

Farmers' Market Guidelines



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

Revised May 2015*



State law defines Farmers' Markets as "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" [50-50-102(8)], MCA. 50-50-102(c)(xiv) and (xviii), MCA provides for the exemption from licensure as a Retail Food Establishment:

50-50-102. Definitions.

A Retail Food Establishment is NOT

- 1) a food stand that offers raw agricultural commodities;
- 2) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot tea, or other food not meeting the definition of potentially hazardous, as authorized by the appropriate municipal or county authority;
- 3) a provider of free samples to the public as a marketing activity if the provider is a licensed wholesale food establishment, a cottage food operation, or a seller at a farmer's market.

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

(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.

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

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 farmers' markets?*

Answer: These products are considered potentially hazardous as defined in 50-50-102, MCA. They are required to be processed in a locally approved and licensed facility to sell products anywhere, including at a farmers' market. Retail licensure may 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, cheese breads considered "Baked goods" and exempt from licensure for sales at farmers' markets?*

Answer: None of these products meet the definition of a non-potentially hazardous food. All of these products would be considered to be "Potentially Hazardous Food" or "Time and Temperature Controlled for Safety foods" as defined in state statute, and as such would require local approval and DPHHS licensure to distribute these products at farmers' markets.

3. Question: *I want to sell my processed Poultry/Meats at a farmers' market. What do I need to do?*

Answer: A retail food license is required to distribute these types of products at farmers' markets. It is recommended 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: *May I sell huckleberries at a farmers' market without a license from DPHHS?*

Answer: Yes, as long as they are not processed. They fall under the category of "Raw and unprocessed farm products".