

**MONTANA DEPARTMENT OF HEALTH & HUMAN SERVICES**

**FOOD & CONSUMER SAFETY SECTION**

**COGSWELL BUILDING**

**HELENA, MONTANA 59620**

**(406) 444-2837**

**Statute for: Retail Food, Temporary Event**  
**Permitting and Cottage Foods**

**Montana Code Annotated**

**50-50-101-403**



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**Part 1. General Provisions**

50-50-101. Purpose of regulation. Regulation required under this chapter is intended to prevent and eliminate conditions and practices that endanger public health.

**History:** En. Sec. 1, Ch. 17, L. 1967; R.C.M. 1947, 27-611; amd. Sec. 8, Ch. 239, L. 2015.

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:

(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.

(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, 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.

**History:** En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971; amd. Sec. 1, Ch. 349, L. 1974; R.C.M. 1947, 27-612; amd. Sec. 1, Ch. 199, L. 1987; amd. Sec. 1, Ch. 732, L. 1991; amd. Sec. 1, Ch. 315, L. 1995; amd. Sec. 136, Ch. 418, L. 1995; amd. Sec. 315, Ch. 546, L. 1995; amd. Sec. 1, Ch. 412, L. 1997; amd. Sec. 1, Ch. 428, L. 2001; amd. Sec. 28, Ch. 474, L. 2003; amd. Sec. 1, Ch. 528, L. 2003; amd. Sec. 1, Ch. 357, L. 2011; amd. Sec. 1, Ch. 302, L. 2013; amd. Sec. 1, Ch. 185, L. 2015; amd. Sec. 9, Ch. 239, L. 2015.

50-50-103. Department authorized to adopt rules -- advisory council. (1) To protect public health, the department may adopt rules relating to:

(a) the operation of retail food establishments and cottage food operations. The rules may address sanitation standards related to food, personnel, food equipment and utensils, and facilities and may

address other controls, construction and fixtures, and housekeeping.

(b) licensure of retail food establishments; and

(c) registration for cottage food operations, including the fees to be charged for registration. The department shall specify in rule any fees for farmer's markets and cottage food operations that may be imposed by a regulatory authority.

(2) The department may adopt rules regarding permitting fees, statewide standards, plans to be provided by mobile food establishments as part of a mobile food establishment's licensing requirements, and an appeals process at the state and local levels.

(3) The department and local boards of health may not adopt rules or ordinances, respectively, that prohibit the sale of cottage food products.

(4) (a) The department shall establish a food safety task force or advisory council to assist in the development of administrative rules or to review any proposed legislation related to the provisions of this chapter.

(b) The task force or advisory council must be composed of equal numbers of representatives of the departments of public health and human services, agriculture, and livestock and of registered sanitarians from local regulatory authorities and no more than six members of the public. Each department head shall appoint two of the public members and confer with other department heads to provide geographic representation. Each public member must be an owner or employee of a licensed retail food establishment or a representative of the food industry.

(c) The department shall present administrative rules and any legislation to be proposed by the department to the task force or advisory council prior to its proposal or introduction. When the department learns of proposed legislation related to the provisions of this chapter that has not been proposed by the department, the department shall provide copies of that legislation for review by the task force or advisory council and shall provide to the legislature any comments of the task force or advisory council.

**History:** En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part); amd. Sec. 2, Ch. 315, L. 1995; amd. Sec. 2, Ch. 528, L. 2003; amd. Sec. 1, Ch. 482, L. 2009; amd. Sec. 1, Ch. 208, L. 2011; amd. Sec. 10, Ch. 239, L. 2015.

50-50-104. Cooperative agreements authorized. The department may enter into cooperative agreements with other state agencies and political subdivisions of the state to carry out the provisions of this chapter.

**History:** En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).

50-50-105. Diseased person not to handle food. A person who has a communicable disease may not work in any retail food establishment or in the handling or processing of food served to the public until a local health officer has determined that the person is free of the infectious agent or unlikely to transmit the infectious agent because of the nature of the person's work.



**History:** En. Sec. 9, Ch. 17, L. 1967; R.C.M. 1947, 27-619; amd. Sec. 11, Ch. 239, L. 2015.

50-50-106. Injunctions. The regulatory authority may bring an action for an injunction against any continued violation of this chapter or rule adopted by the department under this chapter.

**History:** En. 27-615.2 by Sec. 3, Ch. 508, L. 1975; R.C.M. 1947, 27-615.2; amd. Sec. 29, Ch. 474, L. 2003.

50-50-107. County attorney to prosecute violations. When the regulatory authority furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

**History:** En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(5); amd. Sec. 30, Ch. 474, L. 2003.

50-50-108. Violation -- misdemeanor. A person who purposefully or knowingly violates provisions of this chapter or rules adopted by the department under this chapter is guilty of a misdemeanor. Upon conviction, the person shall be:

- (1) fined not less than \$50 or more than \$100 for the first offense;
- (2) fined not less than \$75 or more than \$200 for the second offense;
- (3) fined not less than \$200 and imprisoned in the county jail for not more than 90 days for the third offense and subsequent offenses.

**History:** En. Sec. 15, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-625; amd. Sec. 31, Ch. 474, L. 2003.

50-50-109. Civil penalties -- injunctions not barred. (1) A retail food establishment or a cottage food operation that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed \$500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

**History:** En. Sec. 7, Ch. 732, L. 1991; amd. Sec. 12, Ch. 239, L. 2015.

50-50-110. Costs and expenses -- recovery by department or county. In a civil action initiated by the regulatory authority under this chapter, the court may, by petition of the regulatory authority, order a

retail food establishment or a cottage food operation that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter in the case of a willful violation. These costs are limited to the direct costs of investigations and other expenses.

**History:** En. Sec. 8, Ch. 732, L. 1991; amd. Sec. 32, Ch. 474, L. 2003; amd. Sec. 13, Ch. 239, L. 2015

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.

**History:** En. Sec. 1, Ch. 239, L. 2015.

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.

**History:** En. Sec. 2, Ch. 239, L. 2015.

50-50-120. Temporary food establishment requirements. (1) Whether for-profit or operated by a nonprofit organization, a temporary food establishment:

- (a) must be operated in compliance with applicable department rules; and
- (b) shall obtain a permit from the local health regulatory authority on a form approved by the state.

(2) (a) A for-profit temporary food establishment shall pay a required permit fee to the local regulatory authority.

(b) A temporary food establishment operated by a nonprofit organization:

- (i) is exempt from paying a permit fee; and
- (ii) may sell or serve foods that meet the definition of cottage food products but is not required to register as a cottage food operation.

**History:** En. Sec. 3, Ch. 239, L. 2015.

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](#).

**History:** En. Sec. 4, Ch. 239, L. 2015.

## **Part 2. Licensing**

50-50-201. License or permit required. (1) (a) Except as provided in [50-50-202](#) and subsection (1)(b)(i) of this section, a person operating a retail food establishment shall procure an annual license from the department.

(b) (i) A temporary food establishment described in [50-50-120](#)(2)(a) shall obtain a permit and pay a permit fee to the local regulatory authority in the county where the temporary food establishment is operated.

(ii) For a temporary food establishment described under [50-50-102](#)(22)(b), each time a temporary food establishment alters its menu substantially by food type and means of production, a separate permit must be obtained and a separate permit fee paid.

(2) A separate license is required for each retail food establishment, but if more than one type of retail food establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one retail food establishment license is required for a person owning and operating one or

more vending machines.

(4) (a) Except as provided in subsection (4)(b), a retail food establishment license issued by the department is not valid unless signed in accordance with [50-50-214](#).

(b) A temporary food establishment permit must be signed by the local health officer or the health officer's designee to be valid.

(5) A tribal government may pursue an agreement with the department pursuant to the authority provided in [50-1-106](#) to coordinate the licensing of a mobile retail food establishment subject to tribal regulations. The agreement must include an appeals process if the license is not validated.

(6) If there is not a cooperative agreement pursuant to subsection (5), the department may issue a license to a person operating a mobile retail food establishment.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(1) thru (3); amd. Sec. 2, Ch. 200, L. 1979; amd. Sec. 2, Ch. 199, L. 1987; amd. Sec. 12, Ch. 366, L. 1997; amd. Sec. 14, Ch. 239, L. 2015.

50-50-202. Exemptions from license requirement. (1) A retail food establishment owned or operated by the state or a political subdivision of the state, if that political subdivision employs a full-time sanitarian, is exempt from licensure under this chapter but shall comply with the requirements of this chapter and rules adopted by the department under this chapter. A retail food establishment under this subsection may be operated by but is not limited to a county jail, a local government-owned health care facility, a school, a state prison, or a state university.

(2) A person who exchanges foods in a nonmonetary transaction is exempt from permitting, licensure, and registration.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(6); amd. Sec. 3, Ch. 199, L. 1987; amd. Sec. 3, Ch. 315, L. 1995; amd. Sec. 3, Ch. 528, L. 2003; amd. Sec. 2, Ch. 208, L. 2011; amd. Sec. 1, Ch. 89, L. 2013; amd. Sec. 1, Ch. 94, L. 2013; amd. Sec. 2, Ch. 185, L. 2015; amd. Sec. 15, Ch. 239, L. 2015.

50-50-203. Application for license or permit. (1) Except as provided in subsection (2), an application for a retail food establishment license must be:

(a) made to the department on forms and contain information required by the department; or

(b) filed using an application for a license that is in compliance with rules established by the board of review established in [30-16-302](#).

(2) An application for a temporary food establishment permit must be made to the local regulatory authority on a state-approved form. If a local board of review exists, the local board of review shall work with the state to provide a permit application under this subsection similar to the state-approved form, and the temporary food establishment may use the local board of review permit application.

History: En. Sec. 4, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(1); amd. Sec. 13, Ch. 366, L. 1997; amd. Sec. 16, Ch. 239, L. 2015.

50-50-204. Right to license. Licenses shall be granted as a matter of right unless grounds for denial or cancellation exist.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(7).

50-50-205. License fee -- late fee -- preemption of local authority -- exception. (1) (a) Except as provided in subsection (6) or (7), the department shall collect for each license issued or renewed a fee as provided in subsection (1)(b). Of the fees collected under this section, 90% must be deposited into the local board inspection fund account created in [50-2-108](#), 5% into the general fund, and 5% into the account provided for in [50-50-216](#).

(b) The department shall set the fees by rule according to retail food establishment complexity.

(2) (a) In addition to the license fee required under subsection (1), the department shall collect a late fee of \$25 from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's current license and who operates a retail food establishment governed by this part in the next licensing year.

(b) The late fee must be deposited in the account provided for in [50-50-216](#).

(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two inspections of the retail food establishment.

(4) The fees in subsections (1) and (2) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in [50-2-108](#).

(5) The department shall collect a fee as provided in rule for each mobile food establishment plan submitted to the department for review.

(6) (a) A local health authority shall collect a fee, as provided in subsection (6)(b), for a permit issued for a temporary food establishment required to register under [50-50-120](#).

(b) A fee charged to a temporary food establishment may not exceed the amount charged to a retail food establishment as provided in subsection (1).

(c) The local regulatory authority shall use the revenue from the fee collected under this subsection (6) to defray costs associated with issuing a temporary food establishment permit and the costs of inspections required under this chapter.

(7) A fee may not be charged to a person who sells or serves whole shell eggs at a farmer's market if the whole shell eggs are clean, free of cracks, and stored in clean cartons that are labeled in accordance with department rules and kept at a temperature established by the department by rule.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(2); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 336, L. 1983; amd. Sec. 1, Ch. 247, L.

1989; amd. Sec. 2, Ch. 732, L. 1991; amd. Sec. 14, Ch. 366, L. 1997; amd. Secs. 4, 5, Ch. 528, L. 2003; amd. Sec. 2, Ch. 482, L. 2009; amd. Sec. 17, Ch. 239, L. 2015.

50-50-206. License not transferable. Licenses are not transferable or applicable to any premises other than that for which the license was issued.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(5).

50-50-207. Expiration date of license. (1) Except as provided in subsection (2), licenses expire on December 31 following the date of issue unless canceled for cause.

(2) License renewals provided for in [16-11-122](#), [30-12-203](#)(5)(a), [50-50-201](#), [80-7-106](#), and [82-15-105](#) expire on the anniversary date established by rule by the board of review established in [30-16-302](#).

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(4); amd. Sec. 15, Ch. 366, L. 1997; amd. Sec. 3, Ch. 34, L. 2005.

50-50-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the licensed retail food establishments, excluding temporary food establishments, in each jurisdiction. The local board of health also shall submit to the department a list of cottage food operations that have registered as provided in [50-50-117](#).

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part); amd. Sec. 18, Ch. 239, L. 2015.

50-50-209. Cancellation of license. (1) Except as provided in subsection (2), the department may cancel the license of a retail food establishment if the department finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

(2) A local regulatory authority may cancel a temporary food establishment permit if the local regulatory authority finds after proper investigation that the permitholder has:

- (a) violated the provisions of this chapter or a rule promulgated under this chapter; and
- (b) failed or refused to remedy or correct a violation that was the subject of the investigation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part); amd. Sec. 19, Ch. 239, L. 2015.

50-50-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).

50-50-211. Notice and hearing required. (1) The department may not deny or cancel the license of a retail food establishment without delivering to the applicant or licensee a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. To request a hearing, the licensee shall make a written request to the department within 10 days after notice of the grounds or charges has been received.

(2) A local regulatory authority may not deny or cancel a temporary food establishment permit without delivering to the applicant or permitholder a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the local board of health to show cause, if any, why the permit should not be denied or canceled. To request a hearing, the permitholder shall make a written request to the local board of health within 10 days after notice of the grounds or charges has been received. This subsection does not prohibit the cancellation of a permit in the event of an immediate threat to the public health. The permitholder retains the right of appeal.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(2); amd. Sec. 20, Ch. 239, L. 2015.

50-50-212. Cancellation of license or permit for multiple-type establishment. When a multiple-type retail food establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion as determined by the department. A multiple-type retail food establishment, including a mobile food establishment, includes an establishment authorized by [50-50-201](#)(2).

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(3); amd. Sec. 21, Ch. 239, L. 2015.

50-50-213. Return of license or permit for alteration or destruction. On cancellation of the license of a retail food establishment or the right to operate one or more of the multiple-type retail food establishments under the same license, the license certificate must be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.



History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(4); amd. Sec. 22, Ch. 239, L. 2015.

50-50-214. Notification of and validation by local health officer. (1) (a) A retail food establishment license issued by the department under this chapter is not valid until signed by the local health officer in the county where the retail food establishment is located or until the license is otherwise validated by the local health officer and is in accordance with rules established by the board of review established in [30-16-302](#).

(b) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a retail food establishment license, make a final decision on whether the retail food establishment license will be validated.

(c) Failure of the local health officer to validate the retail food establishment license within 15 days after its receipt is a refusal.

(2) A temporary food establishment permit issued by the local regulatory authority under this chapter must be signed and validated by the local health officer in the county where the temporary food establishment is to operate. If a local board of review exists, the local health officer may validate the permit in accordance with regulations established by the local board of review.

History: En. Sec. 5, Ch. 200, L. 1979; amd. Sec. 16, Ch. 366, L. 1997; amd. Sec. 23, Ch. 239, L. 2015.

50-50-215. Refusal by local health officer -- appeal to board. (1) (a) The local health officer may refuse to validate a license issued under this chapter only upon a finding that the requirements of this chapter and any rules implementing this chapter are not satisfied. If the local health officer refuses to validate the license, the officer shall notify the applicant and the department in writing stating the officer's reasons.

(b) If a local health officer does not approve a registration of a cottage food operator, as provided in [50-50-117](#), or a temporary food establishment permit, as provided in [50-50-120](#), the officer shall notify the applicant in writing stating the officer's reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer as provided in subsection (1) may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979; amd. Sec. 1852, Ch. 56, L. 2009; amd. Sec. 24, Ch. 239, L. 2015.

50-50-216. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

History: En. Sec. 3, Ch. 732, L. 1991.

50-50-217. Water hauler requirements. As a requirement for licensure, a water hauler may obtain potable water only from an approved public water supply system, as defined in [75-6-102](#), or from sources approved and adopted by the department by rule.

History: En. Sec. 2, Ch. 428, L. 2001.

### Part 3. Inspections

50-50-301. Health officers and sanitarians to make investigations and inspections -- training requirements. (1) State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of retail food establishments once a year and make reports to the department as required under rules adopted by the department. An inspection may be conducted more often than once a year.

(2) A person conducting an inspection must be certified and have completed a food safety training program, such as the program administered by the national restaurant association educational foundation or its equivalent.

(3) (a) A cottage food operation is not subject to inspection under this section unless the state or local health officer is investigating a complaint based on an illness or an outbreak suspected to be directly related to cottage food products.

(b) A cottage food operation may request an inspection and pay the appropriate costs for that inspection on a voluntary basis.

**History:** En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(1); amd. Sec. 4, Ch. 732, L. 1991; amd. Sec. 6, Ch. 528, L. 2003; amd. Sec. 25, Ch. 239, L. 2015.

50-50-302. Health officers and sanitarians to have free access. (1) State and local health officers, sanitarians-in-training, and sanitarians must be provided free access to retail food establishments licensed or permitted under this chapter at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

(2) For the purpose of conducting investigations regarding complaints, illness, or outbreaks, state and local health officers, sanitarians-in-training, and sanitarians must be provided free access at all

reasonable hours to cottage food operations if a complaint, illness, or outbreak is suspected or is directly related to the cottage food operation's cottage food products.

**History:** En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(2); amd. Sec. 5, Ch. 732, L. 1991; amd. Sec. 26, Ch. 239, L. 2015.

50-50-303. Licensee or registrant to furnish food samples. A licensee or a registrant under Title 50, chapter 50, part 2, shall furnish food samples for analysis as required by rules adopted by the department.

**History:** En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(3); amd. Sec. 27, Ch. 239, L. 2015.

50-50-304. Discovery of food capable of causing food-borne illness. If a state or local health officer, sanitarian, or other authorized person finds food that is capable of causing food-borne illness, that person shall issue a report in writing recommending that the food be withheld from sale to the public. A duplicate copy of the report, properly authenticated, is admissible in evidence in any action or proceeding where the condition of the food at the time of the inspection is material.

**History:** En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(4); amd. Sec. 1853, Ch. 56, L. 2009.

50-50-305. Department to pay local board for inspections and enforcement. (1) Subject to the provisions of subsection (2), before June 30 of each year, the department shall pay to a local board of health, as established under [50-2-104](#), [50-2-106](#), or [50-2-107](#), an amount from the local board inspection fund account created in [50-2-108](#) that must be used only for the purpose of inspecting retail food establishments, including mobile food establishments, licensed under this chapter and enforcing the provisions of this chapter.

(2) (a) The provisions of subsection (1) apply only if there is a functioning local board of health and the local board of health, local health officers, sanitarians-in-training, and registered sanitarians meet the requirements listed in subsection (2)(b).

(b) To be eligible under subsection (1), the entities listed in subsection (2)(a) shall:

(i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted pursuant to this chapter; and

(ii) meet minimum program performance standards as established under rules adopted by the department.

(3) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would

be made available for the same purpose.

(4) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted under it.

**History:** En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part); amd. Sec. 5, Ch. 336, L. 1983; amd. Sec. 6, Ch. 732, L. 1991; amd. Sec. 28, Ch. 239, L. 2015.

#### [Part 4. Frozen Food Lockers](#)

50-50-401. Tagging or declaration requirements for stored meat. (1) The owner or operator of an establishment, as defined in this chapter, shall not receive the carcass of a game animal, game bird, or any quarter, half, or whole carcass of beef or veal unless:

(a) it is properly stamped or tagged; or

(b) a written declaration is filed by the owner stating how it was obtained, date placed in the locker, and weight and type of meat.

(2) A declaration made under subsection (1)(b) of this section shall be retained for 1 year and shall be open to inspection by employees of the department.

**History:** En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

50-50-402. Plant owner not responsible for violation of game laws. A person who owns or operates a frozen food plant that offers individual compartments to the public is not responsible for violation of game laws by persons who rent locker space from the owner or operator.

**History:** En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part); amd. Sec. 1854, Ch. 56, L. 2009.

50-50-403. Liability of frozen food plant operators restricted. The liability for loss of food by the owner or operator of a frozen food plant that offers individual compartments to the public is limited to negligence in operation or negligence of the owner's or operator's employees.

**History:** En. Sec. 12, Ch. 17, L. 1967; R.C.M. 1947, 27-622; amd. Sec. 1855, Ch. 56, L. 2009.