

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 32.6.701 definitions, 32.6.702)	AMENDMENT, ADOPTION AND
applications to be in writing;)	REPEAL
inspection of plans and facilities prior)	
to issuance of license, and 32.6.712)	NO PUBLIC HEARING
food safety and inspection service)	CONTEMPLATED
(meat, poultry), the adoption of NEW)	
RULES I and II, and the repeal of)	
ARM 32.6.703 through 32.6.711, and)	
32.6.801 through 32.6.815.)	

TO: All Concerned Persons

1. The Department of Livestock proposes to amend, adopt, and repeal the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 20, 2020, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.6.701 DEFINITIONS In this subchapter 7:

~~(1) "Meat" means the edible part of the muscle of cattle, sheep, swine, goats or other animals, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and portions of the bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue, and which are not separated from it in the process of dressing. It does not include the muscles found in the lips, snout or ears.~~

~~(2) "Meat by product" means any edible part, other than meat, which has been derived from one or more cattle, sheep, swine or goats.~~

~~(3)~~ (1) "Meat depot" means an facility establishment where meat or poultry, meat or poultry food products, and/ or meat or poultry by-products, intended capable for use as human food consumption, and intended for sale, are stored.

~~(4) "Meat food product" means any article of food, or any article intended for or capable of being used as human food which is derived or prepared, in whole or in substantial and definite part from any portion of any cattle, sheep, swine or goats, except such articles as organotherapeutic substances, meat juice, meat extract, and~~

the like, which are only for medicinal purposes, and are advertised only to the medical profession.

~~(5)~~ (2) "Meat ~~p~~ Packing house" means an establishment where meat or poultry, meat or poultry food products, and or meat or poultry by-products, intended for human consumption capable for use as human food, are prepared and/ or processed.

~~(6)~~ "Mobile slaughter facility" is defined in 81-9-217, MCA.

~~(7)~~ "Product" means any part or all of meat, meat by-product, and/or meat food product.

~~(8)~~ (3) "Slaughterhouse" means an establishment where animals are butchered for human consumption.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-20-101, MCA

REASON: The department is proposing to amend this rule to simplify and clarify the definitions used. Montana Code Annotated (MCA) uses the term "meat depot" in 81-9-202, MCA, but does not provide a definition for the term. Currently, the rule includes a definition for the term "meat depot" that is overly broad because the definition includes everywhere that meat intended for human consumption is stored. This definition could be interpreted to include private homes, which is not the intent of the statute or rule. The department is proposing to update the definition of meat depot to include only those facilities storing meat that is intended for sale.

The rule also contains some terms already defined in MCA, the Federal Meat Inspection Act (21 U.S.C. 601), or sections of the Code of Federal Regulations (CFR) that the department has adopted by reference. These terms include meat, meat by-product, meat food product, mobile slaughter facility, and product. The department is proposing to remove the duplicate definitions from the rule.

Last, the department is proposing to add "or poultry" to the definitions for meat depot and packing house. Combining meat and poultry definitions into the same rule will allow the repeal of ARM 32.6.801 and simplify the definitions used in this subchapter.

32.6.702 APPLICATIONS TO BE IN WRITING; INSPECTION OF PLANS AND FACILITIES PRIOR TO ISSUANCE OF LICENSE (1) Any person, firm, or corporation desiring to maintain or conduct a slaughterhouse, ~~meat~~ packing house, mobile slaughter facility, or meat depot shall file a written application for a license on a form to be provided by the Department of Livestock.

(2) A meat depot license is not required for facilities at physical locations that are licensed by a local public health authority and subject to onsite sanitary inspections by that authority.

~~(2)~~ (3) Complete drawings and specifications for remodeling establishments and for new structures must be submitted to the department, and approval obtained for the plans, in advance of construction.

~~(3)~~ (4) No license for a slaughterhouse, ~~meat~~ packing house, mobile slaughter facility, or meat depot may be granted until a representative of the Montana Department of Livestock, ~~Meat, Milk, and Egg Inspection Division~~ has inspected the establishment, or facility, and premises proposed to be licensed, and has specified in writing, addressed to the applicants, the requirements for sanitation and necessary facilities for sanitary operation in conformity with the requirements of this subchapter.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-201, 81-9-217, 81-9-219, 81-9-220, 81-9-226, 81-9-227, 81-9-228, 81-9-229, 81-9-230, 81-9-231, 81-20-101, MCA

REASON: The department is proposing to update this rule to include poultry as well as meat so that ARM 32.6.802 can be repealed. Combining meat and poultry into one subsection will reduce the number of rules governing meat and poultry inspection and simplify the regulations for ease of use by the industry.

This rule is also being updated to create an exemption to the meat depot license requirement for facilities that are already licensed by a local public health authority and subject to sanitary inspections by that authority. This exemption is to avoid putting an undue regulatory burden on businesses that are already subject to licensing and oversight by a public health authority.

Retail businesses with a license through a local health authority would not be required to have a meat depot license.

32.6.712 FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY)

(1) The Department of Livestock incorporates by reference ~~the following as they were effective August 22, 2016:~~

(a) through (3) remain the same.

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, MCA

REASON: The department is proposing incorporation by reference to reflect the current version of CFR and this update is necessary to ensure that Montana continues to maintain the at least equal to status required for operation of a state meat inspection program. The United States Department of Agriculture Food Safety and Inspection Services (FSIS) has extensive rules in the CFR governing meat and poultry inspection. To meet the at least equal standard for state meat inspection programs, the department is proposing to implement the relevant sections of the CFR by reference in ARM 32.6.712. Most recently ARM 32.6.712 was updated in 2016 to update the CFR references to the version of the federal rules as of August 22, 2016. FSIS has made several changes to CFR since then, so the rule now needs to be updated to reflect the current version of CFR.

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

NEW RULE I MEAT DEPOT REQUIREMENTS (1) The owners of a meat depot must:

(a) Operate and maintain the facility in a manner sufficient to prevent the creation of insanitary conditions and to ensure that product is not adulterated; this includes but is not limited to:

(i) Construct facilities in such a way to prevent the entrance of vermin, and have in place a pest management program that prevents the harborage and breeding of pests on the grounds and within the facility;

(ii) Control the climate and conditions under which product is stored in a manner appropriate for each type of product;

(iii) Store product in a secure manner that prevents unauthorized access to or tampering with product;

(iv) Keep facilities clean and in good repair;

(b) Store only meat and poultry products which are marked "inspected and passed" either by the state of Montana or the United States Department of Agriculture, Food Safety Inspection Service.

(c) Locate the meat depot so that it is accessible for inspection without entry into a private residence.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-201, 81-9-217, 81-9-219, 81-9-220, 81-9-226, 81-9-227, 81-9-229, 81-9-231, 81-20-101, MCA

REASON: The department is proposing to adopt this rule because meat depots are currently subject to the sanitation requirements in ARM 32.6.703 through 32.6.711 and 32.6.803 through 32.6.815, which are being repealed. The current rules could be unnecessarily burdensome for the low-risk storage of meat in a meat depot. For example, it is not necessary for meat depots to have specific plumbing and sewage installations, toilets, or the other extensive facilities required for establishments that process meat and poultry.

Other types of activities/operations currently covered by the rules recommended for repeal are also addressed by ARM 32.6.712 and the incorporated sections of the federal rules. As meat depots are not an entity included in the federal rules, New Rule I is necessary to address requirements for these facilities. This rule contains basic sanitation requirements to ensure product is stored under conditions that are not likely to lead to contamination or adulteration of product. This rule also clarifies an existing policy that meat depots may store only product that is "inspected and passed" by either the State of Montana or FSIS to ensure that product stored in a meat depot is eligible for both wholesale and retail use.

Additionally, this rule will clarify that a meat depot must be accessible for inspection without entry into a private residence to be consistent with agency policy that inspectors will not enter a private residence.

NEW RULE II RESTROOM FACILITIES (1) Operations required to provide dressing rooms, lavatories, or toilets must provide such facilities dedicated to the business and not located in a private residence, except:

(a) All operations with an active license as of January 1, 2020 are allowed to continue to operate with existing dressing rooms, lavatories, or toilets.

(2) To preserve the exception in (1)(a), an eligible license must be renewed annually with no change in ownership and no substantive modification of the existing facilities.

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, MCA

REASON: The department is proposing to adopt this rule to further clarify the requirements for bathroom facilities that are in 9 CFR 416.2(h), which is incorporated in ARM 32.6.712. These requirements apply to both custom exempt operations and official establishments. The federal rule states that bathrooms must be "conveniently located," but the definition of "convenient" is not included. This language has led to a situation in which some custom exempt operations have a bathroom that is in an adjacent private residence. It is the policy of Meat and Poultry Inspection Bureau (MPI) that inspectors will not enter a private residence, so MPI inspectors cannot determine if bathrooms in a private residence are maintained in a sanitary condition as required by regulation.

NEW RULE II clarifies that bathrooms for any licensed facility required to have a bathroom must be dedicated to the licensed business and may not be in a private residence. The rule provides an exception to allow the continued use of existing bathroom facilities for existing licensees. The rule also provides that whenever ownership of a facility changes or when a facility is substantively modified, for example through the construction of expanded facilities, the exception will no longer apply.

The adoption of a rule specifically addressing bathrooms in licensed facilities is necessary to ensure that department inspectors can conduct adequate sanitary inspections as required by regulation.

5. The department proposes to repeal the following rules:

32.6.703 SANITARY CONDITION REQUIREMENTS

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.704 SANITARY FACILITIES AND ACCOMMODATIONS: SPECIFIC REQUIREMENTS

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.705 EQUIPMENT TO BE EASILY CLEANED; INEDIBLE PRODUCTS
EQUIPMENT TO BE MARKED

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.706 SCABBARDS FOR KNIVES

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.707 ROOMS, COMPARTMENTS, ETC., TO BE CLEAN AND
SANITARY

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.708 OPERATIONS, PROCEDURES, ROOMS, CLOTHING, UTENSILS,
ETC., TO BE CLEAN AND SANITARY

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.709 INEDIBLE OPERATING AND STORAGE ROOMS: OUTER
PREMISES, DOCKS, DRIVEWAYS, APPROACHES: PENS, ALLEYS, ETC., FLY
BREEDING MATERIAL: NUISANCES

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.710 EMPLOYMENT OF DISEASED PERSONS

AUTH: 81-2-102, 81-2-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.711 DISPOSAL OF OFFAL, PAUNCH CONTENTS, AND OTHER
VISCERA

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.801 DEFINITIONS

AUTH: 81-2-102, 81-20-101, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, MCA

32.6.802 APPLICATION; INSPECTION OF PLANS AND FACILITIES PRIOR TO ISSUANCE OF LICENSE

AUTH: 81-20-102, 81-9-220, 81-9-201, 81-9-217, 81-9-219, 81-9-220, 81-9-226, 81-9-227, 81-9-228, 81-9-229, 81-9-230, 81-9-231, MCA
IMP: 81-2-102, 81-20-101, MCA

32.6.803 ESTABLISHMENT OR FACILITY

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.804 ROOMS AND COMPARTMENTS

AUTH: 81-2-102, 81-20-101, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.805 FLOORS, WALLS, CEILINGS, ETC.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.806 BLOOD DISPOSAL

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.807 DRAINING AND PLUMBING

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.808 WATER SUPPLY

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.809 LAVATORY ACCOMMODATIONS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.810 LIGHTING AND VENTILATION

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.811 EQUIPMENT AND UTENSILS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.812 RESTRICTION ON USE OF EQUIPMENT AND UTENSILS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.813 ACCESSIBILITY FOR CLEANING

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.814 CLEANING ROOMS AND COMPARTMENTS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.815 CLEANING OF EQUIPMENT AND UTENSILS

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

REASON: The department is proposing to repeal ARM 32.6.703 through 32.6.711, and 32.6.801 through 32.6.815 to remove unnecessarily burdensome requirements, to avoid duplication and conflict between rules, and to simplify regulatory requirements.

6. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 24, 2020.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the same above address no later than 5:00 p.m., January 24, 2020.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 28 persons based on 281 currently licensed custom exempts and meat storage depots.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment, adoption, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

BY: /s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Director
Board of Livestock
Department of Livestock

BY: /s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State December 17, 2019.