical sanitizing agent approved by the department 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 one minute; or

(E) 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) Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under subsection (15)(c)(v)(D) of this rule in the case of equipment too large to sanitize by immersion.

(vi) When hot water is used for sanitizing, the following facilities shall be provided and used:

(A) 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 numerically scaled indicating thermometer, accurate to ± 3° F. (2° C.), convenient to the sink for frequent checks of water temperature; and

(C) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(vii) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted by the department, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(d) Mechanical cleaning and sanitizing.

(i) 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 be properly installed and maintained in good repair. Machines and devices shall be operated in accordance with manufacturers' instructions, and utensils

and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall be properly installed and maintained.

(ii) The pressure of final rinse water supplied to spray-type dishwashing machines shall 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 be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

(iii) Machine or water line mounted numerically scaled indicating thermometers, accurate to ± 3° F. (2° C.), shall 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.

(iv) Rinse water tanks shall 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 be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.

(v) Drainboards shall 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 be so located and constructed 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.

(vi) Equipment and utensils shall 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 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.

(vii) 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 not be less than 120° F. (49° C.).

(B) The wash water shall be kept clean.

(C) Chemicals added for sanitization purposes shall be automatically dispensed.

(D) Utensils and equipment shall 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 be not less than 75° F. (24° C.) nor less than the temperature specified by the machine's manufacturer.

(F) Chemical sanitizers used shall be approved by the Department.

(G) A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

(viii) Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall be kept clean and water shall 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.)

(ix) All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(e) Drying. After sanitization, all equipment and utensils shall be air dried.

(16) Equipment and Utensil Storage.

(a) Handling. Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates and similar items shall be handled without contact with inside surfaces or surfaces that contact the user's mouth.

(b) Storage.

(i) Cleaned and sanitized utensils and equipment shall be stored at least six inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of

fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

(ii) Utensils shall be air dried before being stored or shall be stored in a self-draining position.

(iii) Glasses and cups shall be stored inverted. Other stored utensils shall be covered or inverted, wherever practical. Facilities for the storage of knives, forks, and spoons shall be designed and used to present the handle to the employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations shall protect these articles from contamination and present the handle of the utensil to the consumer.

(c) Single-service articles.

(i) Single-service articles shall be stored at least six inches above the floor in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

(ii) Single-service articles shall 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.

(iii) Single-service knives, forks, and spoons packaged in bulk shall 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 be provided to protect these items from contamination and present the handle of the utensil to the consumer.

(d) Prohibited storage area. The storage of food equipment, utensils or single-service articles in toilet rooms or vestibules is prohibited.

(17) Water Supply.

(a) General. Enough potable water for the needs of the food service establishment shall be provided from a source constructed and operated according to law.

(b) Transportation. All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed-water system. Both of these systems shall be constructed and operated according to law.

(c) Bottled water. Bottled and packaged potable water shall be obtained from a source that complies with all laws and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

(d) Water under pressure. Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

(e) Steam. Steam used in contact with food or food-contact surfaces shall be free from any unsafe materials or additives.

(18) Sewage.

(a) General. All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed and operated according to law. Non-water-carried sewage disposal facilities are prohibited, except as permitted by subsection (35)(h) of this rule (pertaining to temporary food service establishments) or as permitted by the regulatory authority in remote areas or because of special situations.

(19) Plumbing.

(a) General. Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection 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.

(b) Nonpotable water system. A nonpotable 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 nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(c) Backflow. The potable water system shall be installed to preclude the possibility of backflow. Devices shall 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 not be attached to a faucet unless a backflow prevention device is installed.

(d) Grease traps. If used, grease traps shall be located to be easily accessible for cleaning.

(e) Garbage grinders. If used, garbage grinders shall be installed and maintained according to law.

(f) Drains. Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a dishwashing machine is located within five feet of a trapped floor drain, the dishwasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap if permitted by law.

(20) Toilet Facilities.

(a) Toilet installation.

(i) Toilet facilities shall be installed according to law, shall be the number required, shall be conveniently located, and shall be accessible to employees and customers, unless provided for in subsection (20)(a)(v) of this rule, during all times the establishment is in operation.

(ii) Separate toilet facilities shall be required for each sex in establishments with an occupancy load of fifteen or more or where alcoholic beverages are sold.

(iii) In all new or extensively remodeled establishments, toilet facilities shall be installed to comply with Table I, which follows this rule and by this reference is made a part of this rule. The number of fixtures for each sex shall be determined by dividing the total occupancy load by two, assuming an equal population of males and females.

(iv) Toilets for use by both sexes shall be designed as single occupancy and be equipped with a door that can be secured from the inside.

(v) Establishments with no space on the premises for consumption of food by consumers are required to provide toilet facilities only for employees.

(vi) Toilet facilities shall be available where parking is provided primarily for the consumption of food on the premises or where tables, benches or similar eating areas are provided.

In all new or extensively remodeled food service establishments where parking or eating benches or tables are provided primarily for consumption of food on the premises, the number of facilities and fixtures shall be determined by an occupancy of two individuals per parking space and actual bench or table count.

(vii) Employees 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.

(viii) In a multiple activity area with available public toilets, such as sports centers, etc., these toilets may suffice for the use of food service patrons and employees, provided they shall be of adequate number and conveniently located to the food service establishment and shall be available at all times the food service establishment is in operation.

(ix) 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.

(x) Food service operations which must use privy type toilets shall be evaluated on an installation-by-installation basis.

(b) Toilet fixtures. Toilet fixtures shall be of elongated bowl design and kept clean. Toilet seats shall be of open front construction.

(c) Toilet rooms. Toilet rooms shall be completely enclosed, and shall have tight-fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance. If vestibules are provided, they shall be kept in a clean condition and good repair.

The lack of doors on toilets serving large numbers of people such as sports arenas shall be evaluated separately.

(d) Toilet rooms and supplies. A supply of toilet tissue in a wall-hung or protected container shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in toilet rooms for women shall be covered. Such receptacles shall be emptied at least once a day, and more frequently when necessary to prevent excessive accumulation of waste material.

(e) In all new or extensively remodeled toilet rooms, mechanical ventilation shall be provided and shall be capable of delivering one complete air change every fifteen minutes, shall be vented to the outside, and the vent shall be at least five feet from an openable window. (See also subsection (28)(b)(ii).

(f) Keyed toilets under management control are permitted when unusual conditions exist. Approval for keyed toilet facilities must be specifically given by the regulatory authority.

(g) Proper sex identification and location signs must be conspicuously posted as required.

(21) Lavatory Facilities.

(a) Lavatory installation.

(i) Lavatories shall be installed according to law.

(ii) In all new or extensively remodeled establishments, customer lavatory facilities shall be located in or immediately adjacent to toilet rooms.

(iii) Lavatory facilities shall be in compliance with the number required in subsection (20)(a)(iii) and Table I, which follows this rule and by this reference is made a part of this rule.

(iv) Customers are prohibited from entering the food preparation, food service, food storage or utensil washing areas to use lavatories.

(v) Lavatories for employees shall be located within the area or areas where food is prepared or served and in utensil washing areas.

The number and location of lavatories in the areas will be determined by the convenience of the lavatory to the employees.

(vi) Lavatories located outside and immediately adjacent to toilet rooms may also serve the food preparation, food service or utensil washing areas if convenient.

(vii) Utility sinks may be used as lavatories if properly located, equipped, maintained, and continuously available for hand wash.

(viii) Sinks used for food preparation or for equipment or utensil washing shall not be used for hand washing.

(b) Lavatory faucets. Each lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-dispensing, slow-closing, or metering faucet used shall be designed to provide a flow of water for at least fifteen seconds without the need to reactivate the faucet. Steam mixing valves are prohibited.

The Montana Energy Code, ARM 2-2.11(1)-S11040, in section 504.5, specifies hot water conservation design features.

(c) Lavatory supplies.

(i) A supply of hand-cleansing soap or detergent shall be available at each lavatory.

(ii) A supply of sanitary towels in a wall-hung or protected container or a hand-drying device providing heated air shall be conveniently located near each lavatory. Common towels are prohibited.

(iii) If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand washing facilities.

(d) Lavatory maintenance.

(i) Lavatories, soap dispensers, hand drying devices and all related fixtures shall be kept clean and in good repair.

(22) Garbage and Refuse.

(a) Containers.

(i) Garbage and refuse shall 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.

(ii) Containers used in food preparation and utensil washing areas shall be kept covered after they are filled or when not in active use.

(iii) Containers stored outside the establishment, and dumpsters, compactors and compactor systems shall be easily cleanable, shall 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 be in place at all times, except during cleaning.

(iv) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(v) Soiled containers shall 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 be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

(b) Storage.

(i) Garbage and refuse on the premises shall 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.

(ii) Garbage or refuse storage rooms, if used, shall 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.

(iii) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters and compactor systems located outside shall 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.

(c) Disposal.

(i) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(ii) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter in accordance with the Montana Clean Air Act and rules, Section ~~69-3906, et seq., R.C.M. 1947~~ 72-2-101, et seq., MCA. Areas around incineration facilities shall be clean and orderly.

(iii) 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.

(23) Insect and Rodent Control.

(a) General. Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(b) Openings. Openings to the outside shall be effectively protected against te entrance of rodents. Outside openings shall 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 be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than 16 mesh to the inch.

(24) Floors.

(a) Floor construction. 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 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 section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

(b) Floor carpeting. Carpeting, if used as a floor covering, shall 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.

(c) Prohibited floor covering. The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.

(d) Floor drains. Properly installed, trapped floor drains shall 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 be constructed only of sealed concrete, terrazzo, ceramic tile or similar materials, and shall be graded to drain.

(e) Mats and duckboards. Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.

(f) Floor junctures. 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 be coved and sealed. In all other cases, the juncture between walls and floors shall not present an open seam of more than 1/32 inch.

(g) Utility line installation. Exposed utility service lines and pipes shall 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.

(25) Walls and Ceilings.

(a) Maintenance. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(b) Construction. 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 be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface.

(c) Exposed construction. Studs, joists, and rafters shall 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 be finished to provide an easily cleanable surface.

(d) Utility line installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall 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.

(e) Attachments. Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(f) Covering material installation. Wall and ceiling covering materials shall be attached and sealed so as to be easily cleanable.

(26) Cleaning Physical Facilities.

(a) General. Cleaning of floors and walls, except emergency cleaning of floors, shall 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 be kept clean. Only dustless methods of cleaning floors and

walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust arresting sweeping compounds with brooms.

(b) Utility facility. In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain shall 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, utensil washing or equipment washing, or food preparation sinks for this purpose is prohibited.

(27) Lighting.

(a) General.

(i) Permanently fixed artificial light sources shall be installed to provide at least 20 foot candles of light on all food preparation surfaces and at equipment or utensil washing work levels.

(ii) Permanently fixed artificial light sources shall 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 dining areas during cleaning operations.

(b) Protective shielding.

(i) Shielding to protect against broken glass falling onto food shall 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.

(ii) Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

(28) Ventilation.

(a) General. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create an unsightly, harmful or unlawful discharge.

(b) Special ventilation.

(i) Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other ~~contamination~~ contaminating materials.

(ii) In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors or fumes originate shall be mechanically vented to the outside.

(29) Dressing Rooms and Locker Areas.

(a) Dressing rooms and areas. If employees routinely change clothes within the establishment, rooms or areas shall

be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

(b) Locker areas. Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may 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.

(30) Poisonous or Toxic Materials.

(a) Materials permitted. 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.

(b) Labeling of materials. Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to law for easy identification of contents.

(c) Storage of materials.

(i) Poisonous or toxic materials consist of the following categories:

(A) Insecticides and rodenticides;

(B) Detergents, sanitizers, and related cleaning or drying agents;

(C) Caustics, acids, polishes, and other chemicals.

(ii) Each of the three categories set forth above shall be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall 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.

(d) Use of materials.

(i) Bactericides, cleaning compounds or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.

(ii) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturers' labeling.

(e) Personal medications. Personal medications shall not be stored in food storage, preparation or service areas.

(f) First-aid supplies. First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

(31) Premises.

(a) General.

(i) Food service establishments and all parts of property used in connection with their operations shall be kept free of litter.

(ii) The walking and driving surfaces of all exterior areas of food service establishments shall be surfaced with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to prevent pooling and shall be kept free of litter.

(iii) Only articles necessary for the operation and maintenance of the food service establishment shall be stored on the premises.

(iv) The traffic of unnecessary persons through the food preparation and utensil washing areas is prohibited.

(b) Living areas. No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. Food service operations shall be separated from any living or sleeping quarters by complete partitioning and solid self-closing doors.

(c) Laundry facilities.

(i) Laundry facilities in a food service establishment shall 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 be provided and used.

(ii) Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

(d) Linens and clothes storage.

(i) Clean clothes and linens shall be stored in a clean place and protected from contamination until used.

(ii) Soiled clothes and linens shall be stored in non-absorbent containers or washable laundry bags until removed for laundering.

(e) Cleaning equipment storage. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner for the cleaning of that storage location.

(f) Animals. 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 persons shall be permitted in dining areas.

(32) Mobile Food Service.

(a) General. Mobile food units or pushcarts shall comply with the requirements of this rule, except as otherwise provided in this subsection and in subsection (34)(b) of this rule. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this rule relating to physical facilities, except those requirements of subsections (32)(d) and (e), (33)(a), and (34)(a) and (b) of this rule.

(b) Restricted operation. Mobile food units or pushcarts serving only food prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this rule, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment need not comply with requirements of this rule pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at the commissary. However, frankfurters may be prepared and served from these units or pushcarts.

(c) Single-service articles. Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

(d) Water system. A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and hand washing, in accordance with the requirements of this rule. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this rule.

(e) Waste retention. If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet con-

nection to preclude contamination of the potable water system.

(33) Mobile Food Service Commissary.

(a) Base of operations.

(i) Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations.

(ii) The commissary or other fixed food service establishment used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements of this rule.

(34) Servicing Area and Operations.

(a) Servicing area.

(i) A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or pushcart or where mobile food units do not contain waste retention tanks.

(ii) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

(iii) The construction of the walls and ceilings of the servicing area is exempted from the provisions of subsections (25)(a) through (f) of this rule.

(b) Servicing operations.

(i) Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.

(ii) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewerage disposal system in accordance with subsection (18)(a) of this rule.

(35) Temporary Food Service Establishments.

(a) General. A temporary food service establishment shall comply with the requirements of this rule, except as otherwise provided in this section. 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 rule.

(b) Restricted operations.

(i) These provisions are applicable whenever a temporary food service establishment is permitted, under the provisions of subsection (35)(a) of this rule, to operate without complying with all the requirements of this section.

(ii) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall 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 rule, is obtained in individual servings, is stored at a temperature of 45° F. (7° C.) or below or at a temperature of 140° F. (60° C.) or above in facilities meeting the requirements of this rule, and is served directly in the unopened container in which it was packaged.

(c) Ice. Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of this rule. The ice shall 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 be held in these bags until it is dispensed in a way that protects it from contamination.

(d) Equipment.

(i) Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.

(ii) Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.

(e) Single-service articles. All temporary food service establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.

(f) Water. Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

(g) Wet storage. Storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.

(h) Waste. All sewage, including liquid waste, shall be disposed of according to law.

(i) Hand washing. A convenient hand washing facility shall be available for employee hand washing. This facility shall consist of, at least, warm running water, soap, and individual paper towels.

(j) Floors. 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.

(k) Walls and ceilings of food preparation areas.

(i) Ceilings shall 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 be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall be solid or screened and shall be self-closing. Screening material used for walls, doors, or windows shall be at least 16 mesh to the inch.

(ii) Counter service openings shall not be larger than necessary for the particular operation conducted. These openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter service openings shall be kept closed, except when in actual use.

(36) Licenses.

(a) General. 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 rule shall be entitled to receive or retain such a license. Licenses are not transferable. A valid license shall be posted in every food service establishment.

(b) Issuance of license.

(i) 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 include the name and address of each applicant, the location and type of the proposed food service establishment.

(ii) 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 rule.

(iii) The department shall issue a license to the applicant if the inspection reveals that the proposed food

service establishment complies with all applicable requirements of this rule.

~~(c)--Emergency suspension of license.~~

~~(i)--The department may, without prior notice or hearing, suspend any license to operate a food service establishment if the operation of the food service establishment constitutes a substantial hazard or nuisance to public health. Suspension is effective upon service of the notice required by subsection (36)(c)(ii) of this rule. When a license is suspended, food service operations shall immediately cease.~~

~~(ii)--Whenever a license is suspended, the holder of the license or the person in charge shall be notified in writing immediately upon suspension that an opportunity for hearing will be provided if a written request for hearing is filed with the department by the holder of the license within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The department may end the suspension at any time if reasons for suspension no longer exist.~~

~~(d)~~ (c) Revocation or cancellation of license.

(i) The department may, after providing opportunity for hearing, revoke a license for serious or repeated violations of any of the requirements of this rule or for interference with the department or other authorized persons in the performance of duty.

(ii) Prior to revocation, the department shall notify, in writing, the holder of the license or the person in charge, 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 ten-day period following service. If no request for hearing is filed within the ten-day period, the revocation of the license becomes final.

(iii) Submission to the department of an acceptable plan of correction within ten 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.

~~(e)~~ (d) Service of notices. 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 be filed in the records of the department.

~~(f)~~ (e) Hearings. The hearing provided for in this rule

shall be conducted by the department at a time and place designated by it. 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.

~~(g)~~ (f) Application after revocation. Whenever a revocation of a license has become final, the holder of the revoked license may make written application for a new license.

(37) Inspections.

(a) Inspection frequency. An inspection of a food service establishment shall be performed by the regulatory authority or local sanitarian at least once every six months unless modified by signed agreement with the department. Additional inspections of the food service establishment shall be performed as often as necessary for the enforcement of this rule.

(b) Access. Representatives of the department, local health officer, or state and local sanitarians, after proper identification, shall be permitted to enter any food service establishment at any reasonable time for the purpose of making inspections to determine compliance with this rule. The representatives shall 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.

(c) Report of inspections. Whenever an inspection of a food service establishment or commissary is made, the findings shall be recorded on the inspection report form, DHES 54.10-1. The inspection report form shall summarize the requirements of this rule and shall set forth a weighted point value for each requirement. Inspectional remarks shall be written to reference, by ~~section~~ item number, the ~~section~~ item violated and shall state the correction to be made. The rating score of the establishment shall be the total of the weighted point values for all violations subtracted from 100. A copy of the completed inspection report form shall 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 shall be made available for public review or distribution upon payment of copying costs to any person upon request.

(d) Correction of violations.

(i) The completed inspection report form shall specify a reasonable period of time for the correction of the violations found and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

~~(A) If an imminent health hazard exists, such as complete lack of refrigeration or sewage backup into the estab-~~

~~lishment, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the regulatory authority.~~

~~(B)~~ (A) All violations of 4 or 5 point weighted items shall be corrected as soon as possible, but in any event, within ten days following inspection. ~~Within fifteen days after the inspection, the holder of the license shall submit a written report to the regulatory authority stating that the 4 or 5 point weighted violations have been corrected. A follow up inspection shall be conducted to confirm correction.~~

~~(C)~~ (B) All 1 or 2 point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

~~(D)~~ (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.

~~(E)~~ (D) In the case of temporary food service establishments, all violations shall be corrected within 24 hours. ~~If violations are not corrected within 24 hours, the establishment shall immediately cease food service operations until authorized to resume by the regulatory authority.~~

(ii) The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of food service operations. ~~An opportunity for hearing on the inspection findings or the time limitations or both will be provided if a written request is filed with the department within ten days following cessation of operations. If a request for hearing is received, a hearing shall be held within twenty days of receipt of the request.~~

~~(iii) Whenever a food service establishment is required under the provisions of subsection (37)(d) to cease operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.~~

(38) Examination and Condemnation of Food.

~~(a) General. Food may be examined or sampled by the regulatory authority as often as necessary for enforcement of this rule. The regulatory authority may, upon written notice to the owner or person in charge, specifying with particularity the reasons therefor, place a hold order on any food which it believes is in violation of subsections (5)(a) or (b) or any other section of this rule. The regulatory authority shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, or moved from the estab-~~

~~lishment.--The regulatory authority shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished.--The hold order shall state that a request for hearing may be filed within ten days and that if no hearing is requested the food shall be destroyed.--If a request for hearing is received, the hearing shall be held within twenty days after receipt of the request.---On the basis of evidence produced at that hearing, the hold order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this rule.~~

(a) General. 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 rule and sections 50-13-509 and 50-13-510, MCA.

(b) Food embargo. 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 its removal or use until permission is given by the regulatory authority or a court.

(c) Condemnation of food. 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.

(d) Perishable foods. 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 unsaleable as human food."

(39) Review of plans.

(a) Submission of plans. Whenever a food service establishment is constructed or extensively 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 be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall 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 rule. No food service establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority.

Individuals are reminded that the plans and specifications must also be approved by the local or state building official having jurisdiction.

(b) Pre-operational inspection. Whenever plans and specifications are required by subsection (39)(a) 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 rule.

(40) Procedure when Infection is Suspected.

(a) General. When the regulatory authority has reasonable cause to suspect possible disease transmission by an employee of a food service establishment, it may secure a morbidity history of the suspected employee or make any other investigation as indicated and shall take appropriate action. The department may require any or all of the following measures:

(i) The immediate exclusion of the employee from employment in food service establishments;

~~(ii) The immediate closing of the food service establishment concerned until, in the opinion of the department, no further danger of disease outbreak exists;~~

~~(iii)~~ (ii) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

~~(iv)~~ (iii) Adequate medical and laboratory examination of the employee and of other employees and of his and their body discharges.

TABLE I

MINIMUM FIXTURES REQUIRED FOR CUSTOMER SERVICE

MALES

Occupant Load	Water Closet	Lav	Urinal	*Additional Urinals where Alcoholic Beverages Are Served
1- 50	1	1	0	1
51-100	1	1	1	1
101-150	1	1	1	2
151-200	2	1	1	2
201-300	3	2	2	2
301-400	3	2	2	3
400-	A	A	A	AA

A - Add one fixture per 250 occupancy load increase
AA - Add one fixture per 150 occupancy load increase

FEMALES

Occupant Load	Water Closet	Lav	*Additional Water Closet
1- 50	1	1	0
51-100	1	1	1
101-150	2	1	3
151-200	3	2	3
201-300	3	2	3
301-400	3	2	3
401-	B	B	BB

B - Add one fixture per 200 occupancy load increase
BB - Add one fixture per 100 occupancy load increase

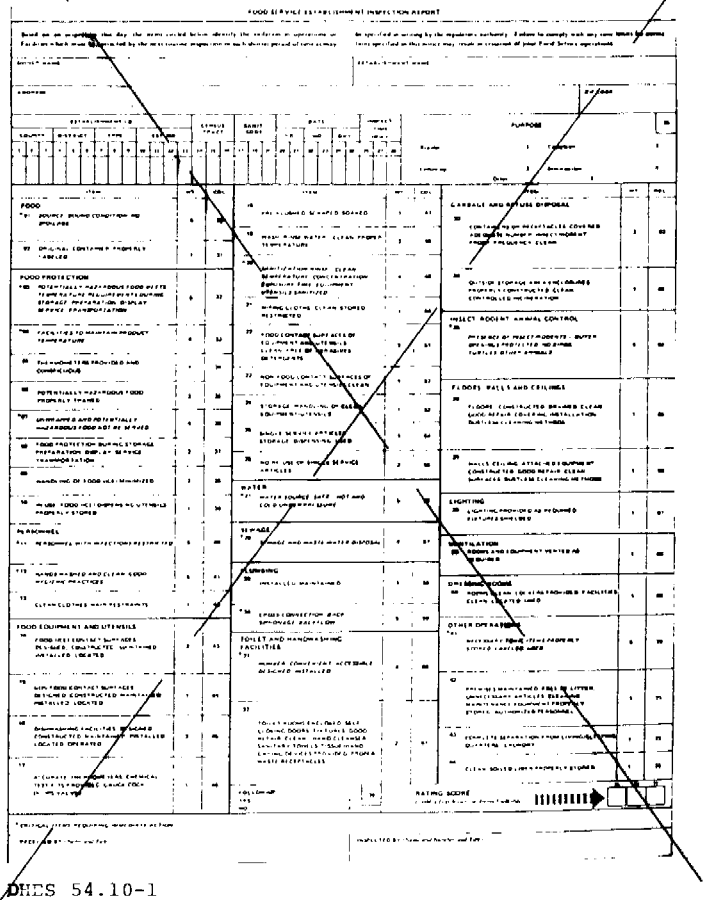
*Applies where alcoholic beverages are sold for on-site consumption. The fixtures are to be in addition to those otherwise required.

Employee use of customer facilities must be approved by the health authority and then the number of employees shall be added to the occupancy load for fixture requirements.

Occupant load is determined by dividing the floor area assigned to that use by the square feet per occupant as set forth in the State Building Code, ARM 2-2.11(1)-S1100. Dining rooms and drinking establishments are calculated at 15 square feet per occupant. This may be modified if other building use is sharing the toilet facilities.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

FOOD AND CONSUMER SAFETY BUREAU



DHES 54.10-1

3. Comments and Reactions. Testimony regarding the proposed rule was submitted in writing from Curtis Duane Langendorf, Chairman, Great Falls Area Food Service Association, Bob Pyfer, staff attorney of the Legislature's Administrative Code Committee, and Will Selser and Clark Meyers of the Lewis and Clark City-County Health Department. Direct testimony was presented at the hearing by Douglas Olson, attorney representing the Department's Food and Consumer Safety Bureau; Robert Stevenson, Great Falls City-County Health Department; Gary Lee Watt, Division of School Food Services, Office of Public Instruction; and Dr. Martin Skinner, Preventive Health Services Bureau, Department of Health and Environmental Sciences. The Department has considered all the testimony presented and has adopted some of these recommendations while rejecting others.

(1) Under section (1) Mr. Watt recommended that Title 7 Vendors, school food operations, hospitals and private schools be included in this section. The Department believes that this recommendation cannot be accepted for section 50-50-103, MCA, specifically limits the scope of the rule to the establishments defined in section 50-50-102, MCA, and the operations suggested by Mr. Watt are not included.

(2) Mr. Watt recommended that the word "deleterious" be changed to "harmful" in section (3)(a)(i)(vi). The Department has not adopted this recommendation because it believes the definitions are synonomous and are consistent with the terminology utilized in the Montana Food, Drug, and Cosmetic Act, and the Federal Food, Drug, and Cosmetic Act.

(3) Mr. Watt recommended that the terms "backflow", "backsiphon", "cross-connection", "cross-contamination", "sanitary", and "single-use" be added to section (3) on definitions. The Department believes that it is not necessary to include the terms "backflow", "backsiphon", and "cross-connection" which are adequately and accurately defined in the state plumbing code. The term "cross-connection" is self-explanatory and the term "single-use" is not necessary for it does not appear in the rule.

(4) Mr. Meyers commented that the term "establishment" in section (3)(h) needed clarification as to whether or not it included custom meat markets. The Department believes this term cannot be changed for section 50-50-102(3), MCA, provides this definition by statute and it cannot be changed in the rule. Furthermore, the Department believes that custom meat markets are generally covered by ARM 16-2.14(2)-S14211, the sanitary rule for food processing establishments.

(5) Mr. Watt proposed a change in terminology under section (3)(k) to change ". . . those surfaces from which food may drain . . . " to ". . . those surfaces from which contamination may drain . . . ". The Department believes this recommendation is unacceptable for the definition of

"food-contact surfaces" is meant to describe surfaces which require special construction standards rather than those describing possible sources of contamination. The word "food" modifies those surfaces which food contacts only.

(6) Mr. Meyers commented on section(3)(m) as to when an establishment qualifies as a "private" one. The Department believes that the test is whether service is generally available to nonmembers (the public). Guests in the company of members would not be considered public in this sense.

(7) Mr. Meyers questioned if grocery stores would be included under food service establishments in section (3)(n). The Department believes that a grocery store would be included under this term if it maintained a lunch counter, coffee shop, restaurant or similar service.

(8) Mr. Watt recommended that the words "or may spoil" be changed in section (3)(u) to read "that may become unfit for human consumption due to natural or microbiological decomposition". The Department has not adopted this recommendation for it believes that the terms "decay" and "spoil" as defined in a common dictionary are synonomous and that the recommended change would not alter the meaning of this section.

(9) Mr. Meyers questioned the availability of equipment to determine the water activity (AW) of potentially hazardous foods in section (3)(x). The Department recognizes that the instruments to make the test for water activity are costly and are beyond the means of most health jurisdictions. However, the present value of the water activity limit is prescribed in the rule primarily so that the suppliers of potentially hazardous foods can satisfy it prior to the food being provided to food service establishments.

(10) Mr. Watt recommended that the term "single-use" be defined between the sections (3)(af) and (3)(ag). The Department does not believe this is necessary as the term "single-use" is not used in the proposed rule.

(11) Mr. Meyers recommended that the definition of a temporary food service establishment in section(3)(ah) be defined as one in operation not more than three days instead of one in operation not more than 14 consecutive days in conjunction with a special event or celebration. Mr. Meyers believed that the 14-day limit could possibly be attached to legal holidays and thus allow a year-round operation to be considered as a temporary one. The Department believes that the three day per year limit on temporary food service establishments as proposed by Mr. Meyers is too severe and would require all operations in excess of three days to meet the equipment, structural and operational requirements of a full-time operation. The Department does not believe that fair booths and rodeo stands at those activities lasting more than three days could reasonably be brought to full-time establishment standards.

(12) Mr. Stevenson commented that the proposed definition of "regulatory authority" in section (3)(aa) varied from previous Montana food service establishment rules and was a departure from the proposed federal code. Mr. Stevenson recommended that the term include local authorities without the need for them to have a written agreement with the Department. The Department disagrees and believes the definition must remain as proposed. Considerable authority is delegated to those entities qualified as regulatory authorities and only through agreements can consistency, competency, and uniformity be achieved. In addition, Chapter 50, Section 50, MCA, specifies the authorities and responsibilities of various agencies and only by following section 50-50-104, MCA, can local agencies be given jurisdiction over certain areas. Section 50-50-104, MCA, provides that the Department may enter into cooperative agreements to carry out the laws and rules pertaining to food service establishments.

(13) Mr. Watt suggested that section (6)(a) does not adequately address home canned foods or other canned foods. The Department disagrees and believes that home canned foods are excluded from the definition of "potentially hazardous" foods in section (3)(x). In addition, the use of home canned foods is prohibited under section (5)(a).

(14) Mr. Meyers recommended that a written policy of embargo and emergency procedure be developed by the Department under section (6)(b). The Department believes that section (38) of the rule adequately details embargo authority and procedure. Other policy statements concerning such things as truck wrecks have been developed and circulated by the Department and others will be written as necessary.

(15) Mr. Watt recommended that the words "partially prepared" be inserted after the word "raw" in section (7)(a)(i). The Department believes that these modifying terms are not necessary for partially prepared foods are still raw and are included.

(16) Mr. Watt recommended that in section (7)(a)(iv) that the word "against" be changed to "from". The Department believes that this change is unnecessary for the intent of the proposed terminology is clear. Mr. Watt also recommended that the word "potential" be inserted before "cross-contamination". The Department believes that the addition of this modifier is also unnecessary.

(17) Mr. Watt recommended that in section (7)(b)(ii) that a statement be added to the effect that ". . . if the food is served within two hours after preparation, it need not be cooled down." The Department believes that the temperature requirements for foods to be served directly after or shortly after preparation are adequately addressed in section (7)(c)(ii).

(18) Mr. Meyers recommended that section (7)(b) be changed to require a four-hour limit for both chilling and warming of potentially hazardous food. The Department believes that the four-hour limit could not be reasonably met, especially when heating and cooling large volumes or masses of food are involved.

(19) Mr. Watt recommended that section (7)(c)(ii) be changed to read "the temperature of potentially hazardous foods requiring hot storage shall be 140° throughout . . ." The Department agrees with this recommendation and the rule has been changed accordingly.

(20) Mr. Watt recommended that section (8)(c)(i) be changed and that the word "sufficiently" be inserted after the word "cooked". The Department believes that the additional term is unnecessary. Mr. Watt also recommended that the terminology "with no" be changed in that section to read "without". The Department has not adopted this recommendation for it believes that the recommended change does not improve the meaning of the sentence.

(21) Mr. Watt recommended that in section (8)(c)(ii) the term "sufficiently" be inserted after the word "cooked". The Department believes that the additional word is unnecessary.

(22) Mr. Watt recommended that in section (8)(d) the word "only" be inserted after "dry-milk products may". The Department accepts this recommendation and the rule has been changed accordingly.

(23) Mr. Watt recommended that in section (8)(f) the words "cooled to below 140° F." be substituted for the word "refrigerated". The Department has not adopted this recommendation for it believes that this section is specifically meant to address those foods which have been refrigerated. Once heated to the required cooking temperature, foods are required to be maintained at 140° or above unless refrigerated as per section (7)(g).

(24) Mr. Watt recommended that the words "only when" be removed from section (8)(g) and that a limit of "three-day supply" be inserted. The Department has not adopted this recommendation for it believes the term "only when" is necessary to sufficiently restrict the use of reconstituted products and that the use of the one gallon limit insures more control than a three-day supply.

(25) Mr. Watt commented concerning section (8)(g)(ii) that a 70° F. temperature was permitted while thawing and that no time contraints were placed on this. The Department does not believe that time restraints are necessary in this section for time and temperature restraints are addressed sufficiently in section (7)(b)(ii). Mr. Watt also commented on the use of double paper sacks for thawing foods. The Department believes that this section adequately addresses thawing procedures and that if double paper sacks can meet the time-

temperature constraints provided, they should be allowed.

(26) Mr. Watt recommended that in section (9)(b)(i) half gallon cartons of milk be permitted for general use. The Department does not concur and has not adopted this recommendation for it believes that the pour spouts on paper cartons are subject to considerable handling during opening and closure procedures and would therefore provide a means to introduce contamination if the larger cartons were authorized. Milk dispensers or half-pint containers are necessary sanitary protection in the opinion of the Department.

(27) Mr. Langendorf questioned the economic and aesthetic impact of the requirement in section (9)(d)(ii) which prohibits the use of open condiment (salad dressing) containers for table self-service by customers. The Department believes that the impact of prohibiting their future use will not be significant and is more balanced by the benefits it will provide. More importantly, the controlled or covered service of condiments eliminates the cross-contamination which takes place as the open salad dressing containers pass from patron to patron and table to table. The exposure to food-borne health problems is reduced significantly through the procedure in the rule.

(28). Mr. Watt commented that section (9)(e) does not adequately address the problem of an ice-scoop being covered during those periods when ice in the container runs low. The Department acknowledges that this may be a problem but believes that the food service establishments have a responsibility to avoid low ice storage periods and can take sufficient steps to eliminate this problem.

(29) Mr. Watt commented that section (9)(f)(iv) needs clarification as it is ambiguous. The Department disagrees and believes that this section is not ambiguous for it refers only to the metal collars used on paper cups to make malts or shakes and any dispensing utensil used in shake, malt, or frozen dessert service.

(30) Mr. Watt commented that the term "service" was not part of section (9)(h) and he was concerned with the section's application to school lunch lines. The Department believes that this is adequately addressed in the section for it concerns "serving line or salad bar protected devices" which are "service" elements.

(31) Mr. Watt commented that in section (10)(a) there is a lack of restraint on broken packaging and the protection of packaged foods from contamination or filth. The Department believes that this concern is adequately covered by section (6)(a) which deals with protective storage.

(32) Mr. Meyers is concerned that section (10) is unnecessary and is difficult to enforce. The Department believes that this section which deals with protective measures during

the transportation of food and utensils is necessary and that it provides the enforcement means to cover foods and utensils during a critical period when exposure to contaminants is greater. The Department believes that this section can be enforced although it recognizes that some difficulty may be encountered.

(33) Dr. Skinner expressed his opinion that the words "diarrheal illness" or "acute gastrointestinal illnesses" should be added to section (11)(a). The Department believes that this is a recommendation with merit and has changed the proposed rule accordingly.

(34) Mr. Watt suggested that "acne" be included as an infected wound in section (11)(a). The Department does not agree for it believes that acne should not be considered in this category.

(35) Mr. Watt recommended that section (11)(b) be re-written to include a requirement that hands be washed after handling soiled dishes. The Department has not adopted this recommendation for it believes that this is already adequately dealt with in the rule which requires that hands be washed as necessary to keep them clean.

(36) Mr. Meyers recommended that section (11)(c)(ii) be removed to another general area under the rule. The Department believes that Mr. Meyers has misread the general area heading and that this section properly belongs under the heading "personnel" where it is currently placed.

(37) Mr. Watt believes that section (11)(d)(i)(B) is ambiguous and needs clarification. The Department disagrees and does not believe that a change in this section is warranted for the section provides sufficient guidance for persons to achieve compliance.

(38) Mr. Watt recommended that section (12)(c) be changed to include the terms "wood work tables" or "hardwood work tables". The Department has not adopted this recommendation for it believes the term "baker's table" is adequate.

(39) Mr. Watt suggested that section (12)(f) be changed to authorize the re-use of single-use items such as mustard jars if they are cleaned. The Department has not adopted this recommendation for it believes the term "single-use" is but a professional term and the authorization to use these items is covered in this section.

(40) Mr. Watt commented that in section (13)(g) it did not seem necessary to require that steam-jacketed kettles have a hood system. The Department disagrees and believes that such hood systems are necessary for they are required by chapter 20, section 2003(a) of the Uniform Mechanical Code.

(41) Mr. Langendorf commented on the new proposed equipment standards in section (13)(h). He indicated that a compliance period was necessary to allow equipment manufacturers to catch up with the new requirements. Also, he felt the proposed

rule would penalize the sale and reuse of used noncomplying equipment. The Department has not adopted a compliance period for it does not believe there will be a significant problem in this regard. Equipment that will meet the new requirements has been available for quite some time and industry does not need time to gear up to the new standards. Purchasers will have to be selective, however, and demand equipment which meets the requirements of this section. The problem of the sale and reuse of noncomplying equipment is judged to be minor. In some instances unacceptable equipment can be made acceptable through the addition of thermometers or other modifications. In other cases, the equipment can be used as is but for purposes which are not subject to the new standards.

(42) Mr. Meyers commented that in section (14)(b)(i) the requirements for four inch clearance may not be adequate for cleaning. The Department disagrees and notes that the national sanitation foundation applies their seal of approval to equipment with this clearance.

(43) Mr. Watt recommended that section (15)(a)(ii) be changed to include washing, rinsing, and sanitizing after "three hours use" or when "bacterial growth may have occurred". The Department has not adopted this recommendation because section (iii) speaks to extended periods of time. The Department does not believe it is necessary to include the bacterial growth statement for the current terminology "contamination" includes bacterial factors.

(44) Mr. Watt commented that section (15)(c)(i) does not require that cooking utensils and other items be sanitized and they should be. The Department believes this comment is not relevant to this section and has not adopted it.

(45) Mr. Watt suggested that section (15)(c)(iii) be changed to require an additional sink for dumping wastes as the three-compartment sinks are often misused. The Department believes this problem can be addressed by other means and that the inclusion of a requirement for an extra waste sink is not necessary.

(46) Mr. Watt recommended that section (15)(c)(iv)(E) be changed to include a specific temperature range of 100° to 120° F. instead of the word "hot". The Department has not adopted this recommendation for it believes that this section refers to manual working procedures and that the temperatures recommended by Mr. Watt may be too hot for comfort or safety and that the detergent being used may be designed to work best at a lower temperature.

(47) Mr. Watt recommended that section (15)(c)(iv)(E) be changed to read "spitting steam" and "raises the surface temperature to 160° F. or above." Mr. Watt's reasoning is that the heat transfer capabilities of "spitting steam" and the temperatures are necessary to achieve sanitization. The

Department does not believe that the term "spitting" is required so long as the proper surface temperature has been reached. Mr. Watt's recommendation concerning surface temperature has been accepted as having merit and a change has been made in the rule.

(48) Mr. Watt recommended the inclusion of the term "manual" in section (15)(c)(vi). The Department does not believe that this is necessary as this is a part of a section entitled "Manual Cleaning and Sanitizing".

(49) Mr. Watt recommended that the concentrations requirement in section (15)(c)(vii) be clarified to indicate the use solution rather than the supply strength. The Department has not adopted this recommendation because it believes the section clearly refers to the solutions prescribed in section (15)(c)(v)(B), (C) and (D).

(50) Mr. Watt recommended that the dishwashers used in bars have a different wash temperature from those required for restaurants. He based this on his belief that there exists a need to remove animal fats. The Department disagrees and has not adopted this recommendation for it does not believe that temperatures alone remove animal fats. Specific detergents and additives may accomplish the removal at 125° F. Mr. Watt also was concerned that the proposed rule in his opinion does not prevent the washing of vegetables in manual dishwashing sinks. The Department disagrees for it finds that foods must be protected from unclean equipment as stated in section (6)(a) and that a dishwashing sink would be considered to be unclean equipment.

(51) Mr. Watt recommended that a section be added under section (15)(d) which would require that a recirculating pump be installed on all hot water booster heaters which are located more than five lineal feet from the dishwasher and that certain installations be required in other cases. The Department has not adopted these recommendations for it does not feel that it should prescribe plumbing methods but that it only should require that a proper temperature be achieved. There may be engineering or plumbing practices which can accomplish the desired end without a pump system.

(52) Mr. Watt suggested that section (16)(c)(iii) be changed to require that single-service plastic gloves be required when handling single-service plastic ware. The Department has not adopted this recommendation for it does not believe that single-service plastic gloves are necessary for well washed hands are acceptable for this operation and provide the equivalent protection.

(53) Mr. Meyers recommended that section (18)(a) be changed to substitute the term "treatment" for the term "disposal" and that variances for "special situations" be eliminated. The Department does not agree for it finds that the common usage of the term "disposal" carries the connota-

tion of treatment with it. Furthermore, it believes that the regulatory authority must be able to improvise proper sewage disposal systems for areas or situations involving large outdoor gatherings. The Department has therefore retained the special situations exclusion.

(54) Mr. Watt recommended that section (19)(c) be changed and that the words "and back siphonage" be added. The Department disagrees and believes this is unnecessary for the flow phenomenon is the same regardless of the terminology used. Mr. Watt also recommended that the word "approved" be inserted before the term "devices". The Department does not believe this is necessary for any device utilized must meet the state plumbing code before it will be approved.

(55) Mr. Watt expressed concern that section (20)(a)(iii) does not provide an adequate number of facilities for female school cooks. The Department notes that the toilets for the students would be provided within the general school facilities and that under section (20)(a)(iv) a single toilet can be provided for the cooks.

(56) Mr. Watt expressed concern that the requirement in section (20)(c) for self-closing doors on restrooms would pose problems for many schools which have open toilets. The Department believes the rule will not pose any problems in this regard for the last sentence of section (20)(c) takes such concerns into consideration.

(57) Mr. Meyers commented that section (20)(b) and (c) which require toilet fixtures to be of an elongated bowl with an open front seat design and have self-closing doors be eliminated unless epidemiology can show an association with illnesses caused by other types. The Department believes that toilet fixtures reasonably would be more contaminated at the front and thus the elongated bowl and open-front seat would significantly reduce the contamination potential. In addition the fixture style is a requirement of the Montana Plumbing Code. The Department believes that toilet rooms should have doors on them to preclude fly movement from the soiled toilet room to food or drink areas.

(58) Mr. Watt recommended that the words "associated with toilet rooms" be added to section (21)(a)(iii). The Department does not believe this is necessary as the location of the lavatory is implicit in the rule and it has therefore not adopted this recommendation. Mr. Watt further recommended that the words "an adequate number of lavatories for employees" and other semantic changes be made. The Department has not adopted these recommendations for the terminology used in the section is adequate in its opinion.

(59) Mr. Watt recommended that section (21)(c)(iii) be changed to remove the terminology "if disposable towels are used" as he believes a waste receptacle should always be provided. The Department does not agree for it believes that it

is not necessary to require waste receptacles where no waste is produced.

(60) Mr. Watt recommended that section (22)(a)(ii) be modified and that the words "or when not in active use" be added to the section. The Department believes that this recommendation has merit and has added the statement.

(61) Mr. Meyers inquired as to whether or not section (32)(b) would classify frankfurters as potentially hazardous foods. The Department believes that the last sentence of this section clearly indicates that frankfurters may be prepared and sold from pushcarts.

(62) Mr. Meyers recommended that section (36)(a) be amended to require that a license be posted so that it is visible to the customers. The Department has not accepted this recommendation for it believes the present terminology is adequate.

(63) Mr. Meyers has recommended that section (36)(b)(ii) be clarified as it relates to inspections being completed before a license application may be approved. He indicated that it is his belief that a contradiction exists with other sections. The Department agrees and has changed the section by adding the words "regulatory authority" so that the regulatory authority or the local health department sanitarian shall make an inspection prior to issuing an initial license.

(64) Several comments were received concerning proposed section (36)(c)(i)(ii). Several members of the legislature as well as the legislature's administrative code committee indicated their belief that adoption of these sections was not authorized by statute. Mr. Langendorf also indicated that these proposed sections pertaining to emergency suspension of licenses be deleted. Mr. Stevenson, however, recommended that these sections be retained. He felt the procedure authorized was a necessary part of an effective food service sanitation program. He believed that substantial hazards to public health must be dealt with properly and that this section provided the means to accomplish this end. The Department after reviewing these recommendations has decided to eliminate the provisions pertaining to emergency suspension of licenses at this time until further research or an attorney general's opinion can be obtained.

(65) The Department has added an additional subsection to section (36) that will provide an administrative procedure allowing establishments to operate while making progress on correcting deficiencies. This reflects current Department policy.

(66) Mr. Meyers recommended that section (37)(a) be changed as it relates to who is to conduct inspections of establishments and the frequencies. He indicated that in his opinion there was a conflict between this section in that the term "regulatory authority" should also be added to this sec-

tion. The Department believes that this recommendation has merit and has modified the section such that either the regulatory authority or the local sanitarian shall make inspections. Mr. Selser also commented with regard to this section and indicated that the intent of the entire rule is that only those persons who have status as a "regulatory authority" may carry out the provisions of these administrative rules. He indicated that there is a need to contract for these services with local health departments and only on those occasions should the local sanitarian be required to make inspections. The Department does not agree with Mr. Selser's comments for it believes that the term "regulatory authority" carries with it considerable authority and responsibility. The Department believes that only through an agreement can the local health authority and the Department be made full partners and that not every local health agency has the experienced staff, the legal backing, or the desire to be classified as a regulatory authority. For these reasons, the Department believes that the term "local sanitarian" must remain. Mr. Selser also commented that section (37)(a) is a direct attempt by the Department to supervise the actions of local health departments and it is not consistent with recent legislation which removes the supervisory role of the Department over local health agencies. The Department is aware of the legislation that Mr. Selser makes reference to, however, section 50-50-301, MCA, indicates that the local health officer, sanitarians or other authorized persons shall make inspections and reports to the Department as required by rules adopted by the Department.

(67) The Department has amended the proposed section (37)(c) and removed the words, "a copy of which follows this rule, and by this reference is made a part hereof." This section pertains to the inspection form and the Department believes that the proposed form needs further review before it is formally adopted. The form when chosen will, however, comply with sections (37)(c), (d). The Department has also amended the proposed rule in section (37)(c) by changing the wording so that it reads that: "inspectional remarks shall be written to reference by item number, the item violated . . . " The Department has made this change because it believes that the remarks on the inspection report form should make reference to the item found to be in violation rather than to the particular section number. This has been done because the Department believes it would be more informative to the establishment.

(68) The legislature's administrative code committee indicated their opinion that there exists no statutory authority for the adoption of section (37)(d)(i)(A) which pertains to immediate closure when an imminent health hazard exists. The Department has reviewed this recommendation and has

decided to eliminate this proposed subsection until further legal research or an official attorney general's opinion may be obtained.

(69) The Department has amended proposed section (37)(d)(i)(B) by deleting language for this subsection beginning with the words "within 15 days after . . . " The Department has taken this action because it believes the proposed section may place an unnecessary burden on the establishment owner and an extra administrative step on the regulatory authority.

(70) The Department has also eliminated the last section of proposed section (37)(d)(i)(E) because it believes that the previous sentence within this subsection implies that an establishment should take actions voluntarily to close if it cannot correct the deficiencies within the prescribed time period. The Department has also eliminated from the proposed rule in section (37)(d)(ii), all words beginning with ". . . and opportunity for hearing . . .", as this is related to section (37)(d)(i)(A) which has been eliminated. The Department has also eliminated all of proposed section (37)(d)(iii) as it relates to proposed section (37)(d)(i)(A) which has been eliminated as stated above.

(71) Mr. Meyers stated that proposed section (37)(d) in his opinion would prohibit all innovative or pilot programs and suggested that a section be added to state that the requirements can be waived in the case of a "modified inspectional program". The Department believes that some of the steps it has taken as indicated above to amend the proposed rule (37)(d) should satisfy Mr. Meyers' criticism of the proposed rule and, inspectors are allowed to use their professional discretion when setting time tables for the correction of violations of these rules.

(72) The Department has rewritten the proposed language for section (38) in order to clarify the relationship between sections 50-50-303 and 50-50-304, MCA, and those of the Food, Drug and Cosmetic Act, section 50-31-101 et seq., MCA, which statutorily provide for the actions to be taken concerning adulterated or misbranded foods. The latter sections have been paraphrased to indicate the procedure that shall be followed.

(73) Mr. Watt commented that section (40)(a) should be amended to consider the status of governmental entities, Title VII center hospitals, and public or private schools as it relates to this rule. The Department has not adopted this recommendation for it believes that section 50-50-202, MCA, sufficiently indicates that establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and the rules adopted by the Department under this chapter.

(74) Mr. Watt also commented on the values that were assigned to items on the proposed inspection form and indicated his belief that there was a need to restructure the document according to a new item weight system. The Department, as has been stated above, decided not to formally adopt an inspection report form as a part of this rule at the present time. The Department believes that there is a need for a further review of the form; however, it does intend to keep the current item weight form because it is uniform with those in other states and on the national level.

(75) Dr. Skinner suggested that section (40)(a) be adopted as proposed because it is vital to insure proper investigation and control of food-borne disease problems. The Department agrees and has not changed this section except to eliminate subsection (ii) from the rule because other steps are available besides administratively seeking the immediate closure of the food service establishment until no further danger of disease outbreak exists. The Department believes that there are sufficient judicial remedies available to obtain this result when such cases arise.

Al Knight

Certified to the Secretary of State July 3, 1979

BEFORE THE DEPARTMENT
OF HIGHWAYS OF THE
STATE OF MONTANA

NEW EMERGENCY RULE

1. The Montana Department of Highways has recently been informed by regulated carriers, state officials and federal officials that diesel fuel supplies in Montana are dangerously low. The Department has been further informed that the critical immediate situation will continue and even worsen through the coming summer months. The lack of diesel presents an imminent peril to the health, safety, and welfare of all the people of Montana since diesel fuel is necessary for agricultural production, home heating, highway construction, transportation of foodstuffs and other basic necessities, and private consumption. Presently, the foregoing activities are seriously curtailed. The critical situation is further compounded by the probability that the Milwaukee Railroad will no longer serve most of Montana.

Therefore, the Director of the Montana Department of Highways has adopted effective the 25 day of June, 1979 the following rule. Under Department of Highways practice, certain multiple trailer combinations may be operated on the Interstate Highway System and adjacent roads on a trip basis by special permit. It is anticipated that the operation of the foregoing multiple trailer combinations will result in conservation of 100,000 gallons of diesel fuel per month and that no alternative methods for conservation exist.

The rule, as adopted, and effective June 25, 1979, will be sent to regulated carriers, the Montana Highway Patrol and other law enforcement agencies, the state wire services and television and newspaper media.

2. Under the law governing emergency rulemaking this rule will be effective the 25th day of June 1979 and may continue for a maximum period of 120 days thereafter at the Director of Highway's discretion. The Department of Highways will carefully monitor the diesel fuel situation during the coming months. If it appears that the diesel fuel shortage will persist, the Director may initiate a regular rulemaking process.

3. The text of the rule is as follows:

Rule I. MOVEMENT OF TRIPLE TRAILER VEHICLE COMBINATIONS AND OTHER SPECIAL VEHICLE COMBINATIONS (1) The following multiple trailer combinations may be operated on a trip basis by a Special Permit issued by the Department of Highways:

(a) A truck-tractor and three trailers, the trailers of approximately equal length, having an overall combined length not to exceed 105 feet.

(b) A truck and two trailers, the trailers of approximately equal length, having an overall combined length not to exceed 95 feet.

(c) A truck-tractor and two trailers of approximately equal length, having an overall combined length not to exceed 105 feet.

(d) An auto transporter combination consisting of a truck and two stinger steered semi-trailers not to exceed 105 feet in vehicle length and 110 feet in load length.

(2) Travel is authorized only on the Interstate Highway System, completed and uncompleted, and on adjacent two lane roads, to allow for local pick-up and delivery. Local is defined as a distance not to exceed 10 miles one way from point of entrance or exit from an Interstate Highway.

(3) Travel is authorized 24 hours per day, including weekends and holidays.

(4) A sign stating "Long Load - Pass with Care" shall be displayed on the rear of each combination. Letters are to be a minimum of 6 inches in height and of a reflectorized type material.

(5) Maximum speed shall not exceed posted speed limits at any time. Speed or any hazardous moving violation will subject the Permittee to revocation of special permit privileges.

(6) Maximum weight shall not exceed that allowed per Section 61-10-107, MCA, which is 20,000 pounds per single axle, 34,000 pounds per tandem axle, and total gross weight of 105,500 pounds.

(7) The combinations shall not be dispatched or operated when hazardous conditions such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke may adversely affect visibility or traction. When adverse conditions are encountered on the road, speed shall be reduced and if conditions become sufficiently dangerous, the operation of the combination shall be discontinued until safe operation can be resumed. During severe conditions, in the interest of safety for the public and combination, the driver may proceed to the first safe place where the unit may be removed from the highway.

(8) Violations of any rules and regulations can result in the Highway Commission's revocation, cancellation or suspension of permits without refund pursuant to Section 61-10-143, MCA.

(9) The above rules and regulations are issued on an emergency basis and will terminate at the end of 120 days following date of issuance, or upon an end of the current fuel shortage, or the onset of bad weather, or other reason deemed sufficient by the Director of the Department of Highways.

(10) In lieu of Special Permit, G.V.W. Form 32, companies intending to use in excess of five permits per day will be authorized to proceed in the following manner:

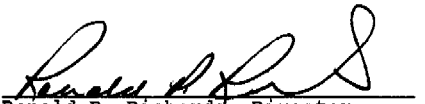
(a) Secure a letter from the Department of Highways for the operation of the vehicle combinations.

(b) Place a photo copy of the letter in each power unit utilized.

(c) Record the number of round trips made each month and forward this information accompanied by a check equal to $6.00 times the number of trips to the Gross Vehicle Weight Division within 10 days following the end of each month.

4. The rationale for the prepared rule is as set forth in the statement of reasons for emergency.

5. The authority of the Director of Highways to adopt the rule is 61-10-124, 61-10-122 and 2-4-303, MCA (Sections 32-1127 and 82-4204(2), R.C.M. 1947).



Ronald P. Richards, Director

CERTIFIED TO THE SECRETARY OF
STATE JUNE 25, 1979

BEFORE THE DEPARTMENT OF STATE LANDS AND
THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the adoption of rules on leasing of state land for coal mining	)))	NOTICE OF ADOPTION OF RULES 26.3.301-26.3.323

TO: All Interested Persons

1. On March 29, 1979, the Department of State Lands published notice of proposed adoption of rules on coal leasing on state land at pages 291-307 of the 1979 Montana Administrative Register, issue no. 6.

2. The Board of Land Commissioners has adopted the rules with the following editorial changes and amendments:

ARM 26.3.302 (Rule II) DEFINITIONS

(1)(a)-(i) Same as proposed rule.

(j) "Commercial quantities" means that quantity of coal which~~,-when-produced,-will-enter-the-commercial-market-in-the usual-course-of-business-of-the-entity-producing-the-coal~~ can be sold at profit in the commercial market.

(k)-(l) Same as proposed rules.

ARM 26.3.317 (Rule XVII) OPERATIONS ON STATE LEASES

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

(4) Upon the termination for any cause of any lease, the lessee must within six months after the date of the termination remove all machinery, fixtures, improvements, buildings and equipment belonging to him from the premises. Any machinery, fixtures, improvements, buildings and equipment belonging to any lessee and not removed within six (6) months after the date of termination of the lease shall, upon the expiration of the six (6) month period, become the property of the state. In special circumstances the department may allow a reasonable extension of time for removal. However, the claiming of such property of the state for salvage or otherwise, and the removal of such property from the lands, or any of such actions shall not relieve the lessee of his obligations to properly reclaim the land and restore the premises to their condition prior to mining operations as far as reasonably possible, as prescribed by Title 82, Chapter 4, Parts 1 and 2 MCA (Title 50, Chapters 10 and 16, R.C.M. 1947). If the land is leased to a new lessee prior to the expiration of the above six month period the former lessee may sell the improvements to the new lessee. If the new lessee and former lessee cannot agree upon the

proper compensation for the improvements arbitration procedures as provided by these rules must be started prior to the end of the six month period.

ARM 26.3.319 (RULE XIX) HEARINGS AND APPEALS

(1) Same as proposed rule.

(2) A verbatim written record of any hearing or rehearing will be made if any party in interest so requests not less than 5 days prior to the day set for hearing and if the requesting party agrees to pay the cost thereof, including the cost of the original copy of the transcript. The transcript shall become a part of the case record and remain on file with the department. The party requesting such verbatim record may be required to deposit, in advance, the anticipated cost of the record. Any transcript must be certified as true, correct, and complete by the parties before it becomes part of the record.

ARM 26.3.323 RULE (XXIII) IMPAIRMENT OF CONTRACT

(1) Nothing in these rules may be construed to impair the obligations of any contract entered into before the effective date of Chapter 358, Law ~~1925~~ 1975.

The lease form attached to the proposed rules is not adopted as a part of the rules but is approved by the Board of Land Commissioners.

(3) Written comments were received from the Department of Natural Resources and Conservation. A summary of their comments is as follows:

(a) A person should not be allowed to hold more than one lease.

(b) The application fee should be charged to the successful bidder rather than the first applicant.

(c) A conflict exists concerning the removal of improvements under ARM 26.3.317(4) (Rule XVII) and ARM 26.3.312(1) (Rule XIII) which concerns the sale of improvements to a new lessee.

(d) A conflict exists between the statutory definition of "commercial quantities" and the definition in the rules.

(e) The definition of "commercial quantities" is unworkable.

(f) The term "fair market value" needs clarification.

(g) The application fee should be on a per unit basis.

(h) No application fee should be returned. A computer system should be used to inform applicants when a previous application has been received.

(i) All sales should be bid on a royalty basis rather than a bonus.

(j) The bid deposit requirement would limit bidding.

(k) The rules should require operations within a

certain time.

(l) The rules should require cancellation of leases when rentals are not paid.

The department carefully considered the above comments. The following is the department's response to each comment:

(a) The department believes that allowing a person to hold more than one lease is in the best interests of the state due to the limited number of potential lessees. There is no statutory prohibition against holding more than one lease. Also, this policy is consistent with other state land leasing policies.

(b) The first applicant is charged the application fee since they are the party responsible for the clerical work which must be done when an application is received. The successful bidder is also charged a fee for issuing the lease. This procedure has worked well in the oil and gas leasing program and is therefore adopted here.

(c) This comment is well taken and the rules have been amended to clarify when these rules apply.

(d) This comment has merit and the rules are amended accordingly.

(e) The definition of "commercial quantities" has been amended to comply with statute.

(f) The term "fair market value" is not capable of further clarification. This language is required by the Montana Constitution and by statute. The Board of Land Commissioners is the public body which is charged with the duty of insuring that "fair market value" is obtained. Anyone disputing this determination may resort to the courts.

(g) The application fee covers one application. An application can only cover contiguous tracts unless they are within one square mile. Therefore, it should not be necessary to charge on a per unit basis.

(h) It appears to be unfair to keep a fee when the application is not accepted. Also at this point a computer system would not be feasible. At a later date if interest is high in coal leases this may be feasible.

(i) The Board retains the option to offer the leases on either bonus bid or royalty basis. Therefore, this comment is not accepted.

(j) The bid deposit is based upon a percentage of the appraised value and therefore will not limit the amount of the bids.

(k) The leases must be in operation within 10 years by statute. The Board does not have the authority to change this requirement by rule.

(1) The Board has the option of canceling any lease for failure to comply with its terms. It is desirable that the Board retain discretion in administering the lease. Therefore, the comment is rejected.

Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State July 3, 1979.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the Amendment of ARM 40-3.70(6)-S7080 concerning renewals	NOTICE OF AMENDMENT OF ARM 40-3.70(6)-S7080 RENEWALS

TO: All Interested Persons:

1. On May 24, 1979, the Board of Optometrists published a notice of amendment of ARM 40-3.70(6)-S7080 concerning renewals at pages 465-466, 1979 Montana Administrative Register, issue number 10.

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

3. No comments or testimony were received. The Board has amended the rule for those reasons as stated in the notice.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PLUMBERS

In the matter of the Amendments of ARM 40-3.82(6)-S8280 concerning examinations and ARM 40-3.82(6)-S8290 subsection (2) concerning renewal fees	NOTICE OF AMENDMENT OF ARM 40-3.82(6)-S8280 EXAMINATIONS AND ARM 40-3.82(6)-S8290 (2) RENEWAL FEES

TO: All Interested Persons:

1. On May 24, 1979, the Board of Plumbers published a notice of amendments of ARM 40-3.82(6)-S8280 concerning examinations and ARM 40-3.82(6)-S8290 subsection (2) concerning renewal fees at pages 467-468, 1979 Montana Administrative Register, issue number 10.

2. The Board has amended the rules exactly as proposed.

3. No comments or testimony were received. The Board has amended the rule for those reasons as stated in the notice.

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, July 3, 1979.

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

In the matter of the amendment of Rule ARM 46-2.6(2)-S684 establishing day care rates.	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.6(2)-S684

TO: All Interested Persons

1. On May 24, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment to rule 46-2.6(2)-S684 pertaining to day care rates at page 475 of the 1979 Montana Administrative Register, issue number 10.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule as the legislature has appropriated funds to the Department of Social and Rehabilitation Services for the increase in day care reimbursement rates.

4. The authority of the agency to make the rule amendment is based on Sec. 1, Ch. 662, L. 1979 and Section 53-4-111, MCA (71-708, R.C.M., 1947). The implementing authority is Section 53-4-514, MCA (10-812 R.C.M., 1947).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of the State July 2, 1979.

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

In the matter of the adoption of rule 46-2.6(2)-S6181 pertaining to child care agencies, payments and rule 46-2.6(2)-S6191 pertaining to group homes, payments.	)))))	NOTICE OF PROPOSED ADOPTION OF RULE 46-2.6(2)-S6181 AND RULE 46-2.6(2)-S6191

TO: All Interested Persons

1. On May 24, 1979, the Department of Social and Rehabilitation Services published notice of a proposed adoption to rule 46-2.6(2)-S6181 pertaining to child care agencies, payments and 46-2.6(2)-S6191 pertaining to group homes, payments at page 479 of the 1979 Montana Administrative Register, issue number 10.

2. The agency has adopted the rules as proposed.

3. No comments or testimony were received. The agency has adopted the rules to respond to the need of an equitable payment system for substitute care of children which is based upon care and services provided by group homes and child care agencies and the identified needs of the residents. Such a rate system would replace the present rate system which is based currently upon individual facility costs.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of the State July 2, 1979.

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

In the matter of the amendment of rule 46-2.10(14)-S11150(5) and (5)(a) pertaining to eligibility requirements for AFDC.	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(14)-S11150(5) and (5)(a)

TO: All Interested Persons:

1. On May 24, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment to rule 46-2.10(14)-S11150(5) and (5)(a) concerning when a stepparent or a spouse of an incapacitated natural or adoptive parent can be included in an AFDC grant at page 474 of the 1979 Montana Administrative Register, issue number 10.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because it clarifies those situations in which the spouse of a natural or adoptive parent may be included as a qualified recipient and when a stepparent also may be included in an AFDC grant.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 2, 1979.

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

In the matter of the amendment of Rule 46-2.10(18)-S11420 pertaining to medical assistance, eligibility requirements.	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11420

TO: All Interested Persons

1. On May 24, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment to rule 46-2.10(18)-S11420 pertaining to medical assistance, eligibility requirements at page 472 of the 1979 Montana Administrative Register, issue number 10.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because the medically needy premium has not served its original purpose as a deterrent to excessive utilization because of its tokenism. The cost of collecting the premium exceeds the amount collected while taking up time that could be better spent making other eligibility determinations. For all the above reasons, this amendment is proposed to eliminate the medically needy premium from the Medicaid program.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 2, 1979.

46-2.10(18)-S11465 SOCIAL AND REHABILITATION SERVICES

EMERGENCY RULE TO AMEND

Statement of reasons for emergency.

Fee increases to certain Medicaid providers have been prohibited since October of 1977. The proposed rule would continue the prohibition on provider fee increase until it is demonstrated by a professional organization, ten (10) members or 25% of the medical specialty group affected that a fee increase is needed.

The promulgation of this rule is necessary in order to allow for the development of equitable reimbursement plans for providers covered by the current prohibition. The Medicaid program is governed by federal laws and regulations. These laws and regulations prohibit the department from paying more than that paid by Medicare or from paying more than the amount the provider charges his private pay clients, whichever amount is less. The department is aware that providers have incurred increased costs in energy, supplies, and labor. Also, it is known that providers have increased their fees to the general public. The proposed rule will allow the department to verify that any fee increase will be within federal guidelines and within the department's budget.

If the prohibitions were allowed to expire, provider reimbursement rates would increase inequitably and beyond budgetary guidelines. This would precipitate the need to curtail essential medical services. Therefore, the department finds that there is imminent peril to public health, safety and welfare which requires the department to adopt the following as an emergency rule:

46-2.10(18)-S11465 MEDICAL ASSISTANCE, TEMPORARY PROHIBITION OF CERTAIN PROVIDER FEE INCREASES (1) From the effective date of this rule ~~until July 1, 1979,~~ no fee increases to Medicaid providers are allowed, except as provided in ~~subsection~~ subsections (2) and (3) of this section.

(2) When it is demonstrated by a professional organization, ten (10) members or 25% of the medical specialty group affected by the fee prohibition, that current Medicaid rates are adversely affecting the program, fee increases shall be granted within legislative budget contraints to any provider group so demonstrating an adverse affect.

~~(2)~~ (3) This prohibition does not apply to any fee increase ~~required by federal Medicaid law or regulations, including but not limited to federally required fee increases~~ for nursing home care providers and hospital providers.

~~(3)~~ (4) This rule, for its effective duration, takes precedence over any other rules in this Title which are in conflict, including but not limited to 46-2.10(18)-S11460. (History: Sections 53-6-113, MCA (71-1511(6), R.C.M. 1947); IMP 53-6-111, MCA (71-1511, R.C.M. 1947), 53-6-141, MCA (71-1517, R.C.M. 1947); EMERG, AMD Eff. 10/25/77; AMD, 1978 MAR, p. 213, Eff. 2/25/78.)

The authority to make these changes in the rule is based upon 53-6-113, MCA (71-1511(6), R.C.M. 1947) with the implementing authority being 53-6-111, MCA (71-1511, R.C.M. 1947) and 53-6-141, MCA (71-1517, R.C.M. 1947).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 28, 1979, 1979.

VOLUME NO. 38 OPINION NO. 22

COUNTY GOVERNMENT - Appointment of full-time county attorney in counties with less than 30,000 population - procedure, salary and qualification;
COUNTY OFFICERS AND EMPLOYEES - County Attorney - Appointment of full-time county attorney in counties with less than 30,000 population - procedure, salary and qualification;
ELECTIONS - Residence for voting purposes;
RESIDENCE - Residence for voting purposes;
MONTANA CODE ANNOTATED - Sections 1-2-201, 7-4-2206, 7-4-2503, 7-4-2504, 7-4-2701, 13-1-111, 13-1-112;
REVISED CODES OF MONTANA, 1947 - Sections 16-2406, 16-3107, 23-2701, 23-3022, 25-608, 25-609.1, 43-507.

HELD: 1. Pursuant to House Bill No. 682, Laws of Montana (1979), a county with a population of less than 30,000 may establish a full-time county attorney position on July 1 of any year. However, the full-time position need not be filled on July 1. The Board of County Commissioners may provide that the full-time position commence at some specified reasonable time after July 1.

2. The salary of a full-time county attorney in a county of less than 30,000 population is the same salary as that provided in section 7-4-2503, MCA, (25-608, R.C.M. 1947) for a full-time county attorney in a county having more than 30,000.

3. A practicing attorney who has declared his intention to make a county his permanent home; is actively seeking a permanent residence in that county; and is in the process of terminating his personal business affairs at his former residence, has become a resident of the county and is eligible for appointment as a full-time county attorney once he has resided in the county for thirty days if he becomes a qualified registered elector and meets other qualifications requirements for the office.

27 June 1979

Robert L. Fletcher
Sanders County Attorney
Thompson Falls, Montana 59873

Dear Mr. Fletcher:

You have requested an opinion concerning the establishment of a full-time county attorney's position in Sanders County under House Bill 682. That bill was enacted by the 1979 Montana Legislature. Section 1 provides:

> Section 1. County attorney may be full time --resolution -- salary. In any county with a population of less than 30,000, the county commissioners may, upon the consent of the county attorney, on July 1 of any year by resolution establish the office of county attorney as a full-time position subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary provided by 7-4-2503 for the office of county attorney in a county with a population in excess of 30,000.

Several questions have arisen concerning the mechanics of establising a full-time position and the amount of salary.

Your first question concerns the July 1 date specified by the section for establishing the position. July 1 is significant because it is the first day of the new fiscal year, and the day provided for fixing salaries of county officials for the next fiscal year. Section 7-4-2504, MCA (25-609.1, R.C.M. 1947). It is also the effective date of H.B. 682 since a different date is not expressly provided. Section 1-2-201, MCA (43-507, R.C.M. 1947). The power to establish a full-time position becomes effective on July 1. The July 1 date, however, should not be interpreted to require the Commissioners to appoint a full-time county attorney on July 1 or to require that an appointee accept his appointment and commence his full-time duties on July 1. Such a reading would be overtechnical and unreasonable. The new section contains no requirement that the position be filled or commence on July 1. Since a full-time position cannot be legally established until July 1, the Commissioners must have time to seek out and appoint a qualified attorney for the position and to provide for the transition of a part-time to full-time office of county attorney. Absent a

specific statutory direction as to the means which are to be employed in exercising an express power, the Commissioners may adopt any appropriate and reasonable means. See Thompson v. Gallatin County, 120 Mont. 263, 184 P.2d 263 (1947).

The salary for any full-time position which may be established on July 1, 1979, "is the salary provided for the office of county attorney in a county with a population in excess of 30,000." The provision is plain and unambiguous. However, a subsequent section of H.B. 689 has created some question concerning salary. Section 4 provides in relevant part:

> (D) In those counties where the office of the county attorney has been established as a full-time position pursuant to (section 1), the salary of the county attorney shall be set by resolution of the county commission but it shall not exceed the salary of the county attorney in a county with a population in excess of 30,000.

That section must be reconciled if possible with the salary requirement of section 1. Indeed, the two sections can be reconciled by interpreting section 4(D) as providing the mechanics for fixing the salary. Compare section 7-4-2504, MCA (25-609.1, R.C.M. 1947), which requires county commissioners to fix salaries of county officials on July 1, even though the actual amount of salary is fixed by statute. If a full-time county attorney is paid the same amount as a county attorney of a county having more than 30,000 population, as required in section 1, such amount would "not exceed" the salary of the county attorney in a county with a population in excess of 30,000.

Finally, you have asked whether the person appointed to the position of full-time county attorney must be a qualified elector of the county at the time of his appointment. Section 7-4-2701, MCA (16-3107, R.C.M. 1947) provides, "No person is eligible to a county office who at the time of his election is not *** (3) an elector of the county in which the duties of the office are to be exercised." Section 7-4-2206, MCA (16-2406, R.C.M. 1947), permits the county commissioners to fill any vacancy in a county office but makes no mention of any requirement that the appointee be an elector of the county at the time of the appointment.

However, it is unnecessary to research the matter further to reach a final conclusion since the facts you have furnished this office indicate that the person the Commissioners are presently considering for the position can satisfy the "qualified elector" requirement by the time of his appointment, if he is appointed. Specifically, you have indicated that the attorney under consideration has practiced law in and been a resident of another Montana county for a number of years. He has declared his intention to reside on a permanent basis in Sanders County; and he is actively seeking a permanent residence in Sanders County. He is currently closing out his personal and business affairs in the other county while simultaneously establishing a new residence in Sanders County. These actions demonstrate a change in residence and an intent to permanently reside in Sanders County. Residency, which is a prerequisite to voting, is principally a question of intent. Rules for determining residence for voting purposes are set forth in section 13-1-112, MCA (23-3022, R.C.M. 1947), the most important of which are:

> (1) The residence of a person is where his habitation is fixed and to which, whenever he is absent, he has the intention of returning.
>
> ***
>
> (9) A change of residence can only be made by the act of removal joined with intent to remain in another place.

In addition to other requirements, eligibility for voter registration requires residence in the county for thirty days. Section 13-1-111, MCA (23-2701, R.C.M. 1947). The facts indicate the person under consideration by the Commissioners has already established a new residence in Sanders County. His actions constitute an ongoing "act of removal" accompanied by an intent to make Sanders County his permanent home. Since the Commissioners presently intend to make the county attorney position full-time on August 1, 1979, the person under consideration can become a qualified elector before that time and if otherwise qualified will be eligible for appointment to the position.

THEREFORE, IT IS MY OPINION:

1. Pursuant to House Bill No. 682, Laws of Montana (1979), a county with a population of less than 30,000 may establish a full-time county attorney position on July 1 of any year. However, the full-time position need not be filled on July 1. The Board of County Commissioners may provide that the full-time position commence at some specified reasonable time after July 1.

2. The salary of a full-time county attorney in a county of less than 30,000 population is the same salary as that provided in section 7-4-2503, MCA, for a full-time county attorney in a county having more than 30,000.

3. A practicing attorney who has declared his intention to make a county his permanent home; is actively seeking a permanent residence in that county; and is in the process of terminating his personal business affairs at his former residence, has become a resident of the county and is eligible for appointment as a full-time county attorney once he has resided in the county for thirty days if he becomes a qualified registered elector and meets other qualifications requirements for the office.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME NO. 38 OPINION NO. 23

COUNTY COMMISSIONERS - Authority to create rural special improvement districts - "thickly populated localities;"
SPECIAL IMPROVEMENT DISTRICTS - Creation of rural special improvement districts on land owned by a single developer - "thickly populated localities;"
1972 MONTANA CONSTITUTION - Article XI, section 4(2);
MONTANA CODE ANNOTATED - Sections 1-2-105, 7-12-2102, 7-12-2105, 7-12-2106, 7-12-2107, 7-12-2109, 7-12-2110, 7-12-2111 and 7-12-2112;
REVISED CODES OF MONTANA, 1947 - Sections 16-1601, 16-1602, 16-1604, 16-1625, 16-1628, and 19-103.

HELD: Section 7-12-2102, MCA (16-1601, R.C.M. 1947), allows the board of county commissioners to create RSID's to fund improvements on underdeveloped and unoccupied parcels of land, provided the proposed district lies within an area which is "thickly populated."

28 June 1979

Robert L. Deschamps III, Esq.
Missoula County Attorney
County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion on the following question:

> Does section 7-12-2102, MCA (16-1601, R.C.M. 1947), allow the board of county commissioners to create rural special improvement districts ("RSID's") to fund improvements on underdeveloped

> and unoccupied parcels of land which are in the process of being subdivided for sale by a single developer?

Your letter informs me that the Missoula County Commissioners have created several of the so-called "developer RSID's", which allow subdividers to finance improvements with little expenditure of their own capital and pass the costs along to the ultimate purchasers of the lots in the form of RSID assessments.

The controlling statute is section 7-12-2102, MCA, which provides:

> Authorization to create rural special improvement districts upon petition. Whenever the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of county commissioners is authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

(Emphasis added.)

From the language of the statute, it was obviously contemplated that RSID's would be created in areas which had already undergone substantial development and which were already occupied by taxpaying freeholders. Your question is whether the statute will admit of a construction allowing creation of RSID's on property owned by only one freeholder, viz., the developer-subdivider.

The uncertainty of the statute arises from its reference to "thickly populated localities" and from the requirement that "60% of the freeholders" approve the RSID. It is suggested that these provisions evidence an intent to limit RSID's to districts which are "thickly populated" when the petition for RSID is filed. In my opinion, the language need not be read so restrictively, especially in light of Article XI,

section 4(2) of Montana's Constitution, which provides that local government powers should be liberally construed. Keeping that constitutional mandate in mind, I conclude that section 7-12-2102, MCA, permits the county to create "developer" RSID's in some circumstances.

It should be noted initially that the RSID statutes were designed to benefit the public and to concommitantly protect two classes of citizens - the taxpayers who bear the burden of paying assessments against the property which benefits from the improvement, and the citizens of the county whose credit is pledged in support of the RSID bonds. Members of the former category are protected by the requirements that sixty percent of the freeholders in the district must petition for the creation of the district, section 7-12-2102, MCA, that the commissioners must publish notice of their intention to create the district, sections 7-12-2105 through 2107, MCA (16-1602, 1626, 1628, R.C.M. 1947), and that dissenting freeholders may protest the creation of the district, sections 7-12-2109 through 2112, MCA (16-1604, 1626, R.C.M. 1947). The interests of the public at large are protected by the requirement that the board of commissioners find the creation of the district to be required for "the public interest or convenience." The petition, notice and protest provisions are jurisdictional - the commissioners may not proceed to create a district without complying with those requirements. See Koich v. City of Helena, 132 Mont. 194, 315 P.2d 811 (1957). However, the finding that the creation of a RSID is in the public interest is vested in the discretion of the commissioners, reviewable by a court only in cases of fraud or manifest abuse. See O'Brien v. Drinkenberg, 41 Mont. 538, 544-45, 111 P. 137 (1910).

The provision for creation of RSID's only in "thickly populated localities" is closely tied to the requirement that RSID's be created for "the public interest or convenience." A prior opinion of the Attorney General has noted:

> [T]here are no requirements for a hearing or for findings as to whether the area involved is a thickly populated locality. The determination appears to be an administrative one, which would fall within the class of determinations which are subject to court review only in cases of fraud or abuse of discretion.

36 OP. ATT'Y GEN. NO. 109 (1976).

The opinion further noted that the proposed district itself need not be thickly populated. Rather, it was found to be sufficient if the general area in which the district would be located was a "thickly populated locality." The opinion explicitly recognized the value of RSID's in promoting the development of raw land into marketable residential real estate.

I adhere to the analysis of that opinion. The County Commissioners plainly have the discretion to determine that enhanced development of uninhabited districts which lie within thickly populated areas may benefit public interest or convenience. On the basis of that determination, section 7-12-2102 allows but does not require the commissioners to create a RSID, even though the district is owned by only one freeholder. The fact that the statute requires approval of a percentage of freeholders is not significant, since by statute the plural "freeholders" necessarily includes the singular "freeholder." Section 1-2-105(3), MCA (19-103, R.C.M. 1947).

Your letter suggests that the commissioners may create a RSID on the basis of a mere expectation that the area comprising the district may be thickly populated in the future, when development is complete and the lots are sold and occupied, relying on the provision of section 1-2-105(1), MCA, that "(t)he present tense includes the future as well as the present." In my opinion the statute does not permit this construction. Initially, section 1-2-105(1) refers to verb tense, and was intended to insure that statutes operate prospectively as well as presently. The term "thickly populated" in section 7-12-2102 is an adjective form modifying "locality." It is a term of limitation, and the extent of its limitation may not be modified by application of the cannon of construction set forth in section 1-2-105(1).

The requirement that the area in which the RSID is located be "thickly populated" has a sound basis in public policy. The credit of the county is pledged in support of RSID bonds. In the event the development proves unsuccessful, the county taxpayers may end up bearing the costs of the improvements. The likelihood of an unsuccessful development is obviously lessened when the area in which the proposed RSID is located already supports one or more residential developments. It seems plausible that the legislature con-

sidered this fact in requiring that the area be thickly populated as a condition precedent to creation of a RSID. However, in voting to create a RSID under these circumstances, the commissioners should bear in mind that such an exercise of their powers approaches the limits of their authority under section 7-12-2102, MCA. Since the county taxpayers are exposed to potential financial liability should the developer's business judgment prove faulty, the commissioners should exercise great care in assuring that the public interest requires creation of a "developer RSID."

THEREFORE, IT IS MY OPINION:

> Section 7-12-2102, MCA, allows the board of county commissioners to create RSID's to fund improvements on underdeveloped and unoccupied parcels of land, provided the proposed district lies within an area which is "thickly populated."

Very truly yours,

MIKE GREELY
Attorney General

MG/CT/br

VOLUME NO. 38 OPINION NO. 24

LICENSES, PROFESSIONAL AND OCCUPATIONAL - Authority of Board of Nursing to approve courses not leading to licensure;
NURSING, BOARD OF - Authority to approve nursing-related courses;
NURSING SCHOOLS AND COURSES - Authority of Board of Nursing to approve nursing-related courses;
MONTANA CODES ANNOTATED - Sections 37-8-101, 37-8-102(3), 37-8-202(2), 37-8-443(1)(g).

HELD: The Board of Nursing lacks authority to require approval of schools and courses which teach nursing-related subjects, but which did not prepare students for licensure as registered or licensed practical nurses.

29 June 1979

Ed Carney, Director
Department of Professional and
Occupational Licensing
LaLonde Building
Helena, Montana 59601

Dear Mr. Carney:

You have requested my opinion on the following question:

> Whether the Board of Nursing has the authority to approve schools and courses which teach nursing-related subjects, but which do not prepare students for licensure as registered or licensed practical nurses.

Title 37, Chapter 8, of the Montana Code Annotated addresses the approval of schools of nursing and the licensure of professional and practical nurses. The legislature has given the Board of Nursing the authority and the duty to survey and approve nursing schools and courses to ensure that persons practicing nursing in the State are qualified. To effectuate this approval requirement, section 37-8-443 (1)(g), MCA, makes it a misdemeanor for a person or institution to "conduct a school of nursing or a course unless the school or course has been approved by the board."

The question you have raised involves schools and courses which are designed to teach students certain nursing-related tasks, such as acting as nursing aides, inhalation therapists, and operating room technicians. The performance of these tasks does not at present require licensure in the State of Montana, and the courses are not offered to prepare the students to become registered or licensed practical nurses. Your specific inquiry is whether the board-approval requirements of Title 37, Chapter 8, apply to these courses and schools as well as to courses and schools qualifying students for licensure.

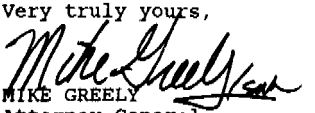
While the general term "nursing" encompasses a wide range of activities involving the care and attendance of the sick, it is clear that not all aspects of nursing are covered by the provisions of Title 37, Chapter 8. Section 37-8-101, MCA, states that the purpose of the statutory provisions in Chapter 8 is to ensure only qualified persons practice in the areas of professional and practical nursing. The types of nursing covered by the chapter are explicitly set forth in the definitional statute, section 37-8-102(3). Most important for the question presented here, section 37-8-202(2), which establishes the powers and duties of the Board of Nursing, states: "The board under each administration shall prescribe curricula and standards for schools and courses preparing persons for registration and licensure under this chapter." (Emphasis added.)

From a reading of the statutes as a whole, it is clear that the powers and duties of the Board of Nursing were intended to extend only to those areas of nursing education culminating in the licensure of registered and practical nurses. Although section 37-8-443(1)(g) does not explicitly limit its proscription of unapproved nursing schools and courses to those preparatory to licensure, such a limitation is implicit when the statute is read in conjunction with the rest of the chapter. Therefore, schools and courses in nursing-related subjects that are not designed to prepare students for registration or licensure as professional or practical nurses do not require approval by the Board of Nursing.

THEREFORE, IT IS MY OPINION:

The Board of Nursing lacks authority to require approval of schools and courses which teach nursing-related subjects, but which do not prepare students for licensure as registered or licensed practical nurses.

Very truly yours,



MIKE GREELY
Attorney General

MG/MBT/ar

VOLUME NO. 38 OPINION NO. 25

CONSERVATION DISTRICTS - Responsibility for costs of conservation district supervisor elections;
ELECTIONS - Responsibility for costs of conservation district supervisor elections;
MONTANA CODES ANNOTATED - Sections 13-4-106, 13-12-213, 76-15-102, 76-15-103, 76-15-201 to 216, 76-15-301 to 303.

HELD: The county in which voting for a conservation district election occurs is responsible for paying the expenses incurred by the election.

2 July 1979

Donald D. MacIntyre, Esq.
Chief Legal Counsel
Montana Department of Natural
Resources & Conservation
32 South Ewing
Helena, Montana 59601

Dear Mr. MacIntyre:

You have requested my opinion on the following question:

> May Cascade County shift to the Conservation District the responsibility for paying the costs of the Cascade County Conservation District Supervisor Election held November 7, 1978?

The legislature has declared its policy to "provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this state." Section 76-15-102, MCA. Pursuant to this policy, conservation districts may be petitioned for and created under the provisions of sections 76-15-201 through 216, MCA. A conservation district, once established, is divided into supervisor areas. Section 76-15-301, MCA. Supervisors for the respective areas are then nominated by petition or nominating election under

section 76-15-302, MCA, and elected in a general nonpartisan election under section 76-15-303, MCA. Prior to 1977 the Department of Natural Resources was specifically charged with the duty to pay all expenses of such elections under section 76-106, R.C.M. 1947. However, in that year the legislature amended the statute to exclude any reference to election expenses. Your inquiry questions the impact of that amendment.

The costs of the election may be separated into two major categories: (1) the printing and distribution of ballots; and (2) the compensation of judges and clerks. It is my opinion that the counties in which the voting occurs must bear the burden of both types of expenses.

Section 13-12-213, MCA, provides in part:

> 1) All ballots cast for public officers within the state, except school district officers, must be printed and distributed at public expense.
>
> 2) The county shall pay for the printing of ballots and cards of instruction for elections in each county.

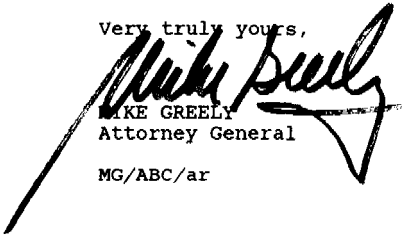
The only question arising from the application of this section to conservation district supervisors is whether the supervisors are "public officers" within the meaning of the statute. Section 76-15-103(11), MCA, states: "Supervisor means one of the members of the governing body of a district elected or appointed in accordance with this chapter." District is in turn defined in section 76-15-103(4), MCA, as "a governmental subdivision of this state and a public body corporate and politic..." This concept is reiterated in section 76-15-215, MCA, which provides that "[T]he district is a governmental subdivision of this state and a public body, corporate and politic, exercising public powers." Clearly a conservation district supervisor, as a member of the governing body of a public organization exercising public powers, is a public official. See Poorman v. Board of Equalization, 99 Mont. 543, 550-51, 45 P.2d 307 (1955). Ballots for elections of such supervisors must therefore be paid for by the county under section 13-12-213(2), MCA, until such time as they are specifically excepted, as school district officers are in section 13-12-213(1), MCA.

The same rationale applies to require the county to bear the expenses of providing election judges and clerks. Section 13-4-106, MCA, states: "The compensation of election judges and clerks shall be fixed by the commission at the prevailing federal minimum wage and paid from county funds..." (emphasis added). Under this provision conservation districts would not be responsible for these election expenses either, since again they are not specifically excepted from the operation of the statute.

THEREFORE IT IS MY OPINION:

The county in which voting for a conservation district supervisor election occurs is responsible for paying the expenses incurred by the election.

Very truly yours,



MIKE GREELY
Attorney General

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