



Department of Public Health and Human Services

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Produce Regulation and Licensing Guidance

PURPOSE

The purpose of this document is to clarify jurisdictional authorities between Montana Department of Agriculture (MDA) and Montana Department of Health and Human Services (DPHHS) regarding unprocessed, processed, and warehoused commercial produce and raw agricultural commodities intended for human consumption.

SUMMARY

Raw produce dealers are required to obtain a produce license from [MDA](#). Produce farms subject to the Produce Safety Rule must be inspected by MDA.

Operators engaged in processing produce are required to obtain a retail or wholesale license through [DPHHS](#), this will include annual inspections of the facility.

Regardless of licensing and inspection requirements, all food products intended for human consumption are regulated under the Montana Food, Drug and Cosmetics Act.

DEFINITIONS

"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. [MCA 80-3-302](#).

"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. [MCA 80-3-302](#).

"Raw agricultural commodity (RAC)" 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. The term does not include an agricultural commodity that has been altered by being cooked, canned, preserved (except drying), combined with other food products, peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures. [MCA 50-50-102](#).

"Retail" means sale of produce to the ultimate consumer. [MCA 50-50-102](#).

"Wholesale" means the sale or provision of food to a retail food establishment or to another person engaged in retail sales who sells or provides the food directly to the consumer. [MCA 50-57-102](#).

Frequently Asked Questions

Rules and Regulations

Q. Who regulates produce in Montana?

- A. *Regulatory jurisdiction depends on whether the produce is RAC or processed. RACs are regulated by MDA; processed produce is regulated by DPHHS.*
In addition, produce growers who introduce food into commerce and provide produce to retailers or store packaged commodities for periods in excess of 24 hours are required to obtain a [wholesale food warehouse license](#) through DPHHS.

Q. What is a raw agricultural commodity (RAC)?

- A. *In accordance with [MCA 50-50-102](#): any food in its raw unaltered state, including fruits, vegetables, raw honey, and grains. The term does not include an agricultural commodity that has been altered by being cooked, canned, preserved (except drying), combined with other food products (i.e. combining different types of lettuce), peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures. A raw agricultural commodity may be in a container, if putting the commodity in a container does not alter the raw state (i.e. placing unprocessed tomatoes into a ball jar).*

Q. What is processed produce?

- A. *Depending on the commercial purpose for the final product, an agricultural commodity is considered processed when:*
- **Retail:** *cooking, canning, preserving (except drying), peeling, dicing, cutting, blanching, combining with other food products, or otherwise subjected to value-adding procedures.*
 - **Wholesale:** *cooking, canning, drying, peeling, dicing, cutting, grinding, blanching, freezing, heating, bottling, brewing, distilling, fermenting, coating, extracting, infusing, pickling, smoking, stuffing, acidifying, combining with other food products, or any other treatment/preservation process.*

Q. During harvest, our produce is cut from the field and washed to remove dirt. Is this considered processing?

- A. *No, produce that has been field cut and washed is not considered processed.*

Q. Do I need a Produce Dealer license from MDA to sell produce?

- A. *Yes, if you wholesale unprocessed produce in Montana or transport produce from another state for sale within Montana.*
Produce dealers who annually sell less than \$25,000 per year in retail produce are required to obtain a fee-exempt produce license from MDA. Produce dealers annually selling \$25,000 or more in produce sales are required to obtain a license through MDA. All produce dealers should use the [Local Raw Produce Safety Checklist](#) to verify their products are grown, harvested, stored, and transported safely.

Q. Does the Produce Safety Rule apply to my operation?

- A. *The Produce Safety Rule is a federal regulation enforced by MDA, in accordance with [21 CFR 112](#). Farms subject to the Produce Safety Rule are inspected by MDA, but certain farms may be exempt. A farm with gross annual produce sales below \$25,000 is exempt however, there may be other criteria to be eligible for an exemption. Learn more about whether your farm is subject to the Produce Safety Rule on the MDA [Produce Safety website](#).*

Q. What is the difference between retail and wholesale practices?

- A. *Retail establishments sell directly to consumers. Wholesale establishments sell to retailers who intend to resell the products.*

Q. How are whole grains and pulse crops regulated?

- A. *[The Seed Dealer Licensing Program](#) protects consumers by ensuring biological, chemical, and physical hazards are controlled through regulation of seed dealers. Entities selling seed in Montana must be licensed and products must be labeled with germination and physical purity information in accordance with valid seed testing results.*

Q. How are wild mushrooms regulated?

- A. *The sale of [wild mushrooms](#) requires a retail and/or wholesale license through DPHHS.*

Reminder: All products intended for human consumption are regulated under the Montana Food, Drug and Cosmetics Act.

Labels

Q. What is required on the product labels?

- A. *Requirements differ depending on the type of produce:*
- **Processed produce:** *at minimum, labels must include statement of identity, quantity, and firm contact information. All requirements for bulk commodities can be found [here](#); all consumer commodities requirements can be found [here](#).*
 - **RAC:** *Farms that sell more than \$25,000 (on a rolling 3-year average, adjusted for inflation) in produce sales annually, must provide their farm name and physical address to the consumer at the point of sale, on a sign, invoice, or label. Please contact the [Produce Safety Program](#) for further information.*

Q. What if I want to label my produce as organic?

- A. *Only USDA National Organic Program certified producers can make organic claims or use the USDA organic seal. Please contact the [Organic Certification Program](#) for further information.*

Q. How do you label products that are not packaged?

- A. *Products that are not easily packaged, including shipping containers, must include all required information on an invoice delivered directly to the recipient.*

Q. How do I find the metric equivalent of the weight or volume of my final product?

- A. Use an online conversion site, or use the following conversion factors:
- | | |
|---------------------------|--|
| 1 Ounce = 28.349 Grams | 1 US Fluid Ounce = 29.5735 Milliliters |
| 1 Pound = 453.59237 Grams | 1 US Gallon = 3.785 Liters |