

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IV, the amendment of	)	PROPOSED ADOPTION,
ARM 37.111.801, 37.111.804,	)	AMENDMENT, AND REPEAL
37.111.805, 37.111.810, 37.111.811,	)	
37.111.812, 37.111.825, 37.111.832,	)	
37.111.833, 37.111.834, 37.111.840,	)	
37.111.841, 37.111.842, 37.111.846,	)	
and the repeal of 37.111.831	)	
pertaining to healthy learning	)	
environments in Montana public	)	
schools	)	

TO: All Concerned Persons

1. On July 11, 2019, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 2, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I INDOOR AIR QUALITY (1) Ventilation systems must undergo annual checks by the school facility manager, school administrator, or administrator-approved staff to ensure they are operating within manufacturer parameters.

(2) Air filters shall have a minimum efficiency reporting value of between 8 and 13 as recommended by the National Air Filtration Association and the Environmental Protection Agency (EPA).

(3) Indoor air quality inspections must be completed annually using the Walk Through Inspection Checklist from EPA's Indoor Air Quality Tools for Schools or other department-approved inspection form.

AUTH: 50-1-206, MCA

IMP: 50-1-206, MCA

NEW RULE II OUTDOOR AIR QUALITY (1) Schools shall reference the Recommendations for Outdoor Activities Based on Air Quality for School and Child Care Facilities developed by the Montana Department of Public Health and Human Services and the Montana Department of Environmental Quality to determine local air quality conditions and choose to cancel outdoor recess and delay or not delay outdoor school-sponsored events.

(2) Schools must have a protocol in place on how to seal school buildings to outside air during poor air quality conditions.

AUTH: 50-1-206, MCA

IMP: 50-1-206, MCA

NEW RULE III SCIENCE, SHOP, AND ART LABORATORY SAFETY

(1) Schools must comply with the Montana Employee and Community Hazardous Chemical Information Act (ECHCIA), 50-78-101, MCA, et seq.

(2) Schools containing science, shop, and art labs must maintain a Chemical Hygiene Plan and designate a school and district Chemical Hygiene Officer (dCHO) in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) Occupational Exposure to Hazardous Chemicals in Laboratories standard 29 CFR 1910.1450.

(3) Chemical Hygiene Plans must include plans for appropriate selection, storage, inventory, use, and disposal of hazardous chemicals, and biological materials.

(a) The dCHO has primary responsibility for ensuring the implementation of all components of the Chemical Hygiene Plan (CHP).

(b) The school Chemical Hygiene Officer (sCHO) must oversee the implementation and enforcement of the schools' CHP at their school(s). A science chairperson, or equivalently qualified faculty member may be designed as the sCHO.

(4) Material Safety Data Sheets (SDS) for all materials in science, shop and art labs, and storage rooms will be stored in those rooms and be accessible at all times.

(a) The SDS must also be kept in a secure, remote site outside of the science, shop, and art labs, and storage rooms.

(b) The SDS must be made publicly available online.

(5) All storage areas must be kept clean and organized according to OSHA Standard 29 CFR 1910.1450.

(6) Unused hazardous materials must be disposed in a timely manner as stated by the manufacturer and approved by the Department of Environmental Quality (DEQ). Schools must consult with the DEQ for additional information about how they can discard hazardous material.

(7) The department may work with the Department of Labor and Industry to determine if stop work orders are necessary to protect the safety of school employees and students.

AUTH: 50-1-206, MCA  
IMP: 50-1-203, 50-1-206, MCA

NEW RULE IV INCORPORATION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference the following:

- (a) Department of Public Health and Human Services and Department of Environmental Quality "Recommendations for Outdoor Activities Based on Air Quality for School and Child Care Facilities" (2016 edition).
- (b) 29 CFR 1910.1450 "Occupational exposure to hazardous chemicals in laboratories" (effective January 22, 2013).
- (c) ARM Title 17, chapter 38, subchapter 2, setting forth public water supply requirements.
- (d) United States Consumer Product Safety Commission "Public Playground Safety Handbook" (2010 edition).
- (e) United States Department of Justice "2010 ADA Standards for Accessible Design."
- (f) Department of Environmental Quality Circular 4, "Montana Standards for Subsurface Wastewater Treatment Systems (2013 edition), setting forth construction and operation standards for sewage systems.
- (g) The definition of "school administrator" provided for under ARM 10.55.602.

(2) Copies of these publications may be obtained from the Department of Public Health and Human Services, Chronic Disease Prevention and Health Promotion Bureau, [chronicdiseaseprevention@mt.gov](mailto:chronicdiseaseprevention@mt.gov); 1(844)684-5848, CDPHP Bureau, P.O. Box 202951, 1400 Broadway, Suite C317, Helena MT 59601.

AUTH: 50-1-206, MCA  
IMP: 50-1-203, 50-1-206, MCA

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

37.111.801 DEFINITIONS (1) "Approved" means acceptable to the department, based on its determination of conformance with this subchapter and good public health practices.

(2) "Bin placement" means placing sample results into the correct cell within Table 1 in ARM 37.111.832, to determine the required response to those results.

(3) "Bin placement sample" means those samples that will be used to determine bin placement in ARM 37.111.832.

(4) "Chemical" means any substance which has been assigned an EPA Hazardous Waste Number.

(5) "Contamination" means impairment or other alteration of the physical, chemical, or biological properties of water, including causing violation of the maximum contaminant levels for public water supplies contained in ARM Title 17, chapter 38, subchapter 2 or otherwise creating a hazard to human health.

~~(4)~~ (6) "Department" means the Department of Public Health and Human Services.

(7) "First-draw sample" means a one-liter sample of tap water that has stood motionless in the plumbing pipes for at least six hours and is collected without flushing the tap.

~~(2) "School" means a building or structure or portion thereof occupied or used at least 180 days per year for the teaching of individuals, the curriculum of which satisfies the basic instructional program approved by the Board of Public Education for pupils in any combination of kindergarten through grade 12, but excludes home schools as that term is defined in 20-5-102(f), MCA.~~

(3) (8) "Fixtures" means a any shower, toilet, toilet seat, urinal, lavatory, drinking fountain, kitchen sink, janitor and custodial sink, utensil sink, handwashing sink, eye washing station, emergency shower, and all exposed plumbing integral to them.

(4) (9) "Floors" means floor covering of all rooms including stairways, hallways, and lobbies.

(10) "Foot Candles" is the unit as defined as the amount of illumination the inside surface of a one-foot-radius sphere would be receiving if there were a uniform point source of one candela in the exact center of the sphere.

~~(5) (11) "Furnishings" means draperies, curtains, blinds, light fixtures, chairs, tables, desks, shelves, and bookcases.~~

(12) "Green products" means products and services that have a lesser or reduced negative effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison applies to raw materials, manufacturing, packaging, distribution, use, reuse, operation, maintenance, and disposal. These products have a "Green Approval Stamp" certified by at least one of the following organizations: Green Seal, UL ECOLOGO®, the EPA Safer Choice, and the USDA Bio-Preferred.

(13) "Human consumption fixture (HCF)" means any endpoint device that provides or may reasonably provide water for human consumption or for food preparation.

(14) "Inactive" means the student population is not accessing the school for a period of more than 3 days. This includes, but is not limited to: holidays, summer vacation, or emergency situations.

(15) "Laboratory" or "Lab" is any space where hazardous chemicals are used for educational purposes.

~~(6) (16) "Local health authority" means a local health officer, local sanitarian, or their authorized agents.~~

~~(7) (17) "Sanitarian" means the a person who is qualified under Title 37, chapter 40, part 3 1, MCA, and represents the health officer.~~

(18) "School" means a building or structure or portion thereof occupied or used at least 180 days per year for the teaching of individuals, the curriculum of which satisfies the basic instructional program approved by the Board of Public Education for pupils in any combination of kindergarten through grade 12, but excludes home schools as that term is defined in 20-5-102(2)(e), MCA.

(19) "School administrator" has the meaning provided for under ARM 10.55.602.

~~(8) (20) "School site" means the ground immediately adjacent to a school used on a regular basis for school-related activity.~~

AUTH: 50-1-206, MCA  
IMP: 50-1-203, 50-1-206, MCA

37.111.804 PRECONSTRUCTION REVIEW (1) Before construction commences, plans for construction of a new school or an addition to or an alteration of an existing school must be submitted to the department or local health authority for review and approval. Plans must include the following where applicable:

(a) location and detail of classrooms used for science or science laboratories, home economics, art classrooms, art supply rooms, mechanic/carpentry, and shops, including location and venting detail of lockable storage area of chemicals and other hazardous products;

(b) location and detail of janitorial facilities;

(c) specifications for the sewage treatment and disposal system to serve the school, except as provided in (2);

(d) specifications for the water supply to serve the school, except as provided in (2);

(e) locations for all emergency eyewash and shower stations, which must meet the American National Standard for Emergency Eyewash and Shower Equipment (ANSI/ISEA Z358.1);

~~(e)~~ (f) location and detail of laundry facilities including description of equipment and a flow chart indicating the route of laundry through sorting, washing, drying, ironing, folding, and storage;

~~(f)~~ (g) specifications for the final finishes of floors, walls and ceilings in toilet, locker and shower rooms, laundries, and janitorial closets;

~~(g)~~ (h) a statement from the designer of the facilities that lighting capable of meeting the minimum requirements of ARM 37.111.830 will be provided;

~~(h)~~ (i) location and detail of the solid waste storage facilities;

~~(i)~~ (j) name of department DEQ-approved sanitary landfill which will receive solid waste from the school;

~~(j)~~ (k) specifications for a food service to serve the school unless the food service has been previously approved by the department and/or local health department;

~~(k)~~ (l) any other information requested by the department or local health authority relating to the health, sanitation, safety, and physical well-being of the teachers, staff, and students;

(m) specifications for any new or modified playground equipment, which must comply with the standards of the United States Consumer Product Safety Commission's Handbook for Public Playground Safety (2010 edition) and the requirements of the 2010 ADA Standards for Accessible Design;

(n) specifications for any new or modified air intakes; and

(o) specifications for any radon-resistant technique used in the building process.

(2) If the sewage treatment or disposal system or water supply has been previously approved by the department and/or DEQ and is designed to handle any increased load necessitated by the school's use, the applicant need not submit system specifications, but must submit written certification that the owner of the system has agreed to provide service.

(3) Schools will be constructed in locations which present the least risk of exposure to pollutants or other health hazards originating onsite or offsite. If potential environmental concerns are identified during the preconstruction process, and the Local Education Agency (LEA) still desires to consider the site, a more comprehensive environmental review must be performed with the help of the department or local health authority.

(4) All chemical storage areas should be constructed to maintain negative air pressure to eliminate contamination of the school's indoor air quality by being vented to the outside of the building.

(5) Gas supply lines serving science laboratories, home economics, shops, and other rooms utilizing multiple outlets must have a master shut-off valve that is readily accessible to the instructor or instructors-in-charge without leaving the classroom or storage area.

(6) Shops and other rooms using electrically operated instruction equipment which presents a significant safety hazard to the student utilizing such equipment must be supplied with a master electric switch readily accessible to the instructor or instructors-in-charge without leaving the classroom or storage area.

~~(3)~~ (7) Construction may not commence until all plans required by (1) through (6) of this rule have been approved by the department or local health authority. The department or local health authority shall complete this review within 60 days after submission to them of complete plans and specifications. Construction must be in accordance with the plans as approved unless permission is granted in writing by the department or local health authority to make changes.

~~(4)~~ (8) Approval will be granted for a period not to exceed 3 years, after which, if construction has not been completed, plans must again be submitted to the department or local health authority for re-evaluation.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.805 EXISTING BUILDING: CHANGE OF USE (1) An existing building not currently used as a school may not be used as a school without the prior approval of the department or local health authority.

(a) When a proposal to use an existing building as a school involves physical modification, plans meeting the requirements of ~~(1)~~ of ARM 37.111.804 (1) through (6) must be submitted to the department or local health authority for review and approval. If no physical modification is involved, the department or local health authority may waive the requirement for submission of plans if an inspection by the department or local health authority indicates that the proposed school meets the requirements of this subchapter.

~~(2) Whenever compliance with this subchapter requires capital expenditures for the modification of an existing building currently being used as a school on April 11, 1986, compliance with such requirements must be achieved no later than December 31, 1987.~~

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.810 INSPECTION (1) Representatives of the department or local health authority must be permitted to enter any school at any reasonable time for the purpose of making inspections to determine compliance with this subchapter. ~~Such inspections should be conducted as frequently as possible and appropriate, ideally at least once in every 12 months.~~ Annual internal inspections must be conducted by a school administrator, facility manager, or other staff member approved by the school administration, as well as having a department or local health authority inspection once a year or more often if necessary. The department or local health authority may determine that special circumstances or local conditions warrant inspections with greater or less frequency. Upon receiving a complaint, the local health authority may determine if more inspections are necessary.

(2) Inspections of school facilities must be done using forms approved by the department.

(3) Inspection records must be kept on file at the school for at least three years from the time of inspection.

~~(2)~~ (4) Immediately following each inspection, representatives of the department or local health authority shall give the school administration a copy of an inspection report which notes any deficiencies and sets a time schedule for compliance. The report must include written citations for every rule violation.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.811 PHYSICAL REQUIREMENTS (1) A school must comply with the following physical requirements:

(a) Adequate lockable, vented, and convenient janitorial facilities including a sink and storage area for equipment and chemicals must be provided.

(b) Floors, walls, and ceilings in toilet, locker, and shower rooms, laundries, janitorial closets, and similar rooms subject to large amounts of moisture must be maintained in a smooth and non-absorbent condition. Non-absorbent, non-skid floor matting may be used where appropriate to prevent injury.

(c) Adequate ~~wrap~~ coat/jacket and book storage for each pupil must be provided.

(d) The school shall have and follow written policies and procedures regarding the storage, administration, and lawful disposal of prescription, nonprescription, and over-the-counter medication.

(e) All medication must be kept in a locked, nonportable container, stored in its original container with the original prescription label.

(f) The school must comply with the applicable requirements of Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C 207) and 39-2-215, MCA, requiring employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child. The school must provide a place for an employee to express breast milk.

(g) The school must provide reasonable accommodations for lactating pupils on the school campus to express breast milk, breastfeed an infant child, or address

other needs related to breastfeeding. Reasonable accommodations include, but are not limited to, all the following:

(i) access to a private and secure room, other than a toilet room or sick room, to express breast milk or breastfeed an infant child;

(ii) permission to bring onto a school campus a breast pump and any other equipment used to express breast milk;

(iii) access to a power source for a breast pump or any other equipment used to express breast milk; and

(iv) access to a place to store expressed breast milk safely.

(h) The school must take measures consistent with the programmatic and developmental needs of its students to ensure the safe use and secure storage of any equipment including but not limited to: kitchen appliances, shop equipment, maintenance tools, and hazardous art supplies.

(i) To reduce the spread of animal-borne diseases, livestock and poultry must be located more than 50 feet from food service areas, offices, or classrooms except those offices and classrooms associated with animal husbandry activities or other demonstrations as approved by the school administration.

(2) In addition to compliance with this subchapter, school officials ~~should also be aware of the need to~~ must comply with the Building and Fire Safety Codes administered by the State Building Codes Division and the State Fire Marshal or by local building officials (see Title 50, chapters 60 and 61, MCA, and rules adopted thereunder).

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.812 SAFETY REQUIREMENTS (1) Janitorial and other storage areas that contain toxic or hazardous materials must be kept locked between periods of use. Custodial closets, boiler rooms, and other areas where hazardous or poisonous compounds are stored should be inaccessible to students.

(2) All cleaning compounds and other toxic chemicals not stored in the product container or package in which it was obtained must be stored in a labeled container that clearly identifies the product by name.

(3) Chemicals must be stored as specified by the chemical's Safety Data Sheet (SDS).

~~(3) (4) Water~~ Hot and cold water must be provided to handsinks handwashing sinks and shower facilities. Hot water may must not be below 100°F not nor exceed a temperature of 120°F.

~~(4) Gas supply lines serving science laboratories, home economics, shops, and other rooms utilizing multiple outlets must have a master shutoff valve that is readily accessible to the instructor or instructors in charge.~~

~~(5) Shops and other rooms using electrically operated instruction equipment which presents a significant safety hazard to the student utilizing such equipment must be supplied with a master electric switch readily accessible to the instructor or instructors in charge.~~

~~(6) (5) The school and school site must be free of objects or conditions which create unreasonable or unnecessary dangers to health or safety.~~



~~(7)~~ (6) The topography of the site must permit good drainage of surface water away from the school building to eliminate significant areas of standing water and infiltration of surface water into the school building.

(7) First aid kits and AEDs must be provided and stored in accessible locations that are easily identifiable to staff and trained personnel.

(8) Playground and school yards must be inspected every month by the facility manager or other school personnel and the inspection must be recorded and records kept on the school site. Inspections must be conducted using a playground safety checklist approved by the department.

(9) Playground inspection results must be made available for review by the local health authority.

(10) Periodic maintenance and repair is performed on playground equipment according to the manufacturer's specifications. Repairs must be documented.

~~(8)~~ (11) Playground equipment must be maintained in a safe condition.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.825 HEALTH SUPERVISION AND MAINTENANCE (1) Soap and disposable towels or other hand-drying devices must be available at all handwashing sinks. Common-use cloth towels are prohibited.

(2) Sanitary napkin disposal must be provided for girls of age ten or older and in teachers' toilet rooms and nurses' toilet rooms. The school must provide either sanitary napkin dispensers in the girls', nurses', and teachers' toilet rooms or some other readily available on-site access to sanitary napkins.

(3) If a child or a staff member develops symptoms of any reportable communicable or infectious illness as defined by ARM 37.114.203 while at school, the responsible school officials shall do the following:

(a) isolate the child immediately from other children ~~in a room or area segregated for that purpose;~~ and

(b) inform the parent or guardian as soon as possible about the illness and request him or her to pick up the child; and

(c) report the case to the local health officer pursuant to 37-2-301, MCA.

(4) Schools shall develop and enforce policies on first aid which include, at a minimum, the following:

(a) obtaining emergency phone numbers for parents or guardians;

(b) procedures to be followed in the event of accidents, ~~or injuries,~~ or chronic disease exacerbations; and

(c) emergency coverage, including the presence of a person with a currently valid American Red Cross ~~standard first aid card~~ or American Heart Association CPR and first aid ~~or current certification from an equivalent first aid course,~~ during school-sponsored activities, including field trips, athletic, and other off-campus events. Recommendations for first aid supplies, health history tracking, emergency contact forms, chronic disease management training, and policies may be secured from the Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Section and the Chronic Disease

Prevention and Health Promotion Bureau, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.

(5) ~~Smoking~~ In addition to the requirements of 50-40-104 and 20-1-220, MCA, must be prohibited during school hours in rooms and any other areas used by children, and no smoking no tobacco use signs must be posted in each hallway, entryway, gymnasium, lunchroom, and restroom, though not in each classroom. Smoking must be prohibited in school vehicles while used by children for school-related functions.

(6) In addition to the requirements of this rule, school officials should also be aware of the need to comply with the laws and rules relating to the immunization of children (~~20-5-402, et seq., MCA; ARM 37.114.701, et seq.~~), in ARM Title 37, chapter 114 and communicable disease reporting in 37-2-301, MCA, the health of school employees (ARM 37.114.1010), and the reporting of communicable diseases (ARM 37.114.201, 37.114.202, and 37s.114.501, et seq.). Copies of these requirements may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, ~~Food and Consumer Safety Section~~ Office of Epidemiology and Scientific Support, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951, or by visiting the website at <https://dphhs.mt.gov/publichealth/epidemiology>.

(7) Pursuant to the advisory authority of ~~50-1-202(11) and (12)~~, MCA, the department recommends that students be evaluated by registered professional nurses or other appropriately qualified health professionals on a periodic basis in order to identify those health problems which have the potential for interfering with learning, including:

- (a) assessment of student's health and developmental status;
- (b) vision screening;
- (c) hearing screening;
- ~~(d) scoliosis screening;~~
- ~~(e)~~ (d) chemical and alcohol abuse;
- (e) mental health screening;
- (f) nutritional screening; and
- (g) dental screening.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.832 WATER SUPPLY SYSTEM (1) The department hereby adopts and incorporates by reference ARM Title 17, chapter 38, subchapters 1, and 2, and 5, which set forth standards for design, operation, and maintenance of public water supplies; ~~and circular #84-11, "Minimum Design Standards for Small Water Systems," DEQ Circulars 1, 3, and PWS 5, published by the Department of Environmental Quality, which sets construction, operation, and maintenance standards for small water systems, and the Department Nonpublic Water Supply Circular Food and Consumer Safety 1-2016 (FCS 1-2016).~~ Copies of ARM Title 17, chapter 38, subchapter 1, 2 and 5, and circular #84-11 these publications may be obtained from the Department of Public Health and Human Services, ~~Health Policy~~

~~and Services Division~~ Public Health and Safety Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.

(2) In order to ensure an adequate and potable supply of water, a school must either:

(a) connect to a water supply system meeting the requirements of ARM Title 17, chapter 38, subchapters 1, ~~and 2, and 5 of the Administrative Rules of Montana~~; or

(b) if the school is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including staff and students, and an adequate public water supply system satisfying the requirements of ARM Title 17, chapter 38, subchapters 1, and 2 and 5, is not accessible, utilize a non-public system whose construction and use meet the standards set in circlear #84-11 Nonpublic Water Supply Circular Food and Consumer Safety 1-2016 published by the Department of Environmental Quality department.

(3) A water supply system of a type other than described in this rule may be utilized only if it is designed by a professional engineer and offers equivalent sanitary protection as determined by the department or local health authority.

(4) If a water supply system is used other than described in (2)(a) above, a school must submit a water sample at least quarterly to a laboratory licensed by the department to perform microbiological analysis of the water supplied in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 17.38.207 and following all testing requirements in Circular FCS 1-2016.

(5) A school must replace or repair the water supply system serving it whenever the water supply:

(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 17.38.207; or

(b) exceeds the Maximum Contaminant Level (MCL) for all other contaminants in Circular FCS 1-2016; or

~~(b)~~ (c) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.

(6) Common drinking cups or containers are prohibited.

(7) Where water under pressure cannot be made available, the drinking water from an approved source must be stored in a clean and sanitized container having a tight-fitting lid and a suitable faucet apparatus for filling individual cups. Single service drinking cups must be provided.

(8) Starting October 1, 2019, schools must sample all human consumption fixtures (HCF) for lead. Initial samples must be taken within one year of the start date. All samples must be analyzed by a Montana certified lab using EPA-approved standard drinking water methods for the detection and quantification of lead.

(a) Schools shall submit to the department a schematic and inventory identifying plumbing materials, all fixture locations, and those fixtures meeting the definition of a HCF. Templates for creating the inventory are available from the department or the Montana Department of Environmental Quality (DEQ) and should be used to complete this requirement. Lead service lines must be clearly identified in the inventory and should be considered for replacement.

(b) The schematic and inventory shall be maintained by the school and shall record any modification that may result in a change in lead exposure from water. Sample results for each HCF must also be maintained in conjunction with the plan and inventory.

(c) All samples collected must be first-draw samples unless otherwise requested or approved by the department or DEQ and samples must be reported to DEQ.

(d) Each first-draw sample for lead must be one liter in volume and must have stood motionless in the plumbing system of each sampling site for at least six hours. For fixtures with hot and cold water, first-draw samples shall only be collected from the cold water. First-draw samples may be collected by a school representative instructed in the proper sampling procedures specified in this rule.

(e) All sample results must be submitted electronically to DEQ in a format approved by the department. All sample results must be submitted to DEQ no later than 48 hours after the school has received the results. Sample results may be submitted to DEQ by certified labs on behalf of the school.

(f) All samples will be considered bin placement samples and must be placed into the appropriate bin in Table 1 unless otherwise designated by the department or DEQ. Follow-up actions are required for each HCF based on the bin placement.

(g) All schools must conduct follow-up sampling of each HCF according to the requirements of Table 2.

(h) Schools must make test results publicly available.

(9) All schools shall create and implement a flushing program unless the school meets the waiver requirements indicated under (9)(c).

(a) Schools shall use the template provided by the department to produce their flushing program.

(b) Flushing will be required any time the school is inactive.

(c) Schools may apply to DEQ for a flushing program waiver based on materials inventory and certification by the school that the school meets the lead-free definition as defined in Section 1417 of the Safe Drinking Water Act.

Table 1.

<u>Bin Placement</u>	<u>Lead Detection</u>	<u>Follow-up Actions</u>
<u>1</u>	<u>Above 15.0 ug/L</u>	<u>Immediately discontinue use of the affected HCF by physical removal or plumbing disconnection. Remediation is required before the school can resume use of the HCF, subject to the follow-up sampling requirements of Table 2. Remedial action must be completed within 6 months of the bin determination.</u>
<u>2</u>	<u>5.0 ug/L up to 15.0 ug/L</u>	<u>Evaluate the conditions at the affected HCF. Determine appropriate remedial action(s) to reduce lead concentration(s) to below 5.0 ug/L. Remedial action must be completed within 6 months of the bin determination.</u>

<u>3</u>	<u>Below 5.0 ug/L</u>	<u>HCF below 5.0 ug/L does not require remedial action but must be sampled according to Table 2.</u>
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Table 2.

<u>Bin Placement</u>	<u>Follow-up Sampling Requirement</u>
<u>1</u>	<u>Each Bin 1 HCF will be required to be resampled after remediation to show effectiveness of the remediation effort before it is returned to service. The HCF must be resampled within one year of the sample that returned the fixture to service.</u>
<u>2</u>	<u>Each Bin 2 HCF must be resampled after remediation. The HCF must be resampled within one year of the HCF's last sample.</u>
<u>3</u>	<u>Each Bin 3 HCF must be sampled within every 3 years of the last sample date to confirm that the HCFs continue to deliver water below 5.0 ug/L.</u>

AUTH: 50-1-206, MCA  
 IMP: 50-1-203, 50-1-206, MCA

37.111.833 SEWAGE SYSTEM (1) ~~The department hereby adopts and incorporates by reference the following Department of Environmental Quality publications setting construction and operation standards for sewage systems:~~

~~(a) circular #84-10, "Sewers and Sewage Treatment for Multi-Family and Non-Residential Buildings";~~

~~(b) circular #13, "The Sanitary Pit Privy". Copies of circulars #84-10 and #13 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.~~

~~(2) The department hereby adopts and incorporates by reference ARM Title 17, chapter 38, subchapter 1, which sets forth standards for design, maintenance and operation of public sewer systems. Copies of ARM Title 17, chapter 38, subchapter 1 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.~~

~~(3) (1) In order to ensure sewage is completely and safely disposed of, a school must:~~

~~(a) connect to a public sewage system meeting the requirements of ARM Title 17, chapter 38, subchapter 1 of the Administrative Rules of Montana; or~~

~~(b) if the school is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including staff and students, and an adequate public sewage system satisfying the requirements of ARM Title 17, chapter 38, subchapter 1 is not available, utilize a non-public system whose construction and use meet the construction and operation standards contained in circular #84-10 DEQ Circular 4 incorporated by reference in (1) of this rule.~~

~~(4) (2) Where pit privies are currently in use, the privies must be operated and maintained in compliance with the standards specified in circular #13, "The Sanitary Pit Privy DEQ Circular 4."~~

~~(5) (3) A sewage system design of a type other than described in this rule may be utilized only if it is designed by a professional engineer and offers equivalent sanitary protection as determined by the department, DEQ, or local health authority.~~

~~(6) A school must replace or repair its sewage system whenever:~~

~~(a) it fails to accept sewage effluent at the rate of application;~~

~~(b) seepage of effluent from, or ponding of effluent on or around the system occurs;~~

~~(c) effluent from the sewage system causes contamination of a potable water supply or state waters; or~~

~~(d) a mechanical failure occurs, including electrical outage, or collapse or breakage of septic tank, inlet lines, or drainfield lines.~~

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.834 SOLID WASTE (1) In order to ensure that solid waste is safely stored and disposed of, a school must:

~~(1) (a) store all solid waste between collections in containers which have lids, are corrosion-resistant, and are constructed to minimize insect and rodent pest attraction and harborage;~~

~~(2) (b) clean all solid waste containers with sufficient frequency to maintain them in a condition which minimizes insect and rodent pest attraction;~~

~~(3) (c) for exterior containers other than dumpsters or compactors, utilize stands which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them;~~

~~(a) (i) dumpsters or compactors must be located on or above a smooth surface of non-absorbent material, such as concrete or asphalt, that is maintained in clean and good condition;~~

~~(4) (d) transport, or utilize a private or municipal hauler to transport, the solid waste at least weekly to a landfill site approved by the department Department of Environmental Quality in a covered vehicle or covered containers.~~

(2) Solid waste includes recycling material.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.840 LAUNDRY FACILITIES (1) Laundries operated in conjunction with or utilized by a school must be provided with:

(a) a mechanical washer and hot air tumble dryer. Manual washing and line drying of towels and other laundry items is prohibited. Dryers must be properly vented to prevent maintenance problems and buildup of moisture.

(b) a hot water supply system capable of supplying water at a temperature of 120°F to the washer during all periods of use.

(c) sufficient separation between the area used for sorting and storing soiled laundry and the area used for folding and storing clean laundry to prevent the possibility of cross-contamination.

(d) separate carts for transporting soiled and clean laundry.

(e) handwashing facilities including sink, soap, and disposable towels. A soak sink may double as a handwashing sink.

(2) Towels and other laundry items must be machine washed at a minimum temperature of 120°F for a minimum time of ~~eight~~ ten minutes and dried to greater or equal to 130°F in a hot air tumble dryer.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.841 CLEANING AND MAINTENANCE (1) A school must comply with the following cleaning and maintenance requirements:

(a) Daily cleaning and maintenance services must be provided whenever the school is in use.

(b) Each janitor room must be kept clean, ventilated, lockable, and free from odors.

(c) Soiled mop heads must be changed frequently, using laundered replacements.

(d) Toilets, lavatories, and showers ~~may~~ must not be used for washing and rinsing of mops, brooms, brushes, or any other cleaning device.

(e) Cleaners used in cleaning showers, lavatories, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides.

(f) Deodorizers and odor-masking agents ~~may~~ must not be used ~~unless the room in which used is clean to sight and touch~~.

(g) Toilet bowl brushes, mops and sponges ~~may~~ must be used only for cleaning toilet bowls and urinals and must be stored separately from other cleaning devices. Cleaning devices used for lavatories and showers may not be used for any other purposes.

(h) Dry dust mops and dry dust cloths for cleaning purposes are prohibited, except for use on gymnasium floors. Only treated mops, wet mops, treated cloths, moist cloths or other means approved by the department or health authority which will not spread soil from one place to another may be used for dusting and cleaning, with the exception of gymnasium floors.

(i) All furnishings, fixtures, floors, walls, and ceilings must be clean and in good repair.

(j) Cleaning compounds and pesticides must be stored, used, and disposed of in accordance with the manufacturer's instructions.

(k) Safety data sheets must be kept with all cleaning supplies in the area where the cleaning supplies are located.

(l) As current non-green cleaning supplies are depleted it is recommended that they are replaced with cleaning products that are "Green Products."

(m) All cleaning supplies need to have an EOA registration number, a "use by" reading letter, be stored with approved ventilation, and stored out of the reach of children.

(n) There must be an approved district policy on how to safely clean up vomit, blood, and fecal matter including diarrhea. Cleaning supplies used for vomit, blood, and fecal matter must be disposed of per approved district policy.

~~(k)~~ (o) Whenever therapeutic whirlpools are used, they must be constructed and maintained for easy cleaning. Whirlpools must be drained and ~~an effective disinfectant applied to the interior surfaces after periods of use~~ sanitized after each use. Individuals with open sores or infections are prohibited from using therapeutic whirlpools.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.842 FOOD SERVICE REQUIREMENTS (1) Whenever a food service is operated as an integral part of a school, compliance with ARM Title 37, chapter 110, subchapter 2, rules for food service establishments, is required.

(a) If the food service is available only to staff and students of the school and their guests, licensure as a food service establishment is not required, but compliance with ARM Title 37, chapter 110, subchapter 2, rules for food service establishments, is required.

~~(2) The department hereby adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, which sets forth rules and standards for food service establishments. Copies of ARM Title 37, chapter 110, subchapter 2 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.~~

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

37.111.846 NOXIOUS PLANT AND ANIMAL CONTROL (1) The school and school site must be maintained free of harborage for insects, rodents, and other vermin pests. Extermination methods and other measures to control ~~insects and rodents pests~~ pests must conform with the requirements of the department or the local health authority.

(2) All areas must be maintained free of accumulation of debris or standing water which may provide ~~rodent harborage or breeding places for flies, mosquitoes, and other pests.~~

(3) ~~Whenever potential for rodent infestation exists,~~ Storage areas must be maintained so as to prevent ~~rodent pest~~ pest harborage. Lumber, pipe, and other building materials must be stored neatly ~~at least one foot above the ground.~~

(4) ~~Whenever the potential for insect and rodent infestation exists,~~ building construction must be of a type which will not provide harborage. The growth of brush, weeds, and grass must be controlled to prevent harborage of ~~noxious insects and other vermin pests~~. School grounds must be maintained to prevent the growth of noxious weeds considered detrimental to health.



(5) Schools must develop and implement an approved Integrated Pest Management (IPM) program beginning September 1, 2020. Students, parents, and staff will be notified when chemicals for IPM are going to be used.

(6) The school IPM must include strategies to prevent the spread of pests.

(7) The school administrator must, whenever practical, ensure the use of nonchemical methods to control pests, including proper sanitation practices, structural repair, and window screens.

(8) Except as provided in (9)(c), at least 24 hours before the application of a pesticide to an area of the school that is used by or is accessible to children, the school administrator must notify parents or guardians of children of the application. A notice of application must include:

(a) a description of the area where the pesticide will be applied;

(b) the date and approximate time of application;

(c) the common or brand name of each pesticide to be used;

(d) the targeted pests to be controlled by the pesticide;

(e) each active ingredient in the pesticide;

(f) the EPA registration number;

(g) the telephone contact number, if any, on the label of the pesticide for additional information about each pesticide; and

(h) a contact name and telephone number at the school.

(i) If the application will be outdoors, the notification must also include three dates in chronological order in case the preceding date is canceled due to weather.

(9) During the school term the required notification must be made by individual notice delivered by phone, face-to-face oral communication, electronic mail, postal mail, or facsimile. A school or school district may also develop a registration system to provide this notification only to those parents who wish to receive the notification. If the school or school district develops a registration system, the school administrator must provide written notice to the parents or guardians of the children at the beginning of the school year, or upon a child's enrollment, that pesticides may be used in or around the school, and must explain to each parent or guardian how to register to be notified at least 24 hours before a pesticide treatment.

(a) If pesticides are used outside the school term and the school is open or to be accessible by the public, the notification required must be prominently posted in a conspicuous location on the school premises at least 24 hours before the pesticide treatment is scheduled to begin.

(b) Immediately before starting the application of a pesticide, the certified applicator must post in the area of the school where the pesticide is to be applied, a sign 8.5x11-inch in size, or greater. The department recommends that the print fonts be no smaller than 26 point (one-fourth inch). The school administrator must ensure the sign remains posted and children are kept out of the treated area until the reentry interval on the label, if any, has expired, or, if the label does not specify a reentry interval, for at least 24 hours.

(c) A school administrator may authorize an immediate pesticide treatment without prior notification if the school administrator determines an emergency exists. An emergency includes an immediate and unanticipated threat to the health and

safety of the individuals at the school. An emergency does not exempt the school from the requirements of (9)(f).

(d) The following pesticide applications are not subject to the notification or posting requirements of this rule:

(i) applications of antimicrobial pesticides;

(ii) an application where the school remains unoccupied for a continuous 72-hour period following the application of the pesticide;

(iii) applications of rodenticides in tamper-resistant bait stations or in areas inaccessible to children; and

(iv) applications of silica gels and other ready-to-use pastes, foams, or gels that will be used in areas inaccessible to children.

(10) A school administrator must keep records of pesticide applications subject to the notification and posting requirements of this rule.

(a) Records must include:

(i) a copy of each notice issued;

(ii) the date of application;

(iii) the name and employer of the individual who applied the pesticide, including the individual's certification number;

(iv) the rate of application;

(v) the concentration of the pesticide applied; and

(vi) the total amount of pesticide used.

(b) If a school administrator authorizes a pesticide application under (9)(c), all the information that is required in a notice under (9)(e) must be included in the record.

(c) Records required to be kept for at least five years, must be made available to the public for review.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

5. The department proposes to repeal the following rule:

37.111.831 HEATING is found on page 37-27963 of the Administrative Rules of Montana.

AUTH: 50-1-206, MCA

IMP: 50-1-203, 50-1-206, MCA

## 6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through IV, amend ARM 37.111.801, 37.111.804, 37.111.805, 37.111.810, 37.111.811, 37.111.812, 37.111.825, 37.111.832, 37.111.833, 37.111.834, 37.111.840, 37.111.841, 37.111.842, 37.111.846, and repeal 37.111.831 pertaining to healthy learning environments in Montana public schools.

These rules have not been updated since 1986. Revision of the rules is necessary to ensure compliance with current law. Revision of the rules is also necessary to implement the best practices in school settings that have developed over the last 30 years as the evidence base regarding health and safety in schools has expanded. The proposed rules are designed to protect the health and safety of Montana students and to help guide school administrators to make the best choices for their schools and districts.

### NEW RULE I

The department is proposing New Rule I to ensure healthy indoor air quality within schools. Indoor air pollution can have significant and harmful health effects. The U.S. Environmental Protection Agency (EPA) studies of human exposure to air pollutants indicate that indoor levels of pollutants can be significantly higher than outdoor air pollution levels. Indoor air pollutants are of particular concern because most people, including students, spend significant amounts of time indoors.

Nearly 1 in 13 children of school-age has asthma, the leading cause of school absenteeism due to chronic illness. There is substantial evidence that indoor environmental exposure to allergens, such as dust mites, pests, and molds, plays a role in triggering asthma symptoms. These allergens are common in schools. There is also evidence that exposure to exhaust from school buses and other vehicles exacerbates asthma and allergies.

To address these concerns, the new rule includes requirements for the periodic inspection of ventilation systems and air filtration.

### NEW RULE II

The department is proposing New Rule II to limit student exposure to the outdoors during periods of unsafe air quality and to mitigate the effects of unsafe outdoor air quality on the impact of school indoor air quality.

Exposing children to environmental pollutants during important times of physiological development can lead to long-lasting health problems, dysfunction, and disease. Research has also shown that children exposed to air pollution perform worse on cognitive functioning tests, have impaired neurological function, and lower IQ scores compared with other children. Wildfires and cold weather inversions affect the air quality in many Montana communities.

This rule contains requirements and recommendations schools should follow to minimize the infiltration of outdoor air pollution into school buildings and to limit student exposure to unhealthy air quality during poor air quality days.

### NEW RULE III

The department is proposing New Rule III to ensure that hazardous chemicals maintained by schools as part of science, art, and vocational programs are used, stored, and accessed in a safe manner. The importance of laboratory safety has been recognized for many years in industry. However, educational institutions have been slower to adopt such safety practices and programs. Ensuring proper use and storage of hazardous chemicals that are part of the classroom setting is critical to the health and safety of students and school employees.

#### NEW RULE IV

The department is proposing New Rule IV. This rule adopts and incorporates by reference federal rules, other state agency rules, and publications referenced within the revised rules. The rule is necessary to comply with the requirements of 2-4-307, MCA.

#### ARM 37.111.801

New definitions have been added as a result of the new proposed rules. Definitions have also been revised and updated to reflect changes in law since the rule was last revised. The revisions are necessary to clarify the meaning of terms used throughout the rules and to provide for a better understanding of the rules.

#### ARM 37.111.804

The rule governs preconstruction review requirements for schools. Five primary revisions to the rule are proposed. First, the department proposes to revise the rule to address safety concerns related to chemical storage areas, classrooms with gas supply lines, and classrooms with shop equipment. Second, the department proposes to revise the rule to address the location of emergency eyewash and shower stations. Third, the department proposes to revise the rule to address playground safety standards. Fourth, the department proposes to revise the rule to require submission of plans for school air intakes and radon mitigation. Fifth, the department proposes to revise the rule to address site location of new schools in areas with potential health hazards. The revisions are necessary to ensure the physical characteristics of schools provide a safe and healthy environment for students and school employees.

#### ARM 37.111.805

The department proposes to revise this rule to conform with proposed revisions to ARM 37.111.804 and to remove an outdated reference to capital expenditures.

#### ARM 37.111.810

The rule governs inspections of schools. The department proposes to revise the rule to require annual inspections, clarify how inspections are to be conducted, and provide for inspection recordkeeping requirements. The revisions are necessary to

ensure school inspections are performed in a consistent and uniform manner and inspection results are accessible.

ARM 37.111.811

The department proposes to revise this rule to address storage and administration of medication within schools. The department proposes to revise this rule to address reasonable accommodations for breastfeeding, which provides important health benefits to both nursing mothers and infants. The department proposes to revise the rule to address the spread of animal-borne diseases by addressing where livestock and other animals may be located within schools. The revisions are necessary to provide for the safety and physical well-being of students and school employees.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

ARM 37.111.812

The department proposes to revise this rule to address school building safety protocols including AED/First Aid Kit supply and location, water temperature, chemical storage, playground maintenance, and playground safety inspection. The revisions are necessary to provide for the safety and physical well-being of students and school employees.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

ARM 37.111.825

The department proposes to revise the rule to update reporting requirements for communicable diseases. The department also proposes to revise the rule's tobacco-free language to reference tobacco-free statutory provisions. The revisions are necessary to ensure the rules conform with applicable law.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

ARM 37.111.832

The rule governs water supply systems for schools. The department is proposing to revise the rule by requiring schools to test all human consumption fixtures for lead and to implement remedial measures should the testing reveal unsafe lead levels.

Exposure to lead is a significant health concern, especially for children whose growing bodies tend to absorb more lead than the average adult. Lead is a neurotoxin that can accumulate in the body over time with long lasting effects, particularly for children. According to the Centers for Disease Control and Prevention, lead in drinking water can cause health effects if it enters the

bloodstream and causes an elevated blood lead level. High lead levels can cause multiple and irreversible health problems, which include learning disabilities, attention deficit-hyperactivity disorder (ADHD), developmental or cognitive delays, growth stunting, seizures, coma, or, at high levels, death.

Even though water delivered from the community's public water supply must meet Environmental Protection Agency (EPA) standards for lead, a building may still have too much lead in the drinking water because of lead-containing plumbing materials and water use patterns. The EPA strongly encourages schools to test water for lead. Testing water in schools is important because students spend a significant portion of their days at school, and likely consume water while there. The longer water remains in contact with leaded plumbing, the more opportunity exists for lead to leach into water. As a result, facilities with on-again/off-again water use patterns, such as schools, may have elevated lead concentrations in the water.

The lead testing and remediation requirements proposed are necessary to ensure the health and physical well-being of students and school employees.

The department is also proposing to revise the rule to update references to current circulars.

#### ARM 37.111.833

The rule governs school sewage systems. The department is proposing to revise the rule to update references to current circulars. The revisions are necessary to ensure the rule references circulars currently in effect.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

#### ARM 37.111.834

The rule governs solid waste disposal for schools. The department is proposing to revise the rule by clarifying that solid waste includes recyclables and by identifying the department responsible for approving landfills. The proposed revisions are necessary to clarify requirements for solid waste disposal.

Stylistic and other minor revisions have been made to ensure consistency with the other proposed rules.

#### ARM 37.111.840

The rule governs school laundry facilities. The department is proposing to revise the rule by imposing additional requirements related to the drying of laundry. The proposed revisions are necessary to address concerns related to mold and bedbugs.

#### ARM 37.111.841

The rule governs cleaning and maintenance requirements for schools. The department is proposing to revise the rule to make the cleaning procedures outlined in the rule mandatory rather than discretionary. The department is proposing to add additional cleaning requirements and to recommend schools use green products. The revisions are necessary to ensure schools are maintained in a clean and sanitary manner that protects the health and safety of students and school employees.

ARM 37.111.842

The rule governs food service requirements in schools. The department is proposing to revise the rule by striking language relating to adoption and incorporation by reference of the department's own rules. The department proposes to remove the language because it is unnecessary for the department to adopt and incorporate by reference its own rules.

ARM 37.111.846

The rule governs control and prevention of pests. The department is proposing to revise the rule to require schools to develop and implement Integrated Pest Management (IPM) plans. The rule provides requirements for IPM plans designed to prevent the spread of bedbugs, lice, rodents, and other pests. The rule also provides IPM plan requirements that are designed to ensure transparency about the use of pesticides within schools and on school grounds.

The revisions are necessary to ensure hazardous chemicals deployed to control pests are used in a safe manner that protects the health and physical well-being of students and school employees.

ARM 37.111.831

The department is proposing to repeal this rule because heating standards are addressed through the state building code promulgated by the Department of Labor and Industry.

Fiscal Impact

The proposed rulemaking is estimated to affect 146,722 students enrolled in Montana public schools and 13,832 students in non-public Office of Public Instruction (OPI) accredited K-12 schools. The proposed rule amendments will also affect approximately 15,273 licensed K-12 staff and paraprofessional staff, as well as food service and custodial staff.

With the exception of the lead testing rule (ARM 37.111.832), the proposed rule changes are not anticipated to have a fiscal impact. The lead testing rule is anticipated to have a significant fiscal impact associated with the cost of lead testing

and remediation measures should the test results reveal unsafe levels of lead. The estimated cost of lead testing is set forth below. Calculating the estimated cost of remediation is not feasible because the costs are dependent upon variables that are currently unknown such as the extent to which lead testing results will reveal the need for remediation and site-specific factors relating to remediation of individual school facilities.

There are 825 OPI accredited schools in Montana sharing a total of 582 unique school building addresses. Annexed buildings also exist at many of the larger schools and may not be reflected in the total number of unique school addresses. For this cost estimate, schools were categorized into groups based on student enrollment. The number of human consumption fixtures per school size category were based on the average number of fixtures reported by similar size schools who responded to requests from the department School Health Program. The number of schools per student enrollment category was determined using 2017-2018 student enrollment data from the Montana Office of Public Instruction. The data is summarized in the following table:

Table 1. Number of Human Consumption Fixtures Based on School Size

School Size by Enrollment	Estimated Number of HCF	Number of Unique School Buildings by Address	Number of HCFs Per School Size Group
1-25	4	211	844
26-50	9	116	1044
51-100	14	121	1694
101-300	16	211	3376
301-500	17	116	1972
501-750	22	27	594
751-1,000	25	7	175
1,001-1,500	35	10	350
1,501+	43	6	258
	Total	825	10,307

Table 2. Total Estimated Fiscal Impact

Testing cost per sample	\$25.00
Shipping cost per sample	\$ 4.17
Human consumption fixtures in OPI accredited schools	10,307
$10,307 \times \$29.17 = \$300,655.19$	

The estimated costs of laboratory testing, testing kit delivery, and shipping were calculated as follows:

Laboratory Test for Lead in Water



The Montana State Environmental Laboratory charges \$25 per one-liter water sample. Bottles and coolers are sent to individuals and organizations that will be collecting the water sample. There are four environmental laboratories in the state that can test for lead and other heavy metals. In the case that a school chooses to use a certified private laboratory, the laboratory will send sample bottles and coolers to the school.

Testing Kit Delivery

Coolers with test bottles will be sent to schools by the Montana State Environmental Laboratory or a private lab. Schools will be responsible for collecting samples and returning the samples to the lab. School staff may conduct the testing or schools may choose to hire an independent contractor to conduct the water sampling for them. Sampling bottles are commonly sent in coolers using UPS or USPS. Cost of shipping is determined by the size and weight of the cooler. If working with the State Environmental Lab, schools will not be charged shipping to receive the sampling bottles and coolers.

The following estimates are based on current UPS and USPS pricing according to weight, size, and distance.

Estimated Return Shipping Costs

50 lb+ package (24"x24"x24")

(15 1-liter samples per large cooler box)

Cooler & packaging material = Free

Return Shipping Service

UPS Ground           \$60 avg.

USPS Ground         \$70 avg.

Total Estimated Shipping Cost Per Sample Cooler = \$65

25-50 lb package (20"x20"x20")

(9 1-liter samples per box)

Cooler & packaging material = Free

Return Shipping Service

UPS Ground           \$35 avg.

USPS Ground         \$35 avg.

Total Estimated Shipping Cost Per Sample Cooler = \$35

Overall average cost per cooler shipment  $[(\$65+\$35)/2] = \$50$

The following table sets forth the estimated average testing cost based upon school size:

Table 3. Overall Average Testing Cost Based on School Size

School Size by Student Enrollment	Testing Cost per School Avg. Number HCFs x \$29.17	Number of Schools in Size Category
1-25 students	\$116.68	211
25-50 students	\$262.53	116
51-100 students	\$408.38	121
101-300 students	\$466.72	211
301-500 students	\$495.81	116
501-750 students	\$641.74	27
751-1,000 students	\$729.25	7
1,001-1,500 students	\$1,020.95	10
>1,501 students	\$1,254.31	6

Note: 94% of the K-12 schools in Montana have less than 500 students and would pay \$500 or less for testing.

Average number of bottles per cooler shipment  $[(9+15)/2] = 12$  bottles

Average shipping cost per sample = \$4.17

The following resources and funding may reduce the estimated financial costs for schools:

Montana State Environmental Laboratory: Free Courier Service

The Montana State Environmental Laboratory has contracts in place to provide free courier services for healthcare organizations using the state lab. Schools may take advantage of this free courier service by coordinating with local healthcare organizations and the state lab to schedule sample pick-ups from designated sites. There are currently 14 pick-up sites around the state located in hospitals or other healthcare facilities. The courier services are available for pick-up Monday through Saturday in all locations with varying availability on Sundays.

Water Infrastructure Improvements for the Nation Act (WIIN) Grants

Financial support for testing may be available through the National Lead Testing in School and Childcare Program. The Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 appropriated funding to assist local and tribal education agencies in voluntary testing for lead contamination in drinking water at schools and childcare programs. The non-competitive grant is based on a funding formula that includes factors for population, poverty, and lead exposure risk. The state has submitted a letter of intent to access this funding and has determined that the Department of Environmental Quality is the appropriate state agency to administer grant funding to local educational agencies. If grant funding is awarded, the department will work closely with the Department of Environmental Quality to distribute funding to Montana public schools as they test for lead under the requirements of these administrative rules.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., July 19, 2019.

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

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 7 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 adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State June 11, 2019.