Farmers' Market Guidelines

This guideline is for use by local sanitarians and farmers' market managers to help answer questions and provide guidance for the operation of farmers' markets.

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Public Health IN THE 406

MONTANA FOOD & CONSUMER SAFETY PROGRAM

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Introduction and General Information

The number of farmers' markets continues to grow as more people have a desire to eat locally produced products. This document is intended to provide information on what foods can be sold, and the required registration.

What is the legal definition of a Farmers' Market? It is defined in 50-50-102(8) of the Montana Code Annotated:

> **"Farmer's market" means a farm premises, a food stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority under 7-21-3301 MCA.**

The market manager of municipal and county markets is required to keep registration records of all persons and organizations that serve or sell food at the market, except those that have a DPHHS food license or Cottage Food Registration. The records must include the name, address, and telephone number of the seller or server as well as types of products sold or served and date on which the products were sold or served. The records must be available for the sanitarian to review.

MADE IN A HOME KITCHEN THAT IS NOT SUBJECT TO RETAIL FOOD ESTABLISHMENT REGULATIONS OR INSPECTIONS

Chocolate Chip Cookies

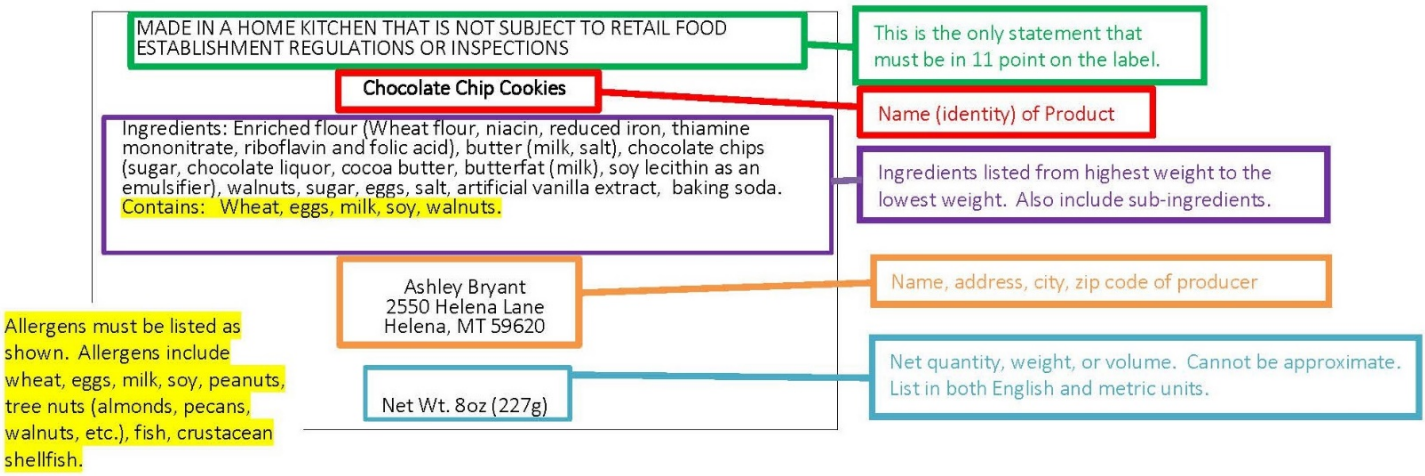
Ingredients: Enriched flour (Wheat flour, niacin, reduced iron, thiamine mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin as an emulsifier), walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda.
Contains: Wheat, eggs, milk, soy, walnuts.

Ashley Bryant
2550 Helena Lane
Helena, MT 59620

Net Wt. 8oz (227g)

Labeling

If products are packaged, they must be labeled. Below is an example of the information that needs to be on the label.



Foods Not Requiring a Food License

Foods sold at farmers' markets must be non-potentially hazardous, specifically exempted, or approved and licensed as a retail food establishment.

Non-potentially hazardous foods include:

- Loaf breads, rolls, biscuits, quick breads, and muffins that do not contain meat or cheese
- Cakes-all frostings or glazes must have a cook step or be made with ingredients (such as a large amount of sugar) that when combined are stable at room temperature
- Pastries or scones
- Cookies or pastry bars
- Crackers
- Cereals, trail mixes or granola
- Nuts and nut mixes
- Snack mixes
- Fruit Pies (no custard style pies, unbaked pies with fresh fruit, or pies that require refrigeration after baking, such as pumpkin pie)
- Dried fruits
    - The following fruits can be dried, packaged and sold as well as other fruits that have a pH of 4.6 or lower:
      Apples, apricots, grapefruit, lemons, limes, mangos, nectarines, oranges, peaches, plums, pomegranates, tangerines, blackberries, blueberries, cherries, cranberries, currants, gooseberries, grapes, raspberries, strawberries and huckleberries.

- Must have a minimum internal food temperature of 160ºF within 60 minutes of cutting fruit.
- Must have a minimum internal temperature of 140ºF during the entire drying process.
- Cannot be packaged in vacuum, reduced oxygen or modified oxygen packaging

➢ Jams, jellies and fruit butters made from the following fruits, and contain at least 55% added sugar by weight. They cannot contain large chunks of fruit.

- Fruit butters made with apple, apricot, grape, pear, plum, prune, quince, and combinations of these fruits.
- Fruit jellies made with apple, apricot, blackberry, black raspberry, boysenberry, cherry, crabapple, cranberry, dewberry, fig, gooseberry, grape, grapefruit, guava, loganberry, orange, peach, pineapple, plum, pomegranate, prickly pear, quince, raspberry, currant, strawberry and youngberry and combinations of these fruits.
- Fruit preserves and jams made with the same fruits as fruit jellies, as well as blueberry, elderberry, huckleberry, rhubarb, tangerine, nectarine, cranberry and tomato and combinations of these fruits.

➢ Recombining and packaging of dry herbs, seasonings, or mixtures (dry soup, teas, coffees, spice seasonings)

➢ Popped popcorn, popcorn balls, or cotton candy

➢ Fudge, candies or confections that require a cook step and do not require refrigeration after cooking

➢ Molded chocolate using commercial chocolate melts

Specifically exempted foods include the following:

➢ Whole shell eggs that are clean, free of cracks, and stored in clean cartons at ≤ 45ºF.
➢ Hot coffee or hot tea if the person selling the hot coffee or hot tea does not provide or include fresh milk or cream
➢ Whole fruits, vegetables, raw honey, and grains that have **NOT** been:
(a) cooked;
(b) canned;
(c) preserved, except for drying;
(d) combined with other food products; or
(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

Wild mushrooms do not qualify as a food license exempted product.

Frequently Asked Questions

1. **Q:** *Can I sell salsas, pickles, salad dressings, herb-in-oil/vinegar mixtures, sauerkraut or pepper jelly?*

   A: Not without a food license. They are required to be processed in a locally approved and licensed facility to sell these types of products anywhere, including at a farmers' market.

2. **Q:** *Can I sell cream puffs, cream pies, pumpkin pies, custard pies, cream or pudding filled pastries, cheesecakes or cheese breads?*

   A: No. All of these products would be considered potentially hazardous, and it would require local approval and a food license to sell these products at farmers' markets.

3. **Q:** *I want to sell my processed poultry/meats at a farmers' market. What do I need to do?*

   A: A retail food license is required to distribute these types of products at farmers' markets. It is recommended that you contact the Montana Department of Livestock, Meat and Poultry Bureau at (406) 444-5202 (Milk and Egg Bureau Website) for information regarding the requirements for slaughter and processing. Contact your local sanitarian for information on how to obtain a retail meat market license.

4. **Q:** *Can I sell huckleberries at a farmers' market without a food license?*

   A: Yes, if they are not processed. Unprocessed berries are raw agricultural commodities that are exempt from food licensing at farmers' markets. Harvesters may be required to obtain a commercial harvester's permit from the Forest Service; please check with your local Forest Service office.

5. **Q:** *I'm new to selling produce at Farmer's Markets and I heard something about needing a license to sell fruits and vegetables. How do I know if I need a license?*

   A: If you grow all your produce in Montana and achieve less than $25,000 in annual produce sales, you do not need a license. If your sales are $25,000 or greater, or you transport produce from out of state to be sold in Montana, you will need to obtain a Produce Dealer license from the Montana Department of Agriculture. If you have questions about produce licensing, please refer to Montana Code Annotated 80-3-301 through 80-3-314, or contact Larry Krum at Lkrum@mt.gov or 406-444-3730.

6. **Q:** *Do I need a food license if I'm handing out free samples?*

   A: If you are a licensed manufacturer, cottage food operation, or a farmer's market vendor and the samples are exempt from licensure or are non-potentially hazardous, then no retail food license is required.

7. **Q:** *I've heard that washing whole produce is considered processing. Is that true?*

   A: Field or harvest rinsing of whole produce to remove soil is not considered processing, however, washing of produce to sell as a ready-to-eat product, such as a bagged lettuce mix, is considered processing.

8. **Q:** *Can I sell a bag of mixed lettuces, or is that considered combining and is now processing?*

   A: Putting several types of lettuce that has only had a harvest cut and field or harvest rinse described in #7 is not considered combining under the definition of processing.

9. **Q:** *Can I sell tea that contains catnip at the farmer's market?*

   A: No, not if it contains catnip. Teas may contain only ingredients approved for use in food. Please refer to the Code of Federal Regulation (CFR Part 172 and 182) to determine if an ingredient is allowed. Catnip is not an approved ingredient.

10. **Q:** *Can I sell CBD food products at the farmer's market?*

    A: No, you may not sell food products containing CBD at the farmers market. CBD is not allowed in food or dietary supplements regardless of the *Cannabis* source, industrial hemp or otherwise. Montana law does not allow CBD extracts in foods or dietary supplements.

Legal References

Montana Code Annotated citations for Farmers' Markets:

7-21-3301. Establishment of markets and market houses.

In addition to the powers specifically granted by the laws of the state and such other limitations and exceptions contained in the existing statutes of the state in reference to the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county in Montana shall have the power to erect market houses to be located at the county seats of their respective counties, to establish and regulate markets, and to acquire the property necessary therefor.

50-50-102. Definitions.

(17) (a) "Raw agricultural commodity" means any food in its raw, unaltered state, including fruits, vegetables, raw honey, and grains. A raw agricultural commodity may be in a container if putting the commodity in a container does not alter the raw state.
(b) The term does not include an agricultural commodity that has been altered by being:
- (a) cooked;
- (b) canned;
- (c) preserved, except for drying;
- (d) combined with other food products; or
- (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

50-50-121. Requirements for farmer's markets.

(1) (a) A person selling food that is not potentially hazardous, including food listed in subsection (2), at a farmer's market is not a retail food establishment.
(b) A person selling food that is not potentially hazardous or otherwise listed in subsection (2) if selling only at a farmer's market is not required to register as a cottage food operation.
(2) Foods that are not potentially hazardous or are otherwise eligible to be sold at a farmer's market include:

(a) whole shell eggs if the whole shell eggs are clean, free of cracks, and stored in clean cartons at a temperature established by the department by rule;
(b) hot coffee or hot tea if the person selling the hot coffee or hot tea does not provide or include fresh milk or cream;
(c) raw agricultural commodities; and
(d) food identified by the department by rule as not being a potentially hazardous food.
(3) A farmer's market authorized by a municipal or county authority shall keep registration records of all persons and organizations that serve or sell food exempt from licensure at the market, including food that does not meet the definition of potentially hazardous food.
(4) The registration records must include the name, address, and telephone number of the seller or server as well as the types of products sold or served and the date on which the products were sold or served.
(5) A farmer's market under this section shall make registration records available upon request to the local health authority.
(6) Food sold in a farmer's market must, if sold in a container, have a label similar to a label required of a cottage food product under 50-50-116.

80-3-301. Short title.

This part may be cited as the "Montana Produce Act."

80-3-302. Definitions.

As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Produce dealer" means a person who engages in a business involving or who as part of a business participates in purchasing, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of produce in this state, except vegetative seed potato products intended or used for planting purposes.
(2) "Produce" means any fruit, vegetable, or other natural product designated by department rule. The term does not include livestock and its byproducts, poultry and its byproducts, apiary products, dairy products, or grain.
(3) "Container" means any package, sack, box, crate, carton, basket, or other object used for the shipping of produce.
(4) "Retail" means sale of produce to the ultimate consumer.
(5) "Wholesale" means the sale of produce intended for resale. The term does not include the sale of Montana-grown produce when sold by the Montana grower for purposes of resale or vegetative seed potato products intended or used for planting purposes.

80-3-321. Produce dealer license -- exception -- renewal.

(1) A produce dealer license is required for any person who:
(a) wholesales produce in this state;
(b) transports produce from out of state into this state for retail sale; or
(c) retails produce grown by the produce dealer in this state when gross retail sales exceed $25,000 annually.
(2) A produce dealer license is not required for a person who complies with the requirements of this part and:
(a) retails produce grown by that person in this state if annual gross produce sales do not

exceed $25,000. However, the person shall, upon request of the department, furnish a sworn statement providing that the produce was grown by that person, stating the location where the produce was grown, and stating the amount of gross sales.

(b) is a nonprofit organization that is recognized by the director and that retails only produce purchased from licensed produce dealers or from Montana produce dealers who are in compliance with this part.

(3) An applicant for a produce dealer license shall provide any information that the department finds necessary to carry out the provisions of this part. Produce dealer licenses expire on December 31 of the year of issuance. A produce dealer shall pay a nonrefundable license fee of $50. A separate license is required for each place of business, including vehicles. The license fee must be credited toward the produce assessment fee prescribed in 80-3-314.

(4) A produce dealer license, if required, must be carried at any time produce is sold, and the license is subject to inspection by any person.

(5) A license issued under this section may not be sold or transferred from one vehicle or location to another without the written consent of the department.

80-3-314. Reporting requirements -- assessment fees -- exceptions.

(1) Produce sold or distributed in this state must be reported on forms approved by the department and must be assessed a fee for each produce unit or equivalent poundage. The fee amount may be adjusted by rule but must be at least 3 cents and not more than 7 cents for each produce unit.

(2) The produce dealer who first distributes produce in this state or a grower who retails Montana-grown produce with gross annual sales exceeding $25,000 shall pay the produce assessment fee established in subsection (1). However, any produce dealer in possession of the produce may be held responsible for payment of the fee unless the grower has paid for a produce dealer license or has made available to the produce dealer a written form provided by the department stating that the assessment fees are being paid.

(3) The report and fees are due on or before the 30th day of the month following each calendar quarter.

(4) Payment of the produce assessment fee is not required on produce that is:

(a) grown and retailed in Montana by the grower if annual gross retail sales by the grower do not exceed $25,000;

(b) grown in this state, not packaged for market, and sold for resale by the grower;

(c) in the case of vegetative seed potato products, intended or used for planting purposes; or

(d) purchased from or distributed by a produce dealer licensed under 80-3-321 if the produce has been reported and the assessment fee has been paid.

Questions about the Montana Department of Agriculture Produce Act and its requirements may be sent to Lkrum@mt.gov or answered by calling 406-444-5419.

For additional information on farmers' markets and registrations, please contact your local sanitarian. Contact information is available online with the DPHHS-FCS interactive map or call 406-444-2837.