



ADMINISTRATIVE RULES OF MONTANA



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) Except for temporary food establishment permit fees set by the local health authority in accordance with 50-50-205(6), MCA, license fees are:
 - (a) \$85 for each license issued to an establishment that does not have more than two employees working at any one time; and
 - (b) \$115 for establishments with more than two employees.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.

- (10) 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.
- (11) Whenever a cancellation of a license has become final, the holder of the cancelled license may make written application for a new license.
- (12) 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.
- (13) 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.
- (14) 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)	(i) only heat commercially processed time/temperature control for safety foods (TCS/potentially hazardous foods) for hot holding; (ii) process only non-TCS foods; (iii) no cooling TCS foods; (iv) establishments otherwise grouped in Category 2, but have shown through documentation to have achieved managerial control of foodborne illness risk factors; and (v) examples include: convenience stores, hot dog carts, coffee shops, and establishments that serve or sell only prepackaged, non-TCS foods.
(2)	(i) establishment has a limited menu; (ii) processed foods are immediately served or made-to-order; (iii) food operations may involve hot and cold holding of TCS foods, after

processing or cooking;

(iv) limited processing of TCS foods that require cooking, cooling, reheating, and the limited service of a few TCS foods;

(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;

(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;

(vii) examples include: retail food stores, schools not serving a highly susceptible population, and quick-service operations.

(3) (i) establishment has extensive menu and handling of raw ingredients;

(ii) complex preparation including cooking, cooling, and reheating for hot holding involving many TCS foods;

(iii) variety of processes require hot and cold holding of TCS food;

(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;

(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;

(vi) examples include: full-service restaurant.

(4) (i) establishments serving a highly susceptible population;

(ii) engage in specialized processes, such as smoking, curing, reduced oxygen packaging, etc.;

(iii) examples include: preschools, hospitals, nursing homes, and special processing requiring a variance.

Authorizing statute(s): 50-50-103, MCA

Implementing statute(s): 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

History: 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; AMD, 2015 MAR p. 1494, Eff. 9/25/15.