



The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Cottage Food Law Statutes:

Montana



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Cottage Food Laws: Montana

MT Code § 50-50-102
MT Code § 50-50-116
MT Code § 50-50-117
MT Code § 50-49 Part 2

MT Code § 50-50-102. Definitions.

Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Consumer" means a person who is a member of the public, takes possession of food, and does not offer the food for resale.
- (2) "Contract cook" means a person who specializes in a home food service and prepares food in an individual's domestic residence only for members of that household and house guests.
- (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.
- (5) "Department" means the department of public health and human services provided for in 2-15-2201.
- (6) "Direct sale" means a face-to-face purchase or exchange of the cottage food product between the manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage food product as a gift. The direct sale may not be by consignment or involve shipping or internet sales.
- (7) "Domestic residence" means a single-family house or a unit in a multiunit residential structure, whether rented, leased, or owned by the person in charge of the cottage food operation.
- (8) "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.
- (9) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.



(10) "Local board of health" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer's authorized representative.

(12) "Meat market" means an operation and buildings or structures in connection with the meat market that are used to process, store, or display meat or meat products for retail sale to the public or for human consumption.

(13)

(a) "Mobile food establishment" means a retail food establishment that serves or sells food from a motor vehicle, a nonmotorized cart, a boat, or other movable vehicle that periodically or continuously changes location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance.

(b) The term does not include:

(i) a motor vehicle used solely to transport or deliver food by a motorized carrier regulated by the state or the federal government;

(ii) a cottage food operation transport vehicle; or

(iii) a concession stand designed to operate as a temporary food establishment.

(14) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(15) "Person" means an individual, a partnership, a corporation, an association, a cooperative group, the state or a political subdivision of the state, or other entity.

(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:

(i) cooked;



- (ii) canned;
- (iii) preserved, except for drying;
- (iv) combined with other food products; or
- (v) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(18) "Registered area" means the portion of a domestic residence that has been registered as provided in 50-50-117 and in which food ingredients intended for cottage food products are transported or stored or the domestic residence kitchen where cottage food products are processed, packaged, or stored.

(19) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(20) "Retail" means the provision of food directly to the consumer.

(21)

(a) "Retail food establishment" means an operation, whether mobile or at a temporary or stationary facility or location, that meets one or more of the conditions in subsections (21)(a)(i) and (21)(a)(ii) and that may include a central processing facility that supplies a transportation vehicle or a vending location or satellite feeding location. A retail food establishment:

(i) stores, processes, packages, serves, or vends food directly to the consumer or otherwise provides food for human consumption at a venue that may include:

(A) a restaurant;

(B) a market;

(C) a satellite or catered feeding location;

(D) a catering operation if the catering operation provides food directly to a consumer or to a conveyance used to transport people;

(E) a vending location;

(F) a conveyance used to transport people;

(G) an institution; or

(H) a food bank; and

(ii) relinquishes possession of food to a consumer directly or indirectly by using either a delivery service, as is done for grocery or restaurant orders, or a common carrier that provides deliveries.



(b) The term is not dependent on whether consumption is on or off the premises or whether there is a charge for food served to the public.

(c) The term does not include:

- (i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;
- (ii) slaughterhouses, meat packing plants, or meat depots;
- (iii) growers or harvesters of raw agricultural commodities;
- (iv) a cottage food operation;
- (v) a person that sells or serves only commercially prepackaged foods that are not potentially hazardous;
- (vi) a food stand that offers raw agricultural commodities;
- (vii) a wholesale food establishment, including those wholesale food establishments that are located on the same premises as a retail food establishment;
- (viii) a kitchen in a domestic residence used for preparing food to sell or serve at a function by a nonprofit organization as provided in subsection (21)(c)(xiii);
- (ix) custom meat and game animal processors that receive from an owner the remains of a carcass and process those remains for delivery to the owner for the exclusive use in the owner's household by the owner or members of the owner's household, including the owner's family pets, or of the owner's nonpaying guests or employees. For this exemption to apply, the carcass must be kept separate from other meat food products and parts that are to be prepared for sale.
- (x) private, religious, fraternal, youth, patriotic, or civic organizations that serve or sell food to the public over no more than 4 days in a 12-month period;
- (xi) a private organization that serves food only to its members and their guests;
- (xii) a bed and breakfast, a hotel, a motel, a roominghouse, a guest ranch, an outfitting and guide facility, a boardinghouse, or a tourist home as defined in 50-51-102 that serves food only to registered guests and day visitors;
- (xiii) a nonprofit organization that operates a temporary food establishment under a permit as provided in 50-50-120;



(xiv) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot tea, homemade food or a homemade food product pursuant to Title 50, chapter 49, or other food not meeting the definition of potentially hazardous, as authorized by the appropriate municipal or county authority;

(xv) a day-care center under 52-2-721(1)(a) or day-care providers who are not subject to licensure under 52-2-721(1)(a);

(xvi) a private domestic residence that receives catered or home-delivered food;

(xvii) a contract cook; or

(xviii) 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.

(22) "Temporary food establishment" means a retail food establishment that in a licensing year either:

(a) operates at a fixed location for no more than 21 days in conjunction with a single event or celebration; or

(b) uses a fixed menu and operates within a single county at a recurring event or celebration for no more than 45 days.

(23)

(a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches.

MT Code § 50-50-116. Conditions for Cottage Food Operation Exemption from Licensure and Routine Facility Inspection.

(1) To acquire the status of not being a retail food establishment, a cottage food operation must meet the conditions in this section and shall register with a local health authority as provided in 50-50-117.

(2) A cottage food operation shall:

(a) follow department food standards as provided in rule, including applicable provisions implementing the 2013 United States food and drug administration food code;



(b) package cottage food products and label the cottage food products prior to sale, including on the label, at a minimum, the following:

- (i) the name, address, city, state, and zip code of the cottage food operation;
- (ii) the name of the cottage food product;
- (iii) the ingredients of the cottage food product, in descending order of predominance by weight;
- (iv) the net quantity, weight, count, or volume of the cottage food product;
- (v) allergen labeling as specified by federal and state labeling requirements;
- (vi) if a nutritional claim is made, an appropriate label if required by federal law; and
- (vii) the following statement, printed in at least the equivalent of 11-point font size in a color that provides a clear contrast to the background and is conspicuously placed on the principal label:
"Made in a home kitchen that is not subject to retail food establishment regulations or inspections."

(3) Providing cottage food products by consignment, including at a retail food establishment or through a wholesale establishment, is prohibited.

(4) Processing or packaging of cottage food products must be in the specific registered area of the domestic residence of the person processing or packaging the cottage food products.

(5) A cottage food operation may store cottage food products only in the registered area of the primary domestic residence used to produce the cottage food product or temporarily in a motor vehicle used to transport cottage food products.

(6)

(a) A cottage food operation is subject to local health authority or state enforcement action for violations of applicable department regulations.

(b) Cottage food products may be subject to other state or federal laws or regulations.

(7) A cottage food operation that meets the requirements in this section is not a retail food establishment or a wholesale food establishment and is not subject to licensure or inspection requirements under Title 50, chapter 57, or this chapter.



MT Code § 50-50-117. Registration of Cottage Food Operations – Fee.

- (1) A person in charge of a cottage food operation shall register with the local health authority in the county in which the person's domestic residence is located and pay a registration fee as provided in subsection (6).
- (2) A registrant shall provide:
 - (a) the name of the cottage food operation;
 - (b) the physical address of the domestic residence, as defined in 50-50-102, where the ingredients are manufactured or packaged into cottage food products and stored;
 - (c) a brief description of expected or known food ingredient sources;
 - (d) a complete list of the cottage food products manufactured or packaged; and
 - (e) a copy of each cottage food product label.
- (3) A local health authority may request additional food safety information, if needed, and shall submit the list of additional information to the department. The additional requested information may not restrain trade through extensive registration requirements.
- (4) The local health authority shall submit a copy of the approved registration to the department, which may maintain a listing of cottage food operations.
- (5) If a local health authority refuses to register a cottage food operation, the provisions of 50-50-215 apply, including the requirement for notification of the cottage food operation in writing.
- (6) The person in charge of the cottage food operation shall pay a nonrefundable registration fee to the county in which the cottage food operation is registered. The department shall set the registration fee by rule. The county shall deposit the registration fee with the county treasurer.
- (7) A tribal government may pursue an agreement with the department pursuant to the authority provided in 50-1-106 to coordinate the registration of cottage food operations subject to tribal regulations. The agreement must include an appeals process if the registration is not approved.
- (8) If there is not a cooperative agreement pursuant to subsection (7), a person in charge of a cottage food operation may register with the department.

MT Code § 50-49-201. Short title – purpose.

- (1) This part may be cited as the "Montana Local Food Choice Act".
- (2) The purpose of this part is to allow for the sale and consumption of homemade food and food products and to encourage the expansion of agricultural sales by ranches, farms, and home-based



producers and the accessibility of homemade food and food products to informed end consumers by:

- (a) facilitating the purchase and consumption of fresh and local agricultural products;
- (b) enhancing the agricultural economy; and
- (c) providing Montana citizens with unimpeded access to healthy food from known sources.

MT Code § 50-49-202. 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.

MT Code § 50-49-203. Exemptions from regulations – transactions – information required -exemptions.

(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.

(b) This part does not preclude an agency from providing assistance, consultation, or inspection requested by a producer.

(c) A producer is not:

(i) a retail food establishment, a cottage food operation, or a temporary food establishment, as each term is defined in 50-50-102;

(ii) a wholesale food manufacturing establishment, as defined in 50-57-102; or

(iii) a dairy or a manufactured dairy products plant, as defined in 81-22-101.

(d) A producer is not subject to labeling, licensure, inspection, sanitation, or other requirements or standards of 30-12-301; Title 50, chapters 31 and 50; or Title 81, chapters 2, 9, 21, 22, or 23.

(2) Transactions pursuant to this part:



- (a) must be directly between the producer and the informed end consumer;
- (b) must be only for home consumption or consumption at a traditional community social event;
- (c) must occur only in this state and may not involve interstate commerce; and
- (d) are not subject to regulation by a board of county commissioners pursuant to 7-21-3301.

(3) Except as provided in subsection (7), a producer shall inform an end consumer that any homemade food or homemade food product sold through ranch, farm, or home-based sales pursuant to this part has not been licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

(4) Except for raw, unprocessed fruit and vegetables, homemade food may not be sold or used in a retail food establishment, as defined in 50-50-102, unless the food has been licensed, permitted, certified, packaged, labeled, and inspected as required by law.

(5) Except as provided in subsection (6) and pursuant to this part, a producer may donate homemade food or homemade food products to a traditional community social event.

(6) A producer may not donate milk to a traditional community social event.

(7)

(a) Except for a temporary food establishment subject to 50-50-120, meat or meat products processed at a state-licensed establishment or a federally approved meat establishment, by the producer, or by any third party may not be used in preparation of homemade food that is sold pursuant to a transaction provided for in this part.

(b) Subsection (7)(a) does not apply to a producer who slaughters fewer than 1,000 poultry birds a year except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping requirements of 9 CFR 381.175. The poultry or poultry products may not be adulterated or misbranded.

(8) A small dairy shall:



- (a) sample, test, or retest every 6 months for standard plate count, coliform count, and somatic cell count of milk or cream sold as homemade food pursuant to this part;
- (b) sample, test, or retest every year for brucellosis for every lactating cow, lactating goat, or lactating sheep that is part of the small dairy; and
- (c) maintain records for 2 years of all previous samples, tests, or retests, which must be provided to the department of livestock if the department suspects the small dairy is causing a foodborne illness.

