

SJ 11 Farmers Markets Study: Key Statutes

ECONOMIC AFFAIRS INTERIM COMMITTEE
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Farmers markets in Montana are governed by MCA [Title 7, chapter 21, part 33 \(Public Markets\)](#); [Title 50, chapter 49, part 2, \(Montana Local Food Choice Act\)](#); and cottage food laws found in [Title 50, chapter 50 \(Retail Food Establishments\)](#). Administrative rules related to cottage foods can be found in the **Administrative Rules of Montana, Title 37, chapter 110, subchapter 5 (Cottage Food Operations)**. Farmers markets and cottage foods are **administered by the MT Department of Public Health and Human Services**.

The **MONTANA LOCAL FOOD CHOICE ACT (MLFCA)** allows for the direct producer-to-consumer sale of food products for home consumption.

COTTAGE FOOD LAWS allow for farmers market sales of unregistered domestic residence foods that are “not potentially hazardous” (see bottom of pg. 2).

KEY MCA STATUTES

7-21-3301. Establishment of markets and market houses. In addition to the powers specifically granted by the laws of the state and other limitations and exceptions contained in law regarding the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county 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 for this. For the establishment and regulation of farmer's markets, the boards of county commissioners are subject to the requirements of Title 50, chapter 50, part 1.

50-49-202. [MLFCA] Definitions. For the purposes of this part, the following definitions apply:

(1) **"Deliver"** means to transfer a product as a result of a transaction between a producer and an informed end consumer. The action may be performed by the producer or the producer's designated agent at a farm, ranch, home, office, traditional community social event, other private property, or another location agreed to between the producer or agent and the informed end consumer.

(2) **"Home consumption"** means: (a) the consumption of food or a food product in a private home; or (b) the consumption of food or a food product from a private home.

(3) **"Homemade"** means food or a food product that is prepared in a private home and that is not licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

(4) **"Informed end consumer"** means a person who is the last person to purchase a product, does not resell the product, and has been informed that the product is not licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

(5) (a) **"Producer"** means a person who harvests, produces, or prepares a product that may be consumed as homemade food or a homemade food product. The term includes a person operating a small dairy. (b) The term does not include the entities listed in 50-49-203(1)(c).

(6) **"Small dairy"** means a place where no more than 5 lactating cows, 10 lactating goats, or 10 lactating sheep are kept for producing milk.

(7) **"Traditional community social event"** means an event at which people gather as part of a community for the benefit of those gathering or for the benefit of the community, including but not limited to a: (a) wedding; (b) funeral; (c) church or religious social; (d) school event; (e) farmer's market; (f) potluck; (g) neighborhood gathering; (h) club meeting or social; or (i) youth or adult outdoor club or sporting event.

(8) **"Transaction"** means an exchange of buying and selling, including the transfer of a product by delivery.

CHAPTER 49. FOOD AND NUTRITION**50-49-203. Exemptions from regulations -- transactions -- information required -- exceptions.**

(1) (a) A state agency or an agency of a political subdivision of the state may not require licensure, permitting, certification, packaging, labeling, testing, sampling, or inspection that pertains to the preparation, serving, use, consumption, delivery, or storage of homemade food or a homemade food product under this part. . . .

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; (d) food identified by the department by rule as not being a potentially hazardous food; and (e) homemade food or a homemade food product pursuant to Title 50, chapter 49.

(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) Except for homemade food or a homemade food product pursuant to Title 50, chapter 49, 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.

CHAPTER 50. RETAIL FOOD ESTABLISHMENTS**50-50-102. Definitions.**

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(3) "Cottage food operation" means a person who provides, manufactures, or packages cottage food products only in a kitchen in a registered area of a domestic residence and only for direct sale to a consumer in this state.

(4) "Cottage food products" means foods that are not potentially hazardous and are processed or packaged in a cottage food operation, including jams, jellies, dried fruit, dry mixes, and baked goods. Other similar foods that are not potentially hazardous may be defined by the department by rule.

...

(16) "Potentially hazardous food" means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.