

MONTANA DEPARTMENT OF HEALTH & HUMAN SERVICES

FOOD & CONSUMER SAFETY SECTION

COGSWELL BUILDING

HELENA, MONTANA 59620

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# **Rule for: Retail Food Establishments**

ADMINISTRATIVE RULES OF MONTANA

TITLE 37, CHAPTER 110, SUBCHAPTER 2

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### 37.110.201 INTRODUCTION

(1) This is a subchapter regulating retail food establishments that serve food to the public, as provided in Title 50, chapter 50, MCA.

(2) All retail food establishments must comply with all appropriate building construction standards as set forth by 50-60-101, MCA and all applicable administrative rules as adopted by the Department of Labor and Industry in ARM Title 24.

History: 50-50-103, MCA; IMP, 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00; AMD, 2014 MAR p. 2957, Eff. 1/1/15.

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### 37.110.238 LICENSES

(1) No person may operate a food establishment who does not have a valid license issued by the department. Only a person who complies with the requirements of this subchapter will be entitled to receive or retain such a license. A valid license must be posted in every retail food establishment.

(2) Any person desiring to operate a retail food establishment must make written application for a license on forms provided by the department.

(3) Prior to approval of an application for a license, the regulatory authority must inspect the proposed retail food establishment to determine compliance with the requirements of this subchapter.

(4) The department will issue a license to the applicant if an inspection by the regulatory authority reveals that the proposed retail food establishment complies with all applicable requirements of this subchapter.

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

(6) Prior to cancellation, the department will notify, in writing, the licensee of the specific reason(s) for which the license is to be cancelled. The notice will further provide for the licensee the opportunity to request an administrative hearing in front of the department within ten business days after the receipt of the notice. If no request for hearing is filed within the ten-day period, the cancellation of the license becomes final.

(7) The licensee may submit to the department an acceptable plan of correction within ten business days after receiving the department's notice of cancellation. Such an acceptable plan of correction will be a bar to canceling the license.

(8) A notice provided for in this rule is properly served when it is delivered to the holder of the license, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the license. A copy of the notice will be filed in the records of the department.

(9) The hearing provided for in this rule will be conducted by the department pursuant to Title 2, chapter 4, subchapter 6, MCA of the Montana Administrative Procedure Act regarding contested cases and ARM [37.5.117](#). The department will make a final finding based upon the complete hearing record and will sustain, modify, or rescind any notice or order considered in the hearing. The department will furnish a written report of the hearing decision to the licensee.

(10) Whenever a cancellation of a license has become final, the holder of the cancelled license may make written application for a new license.

(11) Obtaining the license referred to in (1) does not relieve the applicant from satisfying applicable requirements from other federal, state, or local agencies. These may include:

(a) building code permits and inspections;

(b) fire and life safety inspections;

(c) private or public water supply system or sewage treatment systems permits or inspections;  
or

(d) occupational health and safety requirements.

(12) The regulatory authority will assign a food establishment to a license type and subtype by assessing food processing procedures, food service, and utilizing the definitions in these rules.

(13) At the time of initial licensing and updated as needed, but no less than each licensing year, the regulatory authority will correctly assign a food establishment to one of four categories by evaluating the food processing and service procedures of the food establishment based on the criteria specified in Table 1:

Table 1: Food Establishment Complexity Categories

Category	Establishment Complexity
1	<p>(i) only heat commercially processed time/temperature control for safety foods (TCS/potentially hazardous foods) for hot holding;</p> <p>(ii) process only non-TCS foods;</p> <p>(iii) no cooling TCS foods;</p> <p>(iv) establishments otherwise grouped in Category 2, but have shown through documentation to have achieved managerial control of foodborne illness risk factors; and</p> <p>(v) examples include: convenience stores, hot dog carts, coffee shops, and establishments that serve or sell only prepackaged, non-TCS foods.</p>
2	<p>(i) establishment has a limited menu;</p> <p>(ii) processed foods are immediately served or made-to-order;</p> <p>(iii) food operations may involve hot and cold holding of TCS foods, after processing or cooking;</p> <p>(iv) limited processing of TCS foods that require cooking, cooling, reheating, and the limited service of a few TCS foods;</p> <p>(v) establishments that would otherwise be grouped in Category 3, but have shown through historical documentation to have achieved managerial control of foodborne illness risk factors;</p> <p>(vi) newly licensed establishments that would otherwise be grouped in Category 1 are categorized here, until a history of managerial control of foodborne illness risk factors is documented;</p> <p>(vii) examples include: retail food stores, schools not serving a highly susceptible population, and quick-service operations.</p>
3	<p>(i) establishment has extensive menu and handling of raw ingredients;</p> <p>(ii) complex preparation including cooking, cooling, and reheating for hot holding involving many TCS foods;</p> <p>(iii) variety of processes require hot and cold holding of TCS food;</p> <p>(iv) establishments that would otherwise be grouped in Category 4, but have shown through historical documentation to have achieved managerial control of foodborne illness risk factors;</p> <p>(v) newly licensed establishments that would otherwise be grouped in Category 2 are categorized here, until a history of managerial control of foodborne illness risk factors is documented;</p> <p>(vi) examples include: full-service restaurant.</p>
4	<p>(i) establishments serving a highly susceptible population;</p> <p>(ii) engage in specialized processes, such as smoking, curing, reduced oxygen packaging, etc.;</p> <p>(iii) examples include: preschools, hospitals, nursing homes, and special processing requiring a variance.</p>

History: [50-50-103](#), MCA; [IMP](#), [50-50-103](#), [50-50-201](#), [50-50-204](#), [50-50-205](#), [50-50-206](#), [50-50-207](#), [50-50-208](#), [50-50-209](#), [50-50-210](#), [50-50-211](#), [50-50-212](#), [50-50-213](#), [50-50-214](#), [50-50-215](#), MCA; [NEW](#), 1979 MAR p. 677, Eff. 7/13/79; [AMD](#), 1985 MAR p. 928, Eff. 7/12/85; [TRANS & AMD](#), 2000 MAR p. 3201, Eff. 11/23/00; [AMD](#), 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.239](#) INSPECTIONS

(1) The local health officer, registered sanitarian, or sanitarian-in-training employed by or contracted with the local board of health shall perform an inspection of each retail food establishment within the jurisdiction of the local board of health at least once every 12 months. Additional inspections of the food service establishment must be performed as often as necessary for the enforcement of this subchapter.

History: [50-50-103](#), MCA; [IMP](#), [50-50-103](#), [50-50-104](#), [50-50-203](#), [50-50-205](#), [50-50-206](#), [50-50-301](#), [50-50-302](#), [50-50-305](#), MCA; [NEW](#), 1979 MAR p. 677, Eff. 7/13/79; [AMD](#), 1994 MAR p. 2941, Eff. 11/11/94; [TRANS & AMD](#), 2000 MAR p. 3201, Eff. 11/23/00; [AMD](#), 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.243](#) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES

(1) To qualify for reimbursement under [50-50-305](#), MCA, a local board of health will perform inspections as specified in this subchapter or enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter.

(3) All local boards of health must meet the following criteria:

- (a) At least one sanitarian working with or for the local board of health must receive training from the department in standardized food inspections. The department is responsible for making training and standardization available on a periodic basis.
- (b) Reporting of inspection dates must be documented in a manner and frequency approved by the department.
- (c) All documentation of enforcement of this subchapter including inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions is retained for five years and copies of the documentation are submitted or otherwise made available to the department upon request.

(4) A failure by the local board of health to meet all of its responsibilities under (3)(a), (b), and (c) may result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

History: [50-50-103](#), MCA; IMP, [50-50-104](#), [50-50-208](#), [50-50-214](#), [50-50-215](#), [50-50-301](#), [50-50-305](#), MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00; AMD, 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.251](#) SEPARABILITY

(1) If any provision of this subchapter is held invalid, all other valid provisions remain in effect.

History: Sec. [50-50-103](#), MCA; IMP, Sec. [50-50-103](#), MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.

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### [37.110.260](#) INCORPORATION BY REFERENCE

(1) The Department of Public Health and Human Services (department), except as otherwise provided in this chapter, adopts and incorporates by reference the following publication: "Food Code, 2013, Recommendations of the United States Public Health Service, Food and Drug Administration" published by National Technical Information Service, Publication PB2013-110462, ISBN 978-1-935239-02-4, November 3, 2013. This publication may be reviewed online at: <http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm>; or by contacting DPHHS-FCSS, 1400 Broadway Street, Helena, MT 59620. This publication is being adopted with modifications and additions as described in ARM [37.110.260](#) through [37.110.272](#).

(a) Chapter 1: Purpose and Definitions. Additions and modifications have been made to this chapter as described in ARM [37.110.261](#).

(b) Chapter 2: Management and Personnel. Additions have been made to this chapter as described in ARM [37.110.262](#).

(c) Chapter 3: Food. Modifications have been made to this chapter as described in ARM [37.110.265](#).

(d) Chapter 4: Chapter 4: Equipment, Utensils, and Linens. An addition has been made to this chapter as described in ARM [37.110.266](#).

(e) Chapter 5: Water, Plumbing, and Waste. Additions have been made to this chapter as described in ARM [37.110.267](#).

(f) Chapter 6: Physical Facilities. An addition has been made to this chapter as described in ARM [37.110.268](#).

(g) Chapter 7: Poisonous or Toxic Materials. This chapter has been adopted with no modifications.

(h) Chapter 8: Compliance and Enforcement. Additions and modifications have been made to this chapter as described in ARM [37.110.272](#).

(i) Annexes 1 through 7 of the "Food Code, 2013, Recommendations of the United States Public Health Service, Food and Drug Administration" are excluded. These sections have not been adopted, but may be used as reference information for public health purposes.

(2) The department, except as otherwise provided in this chapter, adopts and incorporates by reference the following publication: "Food and Consumer Safety (FCS) Circular 1-2012" for nonpublic water systems serving food establishments, including temporary food establishments. A copy of FCS Circular 1-2012 may be obtained from the Department of Public Health and Human Services, Food & Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951. The FCS Circular 1-2012 is also available on the department's web site at [www.fcsmt.gov](http://www.fcsmt.gov).

**History:** [50-50-103](#), MCA; **IMP**, [50-50-102](#), [50-50-103](#), [50-50-105](#), [50-50-107](#), [50-50-201](#), [50-50-301](#), [50-50-302](#), [50-50-304](#), MCA; **NEW**, 2014 MAR p. 2957, Eff. 1/1/15.

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## [37.110.261](#) CHAPTER 1: PURPOSE AND DEFINITIONS

The terms defined in this section are modifications or additions to the definitions described in this chapter of the 2013 Food Code:

(1) "Adulterated" means the same as determined in [50-31-202](#), MCA instead of the "Adulterated" definition in section 1-201.10 of the November 3, 2013 model document of food regulations promulgated by the United States Food and Drug Administration (Food Code).

(2) "Bakery" means processing or packaging of baked goods described in [50-50-102](#)(1), MCA for sales or service directly to consumers.

(3) "Catering kitchen" means the activity of providing food wholly or in part owned by the caterer for a specific event at a location other than the food establishment, as defined in [50-50-102](#) (4)(a), MCA, on a contractual, prearranged basis to a specific subset of the public, such as invited guests to a wedding or similar celebration, or to participants in an organized group or activity. A catering kitchen is not the same activity as a contract cook.



(4) "Certified Food Protection Manager" (CFPM) means an individual who operates a food establishment or manages a food establishment who has successfully completed a test through an accredited program required under section 2-102.12 (A) of the Food Code.

(5) "Department" means the Montana Department of Public Health and Human Services.

(6) "Food Code" means the November 3, 2013 model document of food regulations promulgated by the United States Food and Drug Administration.

(7) "Food establishment" means the following:

(a) includes in section 1-201.10(B) of the Food Code, any and all licensable establishments stated in Title 50, chapter 50, MCA;

(b) does not include in section 1-201.10(B) of the Food Code, any and all food provider exclusions stated in Title 50, chapter 50, MCA;

(c) in section 1-201.10(B) of the Food Code, the term "small family day-care provider" actually means a day-care provider not required to be licensed by the department as a day-care center, under [52-2-721\(1\)\(a\)](#), MCA; and

(d) in section 1-201.10(B) of the Food Code; a bed-and-breakfast operation actually means a bed-and-breakfast establishment that meets the definition in [50-51-102\(1\)](#), MCA. Bed-and-breakfast establishments must meet food safety rules required in ARM [37.111.312](#) through [37.111.334](#).

(8) "Food manufacturing" means the same as [50-50-102\(19\)](#), MCA, but for the purposes of license subtypes, should be on-site food processing for sales or service to the public, which includes drinking water vending machines and beverage ice production, packaging, or both.

(9) "Food service" means the same as [50-50-102\(7\)](#), MCA, but for the purposes of license subtypes, should only be the sales or service of food to the public that is not processed on-site.

(10) "Legal licensee" means the same as "permit holder."

(11) "License" means the same as "permit."

(12) "License subtype" means one or more of the following food establishments: bakery, catering kitchen, food service, food manufacturing, meat shop, mobile food establishment, perishable food dealer, produce, school, tavern, or water hauler.

(13) "License type" means a food establishment at a fixed (nonmobile or permanent) location, mobile food establishment, or temporary food establishment.

(14) "Meat market" means the same as [50-50-102\(10\)](#), MCA, but is the processing or packaging of meat or poultry for sales or service to the public.

(15) "Mobile food establishment" means:

(a) A food establishment where food is served or sold from a motor vehicle, nonmotorized cart, movable vehicle such as a push cart, trailer, or boat that periodically or continuously changes location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance, as specified in sections 5-402.14, 6-101.11, and 6-202.18.

(b) Mobile food establishment does not include a motor vehicle used solely to transport or deliver food by a motorized carrier regulated by the state or federal government or a concession stand designed to operate as a temporary food establishment.

(16) "Perishable food" means foods that require time/temperature control for safety (formerly known as potentially hazardous foods).

(17) "Perishable food dealer" means the same as [50-50-102\(12\)](#), MCA, which is an operation that is in the business of purchasing and selling foods that require time/temperature control for safety (formerly known as potentially hazardous foods).

(18) "Potentially hazardous food" means time/temperature control for safety food.

(19) "Processing" means the same as "preparation" of food through one or more methods including: assembling, baking, bottling, brewing, canning, coating, cooking, cutting, dicing, distilling, drying, extracting, fermenting, freezing, grinding, heating, infusing, mixing, packaging, reheating, repackaging, pickling, slicing, smoking, stuffing, or other food treatment or food preservation method.

(20) "Produce" means fruits, vegetables, or grains sold directly to consumers in their natural or unprocessed states.

(21) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian, instead of the "regulatory authority" definition in section 1-201.10 of the Food Code.

(22) "School" means a building or structure or portion thereof occupied or used at least 180 days per year for the teaching of individuals, the curriculum of which satisfies the basic instructional program approved by the board of public education for pupils in any combination of kindergarten through grade 12. This term does not include home schools. For purposes of this licensing subtype, in general, a school is also a learning institution that participates in the federal National School Lunch Program, under 7 CFR 210 of the Code of Federal Regulations.

(23) "Tavern, bar, brewery, winery, distillery, or saloon" means the sale or service of alcoholic beverages with or without beverage ice. This licensing subtype does not include on-site food manufacturing or food service, as defined in this section of the rules.

(24) "Temporary food establishment" means a food establishment that operates at a fixed location for a period of no more than 21 days in a licensing year in conjunction with a single event or celebration, instead of the "Temporary food establishment" definition in section 1-201.10 of the Food Code.

(25) "Water hauler" means the same as [50-50-102\(20\)](#), MCA.

History: [50-50-103](#), MCA; [IMP](#), [20-5-102](#), [50-50-102](#), [50-50-103](#), [50-50-104](#), [50-50-201](#), MCA; [NEW](#), 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.262](#) CHAPTER 2: MANAGEMENT AND PERSONNEL

(1) The following additions have been made to section 2-102.12 of Chapter 2.

(a) A one-year, phase-in period will apply to affected establishments to have a Certified Food Protection Manager, and the one-year period will begin from the date new rules are adopted.

(b) After the one-year, phase-in period, new legal licensees required to have a Certified Food Protection Manager must have a Certified Food Protection Manager within 90 days of issuance of a new license.

(c) After the one-year, phase-in period, existing legal licensees required to have a Certified Food Protection Manager must have a Certified Food Protection Manager within 45 days of losing their Certified Food Protection Manager.

(2) The following additions have been made to 2-102.12(B) of Chapter 2.

(a) Temporary food establishments engaged in the following activities are exempt from having a certified food protection manager:

(i) serving non-TCS (time/temperature controlled for safety) foods;

(ii) serving nonalcoholic or alcoholic beverages with or without beverage ice;

(iii) serving commercially pre-cooked, pre-packaged ready-to-eat, TCS foods, such as hot dogs, sausages, FDA and United States Department of Agriculture (USDA) registered canned food products, frozen pizzas;

(3) The regulatory authority may require or exempt additional food safety training for temporary food establishments under the authority granted in 8-102.10 of Chapter 8.

(4) The following additions have been made to subpart 2-201 Responsibilities of Permit Holder, Person in Charge, Food Employees, and Conditional Employees of Chapter 2.

(5) Specific communicable disease control measures, outlined in the Food Code, should be followed unless more stringent rules are provided in ARM [37.114.501](#).

History: [50-50-103](#), MCA; [IMP](#), [50-50-103](#), MCA; [NEW](#), 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.265](#) CHAPTER 3: FOOD

(1) This chapter has been adopted with the following modifications:

- (a) section 3-201.17(A2) will not be adopted;
- (b) section 3-201.17(A3) will not be adopted;
- (c) section 3-201.17(A4) will not be adopted; and
- (d) section 3-201.17(A1cii) will be replaced with the requirements of [81-9-230](#), [87-4-702](#), and [87-6-106](#)(1), MCA.

History: [50-50-103](#), MCA; [IMP](#), [50-50-102](#), [50-50-103](#), [50-50-301](#), [50-50-302](#), [50-50-303](#), [50-50-304](#), MCA; [NEW](#), 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.266](#) CHAPTER 4: EQUIPMENT, UTENSILS, AND LINENS

(1) This chapter has been adopted with the addition of the following paragraph: 4-301.12(F) A food preparation sink must be provided if food is placed into a sink or sink compartment for the purposes of thawing or cleaning. A food preparation sink must meet the requirements specified in Sections 4-205.10, 5-202.13, and 5-402.11 of the Food Code.

History: [50-50-103](#), MCA; [IMP](#), [50-50-102](#), [50-50-103](#), [50-50-301](#), [50-50-302](#), MCA; [NEW](#), 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.267](#) CHAPTER 5: WATER, PLUMBING, AND WASTE

(1) Additions have been made to section 5-101.11 (B) of this chapter for nonpublic water systems.

(2) A nonpublic water supply system must meet the requirements of Food and Consumer Safety (FCS) Circular 1-2012 when:

- (a) the water supply is constructed after the effective date of this rule;

(b) significant modifications are made to the water system; or

(c) the local regulatory authority determines compliance with FCS Circular 1-2012 is necessary to meet the requirements of this subchapter.

(3) An establishment using a nonpublic water supply system must have drinking water samples analyzed for coliform bacteria as follows:

(a) Sampling for coliform bacteria must be done before initial licensing, and at least in two separate months of each calendar year that the establishment operates.

(b) The sampling schedule must include collection when the water source is most likely to be contaminated, such as during April through June, September through October, during high, ground-water season, or as directed by the local regulatory authority.

(c) The local regulatory authority may require the establishment to sample: (i) monthly;

(ii) in months the establishment operates; or

(iii) if an inspection, sampling results, or an event indicates the water source is at high risk of contamination.

(d) The local regulatory authority may return the establishment to the sampling frequency stated in (3)(a), if an examination of the drinking water system by the local regulatory authority indicates the system is no longer at high risk of contamination.

(4) An establishment using a nonpublic water supply system must have a water sample analyzed for total nitrates before initial licensing and at least every three years the establishment is operating.

(5) After shock disinfection of the system, a sample for coliform bacteria must be collected for analysis three to five days after the disinfectant is no longer detected in the system.

(6) Water samples must be analyzed by a laboratory licensed and certified for drinking water analysis by the state of Montana.

(7) The establishment must report water sampling test results to the local regulatory authority in a format acceptable to the local regulatory authority within five days of receiving the results, except as required in (9)(c) and (11)(d).

(8) The establishment must keep test results readily available for inspection purposes on the premises of the licensed establishment for at least five years.

(9) If coliform bacteria are detected in a nonpublic water system routine sample, the establishment must:

(a) collect at least four additional or repeat samples within 24 hours of notification of the contamination at the following system locations:

- (i) site of the original contaminated routine sample;
- (ii) upstream from the contaminated routine sample;
- (iii) downstream from the contaminated routine sample; and
- (iv) at the source of the drinking water supply system, before the distribution plumbing;  
or
- (v) as directed by the local regulatory authority.

(b) collect at least five samples during the month following a detection of coliform bacteria in any routine sample; and

(c) notify the local regulatory authority of the test results within 48 hours of receiving them.

(10) If coliform bacteria are detected in a repeat sample, the establishment must:

(a) take appropriate corrective action to eliminate the condition causing the positive test results;  
and

(b) post an advisory sign or placard regarding the test results in a conspicuous place for public viewing at each point of entry, or as directed by the local regulatory authority.

(11) If fecal coliform bacteria, *Escherichia coli*, or both are detected in a routine sample or repeat sample, the establishment must:

(a) immediately stop using the water source;

(b) provide a temporary source of safe water in accordance with (17);

(c) implement appropriate corrective actions; and

(d) notify the local regulatory authority of the test results within 24 hours of receiving them.

(12) If an establishment with a public or nonpublic water supply fails to take the required samples following the detection of coliform bacteria, or the laboratory fails to test for fecal coliform bacteria or *Escherichia coli* in coliform positive samples, the establishment must follow corrective actions as specified in (13).

(13) For nonpublic water systems, appropriate corrective actions must be implemented in a timely manner to eliminate the condition or conditions that resulted in the positive test result(s), which may include shock disinfection of the entire water system and replacement or repair of the water system by a date set by the local regulatory authority when:

(a) a water sample exceeds a maximum contaminant level as specified in ARM Title 17, chapter 38, subchapter 2;

(b) the water system does not have the capacity to provide the quantity needed for drinking, food processing, personal hygiene, or cleaning;

(c) after examination of the water system, the local regulatory authority provides a written report to the operator or person-in-charge that the water system is at high risk of contamination;

(d) a pathogenic microorganism is detected in a sample; or

(e) a confirmed disease outbreak is linked with the water system.

(14) When a water system is replaced or repaired, the water system must be shock disinfected before the system is placed into service.

(15) The local regulatory authority will issue a restricted-use order to an establishment using a nonpublic water supply when:

(a) fecal coliform or *Escherichia coli* is detected in a nonpublic water system sample;

(b) total nitrate level is greater than 10 milligrams per liter in a nonpublic water system sample;

(c) maximum contaminant levels exceed parameters specified in ARM Title 17, chapter 38, subchapter 2;

(d) a pathogenic microorganism is detected; or

(e) a confirmed disease outbreak is linked with the water system.

(16) An establishment with a public or nonpublic water supply subject to a restricted-use order must provide and use a temporary source of potable water as described in (17) for consumers and staff for drinking, food processing, personal hygiene and cleaning, or immediately discontinue operations.

(17) With approval from the local regulatory authority, an establishment with a public or nonpublic water supply may provide potable water on a temporary basis using one or more of the following:

(a) bottled or packaged potable water from a department-licensed wholesale or retail food establishment, if the water is dispensed directly from the original container;

(b) water from a Department of Environmental Quality (DEQ)-approved public water supply that meets the requirements of ARM Title 17, chapter 38, subchapters 1, 2, 3, and 5, stored in a clean, sanitized, and covered potable water container or holding tank;

(c) water delivered by a department-licensed potable water hauler;

(d) if the water is contaminated with fecal coliform bacteria or *Escherichia coli*, water that has been boiled for at least one minute, and stored and served from a clean, sanitized, and covered container; or

(e) other source approved by the local regulatory authority.

(18) If the local regulatory authority determines that boiling water will not provide adequate potable water, it may require an establishment with a public or nonpublic water supply to use another approved method for supplying water.

(19) An establishment with a public or nonpublic water supply that is subject to a restricted-use order must post an advisory sign or placard regarding the restricted-use order in a conspicuous place for public viewing at each point of entry, or as directed by the local regulatory authority.

(20) A public or nonpublic water supply under a restricted-use order may not be used to make ice for food or beverages.

(21) An establishment with a public or nonpublic water supply that is subject to a restricted-use order may wash, rinse, and sanitize dishes, utensils, and equipment using the affected water system, if using an approved chemical disinfectant or dish machine that reaches 180 degrees Fahrenheit (82 degrees Celsius) during the final rinse cycle, or as directed by the local regulatory authority.

(22) A restricted-use order on a public or nonpublic water supply may be cancelled by the local regulatory authority after:

(a) Laboratory sampling demonstrates that the water supply is safe;

(b) Water system plumbing is completely flushed with cold water for at least five minutes; and

(c) Food-contact surfaces and equipment directly and indirectly connected to the water system must be cleaned and sanitized prior to use including, but not limited to: post-mix carbonated beverage machines, spray misters, coffee makers, tea urns, ice machines, glass washers, and dish machines.

(23) Additions have been made to section 5-303 of this chapter that may apply to public or nonpublic water supplies.

(24) Every mobile food establishment must be equipped with a gravity or pressurized water storage tank.

(25) The water storage tank, or tanks, in a mobile food establishment must be of adequate capacity, as required in section 5-103.11 (A), but no smaller than the following:

(a) a mobile food establishment that serves beverages or food or reheats processed foods must have a water storage tank, or tanks, with a capacity of at least 38 liters (10 gallons) for food employee handwashing;

(b) a food pushcart must have a water storage tank, or tanks, with a minimum capacity of 19 liters (5 gallons) for handwashing; and



(c) a mobile food establishment that processes food or beverages must have a water storage tank, or tanks, with a capacity of at least 151 liters (40 gallons) for handwashing, utensil washing, and sanitizing purposes.

History: [50-50-103](#), MCA; [IMP](#), [50-50-103](#), MCA; [NEW](#), 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.268](#) CHAPTER 6: PHYSICAL FACILITIES

(1) The following addition has been made to section 6-301.14 of this chapter.

(a) Food establishment operators may create and post their own signs or posters for the posting requirement.

History: [50-50-103](#), MCA; [IMP](#), [50-50-103](#), MCA; [NEW](#), 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.269](#) CHAPTER 7: POISONOUS OR TOXIC MATERIALS

(1) This chapter has been adopted with no modifications.

History: [50-50-103](#), MCA; [IMP](#), [50-50-103](#), MCA; [NEW](#), 2014 MAR p. 2957, Eff. 1/1/15.

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### [37.110.272](#) CHAPTER 8: COMPLIANCE AND ENFORCEMENT

(1) Additions and modifications have been made to this chapter.

(2) In section 8-201.11, the regulatory authority may require properly prepared plans and specifications for review and approval before issuance of a new license to a new legal licensee at the change in ownership of an existing food establishment.

(3) Section 8-301.11 has not been adopted.

(4) Section 8-302.11 has not been adopted.

(5) Section 8-302.12 has not been adopted.

(6) Section 8-302.13 has not been adopted.

(7) Section 8-302.14 has not been adopted.

(8) Section 8-303.30 has not been adopted.

(9) Section 8-304.10 has not been adopted.

(10) Section 8-304.20 has not been adopted.

(11) Section 8-401.10 has not been adopted.

**History:** [50-50-103](#), MCA; [IMP](#), [50-50-102](#), [50-50-103](#), [50-50-104](#), [50-50-106](#), [50-50-107](#), [50-50-108](#), [50-50-109](#), [50-50-110](#), [50-50-201](#), [50-50-203](#), [50-50-205](#), [50-50-206](#), [50-50-207](#), [50-50-209](#), [50-50-210](#), [50-50-211](#), [50-50-212](#), [50-50-213](#), [50-50-301](#), [50-50-302](#), [50-50-304](#), [50-50-305](#), MCA; [NEW](#), 2014 MAR p. 2957, Eff. 1/1/15.