

DEPARTMENT OF PUBLIC HEALTH

AND HUMAN SERVICES

Food and Consumer Safety Section

TITLE 37

Chapter 111

Subchapter 3

PUBLIC ACCOMMODATIONS

Bed and Breakfast  
Establishments

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**Bed & Breakfast Rules**  
**Table of Contents**

Rule 37.111.301	Page 3	Purpose
37.111.302	Page 3-5	Definitions
Rules 03 and 04 reserved		
37.111.305	Page 6-7	Prelicensure Review and Approval
37.111.306	Page 7	Licensure, Renewal, and Inspection
37.111.307	Page 7-8	Variances
37.111.308	Page 8	Personnel
Rule 09 reserved		
37.111.310	Page 8-9	Guest Registration
Rule 11 reserved		
37.111.312	Page 9	Food Supplies
37.111.313	Page 9-10	Food Protection
37.111.314	Page 10-11	Food Storage
37.111.315	Page 11-13	Food Preparation
Rules 16 through 19 reserved		
37.111.320	Page 13-14	Food Equipment and Utensils
37.111.321	Page 14-15	Food Equipment and Utensils: Cleaning and Sanitization
Rule 37.111.322	Page 16-17	Food Equipment and Utensils: Storage and Handling
Rules 23 through 25 reserved		
37.111.326	Page 17-18	Water Supply and Plumbing

**Bed & Breakfast Rules  
Table of Contents (cont.)**

37.111.327	Page 18-19	Wastewater System
37.111.328	Page 19	Toilet Facilities
37.111.329	Page 19-20	Hand Washing Facilities
37.111.330	Page 20	Solid Waste and Pest Control

Rules 31 through 33 reserved

37.111.334	Page 20	Floors, Walls, Ceilings and Lighting
37.111.335	Page 20-21	Laundry
37.111.336	Page 21-22	Housekeeping and Maintenance

Rules 37 and 38 reserved

37.111.339	Page 22	Swimming and Bathing Areas
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Rules 40 and 41 reserved

37.111.342	Page 22-23	Blood-borne Pathogen Protection
37.111.343	Page 23	Safety
37.111.344	Page 23	Pets

Rules 45 through 49 reserved

37.111.350	Page 23-24	Minimum Performance Requirements for Local Health Authorities
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## **Bed and Breakfast Establishments**

**37.111.301 PURPOSE** (1) The purpose of these rules is to establish public health requirements governing the operation of bed and breakfast establishments in order to protect the health and safety of guests staying at such establishments. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.302 DEFINITIONS** In addition to those definitions contained in 50-51-102, MCA, the following definitions apply to this subchapter:

(1) **"Bed and breakfast establishment"** as defined in 50-51-102(1), MCA, means a private, owner or manager occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18.

(2) **"Bedding"** means mattress covers, mattress pads, sheets, pillow protectors and cases, blankets, comforters, quilts and bedspreads.

(3) **"Building authority"** means the building codes bureau of the Montana department of labor and industry or a local government building inspector enforcing a local building code enforcement program certified by the Montana department of labor and industry.

(4) **"Department"** means the Montana department of public health and human services.

(5) **"Dishwashing"** means the cleaning and sanitizing of food contact surfaces of equipment, kitchenware, tableware and utensils.

(6) **"Fire authority"** means the state fire marshal or his or her authorized agent.

(7) **"Fixtures"** means a shower, bathtub, toilet, urinal, lavatory, all types of sinks and all exposed plumbing integral to them.

(8) **"Food equipment"** means items, other than utensils, that are used in the food service operation of the bed and breakfast establishment such as freezers, grinders, ventilation hoods, ice makers, meat blocks, mixers, ovens, refrigerators, sinks, slicers, stoves, tables, dishwashing machines, counters or water heaters.

(9) **"Furnishings"** means those items contained in guest rooms and guest bathrooms such as draperies, curtains, blinds, lamps and lamp shades, chairs, tables, desks, shelves, books, magazines, bookcases, dressers, bedsteads, mattresses, box springs, towels, washcloths, soap, toilet tissue, radios, television sets, coffee makers, pictures, waste containers and mirrors.

(10) **"Guest"** means each registered occupant of any unit of a bed and breakfast establishment.

(11) **"Individual wastewater system"**, in accordance with ARM

17.36.101, means a wastewater system that serves one living unit or commercial structure. The total number of people served may not exceed 24.

(12) **"Individual water system"**, in accordance with ARM 17.36.101, means any water system that serves one living unit or commercial structure. The total number of people served may not exceed 24.

(13) **"Living unit"**, in accordance with ARM 17.36.101 and for the purpose of interpreting the size of wastewater and water systems, means the area under one roof occupied by a family. For example, a duplex is considered two living units.

(14) **"Local health authority"** means a local health officer, local sanitarian or any other person authorized by the department.

(15) **"Multiple user wastewater system"**, in accordance with ARM 17.36.101, means a non-public wastewater system that serves or is intended to serve three through 14 living units or three through 14 commercial structures. The total number of people served may not exceed 24.

(16) **"Multiple user water system"**, in accordance with ARM 17.36.101, means a non-public water supply system designed to provide water for human consumption to serve three through 14 living units or three through 14 commercial structures. The total number of people served may not exceed 24.

(17) **"Poisonous or toxic materials"** may include, but are not limited to:

- (a) insecticides and rodenticides;
- (b) detergents, sanitizers and related cleaning or drying agents;
- (c) caustics, acids, polishes and other chemicals;
- (d) substances necessary for kitchen equipment operation and maintenance such as nonfood-grade lubricants;
- (e) substances not necessary for the kitchen operation such as petroleum products and paints; and
- (f) personal care items or medications.

(18) **"Potentially hazardous food"** means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of *Clostridium botulinum* or in raw shell eggs the growth of *Salmonella enteritidis*.

(a) the term "potentially hazardous food" includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat treated and a food of plant origin that is heat treated or consists of raw seed sprouts; and

(b) the term "potentially hazardous food" does not include:

- (i) an air cooled, hard boiled egg with intact shell;
- (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 75°F;

(iii) a food with a water activity (Aw) value of 0.85 or less;  
(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

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

(19) **"Public wastewater system"**, in accordance with ARM 17.36.101, means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for a period of at least 60 days in a calendar year.

(20) **"Public water supply system"**, in accordance with ARM 17.36.101, means a system for the provision of water for human consumption that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 days or more in a calendar year.

(21) **"Regulatory authority"** means the department of public health and human services or the local health authority.

(22) **"Shared wastewater system"**, in accordance with ARM 17.36.101, means a wastewater system that serves or is intended to serve two living units or commercial structures. The total number of people served may not exceed 24.

(23) **"Shared water system"**, in accordance with ARM 17.36.101, means a water system that serves or is intended to serve two living units or commercial structures. The total number of people served may not exceed 24.

(24) **"Single service articles"** means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials and other similar articles intended for one-time, one-person use and then discarded.

(25) **"Tableware"** means eating, drinking and serving utensils for table use, such as flatware which includes forks, knives and spoons, hollowware including bowls, cups, serving dishes and tumblers and plates.

(26) **"Utensil"** means a food contact implement or container used in the storage, preparation, transportation, dispensing, or service of food, such as:

(a) kitchenware or tableware that is multi-use or single-use;

(b) gloves used in contact with food; and

(c) food temperature measuring devices. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-102 and 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

Rules 03 and 04 reserved

37.111.305 PRELICENSURE REVIEW AND APPROVAL (1) Bed and

breakfast establishments shall submit facility and operating plans to the regulatory authority for review and approval when the following conditions apply:

(a) Before construction commences for a new establishment or for an addition to or an alteration of an existing establishment.

(i) Construction may not commence until all plans required by (1) have been approved by the regulatory authority. Construction must be in accordance with the plans as approved unless permission is granted by the regulatory authority to make changes.

(ii) Approval will be granted for a period not to exceed three years, after which, if construction has not been completed, plans must again be submitted to the regulatory authority for reevaluation.

(b) During the license application process for a bed and breakfast establishment planning to operate in an existing building.

(i) An existing building must receive prior approval from the regulatory authority to be used as a bed and breakfast establishment.

(ii) When a proposal to use an existing building as an establishment involves structural modification, plans meeting the requirements of (2) must be submitted to the regulatory authority for review and approval. If no structural modification is involved, the regulatory authority may waive the requirement for submission of plans if:

(A) an inspection by the regulatory authority indicates that the proposed establishment meets the requirements of this subchapter;

(B) the fire authority approves the building;

(C) the building authority approves the building or waives approval; and

(D) the establishment is in compliance with other state and local requirements.

(2) Facility and operating plans must include the following:

(a) location and detail of storage rooms used for extra bedding and furnishings;

(b) specifications for the water supply to serve the establishment;

(c) evidence of the review and approval of the sewage treatment and disposal system by the local health authority or the Montana department of environmental quality;

(d) location and detail of laundry facilities including description of equipment, floor and wall finish material and a flow chart indicating the route of laundry through sorting, washing, drying, ironing, folding and storage;

(e) specifications for a swimming or spa facility to serve the establishment unless the swimming or spa facility has been previously approved by the department;

(f) identification of the process that will be used to dispose of solid waste;

(g) location of utility sink or a plan for mop water disposal;

(h) specifications for the proposed food service, including

menu, equipment, facility design, location, materials and other information necessary to assure the implementation of this rule;

- (i) location of hand washing sink(s);
- (j) evidence of approval by the building authority;
- (k) evidence of approval by the fire authority; and

(l) any other applicable information as requested by the regulatory authority. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.306 LICENSURE, RENEWAL, AND INSPECTION**

(1) It is unlawful for a bed and breakfast establishment to operate without a license, as specified in 50-51-201, MCA. Failure to procure a license may subject the operator to criminal penalties as provided in 50-51-106, MCA, and/or civil penalties, injunctive relief, and costs as provided in 50-51-401 through 50-51-402, MCA.

(2) Upon notification by the department that an application and fee have been received for a license for a previously unlicensed establishment or by request from the bed and breakfast establishment, the regulatory authority shall make a prelicensing inspection to determine compliance with the requirements of this subchapter.

(3) The regulatory authority shall inspect each licensed establishment within the jurisdiction of the local board of health to determine compliance with this subchapter at least once every 12 months.

(4) If the establishment is in compliance with this subchapter and the department does not receive notification of noncompliance from the building authority or fire authority, a license will be issued or renewed.

(5) A bed and breakfast establishment that serves food only to its registered guests must meet the food service requirements of this rule but does not need a separate food establishment license as required by 50-50-201, MCA.

(6) An applicant or licensee who is denied a license or whose license is cancelled has the rights specified in 50-51-210 and 50-51-211, MCA. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, 50-51-201, 50-51-202 and 50-51-204, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.307 VARIANCES**

(1) An operator of a bed and breakfast establishment may request from the regulatory authority a variance to waive or modify construction or food equipment requirements contained in this subchapter. The request must be in writing, and must:

(a) demonstrate that the variance requested does not have the potential to cause adverse public health or safety effects and no other reasonable alternative exists; and

(b) describe any measure that will be taken to assure that public health and safety are maintained.

(2) The regulatory authority will maintain a record of the

variance requests submitted along with the regulatory authority's responses. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.308 PERSONNEL** (1) No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, diarrheal illness or acute gastrointestinal illness or an acute respiratory infection, shall work in a food service portion of the bed and breakfast in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other persons. Food employees experiencing persistent sneezing, coughing or runny nose that causes discharges from the eyes, nose or mouth may not work with exposed food, clean food equipment, utensils, linens or unwrapped single-service or single-use articles.

(2) All personnel shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work, as often as is necessary to keep them clean and especially after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

(3) The outer clothing of all personnel must be clean.

(4) All personnel shall consume food only in areas that will not result in contamination of other food, equipment, utensils or items needing protection.

(5) All personnel shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the bed and breakfast establishment. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

Rule 09 reserved

**37.111.310 GUEST REGISTRATION** (1) The operator of each bed and breakfast establishment shall keep a register, entry book or card filing system containing the names and mailing addresses of every guest renting a guest room and the dates when occupied. This register, entry book or card filing system may be different than a guest sign-in book and may be inaccessible to other guests.

(2) The register, entry book or card filing system must be

available for inspection by the regulatory authority in accordance with 50-16-603, MCA, which provides for the confidentiality of health care information obtained by the government. The register, entry book or card filing system must be maintained for every calendar year and may not be discarded or destroyed until one year after the calendar year for which it was maintained. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-16-603 and 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

Rule 11 reserved

**37.111.312 FOOD SUPPLIES** (1) Food must be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption. Food must be obtained from sources that comply with the applicable requirements of the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA. The use of food in hermetically sealed containers that was not prepared in a licensed food processing establishment is prohibited except those foods which are included within the definition of preserves as defined in 50-50-102(16)(a), MCA, which are not potentially hazardous foods.

(2) Fluid milk and fluid milk products used or served must be pasteurized and shall meet grade A quality standards. Dry milk and dry milk products must be made from pasteurized milk and milk products.

(3) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products must be used, except that hard boiled, peeled eggs commercially prepared and packaged may be used. Guests must be advised if uninspected farm eggs are to be used. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.313 FOOD PROTECTION** (1) At all times, including while being stored, prepared, displayed, served or transported, food must be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food must be 45°F (5°C) or below or 135°F (60°C) or above except as provided in (2).

(2) Potentially hazardous foods prepared and held refrigerated for more than 24 hours in a bed and breakfast establishment shall be clearly marked at the time of preparation to indicate the date by which the food will be consumed which is, including the day of preparation:

(a) seven calendar days or less from the day that the food is prepared, if the food is maintained at 41°F (5°C) or less; or

(b) four calendar days or less from the day the food is

prepared, if the food is maintained at 45°F (7°C) or less.

(3) Laundry facilities may be present in the residential kitchen, but may not be used during food preparation and service. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.314 FOOD STORAGE** (1) Food, whether raw or prepared, if removed from the container or package in which it was obtained, must be stored in a clean, covered container except during necessary periods of preparation or service. Container covers must be impervious and nonabsorbent, except that clean linens or napkins may be used for lining or covering bread or roll containers.

(2) Containers of food must be stored above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area.

(3) Food and containers of food may not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by the fire authority. The storage of food in toilet rooms or entryways is prohibited.

(4) Food not subject to further washing or cooking before service must be stored in a way that protects it against cross contamination from food requiring washing or cooking.

(5) Packaged foods, including wrapped sandwiches, may not be stored in direct contact with water or undrained ice.

(6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar or flour not stored in the product container or package in which it was obtained must be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities must be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food must be provided with a numerically scaled temperature measuring device, accurate to .3°F (.1.5°C) and must be located to measure the air temperature in the warmest part of the facility and must be located to be easily readable. Recording temperature measuring devices accurate to .3°F (. 1.5°C), may be used in lieu of indicating temperature measuring devices.

(8) Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container so that the cooling period and internal food temperature total no more than two hours with food cooled from 135°F (57.2°C) to below 70°F (21°C) or below and four hours with food cooled from 70°F (21°C) to 45°F (7°C) or less.

(9) Ice used as a medium for cooling stored food, food

containers or food utensils must not be used for human consumption.

(10) The internal temperature throughout potentially hazardous foods requiring hot holding must be 135°F (57.2°C) unless maintained in accordance with (8).

(11) Guest food may be kept in the bed and breakfast establishment's refrigeration equipment, but must be segregated and labeled as not for sale or for use by the establishment. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.315 FOOD PREPARATION** (1) Food must be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross contamination. Sinks used for the preparation of foods must be cleaned and sanitized immediately before beginning the preparation of the food.

(2) Raw fruits and raw vegetables must be thoroughly washed with potable water before being cooked or served.

(3) Potentially hazardous foods must be cooked to heat all parts of the food to a temperature of at least 135°F (57.2°C), except as follows:

<u>Food Item</u>	<u>Temperature</u>
Poultry, poultry stuffing, stuffed meats, stuffings containing meat	heat all parts of the food to at least 165°F (74°C) with no interruption in the cooking process
Pork and pork products	heat all parts of the food to at least 145°F (63°C)
Rare roast beef, rare beef steak	cook to an internal temperature of at least 130°F (55°C) unless otherwise ordered by customer for immediate service
Ground meat	cook to an internal temperature of 155°F (68°C), and the food must hold this temperature for at least 15 seconds

(4) Uncooked, unpasteurized shell eggs may not be used for the

preparation of ready-to-eat foods or foods that are not further cooked or baked.

(5) The reheating of food for hot holding must be done as follows:

<u>Food Item</u>	<u>Temperature</u>
Potentially hazardous food that has been cooked, cooled and reheated for hot holding	reheat to reach at least 165°F (74°C) in all parts of the food and maintain temperature for 15 seconds
Reheating all food for hot holding	reheat rapidly so that temperature of 165°F (74°C) is attained within two hours
Ready-to-eat food taken from commercially processed hermetically sealed container or intact package from a licensed or approved food processing plant	reheat to reach at least 140°F (60°C) prior to hot holding
Cooked and refrigerated food that is for immediate service in response to a consumer's order, such as a roast beef sandwich au jus	serve at any prepared temperature

(6) Potentially hazardous food reheated for hot holding in a microwave oven must:

- (a) be covered;
  - (b) rotated or stirred throughout or midway during cooking or according to label instructions during heating;
  - (c) heated to a temperature of at least 165°F (74°C); and
  - (d) allowed to stand covered for two minutes after reheating.
- (7) Digital or dial type metal stem temperature measuring devices accurate to .2°F (.1°C), must be used to assure the attainment and maintenance of proper internal cooking or holding temperatures of all potentially hazardous foods.

(8) Potentially hazardous foods must be thawed:

- (a) in refrigerated units at a temperature not to exceed 45°F (7°C);

- (b) under potable running water of a temperature of 70°F (22°C)

or below, with sufficient water velocity to agitate and float off loose food particles into the overflow for a period of time that does not allow thawed portions of a raw animal food requiring cooking to be above 45°F (7°C) for more than four hours;

(c) in a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) as part of the conventional cooking process.

(9) Except for cooking and baking uses, potentially hazardous foods, once served, may not be returned to the preparation area and reserved for later meals.

(10) Serving utensils must be used for the display and service of foods during family style meals. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

Rules 16 through 19 reserved

**37.111.320 FOOD EQUIPMENT AND UTENSILS** (1) Multi-use food equipment and utensils must be:

(a) constructed and repaired with safe materials, including finishing materials;

(b) corrosion resistant and nonabsorbent; and

(c) smooth, easily cleanable, and durable under conditions of normal use.

(2) Single-service articles must be made from clean, sanitary and safe materials.

(3) Food equipment, utensils and single-service articles may not impart odors, color or taste, nor contribute to the contamination of food.

(4) Food equipment must be installed according to manufacturer's instructions.

(5) Hard maple or other nonabsorbent material that meets the general requirements set forth in (1) may be used for kitchen utensils, cutting blocks, cutting boards, salad bowls and baker's tables. Wood may be used for single-service articles, such as chop sticks, stirrers or ice cream spoons.

(6) Safe plastic, safe rubber or safe rubber-like materials are permitted for repeated use if they:

(a) are resistant under normal conditions of use to scratching, scoring and decomposition;

(b) are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods; and

(c) meet the general requirements set forth in (1).

(7) Re-use of single-service articles is prohibited.

(8) Food-contact surfaces must be easily cleanable, smooth and

free of breaks, open seams, cracks, chips, pits and similar imperfections. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills, griddle tops and skillets.

(9) Surfaces not intended for contact with food debris or which otherwise require frequent cleaning must be washable, nonabsorbent, accessible for cleaning and must be of such materials and in such repair as to be easily maintained in a clean and sanitary condition.

(10) Ventilation hoods and devices must be designed and installed to prevent grease or condensation from collecting on walls and ceilings and dripping into food or onto food-contact surfaces. Filters or other grease extracting equipment must be readily removable for cleaning and replacement if not designed to be cleaned in place.

(11) Food equipment that was installed in a bed and breakfast establishment prior to July 1, 2003 that does not fully meet all the design and fabrication requirements of this rule may be used if they are in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are nontoxic, except that:

(a) refrigeration equipment must be capable of holding potentially hazardous foods at or below 45°F (7°C);

(b) bed and breakfast establishments serving up to 10 meals per day that have only a two compartment dishwashing sink must install a heat-boosted domestic dishwashing machine or an adequate three compartment dishwashing sink;

(c) bed and breakfast establishments serving more than 10 meals per day must have a three compartment dishwashing sink; and

(d) bed and breakfast establishments licensed on or before July 1, 2003 must meet the provisions of (11)(c) within five years from July 1, 2003, when applicable.

(12) All replacement food equipment and new food equipment acquired after July 1, 2003 must meet the requirements of this rule. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

### **37.111.321 FOOD EQUIPMENT AND UTENSILS: CLEANING AND**

**SANITIZATION** (1) Food contact equipment, surfaces and utensils must be cleaned and sanitized prior to food preparation for the public and after each use.

(2) Sinks, basins or other receptacles used for cleaning equipment and utensils must be cleaned and sanitized before use.

(3) Food equipment and utensils must be preflushed or prescraped and when necessary, presoaked to remove food particles and soil.

(4) Manual cleaning and sanitizing must be conducted in five steps as follows:

(a) prerinsing or scraping;

(b) thoroughly washing in a warm detergent solution that is

kept clean;

(c) rinsing with clean water to remove any abrasives and remove or dilute cleaning chemicals;

(d) sanitization; and

(e) air drying and draining.

(5) The food contact surfaces of all equipment and utensils must be sanitized by:

(a) immersion for at least 1/2 minute in clean, hot water at a temperature of at least 170°F (77°C) or above;

(b) immersion for at least one minute in a clean solution containing at least 50 parts per million (ppm) of available chlorine as a hypochlorite and at a temperature of at least 75°F (24°C);

(c) immersion for at least one minute in a clean solution containing at least 12.5 ppm of available iodine and having a pH of 5.0 or less and at a temperature of at least 75°F (24°C);

(d) immersion for at least one minute in a clean solution containing no more than 200 ppm of a quaternary ammonium compound solution by following manufacturer instructions;

(e) immersion in a clean solution containing any other chemical sanitizing agent approved by the U.S. environmental protection agency that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine as a hypochlorite at a temperature of at least 75°F (24°C) for one minute; or

(f) rinsing, spraying or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under (5)(a) through (e) in the case of food equipment being too large to sanitize by immersion.

(6) Chemicals used for sanitization may not have concentrations higher than the maximum permitted by (5). A test kit or other device that measures the ppm concentration of the solution must be used at least once each business day.

(7) Mechanical cleaning and sanitizing must be conducted using:

(a) commercial dishwashers, which must comply with ARM 37.110.215(17) through (27); or

(b) a domestic or home style dishwasher may be used provided the following performance criteria are met:

(i) the dishwasher must effectively remove physical soil from all surfaces of dishes;

(ii) the dishwasher must sanitize dishes by the application of sufficient accumulative heat;

(iii) the operator shall provide and use daily a maximum registering temperature measuring device or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150°F (66°C) after the final rinse and drying cycle; and

(iv) the dishwasher must be installed and operated according to

manufacturer's instructions for the highest level of sanitization possible when sanitizing utensils and tableware. A copy of the instructions must be available on the premises at all times.

(8) Drainboards, portable dish tubs, or similar devices must be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and must be located so as to not interfere with the proper use of the dishwashing facilities.

(9) Food contact surfaces must be sanitized by one of the following methods:

(a) using moist cloths, which are kept clean and are rinsed frequently in a sanitizing solution mixed at twice the strength required for that sanitizing solution as provided in (5)(a) through (e). However, using the same cloths and sanitizing solution for both food contact and nonfood contact surfaces is prohibited;

(b) spraying with a sanitizing solution mixed at twice the strength required for that sanitizing solution as provided in (5)(a) through (e); or

(c) using an alternative method approved by the regulatory authority. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

#### **37.111.322 FOOD EQUIPMENT AND UTENSILS: STORAGE AND HANDLING**

(1) Cleaned and sanitized food equipment and utensils must be handled in a way that protects them from contamination. Spoons, knives and forks must be touched only by their handles. Cups, glasses, bowls, plates and similar items must be handled without contact with inside surfaces or surfaces that contact the user's mouth.

(2) Cleaned and sanitized food equipment and utensils must be stored above the floor in a clean, dry location in a way that protects them from being contaminated by splash, dust and contaminants. The food contact surfaces of fixed equipment must be protected from contamination. Food equipment and utensils may not be placed under exposed sewer or water lines except for automatic fire protection sprinkler heads.

(3) Utensils must be air dried before being stored or must be stored in a self draining position.

(4) Single-service articles must be stored above the floor in closed cartons or containers which protect them from contamination and must not be placed under exposed sewer or water lines except for automatic fire protection sprinkler heads.

(5) Single-service articles must be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.

(6) Food equipment, utensils or single-service articles may not

be stored in toilet rooms or entryways. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

Rules 23 through 25 reserved

**37.111.326 WATER SUPPLY AND PLUMBING** (1) An adequate and potable supply of water must be provided.

(2) Before a license may be issued, an establishment using an individual, shared or multiple user water supply must submit the following to the regulatory authority:

(a) satisfactory coliform bacteria and nitrate test results. Nitrate results in excess of 10 mg/L are considered unsatisfactory; and

(b) the results of an on site sanitary survey of the water supply system to detect sanitary deficiencies.

(3) A supplier of an individual, shared or multiple user water supply shall conduct a coliform bacteria test of the system at least twice a year with one sample collected between April 1 through June 30 and the second sample collected between August 1 through October 31 and shall conduct a nitrate test of the system at least once every three years. A supplier shall keep sampling result records for three years at the premises of the bed and breakfast establishment for review by the regulatory authority.

(4) A supplier of a public water supply shall undertake sample analyses for its system according to ARM Title 17, chapter 38, subchapter 2.

(5) Nonpotable water sources must be marked "not for human consumption".

(6) Plumbing must be installed and maintained in a manner to prevent cross connections between the potable water supply and any nonpotable or questionable water supply or any source of pollution through which the potable water supply might become contaminated. The potable water system must be installed to preclude the possibility of backflow. A hose may not be attached to a faucet unless a backflow prevention device is installed.

(7) Handsinks and bathing facilities must be provided with water at a temperature of at least 100°F (37.8°C) and not more than 120°F (49°C).

(8) A water supply system is determined to have failed and requires treatment, replacement, repair or disinfection, when the water supply becomes unsafe (when it exceeds the maximum contaminant levels specified in ARM Title 17, chapter 38, subchapter 2) or inadequate (when it is found to be less than 20 psi measured at the extremity of the distribution line during instantaneous peak usage).

(9) Extension, alteration, repair or replacement of a water

supply system or development of a new water supply system must be in accordance with all applicable state and local laws.

(10) Bottled and packaged potable water must be obtained from a licensed and approved source and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service must be dispensed from the original container.

(11) The department hereby adopts and incorporates by reference the provisions of ARM Title 17, chapter 38, subchapter 2, stating maximum allowable contaminant levels, sampling and other requirements for public water supplies. Copies of the above mentioned rules may be obtained from the Department of Public Health and Human Services, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951 or the Department of Environmental Quality, Permitting and Compliance Division, P.O. Box 200901, Helena, MT 59620-0901.

(History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.327 WASTEWATER SYSTEM** (1) An adequate and safe wastewater system must be provided for conveying, treating and disposing of all sewage. Immediate measures must be taken to alleviate health and sanitation hazards caused by wastewater at the bed and breakfast establishment when they occur.

(2) A wastewater system has failed and requires replacement or repair if any of the following conditions occur:

(a) the system fails to accept, treat or dispose of wastewater as designed;

(b) effluent from the wastewater system contaminates a potable water supply or state waters; or

(c) the wastewater system is subjected to mechanical failure, including electrical outage, or collapse or breakage of a septic tank, lead line or drainfield line.

(3) Extension, alteration, replacement or new development of any wastewater system must be done in accordance with all applicable local laws and ARM Title 17, chapter 36, subchapters 1, 3 and 6, which cover the minimum standards for individual, shared or multiple user wastewater systems, as regulated by the Montana department of environmental quality.

(4) Disposing of discharged liquid wastes from sinks, showers, toilets or baths on the ground surface is prohibited. Such waste must be discharged into the wastewater system serving the bed and breakfast establishment or into an alternate system approved by the regulatory authority.

(5) Mop water or heavily soiled cleaning water may not be disposed of in any sink other than a mop or utility sink or a toilet.

(6) The department hereby adopts and incorporates by reference

ARM Title 17, chapter 36, subchapters 1, 3 and 6 which set rules for subdivisions and on site subsurface wastewater treatment. Copies of the above rules may be obtained from the Department of Public Health and Human Services, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951, or the Department of Environmental Quality, Permitting and Compliance Division, P.O. Box 200901, Helena, MT 59620-0901. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.328 TOILET FACILITIES** (1) Toilet facilities must be installed in accordance with the state plumbing code and must be conveniently located and accessible to employees at all times.

(2) Toilet rooms must be completely enclosed and the doors must be kept closed when they open into the kitchen. Additionally, if toilet facilities open onto or are located adjacent to the food preparation area, the toilet facilities must contain mechanical ventilation or a window.

(3) Toilet fixtures must be kept clean and in good repair. A supply of toilet tissue must be provided at each toilet at all times. Easily cleanable receptacles must be provided for waste materials. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.329 HAND WASHING FACILITIES** (1) Bed and breakfast establishments serving up to 10 meals per day may use a compartment of a dishwashing sink for hand washing purposes in the kitchen. Bed and breakfast establishments serving more than 10 meals per day must have a dedicated hand washing sink.

(2) Hand washing facilities must be conveniently located to the kitchen food preparation area and laundry handling area and must provide hot and cold potable water tempered by means of a mixing valve or combination faucet.

(3) A supply of hand cleansing soap or detergent must be available from a dispensing unit at each hand washing facility. A supply of sanitary, single-use towels must be conveniently located near each hand washing facility. The use of common towels is prohibited. If disposable towels are used, easily cleanable waste receptacles must be conveniently located near the hand washing facilities.

(4) A soap dispenser and disposable towels for use in hand washing must be provided at the kitchen sink. This sink must not be used for hand washing after toilet use. After toilet use, personnel shall wash hands first in an approved hand washing facility before they are washed in the kitchen sink.

(5) Hand washing facilities, soap or detergent dispensers, hand

drying devices and all related equipment must be kept clean and in good repair. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.330 SOLID WASTE AND PEST CONTROL** (1) Garbage and refuse must be kept in durable, easily cleanable, insect proof and rodent proof containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers and they may be used for storage inside the establishment. The containers must be kept clean and in good repair and be of sufficient number to hold the solid waste that accumulates.

(2) Outside storage of unprotected plastic bags or wet strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(3) Garbage and refuse must be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(4) Effective measures intended to minimize the presence of rodents, flies, cockroaches and other insects on the premises must be utilized. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

Rules 31 through 33 reserved

**37.111.334 FLOORS, WALLS, CEILINGS AND LIGHTING** (1) The floors, walls and ceilings and attached equipment in food preparation and service areas and in employee bath rooms of bed and breakfast establishments must be fabricated from easily cleanable material and must be maintained in good repair and kept clean. Artificial lighting must be provided sufficient to facilitate sanitary food handling and cleaning of facilities. Light sources in food preparation areas must be adequately shielded or be made of a shatter resistant design or material.

(2) Carpeting, if used as a floor covering in food preparation areas or in toilet facilities, must be of closely woven construction. All carpeting located in guest rooms, hallways and other portions of the bed and breakfast used by guests must be properly installed, easily cleanable and maintained in good repair. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.335 LAUNDRY** (1) Laundries operated or used by a bed and breakfast establishment must be provided with:

- (a) a mechanical washer and hot air tumble dryer;
- (b) a hot water supply system capable of supplying water at a temperature of 120°F (49°C) to the washer during all periods of use;
- (c) detergents; and

(d) sanitizers approved by the U.S. environmental protection agency.

(2) Bedding, towels and washcloths must be machine washed at a minimum temperature of 120°F (49°C) for a minimum time of eight minutes and dried in a hot air tumble dryer or ironed at a minimum temperature of 150°F (65.5°C).

(3) Laundry other than bedding, towels and washcloths may be washed at a minimum temperature of 110°F (43.3°C) for at least eight minutes using a detergent and a sanitizer. Bleach, as a hypochlorite, may be used according to manufacturer's specifications during the final rinse.

(4) Manual washing and line drying of bed linen, towels and washcloths is prohibited.

(5) All bed and breakfast establishments must have a sink that can be used for hand washing within a reasonable distance of the laundry. Hands must be washed between the handling of soiled and clean laundry.

(6) To prevent cross contamination, a separate handling process must be used for the sorting and storage of soiled laundry and the folding and storage of clean laundry. Clean cloths and linens must be laundered, stored and protected from contamination between uses. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.336 HOUSEKEEPING AND MAINTENANCE** (1) Housekeeping and maintenance services must be provided a minimum of every three days and must be available on a daily basis when requested by a guest. Housekeeping and maintenance services must be provided between guest occupancies. Shared bathrooms must be cleaned daily.

(2) Maintenance and properly labeled cleaning supplies and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment must be maintained and stored in a way that does not contaminate food, utensils, food equipment or linens or endanger the safety of guests. The storage area for cleaning supplies and cleaning tools must be kept clean.

(3) Toilets, bathtubs, hand washing sinks and showers may not be used for washing and rinsing of mops, brooms, brushes or any other cleaning devices.

(4) Cleaners used in cleaning bathtubs, showers, sinks, urinals, toilet bowls, toilet seats and floors in bathrooms must contain an approved disinfectant or sanitizing agent.

(5) Cleaning devices used for cleaning toilet bowls, urinals, sinks, showers and bathtubs may not be used for any other purpose and must be kept segregated when stored. Cleaning devices used for cleaning toilet bowls and urinals may not be used to clean sinks, showers and bathtubs.

(6) Deodorizers and odor masking agents may not be used unless

the room in which it is used is clean to sight and touch.

(7) All bedding, towels and washcloths provided by management must be clean and in good repair. Clean bed sheets and pillowcases must be provided on each bed and shall be replaced by clean, freshly laundered sheets and pillowcases after the departure of each guest and prior to occupancy by the next guest. Clean bedding must be available to each guest on a weekly basis or more often if requested by a guest. Clean towels and washcloths must be available to each guest every three days, at minimum, or more often if requested by a guest.

(8) All furnishings, fixtures, floors, walls and ceilings must be clean and in good repair. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

Rules 37 and 38 reserved

**37.111.339 SWIMMING AND BATHING AREAS** (1) Any swimming pool, spa or public swimming place that exists in a bed and breakfast establishment for guest use must be constructed and operated in compliance with Title 50, chapter 53, MCA, and ARM Title 37, chapter 111, subchapters 10 and 11.

(2) Sauna services that exist in a bed and breakfast establishment for guest use must be operated in a clean and sanitary manner and must be maintained in good repair.

(3) Guest towels provided by the bed and breakfast establishment for use in the swimming and bathing area or in a sauna must be laundered between each guest use.

(4) Copies of ARM Title 37, chapter 111, subchapters 10 and 11 may be obtained from the Department of Public Health and Human Services, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

Rules 40 and 41 reserved

**37.111.342 BLOOD-BORNE PATHOGEN PROTECTION** (1) To minimize exposure to potential blood-borne pathogens during housekeeping, maintenance, laundry or other provided services, employees shall:

(a) wear protective gloves and use an appropriate cleaning solution when cleaning up hazardous materials;

(b) use disposable towels to clean up spills and dispose of the towels in a special biohazard labeled bag;

(c) use a dust pan and brush, cardboard or tongs to clean up broken glass; and

(d) wear waterproof gloves when handling dirty laundry.

(2) All actions that involve contact with blood and other

potentially contaminated products should be done in such a way as to minimize splashing, spraying, splattering and the creation of droplets. If workers come into contact with blood or body fluids, they must:

- (a) wash their hands or any other contaminated parts of their body with soap and warm water;
- (b) wash their hands and potentially exposed skin when they remove protective gloves or other personal protective equipment; and
- (c) flush eyes or other mucous membranes with water if these body parts are exposed. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.343 SAFETY** (1) Containers of poisonous or toxic materials must be prominently and distinctly labeled according to law for easy content identification and must be used according to manufacturer's directions. These materials must not be stored or used in any manner which may contaminate food or food contact surfaces. This provision does not prohibit the convenient availability of detergents or sanitizers for use at hand washing or dishwashing stations.

(2) First aid materials must be available on the premises.

(3) Guests must be provided with emergency exit information upon registration. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

**37.111.344 PETS** (1) Pets may be present on the premises with the following restrictions:

(a) pets shall be kept out of the kitchen food preparation and dining areas during food preparation and service to the public;

(b) pets shall be kept out of the laundry area during its use; and

(c) birds shall be kept out of the kitchen, dining and laundry areas at all times and be kept away from forced air ducts and heating system areas. (History: Sec. 50-51-103 and 50-51-108, MCA; IMP, Sec. 50-51-103, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)

Rules 45 through 49 reserved

**37.111.350 MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES** (1) To qualify for reimbursement under 50-51-303, MCA, the local health authority must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local health authority and the department consistent with this subchapter or meet each of the following requirements:

(a) At least one sanitarian working with or for the local

health authority must receive training from the department in bed and breakfast inspection techniques. The department is responsible for making training available on a periodic basis.

(b) The local health authority must ensure that the following are done by the local health officer, sanitarian or sanitarian-in-training:

(i) Upon notification by the department or the establishment, a prelicensing inspection is made to determine compliance with the requirements of this subchapter.

(ii) Each establishment within the jurisdiction of the local health authority is inspected at least once every 12 months or on the schedule specified in a signed agreement with the department.

(iii) Quarterly inspection reports are submitted to the department within 10 days following the closing of each quarter of the fiscal year (1st quarter, September 30; 2nd quarter, December 31; 3rd quarter, March 31; 4th quarter, June 30) on forms approved by the department.

(iv) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction and enforcement actions, must be retained for five years and copies of the documentation are submitted or otherwise made available to the department upon request.

(2) A failure by the local health authority to meet all of its responsibilities under the cooperative agreement or under (1)(a) and (b) shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department. (History: Sec. 50-51-303, MCA; IMP, Sec. 50-51-204 and 50-51-303, MCA; NEW, 2003 MAR p. 1338, Eff. 7/1/03.)