

## Farmer's Market Guidelines



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

**May 2011**

# State Laws

## Montana Codes Annotated (MCA)

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

- (1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.
- (5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.
- (6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.
- (14) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:
  - (i) the rapid and progressive growth of infectious or toxigenic microorganisms; or
  - (ii) the growth and toxin production of *Clostridium botulinum*.
- (b) The term 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.
- (c) The term 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 24 degrees C (75 degrees 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.
- (15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.
- (b) The term does not include:
  - (i) tomatoes or food products containing tomatoes; or
  - (ii) any other food substrate or product preserved by any method other than that described in subsection (15)(a).
- (16) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:
  - (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.

**50-50-103. Department authorized to adopt rules -- advisory council.** (1) To protect public health, the department may adopt rules relating to the operation of establishments defined in [50-50-102](#), including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons **selling baked goods or preserves** at farmer's markets **or EXCLUSIVELY for a charitable community purpose.**

(b) The department and local health authorities may not require that foods sold pursuant to this subsection be prepared in certified or commercial kitchens.

**"50-50-202. Establishments exempt from license requirement -- farmer's market records.**

(3) (a) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products at a farmer's market.

(b) A license is not required of a person selling baked goods or preserves at a farmer's market **or EXCLUSIVELY for a charitable community purpose.**

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent

**SEE ALSO 7-21-33 & 42 MCA Regarding Public Markets**

**IN SUMMARY:** Only products that qualify as “Raw and unprocessed farm products”, “Baked goods”, and “Preserves” can be distributed at a “Farmer’s market” without a license.

**All other distributors of processed and value added food products, with few exceptions, are required to be approved by the local health authority and possess a current license from DPHHS to distribute foods at a Farmer’s Market.**

**A FEW EXCEPTIONS** commonly seen at Farmer’s Markets (with local approval):

**Farm Eggs:** DPHHS has historically supported the USDA exemption for on-farm sales of whole shell eggs directly to the consumer, and at Farmer’s Markets if acceptable to the local health authority. DPHHS recommends that these vendors transport and display this product at 45 °F or colder, use only new cartons, and label the cartons with the statement “Ungraded Farm Eggs” along with the producers address.

**Honey:** DPHHS has supported the sale of various forms of this type of product at local Farmer’s Markets in the past, if acceptable to the local health authority. DPHHS recommends these vendors label their packaged products with the producers address.

**A FEW RECOMMENDATIONS** for local sanitarians:

- Meet with the Market Managers from the Farmer’s Markets in your jurisdiction before the start of the market season each year. Review the market rules, and remind all of their responsibilities in state law.
- Visit each Farmer’s Market at least once each year and be available to Market Managers to answer questions if and when they arise.
- Contact the Food and Consumer Safety Section if there are questions or concerns regarding a particular product or situation (406-444-2408), [www.fcsmt.gov](http://www.fcsmt.gov)

## **FREQUENTLY ASKED QUESTIONS:**

1. Question: Are Salsas, Pickles, Salad Dressings, Herb-in-Oil/Vinegar Mixtures, Sauerkraut, Pepper Jelly, etc, considered to be “Preserves” and exempt from licensure for sales at farmer’s markets?

Answer: None of the products listed above qualify as “Preserves” as defined in 50-50 MCA, and as such are required to be processed by a known/inspected operator and usually require local approval and state licensure to distribute products at a farmer’s market. Retail licensure would not be required of a known or licensed wholesale firm distributing shelf-stable/non-perishable products at retail.

2. Question: Are Cream Puffs, Cream Pies, Pumpkin Pies, Custard Pies, Cream or Pudding Filled Pastries, Cheesecakes, considered “Baked goods” and exempt from licensure for sales at farmer’s markets?

Answer: All of the products would be considered to be “Potentially hazardous foods” as defined in state statute, and as such would require local approval and state licensure to distribute these products at a farmer’s market.

3. Question: I want to sell my processed Poultry/ Meats at the farmer’s market. What do I need to do?

Answer: A retail license is needed from DPHHS to distribute these types of products at the farmer’s market. DPHHS would recommend that you contact the state Department of Livestock Meat Inspection Bureau first to find out their requirements for slaughter and processing, and then contact your local sanitarian to receive information on their requirements to become a licensed retail meat market

4. Question: I manage a licensed/regulated restaurant/grocery store/school food service/institutional food service/food manufacturing plant, etc., and want to use as many locally produced foods as possible. What can I get at the farmer’s market that I could use in my establishment?

Answer: Only produce that qualifies as “Raw and unprocessed farms products” as defined in 50-50 MCA. DPHHS recommends that establishments providing food to the public procure raw produce from safe sources. We recommend that produce be procured from growers that have implemented a voluntary Good Agricultural Practices plan or a safety plan that meets the purchasing requirements of the establishment, especially for produce that will be consumed raw. Operations serving a “Highly Susceptible Population” as defined in ARM 37.110.203 (31) should pay special attention to this recommendation.

All other locally produced foods are required to be procured from known/inspected, or licensed wholesale firms. Seed sprouts are considered to be a processed food product and must be procured from licensed/inspected producers.

## **SOME HELPFUL WEBSITES:**

<http://agr.mt.gov/farmersmarkets/default.asp>

<http://www.aeromt.org/food-ag/farmers-market/>

<http://www.extension.iastate.edu/Publications/PM2046.pdf>