

## REGULATION 4: FOOD SERVICE ESTABLISHMENTS

Revised October 01, 2008

- I. PURPOSE.** The purpose of this regulation is to prevent and eliminate conditions and practices which endanger public health.
- II. AUTHORITY.** Authority for this regulation is provided for in 50-2-116, MCA: under which a local health board may adopt rules for control of communicable diseases for the removal of filth which might affect public health; and to abate nuisances affecting public health and safety or conditions of public health importance.
- III. REGULATIONS INCORPORATED BY REFERENCE.** All food service establishments located in Missoula County shall comply with the Administrative Rules of Montana, as authorized by MCA Title 50 Chapter 50 concerning Food Service Establishments.
- IV. DEFINITIONS.**
- (A) “Caterer” means a person who prepares food in a licensed facility, transports it and serves it at private events or public events.
- (B) “High-Risk Critical Violation” means a critical item in any of the following categories:
- (1) Time-temperature: Perishable and potentially hazardous foods (PHFs) held at safe temperatures; raw animal foods cooked to required temperatures; PHFs cooled as required; PHFs reheated for hot holding as required; proper destruction of parasites by freezing; proper thawing procedures.
  - (2) Personal hygiene: Ill food employees restricted; food employees wash hands when required; food employees prevent contamination of food by eliminating bare hand contact with ready-to-eat foods except as specified in Section V; food employees prevent contamination through eating, drinking and tobacco use.
  - (3) Cross-contamination: Packaged and unpackaged food protected from cross-contamination and unclean sources; tableware, kitchenware and food contact surfaces of equipment and utensils washed, rinsed and sanitized as required.
  - (4) Water/sewage: Adequate and safe water supply; adequate hot water, proper sewage disposal.
- (C) “License” means a document issued by the Montana Department of Public Health and Human Services that authorizes a person to operate a food service establishment.
- (D) “Temporary Food Service” means a short-term food service establishment that operates at a fixed location in conjunction with a single event or celebration, as provided in Section VIII.

**V. LICENSE REQUIRED.**

(A) It is unlawful for any person to operate a food service establishment in Missoula County without a valid license.

(B) When a food service establishment changes owners, licenses are not transferable. Owners shall notify the department when they permanently close their food service establishment.

(C) New owners may not operate until the establishment:

- (1) Meets all current health standards or a schedule of compliance has been approved by the Department;
- (2) Has completed a change of ownership review, including any necessary pre-opening inspections; and
- (3) Has a valid license.

(D) A catering endorsement cannot be used to serve food directly to the public when there is no catering contract with a specific party or when a separate food service license or endorsement is required.

(E) License must be posted in a conspicuous place in the food service establishment.

**VI. HANDLING RESTRICTED.**

(A) Except when washing fruits and vegetables, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as tissues, spatulas, tongs or single-use gloves.

(B) The Department may grant an exemption to the above rule if a plan is submitted and approved by the Department. The written plan must include, at least, the following:

(1) Provision for minimal hand-to-food contact.

(2) A written policy requiring hand washing before beginning work or food preparation; during food handling as often as necessary to remove soil and contamination; to prevent cross-contamination when changing tasks; and after:

- (a) Touching any soiled clothing, object or surface;
- (b) Handling dirty dishes and before handling clean dishes or engaging in food preparation;
- (c) Touching or scratching any area of the body (ears, mouth, nose, hair, etc.);
- (d) Using a handkerchief or tissue;
- (e) Using the restroom;
- (f) Handling raw foods of animal origin;
- (g) Handling other raw foods as necessary to prevent cross-contamination;
- (h) Cleaning, taking out the garbage, or putting away supplies;
- (i) Smoking, eating or drinking; and
- (j) Returning to the kitchen from any other area.

(3) A program to train staff and monitor and evaluate compliance with the hand washing policy.

(4) Adequate and conveniently located hand sink(s) equipped with soap and paper towels in dispensers and fingernail brushes in the food preparation area.

(5) A floor plan showing the location of all hand sinks and food preparation areas.

(6) Prohibition of the use of clothing and aprons for wiping or drying hands.

(7) Requirement for food handlers to keep fingernails trimmed and clean and hands free of jewelry.

(C) If the Department observes noncompliance with the approved plan, the Department may revoke the exemption.

(D) A glove exemption is valid for two years. Before a glove exemption may be renewed, information must be submitted to the Department showing the establishment still meets the requirements of this rule.

## **VII. CERTIFICATE FOR HOME BAKED ITEMS.**

(A) Not-for-profit organizations, which serve food to the public for fewer than 14 days in a calendar year, may serve baked goods and preserves prepared in home kitchens to the public provided they have a certificate from the Department.

(B) To qualify for a certificate, the organization must:

(1) Register the event with the health department;

(2) Limit each event to three (3) days or less;

(3) Maintain a list of home bakers and the food they donate to the event;

(4) Prohibit participation of persons with any communicable disease transmissible by food;

(5) Distribute handouts provided by the health department to all home bakers before food preparation and to all on-site food handlers before they sell goods;

(6) Prohibit direct hand-to-food contact with ready-to-eat foods, and;

(7) Limit the type of food sold or offered to candies, cookies, cakes, cupcakes, bread, fruit pies, popcorn, preserves, coffee, tea, commercially prepared juices and soft drinks.

## **VIII. TEMPORARY FOOD SERVICES**

(A) A person may not operate a temporary food service for more than 14 consecutive days or 21 total days when some of the days are not consecutive.

(B) A person may not obtain more than one temporary food service license for a single event at a single location in order to operate longer than allowed in (A).

(C) A person must have permission from the entity sponsoring or organizing the event to operate a temporary food service at an event or celebration.

(D) If an event or celebration takes place at several locations, a separate license is needed for each location at which a temporary food service operates.

(E) If an event or celebration is longer than the limitations listed in (A), a person operating a temporary food service shall designate which days he or she will operate before the Department may approve the license.

(F) A person may not create an event or celebration in order to circumvent the requirements of the state and local food regulations. The Department has the sole discretion to determine whether an event or celebration qualifies under this regulation.

(G) Event Series. A series of events may qualify as one event for the purpose of licensing under the following conditions:

- (1) There must be a series coordinator who will oversee the entire series;
- (2) All events in the series must take place at the same location;
- (3) At least 10 days before the first event in the series, the series coordinator shall submit to the Department a list of individual events that make up the event series. No events may be added after the series begins;
- (4) The series coordinator or their representative must be available during each event to respond immediately to problems affecting food service;
- (5) At least 5 working days before each event in the series, the series coordinator must submit a list of participating food vendors to the Department;
- (6) Temporary food establishments do not have to participate in every event in the series to qualify for the single license; and
- (7) Changes to the approved menu(s) require additional plan review.

(H) A temporary food service may offer potentially hazardous food that is not individually portioned and packaged at the commissary under the following conditions:

- (1) The menu must be simple;

- (2) On site food preparation must be limited to *quick cook-and-serve* and *simple assemble-and-serve*;
- (3) All other food preparation must be done in an approved commissary;
- (4) During transport and at the event, food must be held and dispensed in such a way as to prevent contamination;
- (5) Appropriate equipment must be used to keep the food in allowable temperature ranges unless time is being used as a control;
- (6) If time is being used as a control, all food must be clearly time marked and served or discarded within four hours of being out of temperature control;
- (7) All equipment and utensils used to transport, hold and serve bulk potentially hazardous food must be clean, sanitized, food-grade and in good repair; and
- (8) Reheating at the event site is allowed only if appropriate equipment designed for rapid reheating is used.

(I) A temporary food service may use bulk ice from an approved commissary as long as the ice is made from water from a public water supply and the ice is transported to and stored at the event site in clean, sanitized, food-grade containers, which are in good repair.

(J) A temporary food service may operate from a booth other than that described in ARM 37.110.236(13) and (14) as long as the alternate booth meets the following requirements:

- (1) It must include overhead cover and cleanable flooring;
- (2) If cooking cannot take place under overhead cover because of fire safety reasons, food must be otherwise protected from potential contamination; and
- (3) If the booth will be left up overnight:
  - (a) The booth must include walls;
  - (b) All food contact surfaces must be cleaned and sanitized before beginning operation and after ending operation each day; and
  - (c) food must be stored in such a way as to prevent contamination, tampering or rodent/pest infestation.

## **IX. INSPECTIONS.**

(A) The Department shall make investigations and inspections of food service establishments as required by MCA 50-50-300.

(B)The Department shall charge a fee established by the Board for violations of the rule which are not corrected or persist after two visits to the establishment within 365 days from the date of the original inspection. Failure to pay the fee is a violation of this Code.

**X. CLOSURE OF FOOD SERVICE ESTABLISHMENTS.**

(A) The Department may close a food service establishment under the following conditions:

(1) If a food borne illness outbreak is likely associated with the establishment and the Health Officer deems that closure is necessary to protect public health and/or correct the circumstances contributing to the outbreak;

(2) If a critical violation which creates an imminent or present danger to public health is not corrected immediately to the satisfaction of the Department;

(3) When a follow-up inspection of a food service establishment yields two or more of the same high-risk critical violations noted on a previous inspection and the establishment has been notified closure may be a consequence of noncompliance as described in (C); or

(4) When the food service establishment is operating without a valid license.

(B) No person may operate a food service establishment which has been closed by the Department.

(C) Before the Department closes an establishment based on repeat high-risk critical violations, the Department shall notify the establishment in writing that it may be closed to the public and a closure notice placed at each customer entrance if two or more of the same high-risk critical violations remain on the follow-up inspection to be conducted within 10 working days.

(D) When the Department closes an establishment for any reason:

(1) The Department must deliver a written explanation of the reasons for closure and a copy of any pertinent inspection forms to the operator or person in charge;

(2) The closure order is effective upon delivery of the notice, and no new customers may be served food or drink. The Department may require the operator notify any current customers of the closure;

(3) A conspicuous notice of closure must be posted at each customer entrance by a police officer, sheriff, or sanitarian

(4) No person, except under the direction of the Department, may remove or alter the notice of closure.

(E) When a food service establishment has been closed, it may be reopened after 24 hours if:

(1) The operator submits a written plan of correction, specifying the corrections to be made and time limits for their completion; and

(2) The Department approves the plan of correction; and

(3) The Department inspects the establishment and makes a determination that the approved plan of correction is being followed. and

(4) The notice of closure previously posted is removed by, or under the direction of, the Department.

(F) A food service establishment may be opened earlier than 24 hours following a voluntary meeting attended by the restaurant operator or person in charge, the Division Director or designee and the inspecting sanitarian, at which the provisions of subsection (E) are demonstrated to be met.

(G) Once an establishment re-opens:

(1) The Department shall conduct additional inspections as necessary to evaluate whether the plan of correction is being followed and whether any high-risk critical violations exist;

(2) The Department may require an operator modify a plan of correction;

(3) An establishment may be closed again by the Department if:

(a) any conditions in (A) exist; or

(b) the plan of correction is not being followed.

## **XI. EDUCATION**

(A) Voluntary Certification.

(1) Food service workers completing food safety training sponsored by the department or another approved program shall be eligible for a safe food handler certification.

(2) Safe food handler certification shall expire three years from the date of training.

(B) Requirement for training.

(1) The food service operator or person in charge shall ensure that at least one employee completes a food safety training program approved by the department within 6 months of the following:

(a) Whenever a food service establishment has been closed in accordance with subsection IX;

(b) Whenever a reinspection fee must be charged in accordance with subsection X (B); or

(c) Whenever notified by the Department that the food service establishment has a history of noncompliance with these rules as determined by having two or more high-risk critical violations noted on each of their past three inspection reports.

**XII. EXEMPLARY FOOD SERVICE PROGRAM.** The Department shall establish a program to offer special certification and recognition to food service establishments meeting criteria established by the department which shall include but not be limited to the following:

(A) No uncorrected critical violations and;

(B) Establishing a smoke-free establishment, and;

(C) Having on site at all times at least one employee who has completed a safe food handling program approved by the department, and;

(D) Conducting risk-based self-inspections at least once each quarter. Self-inspection reports must be kept on file for review by the health inspection official, and;

(E) Establishing a training program for all employees and especially new employees to assure basic safe food handling practices are known and practiced; and

(F) Having a written policy which addresses safe food handling, proper hand washing and ill employee restrictions.

### **XIII. PLAN REVIEW.**

(A) A person owning a food service establishment, including one in conjunction with a school or public accommodation, must submit properly prepared plans and specifications to the Department for review and approval before construction, remodeling or conversion of an existing structure begins or before making significant changes to a menu.

(B) The Department may require a plan review at change of ownership if there will be equipment or significant menu changes.

(C) An operator of temporary food service must submit plan review materials and a plan review fee to the Department. A temporary food service may not begin operation until the Department approves the plans.

(D) A fee as established by the Board shall be charged for plan review.

(E) Failure to comply with plan review requirements is a violation of this Code and may result in the Health Officer's refusal to validate the license.

### **XIV. TEMPERATURE REQUIREMENTS FOR GROUND AND INJECTED MEAT**

Ground meats, ground fish and injected meat must be cooked to internal temperatures specified in ARM 37.110.207 (4) and may not be served in a raw or partially cooked form upon consumer request.

### **XV. CONSUMER ADVISORY REQUIREMENTS**

If a licensed establishment serves raw or undercooked ready-to-eat foods of animal origin not addressed in Section XIV, and they have not been otherwise processed to eliminate pathogens, the establishment shall inform consumers, in writing, of the significantly increased risk certain vulnerable consumers may have by eating such foods in raw or undercooked form. The licensed establishment may use brochures, deli case or menu advisories, label statements, table tents, placards or other effective written means to inform consumers.