

HOUSE BILL NO. 443

INTRODUCED BY T. BURNETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ASSERTING MONTANA'S SOVEREIGNTY REGARDING AND THE
5 STATE'S RIGHT TO REGULATE THE MANUFACTURE, PRODUCTION, SALE, OR GIVING OF FOOD
6 INTENDED TO REMAIN IN THIS STATE AND NOT INTENDED TO ENTER INTERSTATE COMMERCE;
7 CLARIFYING THAT THE MANUFACTURE, PRODUCTION, SALE, OR GIVING OF FOOD THAT IS INTENDED
8 TO ENTER OR HAS ENTERED INTERSTATE COMMERCE IS SUBJECT TO CERTAIN FEDERAL
9 REGULATIONS; AUTHORIZING AN IN-STATE ORGANIC FOOD CERTIFICATION PROGRAM AND
10 ADVISORY COUNCIL; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 50-31-103,
11 50-31-104, 50-31-202, 50-50-102, 80-3-311, 80-3-312, 80-3-313, 80-4-429, 80-4-526, 80-4-531, 80-8-105,
12 80-8-201, 80-11-601, 81-8-273, 81-9-217, 81-9-219, 81-9-220, 81-20-205, 81-22-101, 81-22-409, 81-22-412,
13 81-22-421, AND 81-23-101, MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as "The Montana Food
18 Freedom Act".

19
20 NEW SECTION. **Section 2. Findings.** The legislature finds that:

21 (1) the people of the several states comprising the United States of America created the federal
22 government to be their agent for certain enumerated purposes as set forth in the United States constitution and
23 nothing more;

24 (2) the 10th amendment to the United States constitution defines the total scope of federal powers as
25 being those that have been delegated by the people of the several states to the federal government, and all
26 powers not delegated to the federal government in the United States constitution are reserved to the states,
27 respectively, or to the people themselves;

28 (3) the 9th amendment to the United States constitution states that "The enumeration in the Constitution,
29 of certain rights, shall not be construed to deny or disparage others retained by the people"; and

30 (4) the assumption of power that the federal government may assert by enacting laws to regulate, in any

1 way, the manufacture, production, processing, packing, exposure, offer, possession, and holding of food for sale,
2 the sale, dispensing, and giving of food, and the supplying or applying of food intended to remain in this state and
3 not intended to enter interstate commerce is nowhere expressly granted by the United States constitution and
4 interferes with the right of the people of the state of Montana to regulate as they see fit the manufacture,
5 production, processing, packing, exposure, offer, possession, and holding of food for sale, the sale, dispensing,
6 and giving of food, and the supplying or applying of food intended to remain in this state and not intended to enter
7 interstate commerce.

8

9 **NEW SECTION. Section 3. Certain federal laws declared unconstitutional -- null and void in**
10 **Montana.** (1) The legislature declares that any law enacted by congress after [the effective date of this act], any
11 federal regulation, rule, or policy promulgated after [the effective date of this act], and any executive order issued
12 by the president of the United States after [the effective date of this act] that seeks, purports, or is otherwise
13 intended to regulate, in any way, the manufacture, production, processing, packing, exposure, offer, possession,
14 and holding of food for sale, the sale, dispensing, and giving of food, and the supplying or applying of food
15 intended to remain in this state and not intended to enter interstate commerce is not authorized by the United
16 States constitution and violates the true meaning and intent given to the United States constitution by the
17 founders and ratifiers.

18 (2) The legislature declares the federal laws referred to in subsection (1):

19 (a) are invalid in this state;

20 (b) may not be recognized by the state of Montana;

21 (c) are specifically rejected by the state of Montana; and

22 (d) are considered null and void, having no effect in this state.

23 (3) The legislature shall adopt and enact any measures needed to prevent the enforcement of the federal
24 laws referred to in subsection (1) within the state of Montana, consistent with the legislative declaration contained
25 in 2-1-402.

26 (4) An official, agent, or employee of the United States government or an employee of an entity providing
27 services to the United States government may not attempt to enforce an act, order, law, executive order, court
28 decision, or regulation of the United States government in violation of [sections 1 through 3].

29 (5) A public officer or employee of the state of Montana may not enforce or attempt to enforce an act,
30 order, law, executive order, court decision, or regulation of the United States government in violation of [sections

1 1 through 3].

2 (6) A violation of subsection (4) or (5) is a felony and is punishable by a fine of up to \$5,000, incarceration
3 in a county jail for up to 1 year, or both.

4 (7) An aggrieved party may bring a private action against a person who violates the provisions of
5 subsection (4) or (5).

6

7 **Section 4.** Section 50-31-103, MCA, is amended to read:

8 **"50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
9 apply:

10 (1) "Advertisement" means representations disseminated in any manner or by any means, other than
11 by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food,
12 drugs, devices, or cosmetics.

13 (2) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders
14 as those terms are understood by general custom and usage in the food industry.

15 (3) "Bottled water" means water that is intended for human consumption and that is sealed in bottles or
16 other containers with no added ingredients, except that it may optionally contain safe and suitable antimicrobial
17 agents.

18 (4) "Color" includes black, white, and intermediate grays.

19 (5) (a) "Color additive" means a material that:

20 (i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is
21 extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable,
22 animal, mineral, or other source; or

23 (ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through
24 reaction with another substance) of imparting color to the human body.

25 (b) The term does not include material that has been or is exempted under the federal act.

26 (6) (a) "Consumer commodity", except as otherwise specifically provided by this subsection, means any
27 food, drug, device, or cosmetic as those terms are defined by this chapter or by:

28 (i) the federal act and regulations pursuant to the federal act if the consumer commodity is a drug, device,
29 or cosmetic or is food that has entered or will enter interstate commerce; or

30 (ii) if the consumer commodity is food that has not and will not enter interstate commerce;

1 (A) the federal act and regulations pursuant to the federal act as the act read on [the effective date of
 2 this act]; or

3 (B) rules adopted by the department.

4 (b) The term does not include:

5 (i) any tobacco or tobacco product;

6 (ii) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide,
 7 Fungicide, and Rodenticide Act, {7 U.S.C. 136, et seq.}, or the provisions of the eighth paragraph under the
 8 heading "Bureau of Animal Industry" of the act of March 4, 1913, {37 Stat. 832-833; 21 U.S.C. 151 through 157},
 9 commonly known as the Virus-Serum-Toxin Act;

10 (iii) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act,
 11 {21 U.S.C. 353(b)(1) and 356};

12 (iv) a beverage subject to or complying with packaging or labeling requirements imposed under:

13 (A) the Federal Alcohol Administration Act, {27 U.S.C. 201, et seq.}, if the beverage has entered or will
 14 enter interstate commerce; or

15 (B) the Federal Alcohol Administration Act, 27 U.S.C. 201, et seq., as that act read on [the effective date
 16 of this act], if the beverage has not and will not enter interstate commerce; or

17 (v) a commodity subject to:

18 (A) the Federal Seed Act, {7 U.S.C. 1551 through 1610}, if the commodity has entered or will enter
 19 interstate commerce; or

20 (B) the Federal Seed Act, 7 U.S.C. 1551 through 1610, as that act read on [the effective date of this act],
 21 if the commodity has not and will not enter interstate commerce.

22 (7) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust,
 23 dirt, and, as far as may be necessary by all reasonable means, foreign or injurious contaminations.

24 (8) "Cosmetic" means:

25 (a) ~~articles~~ an article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or
 26 otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the
 27 appearance;

28 (b) ~~articles~~ an article intended for use as a component of ~~these~~ the articles referred to in subsection
 29 (8)(a), except that the term does not include soap.

30 (9) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the

1 trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug
2 manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed,
3 packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been
4 packed or distributed by the other drug manufacturer, processor, packer, or distributor.

5 (10) "Department" means the department of public health and human services provided for in 2-15-2201.

6 (11) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3),
7 and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and
8 accessories, intended:

9 (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other
10 animals; or

11 (b) to affect the structure or function of the body of humans or other animals.

12 (12) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement
13 the diet and that:

14 (a) is advertised only as a food supplement;

15 (b) bears or contains one or more of the following ingredients:

16 (i) a vitamin;

17 (ii) a mineral;

18 (iii) an herb or other botanical substance;

19 (iv) an amino acid;

20 (v) a dietary substance used to supplement the diet by increasing the total dietary intake or a
21 concentrate, metabolite, constituent, extract, or combination of any ingredients described in subsections (12)(b)(i)
22 through (12)(b)(iv);

23 (c) conforms to any additional provisions for the definition of dietary supplement under:

24 (i) 21 U.S.C. 321 if the commodity is not food or is food that has entered or will enter interstate commerce;

25 or

26 (ii) if the commodity has not and will not enter interstate commerce:

27 (A) 21 U.S.C. 321 as that section read on [the effective date of this act];

28 (B) rules adopted by the department.

29 (13) "Drug" means:

30 (a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a

1 supplement to either of these;

2 (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in
3 humans or other animals;

4 (c) articles (other than food) intended to affect the structure or function of the body of humans or other
5 animals;

6 (d) articles intended for use as components of any article specified in subsection (13)(a), (13)(b), or
7 (13)(c) but does not include devices or their components, parts, or accessories.

8 (14) "Federal act" means:

9 (a) the Federal Food, Drug, and Cosmetic Act, as amended, (21 U.S.C. 301, et seq.), if application of
10 the term is not to food or is to food that has entered or will enter interstate commerce; or

11 (b) if the application of the term is to food that has not and will not enter interstate commerce;

12 (i) the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq., as that act read on [the effective
13 date of this act]; or

14 (ii) "federal act" as defined in rules adopted by the department.

15 (15) "Food" means:

16 (a) articles used for food or drink for humans or other animals;

17 (b) chewing gum;

18 (c) articles used for components of these articles; and

19 (d) dietary supplements.

20 (16) (a) "Food additive" means a substance, the intended use of which results or may be reasonably
21 expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics
22 of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing,
23 treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the
24 substance is not generally recognized, among experts qualified by scientific training and experience to evaluate
25 its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used
26 in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in
27 food) to be safe under the conditions of its intended use.

28 (b) The term does not include:

29 (i) a pesticide chemical in or on a raw agricultural commodity;

30 (ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or

1 transportation of a raw agricultural commodity;

2 (iii) a color additive;

3 (iv) a substance used in accordance with a sanction or approval;

4 (A) granted prior to the enactment of the Food Additives Amendment of 1958;

5 (B) granted pursuant to the federal act;

6 (C) if the sanction or approval is not to food or is to food that has entered or will enter interstate
 7 commerce, granted pursuant to the Poultry Products Inspection Act, (21 U.S.C. 451, et seq.), or the Federal Meat
 8 Inspection Act of March 4, 1907, (34 Stat. 1260), as amended and extended, (21 U.S.C. 603 601, et seq.);

9 (D) if the sanction or approval is to food that has not and will not enter interstate commerce, granted
 10 pursuant to the Poultry Products Inspection Act, 21 U.S.C. 451, et seq., as that act read on [the effective date of
 11 this act], or the Meat Inspection Act, 21 U.S.C. 603, et seq., as that act read on [the effective date of this act]; or

12 (E) granted by rules adopted by the department.

13 (17) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen,
 14 fast-food retailer, or any other place that serves food at retail to the public for consumption, either at or away from
 15 the point of service, and any facility operated by a governmental entity where food is served.

16 (18) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and
 17 frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are
 18 four grades of hamburger or ground beef:

19 (a) "regular hamburger" or "regular ground beef" may have:

20 (i) a fat content no greater than;

21 (A) the federal standard set forth in 9 CFR 319.15 if application of the term is to food that has entered
 22 or will enter interstate commerce; or

23 (B) the federal standard set forth in 9 CFR 319.15 as the standard read on [the effective date of this act]
 24 if the application of the term is to food that has not and will not enter interstate commerce; and

25 (ii) a lean content of no less than 70%;

26 (b) "lean hamburger" or "lean ground beef" may have:

27 (i) a fat content no greater than 22%; and

28 (ii) a lean content of no less than 78%;

29 (c) "extra lean hamburger" or "extra lean ground beef" may have:

30 (i) a fat content no greater than 16%; and

- 1 (ii) a lean content of no less than 84%; and
- 2 (d) "super lean hamburger" or "super lean ground beef" may have:
- 3 (i) a fat content no greater than 12%; and
- 4 (ii) a lean content of no less than 88%.
- 5 (19) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the
- 6 comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25%
- 7 of ash, and not more than 8% sucrose.
- 8 (20) "Label" means a display of written, printed, or graphic matter on the immediate container of an
- 9 article. "Immediate container" does not include package liners.
- 10 (21) "Labeling" means labels and other written, printed, or graphic matter:
- 11 (a) on an article or its containers or wrappers;
- 12 (b) accompanying the article.
- 13 (22) "Menu" means a list presented to the patron that states the food items for sale in a food service
- 14 establishment.
- 15 (23) "New drug" means a drug, the composition of which is such that:
- 16 (a) it is not generally recognized, among experts qualified by scientific training and experience to
- 17 evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed,
- 18 recommended, or suggested in its labeling; or
- 19 (b) the drug, as a result of investigations to determine its safety and effectiveness for use under the
- 20 conditions prescribed, has become so recognized but that has not, other than in the investigations, been used
- 21 to a material extent or for a material time under the conditions prescribed.
- 22 (24) "Official compendium" means the official United States Pharmacopoeia, official National Formulary,
- 23 or a supplement to either of these.
- 24 (25) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use
- 25 in the delivery or display of that consumer commodity to retail purchasers.
- 26 (b) The term does not include:
- 27 (i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk
- 28 or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;
- 29 (ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail
- 30 customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

1 (26) "Person" includes an individual, partnership, corporation, and association.

2 (27) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation with
3 one or more other substances is an "economic poison";

4 (a) under the Federal Insecticide, Fungicide, and Rodenticide Act, (7 U.S.C. 136, et seq.), as amended,
5 ~~and that if the substance~~ is used in the production, storage, or transportation of raw agricultural commodities ~~that~~
6 have entered or will enter interstate commerce; or

7 (b) if the substance is used in the production, storage, or transportation of raw agricultural commodities
8 that have not and will not enter interstate commerce;

9 (i) under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., as that act read
10 on [the effective date of this act]; or

11 (ii) under rules adopted by the department.

12 (28) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food
13 service establishment or retail meat establishment.

14 (29) "Principal display panel" means that part of a label that is most likely to be displayed, presented,
15 shown, or examined under normal and customary conditions of display for retail sale.

16 (30) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating,
17 extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food
18 and the enclosure of the food in a package.

19 (31) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed,
20 colored, or otherwise treated in their unpeeled natural form prior to marketing.

21 (32) "Retail meat establishment" means a commercial establishment at which meat or meat products are
22 displayed for sale or provision to the public, with or without charge.

23 (33) "Synthetically compounded" means a product formulated by a process that chemically changes a
24 material or substance extracted from naturally occurring plant, animal, or mineral sources, except for
25 microbiological processes."

26

27 **Section 5.** Section 50-31-104, MCA, is amended to read:

28 **"50-31-104. Department authorized to adopt rules.** (1) The department may adopt rules for the
29 efficient enforcement of this chapter.

30 (2) The department may adopt by reference the regulations adopted by the food and drug administration

1 under:

2 (a) the federal act; and

3 (b) the Fair Packaging and Labeling Act, (15 U.S.C. 1451, et seq.), if application of the federal
4 regulations is not to food or is to food that has entered or will enter interstate commerce; or

5 (c) if application of the federal regulations is to food that has not and will not enter interstate commerce,
6 the Fair Packaging and Labeling Act, 15 U.S.C. 1451, et seq., as that act read on [the effective date of this act].

7 ~~(2)(3) No A hearing is not required for adoption by reference of those rules adopted by the department~~
8 ~~under subsection (2) if the rules refer only to the federal regulations adopted under the federal act and the Fair~~
9 ~~Packaging and Labeling Act (15 U.S.C. 1451, et seq.) allowed to be adopted by reference under subsection (2)."~~

10

11 **Section 6.** Section 50-31-202, MCA, is amended to read:

12 **"50-31-202. When food adulterated.** A food is considered to be adulterated if:

13 (1) it bears or contains any poisonous or deleterious substance that may render it injurious to health. If
14 the poisonous or deleterious substance is not an added substance, the food may not be considered adulterated
15 under this subsection if the quantity of the substance in that food does not ordinarily render it injurious to health.

16 (2) it bears or contains any added poisonous or added deleterious substance, other than one that is:

17 (a) a pesticide chemical in or on a raw agricultural commodity;

18 (b) a food additive; or

19 (c) a color additive that is unsafe within the meaning of 50-31-109;

20 (3) it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within
21 the meaning of:

22 (a) section 408(a) of the federal act, (21 U.S.C. 346a(a)), as amended, if the raw agricultural commodity
23 has entered or will enter interstate commerce; or

24 (b) if the commodity has not and will not enter interstate commerce;

25 (i) section 408(a) of the federal act, 21 U.S.C. 346a(a), as the act read on [the effective date of this act];

26 or

27 (ii) rules adopted by the department;

28 (4) (a) it is or it bears or contains any food additive that is unsafe within the meaning of:

29 (i) section 409 of the federal act, (21 U.S.C. 348), as amended, if the food additive has entered or will
30 enter interstate commerce; or

1 (ii) if the commodity has not and will not enter interstate commerce:

2 (A) section 409 of the federal act, 21 U.S.C. 348, as that section read on [the effective date of this act];

3 or

4 (B) rules adopted by the department.

5 (b) However Subject to the provisions of subsection (4)(c), if a pesticide chemical has been used in or
 6 on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section
 7 408 of the federal act (21 U.S.C. 346) and the raw agricultural commodity has been subjected to processing, such
 8 as canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on
 9 the processed food may, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this
 10 section, not be determined unsafe if the residue in or on the raw agricultural commodity has been removed to the
 11 extent possible in good manufacturing practice and the concentration of the residue in the processed food when
 12 ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

13 (c) The residue of a pesticide chemical that has been used in or on a raw agricultural commodity may
 14 not be determined unsafe under subsection (4)(b) if the pesticide chemical is in conformity with an exemption
 15 granted or tolerance prescribed:

16 (i) under section 408 of the federal act, 21 U.S.C. 346, and the raw agricultural commodity has entered
 17 or will enter interstate commerce; or

18 (ii) if the raw agricultural commodity has not and will not enter interstate commerce under:

19 (A) section 408 of the federal act, 21 U.S.C. 346, as it read on [the effective date of this act]; or

20 (B) rules adopted by the department.

21 (5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance
 22 or if it is otherwise unfit for food;

23 (6) it has been produced, prepared, packed, or held under unsanitary conditions under which it may have
 24 become contaminated with filth or under which it may have been rendered diseased, unwholesome, or injurious
 25 to health;

26 (7) it is the product of a diseased animal or an animal that has died otherwise than by slaughter or that
 27 has been fed upon the uncooked offal from a slaughterhouse;

28 (8) its container is composed in whole or in part of any poisonous or deleterious substance that may
 29 render the contents injurious to health;

30 (9) any valuable constituent has been in whole or in part omitted or abstracted from the food;

1 (10) any substance has been substituted wholly or in part for the food;

2 (11) damage or inferiority has been concealed in any manner;

3 (12) any substance has been added to the food or mixed or packed with the food so as to increase its
4 bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

5 (13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except
6 harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 0.4%, harmless natural wax not
7 in excess of 0.4%, or harmless natural gum and pectin. However, this paragraph does not apply to any
8 confectionery by reason of its containing less than 0.5% by volume of alcohol derived solely from the use of
9 flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory
10 substances.

11 (14) it is or bears or contains any color additive that is unsafe within the meaning of the federal act."
12

13 **Section 7.** Section 50-50-102, MCA, is amended to read:

14 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
15 apply:

16 (1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially
17 hazardous foods.

18 (2) "Consumer" means a person who is a member of the public, takes possession of food, is not
19 operating an establishment, and does not offer the food for resale.

20 (3) "Department" means the department of public health and human services provided for in 2-15-2201.

21 (4) "Establishment" means a retail food manufacturing establishment, meat market, food service
22 establishment, perishable food dealer, or water hauler.

23 (5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an
24 organized market authorized by the appropriate municipal or county authority.

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

27 (7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria,
28 short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage
29 samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment,
30 catering kitchen, commissary, private organization routinely serving the public, or similar place where food or

1 drink is prepared, served, or provided to the public at retail, with or without charge.

2 (b) The term does not include:

3 (i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in
4 their unbroken, original containers;

5 (ii) a private organization serving food only to its members;

6 (iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat
7 for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests; or

8 (iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests.

9 (8) "Local board of health" means a county, city, city-county, or district board of health.

10 (9) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local
11 board of health, or the health officer's authorized representative.

12 (10) "Meat market" means an operation and buildings or structures in connection with it used to process,
13 store, or display meat or meat products for retail sale to the public or for human consumption.

14 (11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization;

15 (a) under 26 U.S.C. 501 if the organization is not engaged with the production, processing, marketing,
16 transportation, or delivery of food or is engaged with the production, processing, marketing, transportation, or
17 delivery of food that has entered or will enter interstate commerce; or

18 (b) if the organization is engaged with the production, processing, marketing, transportation, or delivery
19 of food that has not and will not enter interstate commerce, under:

20 (i) 26 U.S.C. 501 as that section read on [the effective date of this act]; or

21 (ii) rules adopted by the department.

22 (12) "Perishable food dealer" means an operation that is in the business of purchasing and selling
23 perishable food to the public at retail.

24 (13) "Person" means a person, partnership, corporation, association, cooperative group, the state or a
25 political subdivision of the state, or other entity.

26 (14) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable
27 of supporting:

28 (i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

29 (ii) the growth and toxin production of *Clostridium botulinum*.

30 (b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or

1 heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

2 (c) The term does not include:

3 (i) an air-cooled, hard-boiled egg with intact shell;

4 (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C
5 (75 degrees F);

6 (iii) a food with a water activity (aw) value of 0.85 or less;

7 (iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and
8 maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

9 (v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and
10 progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum*
11 cannot occur.

12 (15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades,
13 chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below
14 when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

15 (b) The term does not include:

16 (i) tomatoes or food products containing tomatoes; or

17 (ii) any other food substrate or product preserved by any method other than that described in subsection
18 (15)(a).

19 (16) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market
20 in their natural state that are not packaged and labeled and are not:

21 (a) cooked;

22 (b) canned;

23 (c) preserved, except for drying;

24 (d) combined with other food products; or

25 (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

26 (17) "Regulatory authority" means the department, the local board of health, the local health officer, or
27 the local sanitarian.

28 (18) "Retail" means the provision of food directly to the consumer.

29 (19) (a) "Retail food manufacturing establishment" means an operation and the buildings or structures
30 used to manufacture or prepare food for sale or human consumption at retail.

1 (b) The term does not include:

2 (i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

3 (ii) slaughterhouses, meat packing plants, or meat depots; or

4 (iii) producers or harvesters of raw and unprocessed farm products.

5 (20) (a) "Water hauler" means a person engaged in the business of transporting water for human
6 consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter
7 6.

8 (b) The term does not include a person engaged in the business of transporting water for human
9 consumption that is used for individual family households and family farms and ranches."

10

11 **Section 8.** Section 80-3-311, MCA, is amended to read:

12 **"80-3-311. Standard grades for produce.** (1) Unless a Montana grade standard has been established,
13 the standard grades for produce:

14 (a) are limited to:

15 (i) the U.S. grades governing the produce that has entered or will enter interstate commerce; or

16 (ii) if the produce has not and will not enter interstate commerce:

17 (A) the U.S. grades governing the produce as the grades read on [the effective date of this act]; or

18 (B) grades adopted by the department by rule;

19 (b) must conform in all respects and be identical with the most recent standards established by the U.S.
20 department of agriculture for the produce; and

21 (c) when conforming, must be accepted as the legal standards for this state.

22 (2) The department may by rule establish state grades for produce grown in Montana when the amount
23 grown reaches a volume rendering it of market importance or when requested by the industry. State produce
24 grades must be established in consultation with representatives of the various components of the produce
25 industry, including growers, sellers, buyers, traders, wholesalers, retailers, and consumers.

26 (3) The grade "Montana unclassified" must contain at least 50% of produce that would grade:

27 (a) U.S. No. 2 or better if the produce has entered or will enter interstate commerce; or

28 (b) if the produce has not and will not enter interstate commerce, U.S. No. 2 or better as the grade U.S.
29 No. 2 read on [the effective date of this act].

30 (4) Produce not conforming to established grades may be sold if it is marked in the same manner as

1 graded produce, except that in place of specifying the grade, the word "ungraded" or "unclassified" must be
2 used."

3

4 **Section 9.** Section 80-3-312, MCA, is amended to read:

5 **"80-3-312. Markings -- exceptions.** (1) A person may not sell, pack, offer for sale or transport, deliver,
6 or consign in interstate or intrastate commerce produce prepared for market unless each container has been
7 legibly marked with the declared grade of the produce and the name and address of the person responsible for
8 the packing and grading. The grade declared must conform to the provisions of this part.

9 (2) Produce that is grown in Montana or any other produce arriving or found in Montana in containers
10 that have no grade marking:

11 (a) must meet the requirements of the U.S. No. 1 grade or be marked with the proper grade;

12 (b) must meet the requirements of the U.S. No. 1 grade if the produce has entered or will enter interstate
13 commerce; or

14 (c) if the produce has not and will not enter interstate commerce:

15 (i) must meet the requirements of U.S. No. 1 grade as the grade U.S. No. 1 read on [the effective date
16 of this act]; or

17 (ii) must conform with rules adopted by the department.

18 (3) This section does not apply to:

19 (a) a person selling to the ultimate consumer produce that was grown by that person and that is not for
20 resale; or

21 (b) the display of produce on a free choice rack.

22 (4) Produce may be sold for seed purposes when graded under rules adopted by the department and
23 plainly marked for seed purposes."

24

25 **Section 10.** Section 80-3-313, MCA, is amended to read:

26 **"80-3-313. Advertisements -- grade stated.** (1) Produce for which a grade is established in this part,
27 when advertised with a price stated, ~~must meet the requirements of U.S. No. 1 grade or better or must show, in~~
28 ~~addition to the price quoted, the true grade of the produce as provided by law~~ and must:

29 (a) meet the requirements of the U.S. No. 1 grade or better or show the true grade of the produce if the
30 produce has entered or will enter interstate commerce; or

- 1 (b) if the produce has not and will not enter interstate commerce:
 2 (i) meet the requirements of U.S. No. 1 grade or better as the grade U.S. No. 1 read on [the effective
 3 date of this act]; or
 4 (ii) conform with rules adopted by the department.
 5 (2) Price tags exhibited in a place of business on exposed produce are not considered advertising under
 6 this section."

7
 8 **Section 11.** Section 80-4-429, MCA, is amended to read:

9 **"80-4-429. Penalty.** (1) Except as otherwise provided, a person who violates any provision of parts 4
 10 through 7 of this chapter or rules promulgated under parts 4 through 7 or who impedes, obstructs, hinders, or
 11 otherwise prevents or attempts to prevent the director or an authorized representative in the performance of a
 12 duty under parts 4 through 7 of this chapter is guilty of a misdemeanor.

13 (2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other
 14 documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or purchase contract
 15 that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

16 (3) A person acting as a commodity dealer or warehouse operator who knowingly sells
 17 warehouse-receipted agricultural commodities that the person is not authorized to sell or who fails to pay for
 18 purchased agricultural commodities is guilty of a felony.

19 (4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(5)(b)(vi)
 20 who fails to pay in full all amounts due to a producer for the sale of agricultural commodities is guilty of a felony
 21 and is also subject to any additional administrative penalty authorized by this chapter.

22 (5) A person is guilty of a felony if that person knowingly delivers to a commodity dealer or warehouse
 23 operator or upon the exercise of reasonable diligence should have known of the delivery to that person of an
 24 agricultural commodity that contains:

25 (a) a nitrogen fertilizer added to harvested grain;

26 (b) a poisonous, deleterious, or other substance that:

27 (i) is not registered or approved by federal or state statutes, regulations, or rules if the agricultural
 28 commodity has entered or will enter interstate commerce; or

29 (ii) if the agricultural commodity has not and will not enter interstate commerce, is registered or approved
 30 by:

- 1 (A) federal statutes, regulations, or rules as the federal statutes, regulations, or rules read on [the
2 effective date of this act]; or
3 (B) state statute or rules adopted by the department; or
4 (c) a registered or approved substance that has not been used or applied according to label directions
5 or other government standards according to:
6 (i) other federal government standards if the agricultural commodity has entered or will enter interstate
7 commerce; or
8 (ii) if the agricultural commodity has not and will not enter interstate commerce:
9 (A) other federal government standards as the standards read on [the effective date of this act]; or
10 (B) state standards."

11
12 **Section 12.** Section 80-4-526, MCA, is amended to read:

13 **"80-4-526. Warehouse receipts -- written terms.** (1) Warehouse receipts under this part must contain
14 in written terms:

- 15 (a) a statement that the warehouse is operated under a license issued by the department;
16 (b) a statement showing whether it is an original, duplicate, triplicate, or other copy;
17 (c) a statement showing the name of the warehouse;
18 (d) a statement showing the name of the city or town where the warehouse is located;
19 (e) the date the warehouse receipt is issued;
20 (f) the number of the warehouse receipt. All receipts must be numbered consecutively.
21 (g) a statement that the grain is "received in store" from the person named;
22 (h) a statement of gross weight, dockage, and net weight and the sample report used for grade and
23 protein analysis;
24 (i) a statement of encumbrances, such as cash or other advances;
25 (j) a statement that, upon the return of the receipt properly endorsed by the person to whom the order
26 was issued and the payment of the proper charges for storing and handling, delivery will be made in accordance
27 with this part;
28 (k) a statement that the grain is properly insured for the benefit of the owner; and
29 (l) the name of the manager or agent of the warehouse.
30 (2) The face of the warehouse receipt may also provide for other statements, such as:

- 1 (a) the scale weight ticket numbers or the assembly sheet number;
- 2 (b) the grade; and
- 3 (c) the protein certificate used.
- 4 (3) The back of the warehouse receipt may include printed statements, such as:
- 5 (a) delivery provisions;
- 6 (b) actual-delivery-of-grain provisions;
- 7 (c) bailment provisions provided for in Title 30, chapter 7, part 2, that do not conflict with this part;
- 8 (d) act-of-God provisions;
- 9 (e) nonnegotiable provisions; and
- 10 (f) endorsements and other statements pertinent to bookkeeping data whenever the statements do not
- 11 conflict with ~~any state or~~
- 12 (i) any federal law pertaining to public warehousing or the grading or testing of grain if the endorsement,
- 13 statement, or federal law addresses or affects grain that has entered or will enter interstate commerce; or
- 14 (ii) if the endorsement or statement addresses or affects grain that has not and will not enter interstate
- 15 commerce;
- 16 (A) any federal law pertaining to public warehousing or the grading or testing of grain as the federal law
- 17 read on [the effective date of this act]; or
- 18 (B) state law pertaining to public warehousing or the grading or testing of grain.
- 19 (4) A copy of the warehouse receipt issued by the warehouse operator must accompany each application
- 20 for a warehouse operator's license."

21

22 **Section 13.** Section 80-4-531, MCA, is amended to read:

23 **"80-4-531. Duty to deliver stored agricultural commodities -- weights and inspections -- modifying**

24 **agreements -- damages.** (1) The duty of the warehouse operator to deliver agricultural commodities stored is

25 governed by this part. Upon the return of a properly endorsed warehouse receipt to the warehouse operator and

26 upon payment or tender of all advances and legal charges, agricultural commodities of the grade and quantity

27 named therein must be delivered to the holder of the warehouse receipt.

- 28 (2) (a) The holder of the warehouse receipt is entitled to an official inspection, as specified by:
- 29 (i) the federal grain inspection service in the regulations implementing the United States Grain Standards
- 30 Act, 7 U.S.C. 71 through 87, if the grain subject to inspection has entered or will enter interstate commerce; or

- 1 (ii) if the grain subject to inspection has not and will not enter interstate commerce:
- 2 (A) the United States Grain Standards Act, 7 U.S.C. 71 through 87, as that act read on [the effective date
- 3 of this act]; or
- 4 (B) rules adopted by the department.
- 5 (b) Inspections other than official must be agreed to in writing by the warehouse operator and the holder
- 6 of the warehouse receipt.
- 7 (3) (a) The holder of a warehouse receipt is entitled to class X or Y weights or better;
- 8 (i) as specified by the federal grain inspection service in the regulations implementing the United States
- 9 Grain Standards Act, 7 U.S.C. 71 through 87, if the grain subject to inspection has entered or will enter interstate
- 10 commerce; or
- 11 (ii) if the grain subject to inspection has not and will not enter interstate commerce:
- 12 (A) as specified by the federal grain inspection service in the regulations implementing the United States
- 13 Grain Standards Act, 7 U.S.C. 71 through 87, as those regulations read on [the effective date of this act]; or
- 14 (B) as provided in rules adopted by the department.
- 15 (b) ~~In the event~~ If an approved class X or Y weight is unavailable at the warehouse of origin, the following
- 16 weights take precedence in this order:
- 17 (i) destination official or certified class X or Y or better; or
- 18 (ii) railroad track scale weights.
- 19 (4) The parties to a storage agreement are bound by an agreement made under this section and
- 20 intended to supplement or modify the optional sections of the warehouse receipt if the agreement offer is made
- 21 in writing and the receiving party fails to reject the offer in writing within 10 days of receipt of the written offer. In
- 22 order to be valid, the agreement offer must state in boldface type that the receiving party has 10 days to reject
- 23 the offer.
- 24 (5) A warehouse operator's duty to deliver any agricultural commodity is fulfilled if delivery is made
- 25 pursuant to the contract with the depositor as rapidly as it can be done by ordinary diligence. When delivery is
- 26 made within 48 hours from date of demand or as agreed upon in writing by all parties concerned, the delivery
- 27 complies with the provisions of this section. An extension of the delivery period may be granted by the department
- 28 upon written request.
- 29 (6) All redeliveries must be made at the warehouse or station where the agricultural commodity was
- 30 received unless otherwise agreed.

1 (7) At the option of the depositor, the warehouse operator shall deliver the agricultural commodity at a
 2 terminal or, if mutually agreed, shall pay to the depositor the equivalent market value of the agricultural commodity
 3 on that date, less any freight and storage charges to the terminal and less other charges ~~which~~ that may be
 4 allowed by the department.

5 (8) In addition to other penalties provided, a warehouse operator failing to deliver agricultural
 6 commodities within the time provided in this section is subject to suit by the person entitled to delivery of the
 7 agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damages or
 8 liquidated damages of 1/2 of 1% of the value for each day's delay."

9

10 **Section 14.** Section 80-8-105, MCA, is amended to read:

11 **"80-8-105. Rules.** (1) (a) The department may adopt by reference without a public hearing regulations
 12 that:

13 (i) were adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.,
 14 as amended, as that act relates to the production, storage, or transportation of a crop that has entered or will
 15 enter interstate commerce; or

16 (ii) if related to the production, storage, or transportation of a crop that has not and will not enter
 17 interstate commerce were:

18 (A) adopted under the Federal Insecticide, Fungicide, and Rodenticide Act as that act read on [the
 19 effective date of this act]; or

20 (B) adopted by the department as rules.

21 (b) The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

22 (2) The rules may prescribe methods of:

23 (a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting
 24 use, offering or exposing for sale of any pesticide;

25 (b) determining whether pesticides are highly toxic to humans;

26 (c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the
 27 requirements of 80-8-202;

28 (d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for
 29 applicators, operators, and dealers, and providing for the review of the records by the department's authorized
 30 agent and the submission of the records to the department upon written request;

- 1 (e) issuing farm applicator special-use permits and the maintenance and submission of records by farm
2 applicators issued special-use permits;
- 3 (f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of
4 pesticides and devices;
- 5 (g) operating and maintaining equipment used by applicators;
- 6 (h) developing examinations ~~which~~ that must be held periodically throughout the state;
- 7 (i) establishing the form and content of all applications for licenses and permits;
- 8 (j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The
9 department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration
10 ~~which~~ that would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled,
11 sprayed, or dusted on the skin.
- 12 (k) revoking licenses and permits;
- 13 (l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit
14 builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic
15 properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other
16 pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is
17 to be used;
- 18 (m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing
19 licensing, inspection, and fees for blending plants;
- 20 (n) establishing registration procedures for devices, with a fee not to exceed \$5 per type of device,
21 specifying classes of devices to be registered and providing for additional requirements;
- 22 (o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including
23 requalification training;
- 24 (p) establishing procedures for implementing and administering the civil penalties under 80-8-306;
- 25 (q) establishing fees for training courses and materials;
- 26 (r) establishing standards and procedures for administering a waste pesticide and pesticide container
27 collection, disposal, and recycling program;
- 28 (s) establishing special fees on waste pesticides or pesticide containers collected under the waste
29 pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon
30 volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a

1 credit for pesticide applicator, dealer, or operator license or permit fees.

2 (t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide
3 facilities.

4 (3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that rules
5 are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner,
6 and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may
7 restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and must
8 encompass all reasonable factors that the department considers necessary to prevent damage or injury to:

9 (i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

10 (ii) the environment;

11 (iii) plants, including forage plants;

12 (iv) wildlife;

13 (v) fish and other aquatic life.

14 (b) In issuing the rules, the department shall give consideration to pertinent research findings and
15 recommendations of other agencies of this state or of the federal government.

16 (4) If the department finds that an emergency exists ~~which~~ that requires immediate action with regard
17 to the registration, use, or application of pesticides, the department may, without notice or hearing, issue
18 necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this
19 subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department
20 determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 must be
21 held within the ~~above~~ period prescribed under the Montana Administrative Procedure Act to determine whether
22 the order or rule should be adopted by the department.

23 (5) All rules and orders issued by the department must be made in writing and must be available at the
24 department for public inspection. Except for orders establishing or changing rules of practice and procedure, all
25 orders made and published by the department must include and be based upon written findings of fact. A copy
26 of any rule or order certified by the department must be received in evidence in all courts of this state with the
27 same effect as the original."

28

29 **Section 15.** Section 80-8-201, MCA, is amended to read:

30 **"80-8-201. Registration.** (1) (a) Each pesticide distributed, sold, or offered for sale within the state or

1 delivered for transportation or transported in intrastate commerce or between points within the state must be
 2 registered with the department. The registration must be renewed annually by the manufacturer, formulator, or
 3 distributor of the pesticide.

4 (b) The department shall register all federally approved pesticides, and those registered are subject to
 5 registration fees and all other provisions of this chapter.

6 (c) As used in subsection (1)(b), "federally approved pesticide" means a pesticide that is:

7 (i) approved under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., as
 8 amended, and that is used in the production, storage, or transportation of a crop that has entered or will enter
 9 interstate commerce; or

10 (ii) used in the production, storage, or transportation of a crop that has not and will not enter interstate
 11 commerce and was approved under:

12 (A) the Federal Insecticide, Fungicide, and Rodenticide Act, as that act read on [the effective date of this
 13 act]; or

14 (B) rules adopted by the department.

15 (d) All registrations of pesticides expire on December 31 following the date of issuance unless otherwise
 16 terminated.

17 (2) The applicant for registration shall file with the department a statement that includes:

18 (a) the name and address of the applicant and the name and address of the person whose name will
 19 appear on the label, if other than the registrant;

20 (b) a complete copy of the label of the pesticide, ~~the United States environmental protection agency~~
 21 ~~registration number if the pesticide is registered,~~ and a statement of all claims to be made for it, including
 22 directions for use; and:

23 (i) the United States environmental protection agency registration number if the pesticide is registered
 24 under the authority of the United States environmental protection agency and the pesticide is used in the
 25 production, storage, or transportation of a crop that has entered or will enter interstate commerce; or

26 (ii) if the pesticide is used in the production, storage, or transportation of a crop that has not and will not
 27 enter interstate commerce:

28 (A) the United States environmental protection agency registration number on [the effective date of this
 29 act] if the pesticide was registered under the authority of the United States environmental protection agency on
 30 [the effective date of this act]; or

1 (B) the registration number, if any, assigned pursuant to or other information required by rules adopted
2 by department.

3 (c) the trade and chemical name of the pesticide;

4 (d) if requested by the department, a full description of tests made and the results upon which the claims
5 are based. In the case of renewal of registration, a statement is required only for information that is different from
6 that furnished when the pesticide was registered or last reregistered.

7 (3) A pesticide imported into the state that is subject to and has been registered under the provisions
8 of a federal act providing for the registration of pesticides must be registered in the state. However, the state may
9 restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may
10 establish special registrations of pesticides as outlined in 80-8-105(3) and in subsection (8) of this section. The
11 annual registration fee must also be paid, and registration information required by the department must be
12 provided.

13 (4) The applicant shall pay an annual fee of \$90 for each pesticide registered. The applicant shall pay
14 an annual fee of \$90 for:

15 (a) each emergency exemption requested by the state;

16 (i) as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p, if the pesticide
17 is not used in the production, storage, or transportation of a crop or is used in the production, storage, or
18 transportation of a crop that has entered or will enter interstate commerce; or

19 (ii) if the pesticide is used in the production, storage, or transportation of a crop that has not and will not
20 enter interstate commerce:

21 (A) as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p, as that act
22 read on [the effective date of this act]; or

23 (B) pursuant to rules adopted by the department;

24 (b) a special local need registration;

25 (i) as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c)(1), if the
26 pesticide is not used in the production, storage, or transportation of a crop or is used in the production, storage,
27 or transportation of a crop that has entered or will enter interstate commerce; or

28 (ii) if the pesticide is used in the production, storage, or transportation of a crop that has not and will not
29 enter interstate commerce:

30 (A) as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c)(1), as that

- 1 subsection read on [the effective date of this act]; or
 2 (B) pursuant to rules adopted by the department; or
 3 (c) an experimental-use permit registration;
 4 (i) as provided in 7 U.S.C. 136c if the pesticide is not used in the production, storage, or transportation
 5 of a crop or is used in the production, storage, or transportation of a crop that has entered or will enter interstate
 6 commerce; or
 7 (ii) if the pesticide is used in the production, storage, or transportation of a crop that has not and will not
 8 enter interstate commerce as provided in:
 9 (A) 7 U.S.C. 136c as that section read on [the effective date of this act]; or
 10 (B) rules adopted by the department.
- 11 (5) The department may require the submission of the complete formula and certified analytical
 12 standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the
 13 proposed claims for it and if the pesticide, its labeling, and other material required to be submitted comply with
 14 the requirements of 80-8-202, the department shall register the pesticide.
- 15 (6) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the
 16 pesticide, its labeling, and other material required to be submitted do not comply with this chapter, the department
 17 shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted
 18 fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the
 19 applicant does not make the corrections upon receipt of the notice, the department may refuse to register the
 20 pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that
 21 the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide
 22 endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an application
 23 for registration is refused or the department proposes to suspend or cancel a registration, the registrant may
 24 pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.
- 25 (7) Registration is not required in the case of a pesticide shipped from one plant in the state to another
 26 plant in the state by the same person.
- 27 (8) (a) The department, the department of public health and human services, and the department of fish,
 28 wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for
 29 special local needs. The departments shall use the same requirements and standards for reviewing registrations:
 30 (i) established by the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., as

1 amended, and regulations adopted under ~~the that~~ act if the pesticide is not used in the production, storage, or
 2 transportation of a crop or is used in the production, storage, or transportation of a crop that has entered or will
 3 enter interstate commerce; or

4 (ii) if the pesticide is used in the production, storage, or transportation of a crop that has not and will not
 5 enter interstate commerce, established:

6 (A) by the Federal Insecticide, Fungicide, and Rodenticide Act and regulations adopted under that act
 7 as the act and regulations read on [the effective date of this act]; or

8 (B) pursuant to rules adopted by the department.

9 (b) The department shall provide the departments of public health and human services and fish, wildlife,
 10 and parks with a complete copy of the application, related correspondence, and a statement of the department's
 11 proposed action on the application. The department, the department of public health and human services, and
 12 the department of fish, wildlife, and parks shall approve or disapprove the application within 10 days after the
 13 receipt of the application. If the department, the department of public health and human services, and the
 14 department of fish, wildlife, and parks are in agreement with the proposed registration, the department shall issue
 15 the registration.

16 ~~(b)(c)~~ The department shall establish a time and place for an interagency conference for the purposes
 17 of resolving the registration of any pesticide or device. If two of the departments approve the proposed
 18 registration, the department shall issue the registration.

19 ~~(c)(d)~~ The registrant applying for registration must be notified as to proposed changes in registration.
 20 If the departments cannot resolve the proposed registration following the interagency conference, the registrant
 21 may request a joint administrative hearing before the departments of agriculture, public health and human
 22 services, and fish, wildlife, and parks.

23 ~~(d)(e)~~ Following the interagency conference and, if requested, the administrative hearing, if the proposed
 24 registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory
 25 council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's
 26 recommendations on the registration must be accepted by the departments and implemented by the department
 27 of agriculture.

28 (9) (a) ~~Pesticides~~ Whenever a pesticide registered under ~~any~~ federal law ~~when is~~ canceled for sale and
 29 use in total or in part by a federal agency responsible for registration, ~~are~~ the pesticide is considered canceled
 30 in total or in part for sale and use in Montana if:

1 (i) the pesticide is not used in the production, storage, or transportation of a crop or if it is used in the
 2 production, storage, or transportation of a crop that has entered or will enter interstate commerce; or

3 (ii) the pesticide is used in the production, storage, or transportation of a crop that has not and will not
 4 enter interstate commerce, cancellation by the federal agency occurs after [the effective date of this act], and the
 5 department prohibits, by rule, use of the pesticide in the production, storage, or transportation of a crop.

6 (b) The cancellation is effective on the final date of sale or use allowed under the federal law and rules
 7 or orders of the federal agency or under the rules adopted pursuant to subsection (9)(a)(ii). Except as provided
 8 in subsection ~~(9)(b)~~ (9)(c), if the federal cancellation allows existing stock to be used past the final date of
 9 cancellation, the sale or use in this state may not exceed 2 years unless sale or use after 2 years is allowed under
 10 the rules adopted pursuant to subsection (9)(a)(ii). The department shall provide technical assistance to any
 11 person in possession of the products to ensure their proper disposal, relabeling, or removal.

12 ~~(b)(c)~~ (c) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7
 13 U.S.C. 136a-1(i)(5), may be sold and used according to environmental protection agency labeling requirements
 14 or other requirements for a period not to exceed 6 years from the date that distribution from the registrant,
 15 manufacturer, formulator, or distributor is terminated if :

16 (i) the pesticide is not used in the production, storage, or transportation of a crop or if it is used in the
 17 production, storage, or transportation of a crop that has entered or will enter interstate commerce; or

18 (ii) the pesticide is used in the production, storage, or transportation of a crop that has not and will not
 19 enter interstate commerce, cancellation by the federal agency occurs after [the effective date of this act], and the
 20 department prohibits, by rule, use of the pesticide in the production, storage, or transportation of a crop."

21
 22 **Section 16.** Section 80-11-601, MCA, is amended to read:

23 **"80-11-601. Plan Plans for establishment of state organic certification program programs --**
 24 **submission by governor to U.S. secretary of agriculture -- administration by department.** (1) (a) Upon
 25 petition by 50% or more of certified organic producers, processors, and handlers in Montana whose products
 26 enter interstate commerce, the department shall develop a plan for a state organic certification program ~~for~~
 27 ~~producers and handlers of agricultural products that have been produced using organic methods. The plan must~~
 28 ~~be developed that is~~ in conformity with the requirements of the Organic Foods Production Act of 1990, 7 U.S.C.
 29 6501, et seq. The state program must be designed to ensure that a product that is sold or labeled as organically
 30 produced is produced and handled using organic methods. The state organic certification program may contain

1 requirements that are more restrictive than those contained in the federal act for the organic certification of farms
 2 and handling operations and the production and handling of agricultural products that are to be sold or labeled
 3 as organically produced.

4 ~~(2)(b)~~ Once the plan is developed, the governor, as the governing state official, shall submit the plan for
 5 ~~a Montana state organic certification program~~ to the U.S. secretary of agriculture for approval.

6 ~~(3)(c)~~ If the state ~~program plan~~ is approved by the U.S. secretary of agriculture, two-thirds of the certified
 7 organic producers, processors, and handlers who petitioned for development of a state plan pursuant to
 8 subsection (1)~~(a)~~ may petition the department for implementation of the federally approved Montana state organic
 9 certification program.

10 ~~(4)(d)~~ Upon receipt and verification of ~~the a~~ petition made under subsection (1)(c), the department shall
 11 implement the program. Implementation must include the establishment of an organic commodity advisory
 12 council. The council must be composed of the director of the department, a consumer member of the public at
 13 large, and certified Montana organic producers, processors, and handlers, a majority of which must be organic
 14 producers whose products enter interstate commerce, to advise the department regarding:

15 ~~(a)~~(i) the adoption of administrative rules to implement the organic certification program;

16 ~~(b)~~(ii) appropriate research and market development programs for certified organic products;

17 ~~(c)~~(iii) assessments on certified organic products payable by certified organic producers, processors,
 18 and handlers certified under the state organic certification program, when approved by a majority of those
 19 producers, processors, and handlers, in an amount sufficient to fund the state organic certification program
 20 without negative fiscal impact on the state budget;

21 ~~(d)~~(iv) assessment collection and enforcement procedures;

22 ~~(e)~~(v) appropriate penalty and enforcement provisions applicable to the state organic certification
 23 program;

24 ~~(f)~~(vi) the awarding of research and marketing contracts; and

25 ~~(g)~~(vii) any other issues the advisory council considers necessary for proper administration of the state
 26 organic certification program.

27 ~~(5)(e)~~ A federally approved state organic certification program may not be construed to apply to organic
 28 producers, processors, and handlers certified solely by other organic certification programs, whether public,
 29 private, foreign, or domestic, ~~nor may~~ and the federally approved state organic certification program may not
 30 prohibit those other certifying organizations from certifying and collecting fees from organic producers,

1 processors, handlers, or any other commercial entity in Montana. Organic producers, processors, and handlers
2 may be certified under both the federally approved state organic certification program and programs administered
3 by other certifying organizations.

4 (2) (a) Upon petition by 50% or more of certified organic producers, processors, and handlers in Montana
5 whose products do not enter interstate commerce, the department shall develop a plan for an intrastate organic
6 certification program. The plan may be developed in conformity with the requirements of the Organic Foods
7 Production Act of 1990, 7 U.S.C. 6501, et seq., or with any other requirements. The intrastate program must be
8 designed to ensure that a product that is sold or labeled as organically produced does not enter interstate
9 commerce and is produced and handled using organic methods. The intrastate program may contain
10 requirements that are more restrictive than those contained in the federal act or the federally approved program
11 provided for in subsection (1) for the organic certification of farms and handling operations and the production
12 and handling of agricultural products that will not enter interstate commerce and are to be sold or labeled as
13 organically produced.

14 (b) At any time after the department establishes the intrastate program, two-thirds of the certified organic
15 producers, processors, and handlers who petitioned for development of the intrastate plan pursuant to subsection
16 (2)(a) may petition the department for implementation of the intrastate program.

17 (c) Upon receipt and verification of the petition, the department shall implement the intrastate program.
18 Implementation must include the establishment of an advisory council. The council must be composed of the
19 director of the department or the director's representative, a consumer member of the public at large, and certified
20 Montana organic producers, processors, and handlers, a majority of which must be organic producers whose
21 products do not enter interstate commerce. The advisory council shall advise the department regarding:

22 (i) the adoption of administrative rules to implement the intrastate program;

23 (ii) appropriate research and market development programs for certified organic products;

24 (iii) assessments on certified organic products payable by certified organic producers, processors, and
25 handlers certified under the intrastate program, when the assessments have been approved by a majority of
26 those producers, processors, and handlers, in an amount sufficient to fund the program without negative fiscal
27 impact on the state budget;

28 (iv) assessment collection and enforcement procedures;

29 (v) appropriate penalty and enforcement provisions applicable to the intrastate program;

30 (vi) the awarding of research and marketing contracts; and

1 (vii) any other issues the advisory council considers necessary for proper administration of the intrastate
2 program.

3 (d) The intrastate program may not be construed to apply to organic producers, processors, and handlers
4 certified under the provisions of subsection (1) or certified solely by other organic certification programs, whether
5 public, private, foreign, or domestic, and the intrastate program may not prohibit those other certifying
6 organizations from certifying and collecting fees from organic producers, processors, handlers, or any other
7 commercial entity in Montana.

8 (3) Organic producers, processors, and handlers may be certified under the federally approved state
9 organic certification program provided for in subsection (1), the intrastate program provided for in subsection (2),
10 or programs administered by other certifying organizations or by any combination of those programs."

11

12 **Section 17.** Section 81-8-273, MCA, is amended to read:

13 **"81-8-273. Refusal to issue or renew license.** (1) The department shall refuse to issue or renew a
14 license if the applicant:

15 (a) has failed to maintain a financial condition of total assets in excess of total liabilities, including total
16 current assets in excess of total current liabilities;

17 (b) is in violation of any of the provisions of this part;

18 (c) has knowingly made false or misleading statements as to the health or physical condition of livestock
19 or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or the selling,
20 exchanging, soliciting, or negotiating of the sale of livestock or the weighing of the same;

21 (d) has failed to keep records of all purchases and sales or refused to grant inspection of ~~such~~ the
22 records by authorized agents of the department;

23 (e) is in violation of the rules adopted by the department;

24 (f) has failed to comply with a lawful order of the department;

25 (g) has been found by the department to have failed to pay, without reasonable cause, obligations
26 incurred in connection with livestock transactions;

27 (h) has been suspended;

28 (i) by the order of the secretary of agriculture of the United States department of agriculture under
29 provisions of the Packers and Stockyards Act, 1921, ~~as amended~~, 7 U.S.C. 181, et seq., as amended, if the
30 livestock dealer is engaged in interstate commerce; or

- 1 (ii) if the livestock dealer is not engaged in interstate commerce, the suspension was made by:
 2 (A) order of the secretary of the United States department of agriculture before [the effective date of this
 3 act]; or
 4 (B) the department; or
 5 (i) employs a person required to be licensed but whose license cannot be renewed or whose license is
 6 under suspension or revocation;
 7 (i) by the department or the United States department of agriculture if the person is engaged in interstate
 8 commerce; or
 9 (ii) if the person is not engaged in interstate commerce, by:
 10 (A) the United States department of agriculture if the suspension or nonrenewable determination
 11 occurred before [the effective date of this act]; or
 12 (B) the department.
 13 (2) An applicant refused a license or license renewal may not apply again for 1 year following refusal
 14 unless the department determines that the applicant has met the requirements of this part."
 15

16 **Section 18.** Section 81-9-217, MCA, is amended to read:

17 **"81-9-217. Definitions.** As used in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the
 18 following definitions apply:

19 (1) (a) "Adulterated" means the term applied to meat if:

20 ~~(a)~~(i) it bears or contains a poisonous or deleterious substance that may render it injurious to health,
 21 except that if the substance is not an added substance, the product may not be considered adulterated if the
 22 quantity of the substance is insufficient to ordinarily render it injurious to health;

23 ~~(b)~~(ii) it bears or contains, by reason of administration of any substance to the meat, an added poisonous
 24 or added deleterious substance other than a color additive, a food additive, or a pesticide chemical in or on a raw
 25 agricultural commodity, any of which may in the board's judgment make the meat unfit for human ~~food~~
 26 consumption;

27 ~~(c)~~(iii) it is in whole or in part a raw agricultural commodity and bears or contains a pesticide chemical
 28 that is unsafe as provided in;

29 (A) the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 353, if application of the act is to a raw
 30 agricultural commodity that has entered or will enter interstate commerce; or

1 (B) the Federal Food, Drug and Cosmetic Act as that act read on [the effective date of this act] or rules
 2 adopted by the board if application of the act or the rules is to a raw agricultural commodity that has not and will
 3 not enter interstate commerce;

4 ~~(d)~~(iv) it bears or contains a food additive that is unsafe as provided in:

5 (A) the Federal Food, Drug and Cosmetic Act if application of that act is to a food additive that has
 6 entered or will enter interstate commerce; or

7 (B) the Federal Food, Drug and Cosmetic Act as that act read on [the effective date of this act] or rules
 8 adopted by the board if application of the act or rules is to a food additive that has not and will not enter interstate
 9 commerce;

10 ~~(e)~~(v) it bears or contains a color additive that is unsafe as provided in:

11 (A) the Federal Food, Drug and Cosmetic Act; however, the meat that is not otherwise considered
 12 adulterated under subsection (1)(c), (1)(d), or (1)(e) is considered adulterated if use of the pesticide chemical,
 13 food additive, or color additive in or on the article is prohibited by rule of the board if application of the act is to
 14 a color additive that has entered or will enter interstate commerce; or

15 (B) the Federal Food, Drug and Cosmetic Act as that act read on [the effective date of this act] or rules
 16 adopted by the board if application of that act or the rules is to a color additive that has not and will not enter
 17 interstate commerce;

18 ~~(f)~~(vi) it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other
 19 reason unsound, unhealthful, unwholesome, or otherwise unfit for human food consumption;

20 ~~(g)~~(vii) it has been prepared, packed, or held under unsanitary conditions whereby it may have become
 21 contaminated with filth or rendered injurious to health;

22 ~~(h)~~(viii) it is in whole or in part the product of an animal, including poultry, that has died otherwise than
 23 by slaughter;

24 ~~(i)~~(ix) its container is composed in whole or in part of any poisonous or deleterious substance that may
 25 render the contents injurious to health;

26 ~~(j)~~(x) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity
 27 with a regulation or exemption in effect pursuant to;

28 (A) 21 U.S.C. 348 if the meat has entered or will enter interstate commerce; or

29 (B) 21 U.S.C. 348 as that section read on [the effective date of this act] or pursuant to rules adopted by
 30 the board if the meat has not and will not enter interstate commerce; or

1 ~~(k)~~(xi) any valuable constituent has been in whole or in part omitted or abstracted from the meat, any
2 substance has been substituted wholly or in part for meat, damage or inferiority has been concealed in any
3 manner, or any substance has been added to it or mixed or packed with it so as to increase its bulk or weight or
4 make it appear better or of greater value than it is.

5 **(b) Meat that is not otherwise considered adulterated under subsection (1)(a)(iii), (1)(a)(iv), or (1)(a)(v)**
6 **is considered adulterated if use of the pesticide chemical, food additive, or color additive in or on the article is**
7 **prohibited by rule of the board.**

8 (2) "Chief" means the chief meat inspector appointed as provided in 81-9-226.

9 (3) "Federal Food, Drug and Cosmetic Act" means:

10 **(a) except as provided in subsection (3)(b), 21 U.S.C. 301 through 392, as that law read on October 1,**
11 **1987, and application of the act is not to food, as defined in 50-31-103, or is to food, as defined in 50-31-103, that**
12 **has entered or will enter interstate commerce; or**

13 **(b) 21 U.S.C. 301 through 392, as that law read on October 1, 1987, if the application of the act is to**
14 **food, as defined in 50-31-103, that has not and will not enter interstate commerce.**

15 (4) "Livestock" means cattle, buffalo, sheep, swine, goats, rabbits, horses, mules or other equines, and
16 alternative livestock, as defined in 87-4-406, whether alive or dead.

17 (5) "Livestock product" or "poultry product" means a product capable of use as human food that is wholly
18 or partially made from meat and is not specifically exempted by rule of the board.

19 (6) "Meat" means the edible flesh of livestock or poultry and includes livestock and poultry products.

20 (7) "Misbranded" means the term applied to meat:

21 (a) if its labeling is false or misleading in any particular;

22 (b) if it is offered for sale under the name of another food;

23 (c) if it is an imitation of a meat product, unless its label bears, in type of uniform size and prominence,
24 the word "imitation" and immediately thereafter the name of the food being imitated;

25 (d) if its container is so made, formed, or filled as to be misleading;

26 (e) if it does not bear a label showing:

27 (i) the name and place of business of the manufacturer, packer, or distributor; and

28 (ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count.

29 The board may adopt rules exempting small meat packages, meat not in containers, and other reasonable
30 variations.

1 (f) if any word, statement, or other information required by 81-9-216 through 81-9-220 and 81-9-226
2 through 81-9-236 to appear on the label is not prominently placed on the label, as compared with other words,
3 statements, designs, or devices in the labeling, and is not stated in terms that render it likely to be read and
4 understood by the ordinary individual under customary conditions of purchase and use;

5 (g) if it is represented as a food for which a definition and standard of identity or composition has been
6 prescribed by the rules of the board, unless:

7 (i) it conforms to the definition and standard; and

8 (ii) its label bears the name of the food specified in the definition and standard and, if required by the
9 rules, the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;

10 (h) if it is represented as a food for which a standard of fill of container has been prescribed by rules of
11 the board and it falls below the standard of fill of container applicable to the food, unless its label bears, in the
12 manner and form that the rules specify, a statement that it falls below the standard;

13 (i) if it is not subject to the provisions of subsection (7)(g), unless its label bears:

14 (i) the common or usual name of the food, if any; and

15 (ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient,
16 except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices,
17 flavorings, and colorings without naming each. To the extent that compliance with the requirements of this
18 subsection (7)(i)(ii) is impracticable or results in deception or unfair competition, exemptions must be established
19 by rules promulgated by the board.

20 (j) if it purports to be for special dietary uses, unless its label bears information concerning its vitamin,
21 mineral, and other dietary properties as the board, after consultation with the U.S. secretary of agriculture, by rule
22 prescribes as necessary in order to fully inform purchasers as to its value for those uses;

23 (k) if it bears or contains an artificial flavoring, artificial coloring, or chemical preservative, unless it bears
24 labeling stating that fact, provided that to the extent that compliance with the requirements of this subsection (7)(k)
25 is impracticable, exemptions must be established by rules promulgated by the board; or

26 (l) if it fails to bear directly on the meat and on its containers, as the board may by rule prescribe, the
27 official inspection legend and establishment number of the establishment where the product was prepared and
28 other information that the board may require to ensure that it will not have false or misleading labeling and that
29 the public will be informed of the manner of handling required to maintain the meat in a wholesome condition.

30 (8) (a) "Mobile slaughter facility" means a mobile unit that is operated by a person licensed by the board

1 to slaughter livestock or poultry, that is capable of providing onsite slaughter services for the owner of the
 2 livestock or poultry, and at which inspection of the slaughter of livestock or poultry or the preparation of meat food
 3 products is regulated under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

4 (b) The term does not mean a person engaged in custom slaughtering as provided in 81-9-218(2).

5 (9) "Official establishment" means an establishment licensed by the board at which inspection of the
 6 slaughter of livestock or poultry or the preparation of meat food products is maintained under 81-9-216 through
 7 81-9-220 and 81-9-226 through 81-9-236. The term includes a mobile slaughter facility.

8 (10) (a) Except as provided in subsection (10)(b), "Pesticide", "pesticide chemical", "food additive", "color
 9 additive", and "raw agricultural commodity" have the same meanings as provided in 21 U.S.C. 321 if the meaning
 10 does not apply to food, as defined in 50-31-103, or does apply to food, as defined in 50-31-103, that has entered
 11 or will enter interstate commerce.

12 (b) Unless defined by the board by rule, "pesticide chemical", "food additive", "color additive", and "raw
 13 agricultural commodity" have the same meanings as provided 21 U.S.C. 321 as that section read on [the effective
 14 date of this act] if the meaning applies to food, as defined in 50-31-103, that has not and will not enter interstate
 15 commerce.

16 (11) "Poultry" means any domesticated bird, whether alive or dead.

17 (12) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise
 18 manufactured or processed."

19

20 **Section 19.** Section 81-9-219, MCA, is amended to read:

21 **"81-9-219. Application.** (1) The Subject to the provisions of subsection (2), the provisions of 81-9-216
 22 through 81-9-220 and 81-9-226 through 81-9-236 apply to persons, establishments, animals, and articles;

23 (a) (i) regulated under the Federal Meat Inspection Act, 21 U.S.C. 601 through 695, et seq., if the
 24 application of the provisions is not to food, as defined in 50-31-103, or is to food, as defined in 50-31-103, that
 25 has entered or will enter interstate commerce; or

26 (ii) if the application of the provisions is to food, as defined in 50-31-103, that has not and will not enter
 27 interstate commerce, regulated under the Federal Meat Inspection Act, as that act read on [the effective date of
 28 this act];

29 (b) the federal Poultry Products Inspection Act, 21 U.S.C. 451 through 470, as ~~those acts~~ that act read
 30 on October 1, 1987; or

1 (c) the federal Humane Methods of Slaughter Act of 1978, 7 U.S.C. 1901, 1902, 1904, 1906, and 1907,
2 as that act read on March 27, 2007;

3 (2) The provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 apply to persons,
4 establishments, animals, and articles regulated under the federal acts specified in subsections (1)(a) through
5 (1)(c) only to the extent provided for in the federal acts and this section."

6

7 **Section 20.** Section 81-9-220, MCA, is amended to read:

8 **"81-9-220. Rules.** (1) The board, upon the recommendation of the chief, shall adopt rules consistent
9 with ~~the requirements of:~~

10 (a) the rules of the U.S. department of agriculture governing meat inspection if the federal rules do not
11 relate to food or do relate to food that has entered or will enter interstate commerce; or

12 (b) if the rules relate to food that has not and will not enter interstate commerce;

13 (i) the rules of the U.S. department of agriculture governing meat inspection as the rules read on [the
14 effective date of this act]; or

15 (ii) other criteria established by the department by rule.

16 (2) The rules promulgated by the board must:

17 ~~(1)~~(a) require antemortem and postmortem inspections, quarantines, segregation, and reinspections with
18 respect to the slaughter of livestock and poultry and the preparation of livestock and poultry products at all official
19 establishments;

20 ~~(2)~~(b) require the identification of livestock and poultry and the marking and labeling of livestock or
21 poultry products as "Montana Inspected and Passed" if they are found upon inspection not to be adulterated;

22 ~~(3)~~(c) require the destruction for food purposes of all livestock, poultry, livestock products, and poultry
23 products that have been found to be adulterated;

24 ~~(4)~~(d) set standards for ingredients of livestock products, meat, and poultry products;

25 ~~(5)~~(e) set standards for labeling, marking, or branding of meat, livestock products, and poultry products;

26 ~~(6)~~(f) set standards for the weights or measures of meats, livestock products, and poultry products not
27 inconsistent with standards established under Title 30, chapter 12;

28 ~~(7)~~(g) set standards for the filling of containers for meat, livestock products, and poultry products;

29 ~~(8)~~(h) regulate the false or fraudulent advertising of meat, livestock products, and poultry products;

30 ~~(9)~~(i) provide for periodic investigations of the sanitary conditions of each official establishment and

1 withdraw or otherwise refuse to license and inspect those establishments where the sanitary conditions are such
2 as to render adulterated any meat products prepared or handled in that establishment;

3 ~~(+0)~~(j) prescribe sanitation requirements for all official establishments;

4 ~~(+4)~~(k) require all persons subject to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to
5 maintain full and complete records of all transactions involving meat, livestock products, or poultry products and
6 to make the records available on request to the chief or the chief's inspectors at any reasonable time;

7 ~~(+2)~~(l) prescribe additional standards, methods, and procedures that are necessary to effect the purposes
8 of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236; and

9 ~~(+3)~~(m) provide for the licensing and inspection of mobile slaughter facilities to ensure that the
10 requirements of this part are met with respect to all operations conducted at mobile slaughter facilities."
11

12 **Section 21.** Section 81-20-205, MCA, is amended to read:

13 **"81-20-205. Egg -- when defined as unfit for human food consumption.** (1) Eggs hereinafter defined
14 ~~shall be deemed~~ as described in this section are considered unfit for human ~~food~~ consumption:

15 (a) "Addled" or "white rot" means an egg that is putrid or rotten.

16 (b) "Adherent yolk" means an egg in which the yolk has become fastened to the shell.

17 (c) "Black rot" means an egg ~~which~~ that has deteriorated to such an extent that the whole interior
18 presents a blackened appearance.

19 (d) "Blood ring" means an egg in which the germ has developed to such an extent that blood is formed.

20 (e) "Blood spot" ~~is~~ means a spot of blood ~~that is~~ adhering to the yolk of an egg.

21 (f) "Bloody white" means an egg ~~with~~ that has a general reddish appearance due to blood mixed through
22 it and ~~which egg~~ that may show spots of blood floating in the white.

23 (g) "Incubated eggs" ~~shall include~~ means eggs ~~which~~ that have been subjected to incubation, whether
24 natural or artificial, for more than 48 hours, and it ~~shall be~~ is unlawful to offer for sale incubated eggs unless
25 branded or stamped with the word "incubated".

26 (h) "Meat spot" means ~~that the egg has~~ a speck of foreign matter adhering to the yolk or floating in the
27 white.

28 (i) "Moldy" means an egg ~~which~~ that, through improper care, has deteriorated so that mold spores have
29 formed within the egg.

30 (2) An egg that is smashed or broken so that the contents are leaking is unfit for human ~~food~~

1 consumption.

2 (3) Eggs ~~which are unfit for human consumption if they are otherwise unwholesome or are adulterated~~
3 ~~as such term is defined pursuant to:~~

4 (a) pursuant to the definition of "adulterated" in the Federal Food, Drug, and Cosmetic Act and rules
5 promulgated under authority of this part are unfit for human food if the eggs have entered or will enter interstate
6 commerce; or

7 (b) if the eggs have not and will not enter interstate commerce, pursuant to:

8 (i) the definition of "adulterated" in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 through
9 392, as that act read on [the effective date of this act]; or

10 (ii) rules promulgated under authority of this part."

11

12 **Section 22.** Section 81-22-101, MCA, is amended to read:

13 **"81-22-101. Definitions.** For the purpose of this chapter, the following definitions are adopted:

14 (1) "Agent" means a person who is authorized by another person to act for that other person in dealing
15 with a third person.

16 (2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into
17 a mass that also contains a small portion of the other milk constituents, with or without salt, and must contain not
18 less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added
19 coloring matter.

20 (3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein
21 with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free
22 substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added
23 coloring matter.

24 (4) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are
25 mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for
26 permanently installed sanitary product-pipelines and cleaning systems.

27 (5) "Code of Federal Regulations" refers especially but is not limited to Title 21, ~~which~~ that contains the
28 definitions and standards of identity for products as established by the food and drug administration, United
29 States department of health and human services.

30 (6) "Cream" means the milk fat that rises to the surface when milk is allowed to stand or that is separated

1 from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

2 (7) "Creamery" means a place where butter is made for commercial purposes.

3 (8) "Culture" means the harmless lactic acid fermenting bacteria that are added to milk or cream to make
4 manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese,
5 butter, and similar products.

6 (9) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the
7 milk or cream from which is used for manufacturing purposes.

8 (10) The term "department", unless otherwise indicated, means the department of livestock provided for
9 in Title 2, chapter 15, part 31.

10 (11) "Directly acidified" and similar terms mean the process of adding a food grade acid to milk or cream
11 instead of or in addition to the adding of culture.

12 (12) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or
13 not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or
14 manufactured from them, to which has been added or ~~which~~ that has been blended or compounded with fat or
15 oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk,
16 cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt,
17 dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix,
18 low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

19 (13) "French ice cream", "French custard ice cream", and similar frozen products, except sherbets and
20 water ices, are varieties of ice cream.

21 (14) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory
22 analysis, the results of which determine a grade designating their quality.

23 (15) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or
24 condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet
25 butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg
26 products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10%
27 of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice
28 cream may contain not to exceed 1% gelatin. A frozen milk or milk product may not be manufactured or sold
29 unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All
30 ice cream must be manufactured from pasteurized ice cream mix.

1 (16) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and
2 must comply with the requirements for ice cream.

3 (b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsections
4 (21)(a)(iii) through (21)(a)(xii) are made.

5 (17) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and
6 includes the operation of a business or service establishment.

7 (18) "Manufactured dairy product" means an item enumerated in subsection (21) or any other dairy
8 product made by incorporating milk or cream or converting milk or cream into a different state of appearance or
9 quality. For purposes of reporting production and licensing, manufactured dairy product includes but is not limited
10 to:

11 (a) ice cream or its mix;

12 (b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their
13 mixes;

14 (c) sherbets of all kinds or their mixes;

15 (d) animal or vegetable fat frozen desserts or their mixes;

16 (e) frozen confections or their mixes when made in a manufactured dairy products plant;

17 (f) water ices or their mixes;

18 (g) frozen dessert sandwiches, bars, cones, and similar novelties;

19 (h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of
20 dairy products or their mixes when made in a manufactured dairy products plant;

21 (i) ice milk or its mix;

22 (j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese,
23 either cultured or directly acidified;

24 (k) sour cream when cultured or directly acidified;

25 (l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

26 (m) buttermilk, cultured or from churned butter or directly acidified;

27 (n) butter;

28 (o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

29 (19) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and
30 converted into a product or into a different state of appearance or quality or that manufactures those products

1 listed in subsection (21). If only products of semblance or imitation of dairy products are made, the plant is not
2 considered a manufactured dairy products plant.

3 (20) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one
4 or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully
5 accredited as tuberculosis-free by the United States department of agriculture or in the process of being
6 accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

7 (21) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or
8 for conversion into products of a form other than the form in which originally produced or products commonly
9 known as but not limited to:

10 (i) butter;

11 (ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, ~~which~~
12 ~~are~~ that is either cultured or directly acidified, and cheese dressings;

13 (iii) ice cream or its mix;

14 (iv) frozen dessert or its mix;

15 (v) sherbets of all kinds or their mixes;

16 (vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

17 (vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

18 (viii) frozen confections or their mixes;

19 (ix) water ices or their mixes;

20 (x) ice milk or its mix;

21 (xi) French ice cream, French custard, or their mixes;

22 (xii) frozen custard or its mix and frozen yogurt;

23 (xiii) yogurt, flavored yogurt, and low-fat yogurt;

24 (xiv) sour cream, either cultured or directly acidified;

25 (xv) cream cheese, either cultured or directly acidified;

26 (xvi) buttermilk, either cultured, from churned butter, or directly acidified;

27 (xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar
28 flavored products;

29 (xviii) dry or powdered milk; and

30 (xix) condensed milk products.

1 (b) The items specified in subsection (21)(a) must conform to the standards of identity set forth in the
2 Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted
3 by the department prevail. The labeling of manufactured dairy products must be in accordance with the Montana
4 Food, Drug, and Cosmetic Act.

5 (22) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are
6 weighed, graded, sampled, tested, or collected for purchase.

7 (23) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded",
8 "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when
9 applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy
10 product, are as defined in Title 50, chapter 31.

11 (24) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning
12 samples, methods, and rules of evidence.

13 (25) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk
14 or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30
15 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15
16 seconds in equipment that is properly operated and approved by the department. Milk products that have a higher
17 fat content than milk or contain added sweeteners must be heated to at least 155 degrees F and held
18 continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held
19 continuously at or above this temperature for at least 25 seconds. This definition does not bar any other
20 pasteurization process that has been recognized by the United States public health service to be equally effective
21 and that is approved by the department.

22 (26) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or
23 trade device.

24 (27) "Producer" means the person who exercises control over the production of milk or cream delivered
25 to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or
26 cream used in manufacturing.

27 (28) "Safe temperature" means 45 degrees F or less unless the product is frozen, in which case the
28 temperature must be at or below 0 degrees F.

29 (29) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured
30 dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality,

1 wholesomeness, or composition.

2 (30) "Water ice" means a frozen product containing but not limited to ~~the following ingredients:~~ water,
3 sugar, flavoring, coloring, stabilizers, and other ingredients allowed as optional ingredients:

4 (a) by the Code of Federal Regulations ~~as optional ingredients~~ if the water ice has entered or will enter
5 interstate commerce; or

6 (b) if the water ice has not and will not enter interstate commerce:

7 (i) by the Code of Federal Regulations as it read on [the effective date of this act]; or

8 (ii) under rules adopted by the board."

9

10 **Section 23.** Section 81-22-409, MCA, is amended to read:

11 **"81-22-409. Adulterating milk or cream unlawful -- penalty.** (1) ~~(a) It shall be~~ Except as provided in
12 subsection (1)(c), it is unlawful for any person to adulterate milk or cream produced or sold for manufacturing
13 purposes or for any manufactured dairy product to contain an adulterant.

14 ~~(b) For~~ Except as provided in subsection (1)(c), for the purposes of this chapter, the presence of any milk
15 or cream produced or sold for manufacturing purposes or any manufactured dairy product is considered to be
16 adulterated if the milk, cream, or manufactured dairy product contains any antimicrobial substance, pesticide
17 residuals, unapproved coloring, food additives, or foreign substances added directly to or assimilated into such
18 products which are any milk, cream, or manufactured dairy product that is not explicitly allowed:

19 ~~(i) in the Code of Federal Regulations, except for the addition of adulterants for rejection purposes, shall~~
20 ~~be deemed adulterated~~ if the milk, cream, or manufactured dairy product has entered or will enter interstate
21 commerce; or

22 (ii) if the milk, cream, or manufactured dairy product has not and will not enter interstate commerce, in:

23 (A) the Code of Federal Regulations as it read on [the effective date of this act]; or

24 (B) rules adopted by the department.

25 (c) Milk or cream produced or sold for manufacturing purposes or any manufactured dairy product is not
26 considered to be adulterated if an adulterant included in subsection (1)(b) was added for rejection purposes.

27 ~~(d) Violations~~ A violation of this subsection (1) ~~shall be misdemeanors~~ is a misdemeanor and ~~shall be~~
28 is punishable by fine or imprisonment, or both, as provided in this chapter.

29 (2) It ~~shall be~~ is unlawful for any person to:

30 (a) sell, manufacture, exchange, display, or offer or expose for sale or exchange, as milk or cream, any

1 impure, colored, adulterated, or unwholesome milk or cream or any substance in the semblance or imitation of
 2 milk or cream, ~~nor shall any such; or~~

3 (b) use in the manufacture of any article of food for human consumption any impure, colored,
 4 adulterated, or unwholesome milk or cream ~~be used in the manufacture of any article of food for human beings."~~

5

6 **Section 24.** Section 81-22-412, MCA, is amended to read:

7 **"81-22-412. Manufactured products to conform to standards of identity.** It ~~shall be~~ is unlawful for
 8 any person to manufacture, display, transport, sell, or offer for sale in Montana as a manufactured dairy product
 9 any substance or product ~~which~~ that:

10 (1) does not conform to the standards of identity for ~~such product~~ a manufactured dairy product as the
 11 standards are defined in the Code of Federal Regulations or to the standard of identity established by the
 12 department if the manufactured dairy product has entered or will enter interstate commerce; or

13 (2) if the manufactured dairy product has not and will not enter interstate commerce does not conform
 14 to:

15 (a) the Code of Federal Regulations as it read on [the effective date of this act]; or

16 (b) the standard of identity established by the department."

17

18 **Section 25.** Section 81-22-421, MCA, is amended to read:

19 **"81-22-421. Labeling on manufactured dairy products to conform to requirements.** (1) Labeling
 20 on manufactured dairy products must conform:

21 (a) to requirements of the Food, Drug, and Cosmetic Act, 21 U.S.C. 353, and if the manufactured dairy
 22 products have entered or will enter interstate commerce; or

23 (b) if the manufactured dairy products have not and will not enter interstate commerce, to requirements
 24 of the Food, Drug, and Cosmetic Act as that act read on [the effective date of this act].

25 (2) Labeling on manufactured dairy products must also conform to the other requirements that are
 26 adopted by the department or the department of public health and human services."

27

28 **Section 26.** Section 81-23-101, MCA, is amended to read:

29 **"81-23-101. (Temporary) Definitions.** (1) Unless the context requires otherwise, in this chapter, the
 30 following definitions apply:

- 1 (a) "Board" means the board of milk control provided for in 2-15-3105.
- 2 (b) (i) "Class" refers to the classes of utilization of milk that the board defines by rule.
- 3 (ii) (A) In adopting rules under this subsection (1)(b), the board shall use the ~~current~~ definitions of classes
- 4 of utilization of milk that are found in 7 CFR, part 1000.40, ~~except that the~~.
- 5 (B) When defining classes of utilization for milk that has entered or will enter interstate commerce, the
- 6 board shall use the definitions in the Code of Federal Regulations that are in effect on the date the board adopts
- 7 the rules. The board shall use the definitions in the Code of Federal Regulations in effect on [the effective date
- 8 of this act] when defining classes of utilization of milk that has not and will not enter interstate commerce.
- 9 (C) The board may combine any of the classes of milk provided for in the federal definitions into a single
- 10 class only to the extent that the classes of milk provided for in the federal definitions are separately identified for
- 11 milk that has not and will not enter interstate commerce and for milk that has entered or will enter interstate
- 12 commerce.
- 13 (c) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption
- 14 or use.
- 15 (d) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.
- 16 (e) (i) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and
- 17 distributing it for consumption in this state. The term includes what are commonly known as jobbers and
- 18 independent contractors.
- 19 (ii) The term does not include a person purchasing milk from a dealer licensed under this chapter for
- 20 resale over the counter at retail or for consumption on the premises.
- 21 (f) "Licensee" means a person who holds a license from the board.
- 22 (g) "Market" means an area of the state designated by the board as a natural marketing area.
- 23 (h) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw
- 24 and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise
- 25 processed and all of which are designated as grade A by a constituted health authority and including those
- 26 secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any
- 27 health authority of this or any other state or nation.
- 28 (i) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by
- 29 the department of corrections at the Montana state prison.
- 30 (j) "Producer" means a person who produces milk for consumption in this state and sells it to a

1 distributor.

2 (k) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a
3 distributor.

4 (l) "Producer-distributor" means a person both producing and distributing milk for consumption in this
5 state.

6 (m) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for
7 consumption on the premises and includes but is not limited to retail stores of all types, restaurants,
8 boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and
9 universities, and both public and private institutions and instrumentalities of all types and description.

10 (2) The board may assign new milk products not provided for under 7 CFR, part 1000.40, as it read on
11 [the effective date of this act] to the class that the board considers proper. (Terminates June 30, 2011--sec. 20,
12 Ch. 361, L. 2009.)

13 **81-23-101. (Effective July 1, 2011) Definitions.** (1) Unless the context requires otherwise, in this
14 chapter, the following definitions apply:

15 (a) "Board" means the board of milk control provided for in 2-15-3105.

16 (b) (i) "Class" refers to the classes of utilization of milk that the department shall define by rule.

17 (ii) (A) In adopting rules under this subsection (1)(b), the department shall use the ~~current~~ definitions of
18 classes of utilization of milk that are found in Title 7 CFR, part 1000.40, ~~except that the~~

19 (B) When defining classes of utilization for milk that has entered or will enter interstate commerce, the
20 department shall use the definitions in the Code of Federal Regulations in effect on the date the department
21 adopts the rules. The department shall use the definitions in the Code of Federal Regulations that are in effect
22 on [the effective date of this act] when defining classes of utilization of milk that has not and will not enter
23 interstate commerce.

24 (C) The department may combine any of the classes of milk provided for in the federal definitions into
25 a single class only to the extent that the classes of milk provided for in the federal definitions are separately
26 identified for milk that has not and will not enter interstate commerce and for milk that has entered or will enter
27 interstate commerce.

28 (c) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption
29 or use.

30 (d) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

1 (e) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and
2 distributing it for consumption in this state. The term includes what are commonly known as jobbers and
3 independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under
4 this chapter, for resale over the counter at retail or for consumption on the premises.

5 (f) "Licensee" means a person who holds a license from the department.

6 (g) "Market" means an area of the state designated by the department as a natural marketing area.

7 (h) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw
8 and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise
9 processed and all of which are designated as grade A by a constituted health authority and including those
10 secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any
11 health authority of this or any other state or nation.

12 (i) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by
13 the department of corrections at the Montana state prison.

14 (j) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

15 (k) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a
16 distributor.

17 (l) "Producer-distributor" means a person both producing and distributing milk for consumption in this
18 state.

19 (m) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for
20 consumption on the premises and includes but is not limited to retail stores of all types, restaurants,
21 boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and
22 universities, and both public and private institutions and instrumentalities of all types and description.

23 (2) The department may assign new milk products to the class that the department considers proper."
24

25 **NEW SECTION. Section 27. Saving clause.** [This act] does not affect rights and duties that matured,
26 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
27

28 **NEW SECTION. Section 28. Severability.** If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
30 the part remains in effect in all valid applications that are severable from the invalid applications.

