



# Alternative Energy Resources Organization

Linking People, Sustainable Agriculture, and Energy Solutions since 1974

## **Growing Food Businesses Online Forum Instructions**

### **What is the Growing Food Businesses Online Forum?**

The Growing Food Businesses: Opportunities Under Montana's New Food Law online forum is a **24/7 peer learning network** designed to help entrepreneurs and professionals “work the bugs out” as the provisions of Montana’s new food modernization laws are implemented, learn from each other’s experiences, and standardize food safety practices statewide. These online conversations are one means to ensure that Montana’s food laws are accessible as a value-added income source for Montana producers and food businesses.

### **How can I use the Growing Food Businesses Online Forum?**

You can view the forum and see what conversations other participants are having. You can create an account and receive updates on particular topics AND post/answer questions directly to the forum yourself. Please go to this webpage for more information on how to sign up for the forum:  
<http://mtfoodeconomy.wpengine.com/forums/topic/sign-up-to-this-forum/>.

### **Why would I use the Growing Food Businesses Online Forum?**

**Shortcut!** The online forum is accessible 24/7 and provides a quick way to find answers to questions you may have about your food business.

**Resources!** The forum has links to resources with information about Montana food laws from AERO and state partners. It is also administered by AERO staff who will oversee the forum and make sure site users are connected to the resources they need; AERO also moderates the forum to ensure users are receiving accurate information.

**Connections!** The online forum connects you to other entrepreneurs with similar questions and a variety of experiences implementing Montana’s food laws. It is frequented by professionals in food safety regulations and economic development, as well as those supporting food businesses in Montana.

### **Who can use it?**

**Anyone!** The Growing Food Businesses Online Forum is free and open to the public. Anyone can sign up to engage, including workshop participants, but also those who didn’t come to the workshop. Registered users can also recruit others to use the site, and continuing expanding the network.

*AERO is a grassroots nonprofit organization dedicated to solutions that promote resource conservation and local economic vitality. AERO nurtures individual and community self-reliance through programs that support sustainable agriculture, renewable energy, and environmental quality.*



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## How do I sign up for the Growing Food Businesses Online Forum?

Steps	Instructions	Materials needed
<b>Step 1. View Forum</b>	Access website	<a href="http://mtfoodeconomy.wpengine.com/forums/">http://mtfoodeconomy.wpengine.com/forums/</a>
	View Forum	<a href="http://mtfoodeconomy.wpengine.com/forums/forum/growing-food-businesses/">http://mtfoodeconomy.wpengine.com/forums/forum/growing-food-businesses/</a>
	View a topic	
<b>Step 2. Sign up to participate</b>	Go to website	<a href="http://mtfoodeconomy.wpengine.com/get-involved/">http://mtfoodeconomy.wpengine.com/get-involved/</a>
	Enter information to get signed up	
	After receiving confirmation email, click link to activate	
	Receive email with username and password info	
	Click "log in"	
	Click "Forums" and select "Growing Food Businesses: Opportunities Under Montana's New Food Law"	
	Click on your topic of choice and read, or post to respond	
<b>Step 3. Post a topic or question</b>	Sign in to website	<a href="http://mtfoodeconomy.wpengine.com/forums/forum/growing-food-businesses/">http://mtfoodeconomy.wpengine.com/forums/forum/growing-food-businesses/</a>
	Write and post your topic/question	can click on "notify me of follow-up replies via email"
<b>Step 4. Post a reply</b>	Click on desired topic	
	Post reply in text box	can click on "notify me of follow-up replies via email"

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# **New Laws for Retail Food Establishments**

## **Introduction to Workshop Scope**

MCA 50-50-102

Definitions

A **“retail food establishment”** sells food directly to the consumer.

Examples of retail venues:

- Restaurant
- Grocery market
- Satellite feeding location
- Catering operation
- Mobile food truck or cart

A **“retail food establishment”** does NOT include:

1. Growers or harvesters of raw agricultural commodities
2. A food stand that offers raw agricultural commodities
3. Cottage food operations
4. Milk producers, facilities or plants
5. Meat facilities or plants, or meat depots

A “**retail food establishment**” also does NOT include:

A **provider of free samples to the public as a marketing activity**—IF the provider is a:

- licensed wholesale food establishment
- cottage food operation
- seller at a farmer's market

## **"Cottage food operation" means:**

A person who provides, manufactures, or packages cottage food products...

*Only* in a domestic kitchen, and

*Only* for direct sale to a **"consumer"** in this state.

**"Consumer"** means:

A person who is a member of the public, takes possession of food, and does not offer the food for resale.



**"Cottage food products" means:**

1. Foods that are not potentially hazardous
2. Are processed or packaged in a cottage food operation

**"Potentially hazardous food" means:**

Foods that require: ***time and temperature control*** for safety—to limit toxin formation or the growth of pathogens.

Examples include: low acid vegetables, meat, cream, eggs.

**Foods *not* potentially hazardous & eligible for sale at a farmer's market include:**

- whole shell eggs;
- hot coffee or hot tea
- raw agricultural commodities; and
- foods in DPHHS rule

Examples include: jams, jellies, dried fruit, dry mixes, baked goods.

**"Raw agricultural commodity"** means:

Any food in its raw, unaltered state, including fruits, vegetables, raw honey, and grains.

It does *not* include an agricultural commodity 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.

## **Mobile and Temporary food service:**

**Regulated as retail food establishments, but now with clearer and more generous requirements.**

# Resources

## **Montana Department of Agriculture**

302 N Roberts, Helena, MT 59601  
(406) 444-3144

### **Food and Agriculture Development Centers**

**Steph Hystad**

Phone: (406) 444-5425

E-mail: [shystad@mt.gov](mailto:shystad@mt.gov)

<http://agr.mt.gov/agr/Business/FADC/>

### **Organic Certification Program**

Georgana Webster, Manager

Phone: (406) 444-7804

E-mail: [agrorganic@mt.gov](mailto:agrorganic@mt.gov)

Fax: (406) 444-9466

<http://agr.mt.gov/agr/Programs/Organic/>

### **Produce Program**

**Larry Krum**

Seed Potato/Produce Program Coordinator

Phone: (406) 444-3730

E-mail: [lkrum@mt.gov](mailto:lkrum@mt.gov)

<http://agr.mt.gov/agr/Producer/Produce/>

### **Good Agriculture Practices (GAP) program**

**Larry Krum**

GAP Program Coordinator, GAP auditor

Phone: (406) 444-3730

E-mail: [lkrum@mt.gov](mailto:lkrum@mt.gov)

## **Montana Department of Livestock**

301 N Roberts, Helena, MT 59601

### **Meat and Poultry Inspection Bureau**

**Gary Hamel**

Email: [ghamel@mt.gov](mailto:ghamel@mt.gov)

Phone: (406) 444-5202

<http://liv.mt.gov/mi/default.mcp>

## **Milk and Egg Bureau**

**Dan Turcotte**

Email: [milkegg@mt.gov](mailto:milkegg@mt.gov)

Phone: (406) 444-9761

## **Food Safety Modernization Act**

**FDA**

<http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247546.htm>

**National Sustainable Agriculture Coalition (NSAC)**

<http://sustainableagriculture.net/blog/new-food-safety-rules/>

## **Private resources**

### **Montana Organic Association**

**Mona Rae Tuhy**, Board Secretary

Phone: (406) 253-8041

Email: [thunderglory@centurytel.net](mailto:thunderglory@centurytel.net)

<http://www.montanaorganicassociation.org>

### **GAP education**

**Jonda Crosby**, GAP trainer

Phone: (406) 227-9161

Email: [jcrosby@mt.net](mailto:jcrosby@mt.net)

# **New opportunities for MT food entrepreneurs**

## **2015 Montana Food Policy Modernization Law**

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### **Opportunity 1. Cottage food is a real business option!**

The state's new cottage food law allows sales at any direct venue in Montana—not just at farmers markets. And there is no dollar limit on sales.

The new law includes more food products that may be made by a cottage food operation than were previously allowed at farmers markets, though all products must still be non-potentially hazardous. The Montana Department of Public Health and Human Services-Food and Consumer Safety Section is authorized to add to the list of allowed products through rule-making.

Folks that previously marketed baked goods or preserves at farmers markets will face no new regulations or fees as long as they continue to market only at the farmers market.

### **Opportunity 2. Food manufacturers, cottage food operations, and farmers may offer free food samples as part of their marketing activities without a retail food license.**

Research shows that farmers who offer free-sample tastes of their produce at farmers markets sell significantly more than those who don't.

### **Opportunity 3. More types of farm products now fall under the definition of “raw agricultural commodity,” which may be sold without a food license.**

Honey is now included in the definition of “raw agricultural commodity,” and may be sold at a farmers market. It may also be extracted by the beekeeper or a cottage food operation without a food establishment license.

### **Opportunity 4. A revised definition of “retail food establishment” allows folks to sell or serve whole shell eggs, hot coffee, hot tea, and other foods that are not defined as potentially hazardous, at a farmer's market or a food stand—without a license.**

### **Opportunity 5. The new law clarifies that mobile food establishments need only a single state license, with no additional license or fees required when moving between counties.**



**Opportunity 6. The new law allows temporary food service operations to set up at recurring events, such as farmers markets or Alive at Five, and have the recurring event licensed similarly to a single event.**

The new law also allows temporary food service operations to stay more days at recurring events (45) and more days at a single event (21), and have licensing conducted at the county level for a quicker turn-around.

**Opportunity 7. Regulated food businesses can now expect their county health authority to follow due process in the event of an adverse regulatory judgment.**

DPHHS and local health departments have committed to working together more closely to improve regulatory actions related to food business licensing enforcement actions.

**Opportunity 8. The new law, along with the state's recent adoption of the model federal food code, sets the stage for a new and better business climate for Montana's retail food sector.**

The changes to Montana code and rule bring new clarity and predictability to Montana's retail food entrepreneurs and regulators, reducing paper work and licensing for Montana's mobile retail food establishments, and reducing costs for temporary events by allowing for broader time frames of operation. This law represents a fresh start.

## ***Summary of Changes Made by Montana's 2015 Food Law MCA Title 50, Chapter 50***

**Background:** The 2013 Montana Legislature mandated (thru HB630) the Departments of Public Health and Human Services, Agriculture, and Livestock to study Montanan's food laws and rules and recommend ways to make them clearer, and to make it easier for Montana entrepreneurs bring new products to market and determine safe and practical ways to implement a cottage food industry. Following this study, the 2015 Montana Legislature passed HB 478 that implements the majority of the recommended changes. The changes have been incorporated into the Montana Code Annotated, specifically in **MCA Title 50, Chapter 50. Retail Food Establishments**

Key items addressed by the new law, include:

- Implementing safety standards and oversight for cottage food operations and various retail food establishments;
- Providing conditions and registration requirements for cottage food operations; clarifying terms and state regulation of mobile food establishments;
- Providing for local boards of health to oversee and issue permits for temporary food establishments;
- Clarifying regulation of a cottage food operation in relation to certain products; and
- Extending rule-making authority for the department of public health and human services.

**The following describes the specific changes in the state's food laws.**

**New Section 1:** Provides conditions for registration of cottage food operations or the production of items prepared in a home-based setting for direct sale to consumers. Minimal requirements for cottage food operations are outlined including: labeling requirements, how food should be processed and stored, and compliance with related rules. Lastly it also prohibits the sale of cottage foods in retail food and wholesale establishments, as the intent is to allow direct sales to consumers.

**Reason** – The creation of a cottage food registration allows producers of non-potentially hazardous foods to sell food on a relatively small scale without significant upfront investment or licensing. Such operations are common in many states and allow small producers to sell a safe product whose origins and ingredients are clear directly to the consumer.

**New Section 2:** This section describes how a cottage food operation registers with a local health department. Specifically it discusses registration fees and what to provide to the local health authority to become registered. It also provides a procedure that allows due process for the applicant if their operation is denied registration by the health department.

**Reason** – This section is necessary so that the requirements for a cottage food operation are clear for the operator, the consumer, and the local health authority.

**New Section 3:** This section specifies that a temporary food establishment (small operation that operates for a limited number of days at events such as fairs or concerts) must obtain an operating permit from the local health authority and not the state as presently required. Fees are charged for a profit-based operation while a non-profit may operate without paying a permit fee. Both must operate in compliance with the applicable department rules.

**Reason** – This section makes it clear that although not for profits are exempt from paying a fee they still must follow the food safety rules that are in place in Montana. Shifting this to local health authorities allows for timelier licensing for short-term events.

**New Section 4:** This section clarifies many of the requirements for farmers markets and food stands. It also specifies that a person operating only at farmers markets and selling non-potentially hazardous food is exempt from cottage food operation registration and retail food licensure. This section maintains all of the previously inserted exemptions at farmers markets but adds wording to allow the department to approve future non-potentially hazardous food that may be proposed for sale by an operator.

**Reason** – This section is important and allows individuals that currently sell only at farmers markets to avoid a registration fee, maintaining the current system.

**Section 5:** Amends section 50-31-103 by making minor edits to improve existing definitions and to clarify several terms by referring to definitions in 50-50-102 for consistency.

**Reason** – Consistent definitions are important to allow operators and regulators to communicate clearly regarding products and requirements.

**Section 6:** Amends section 50-46-309, MCA to clarify that marijuana infused products must meet local board of health requirements for retail food establishments.

**Reason** – Current MCA requires marijuana infused product providers to follow local retail food ordinances and register with the department. This clearly states that those requirements to apply to cottage food operators as well.

**Section 7:** Amends section 50-50-101, MCA, to clarify the purpose of chapter 50, the new wording is “Regulation required under this chapter is intended to prevent and eliminate conditions and practices that endanger public health.”

**Reason** – Minor revision intended to clarify intent making the MCA easier to read and understand.

**Section 8:** Amends section 50-50-102, MCA, definitions to clarify several issues identified during the study bill effort. In addition to a few basic edits, definitions such as “Cottage food operation” and “Cottage food products” have been added so that the requirements for this new industry can be understood. Other significant changes include:

“**Contract Cook**” is added to clarify exemptions that occur later in the code.

**“Mobile food establishment”** definition has been added to clarify the requirements for these types of licenses and that the state license is valid in any county in Montana.

**“Raw agricultural commodity”** has been changed to include raw honey while also broadening the definition so that as long as the product has not been altered it will be easy to bring an agricultural commodity to market.

**“Retail Food Establishment”** is clarified to detail what a retail food establishment is and isn’t. This change pulls together all of the exemptions and inclusions and puts them in one definition.

**“Temporary food”** establishment was expanded to allow operation at a recurring event, such as Farmer’s Markets, as well as one-time events without incurring the cost of additional licenses.

Reason – Many of the exemptions to retail licensing listed in statute involve non-potentially hazardous foods. By striking the individual exemptions and using the term non-potentially hazardous it broadens the scope of what can be exempted, allowing a greater variety of products generally considered to be safe to be marketed.

Definitions related to cottage food were necessary because there are proposed requirements for them in other sections of the MCA so it is important that everyone knows what is being discussed. Changes made regarding mobile food establishments are part of a broader change in the MCA that would bring the plan review for mobiles to the state while keeping the license validation and inspection at the counties. This is intended to create more consistent interpretations of what can and can’t be licensed as a mobile operation, preventing problems when operating across county lines.

The **change to the retail food establishment definition** brings together all of the exemptions and inclusions listed in various parts of the current MCA so that they can all be found in one place.

The **change to the definition of temporary food establishments** is important because it expands their ability to operate while also putting the permitting at the county level, allowing faster licensing turnaround time.

**Section 9:** Amends section 50-50-103, MCA, to allow the department to adopt rules and assess fees based on the complexity of the establishment seeking a retail license. It also allows the department to create standard rules for mobile food establishments and permitting fees along with registration for cottage food operations including the fees to be charged for operation.

This section is also amended to prevent the department or locals from prohibiting cottage food operations. Amendments also **expand the food safety advisory task force to include two designated members from the Department of Agriculture, the Department of Livestock, and the Department of Public Health and Human Services along with up to six members of the public.**

**Reason** – This change would allow the department to assign fees based on complexity of the establishment, so a small establishment that grills burgers wouldn't pay as much as a large supermarket for example. The change to mobile food establishments brings plan review to the department, which would allow for a consistent approach to this review and mitigate most of the licensing inconsistencies currently occurring for mobiles.

The expansion of the food safety advisory task force would bring more voices to the table from a variety of perspectives creating more comprehensive guidance for rule and code changes that affect food production.

**Section 10:** Amends section 50-50-105, MCA, to clarify when diseased persons cannot work in retail food establishments and cottage food operations.

**Reason** – this change brings the code up to current standards of practice for how to deal with individuals who have a contagious disease and work in food service.

**Section 11:** Amends section 50-50-109, MCA, to include cottage food operations in civil penalties when they are found to violate this chapter or rules adopted by the department pursuant to this chapter.

**Reason** – This language expands statute adding the cottage food industry as an entity subject to penalties if found out of compliance with statute or rules.

**Section 12:** Amends section 50-50-110, MCA, to add cottage food operations, allowing the department to recover money due to civil action.

**Reason** – This is directly related to section 11. In situations where the department pursues civil penalties they are allowed to recover money, this expands that allowance to the new cottage food industry.

**Section 13:** Amends section 50-50-201, MCA, to include the **new types of temporary food establishments** in licensing and permitting, along with the fees they would need to pay. Additions were also made to make the terminology consistent with the other relevant statutes.

**Reason** – Input from public meetings indicated a need for temporary but recurring food establishments at events such as “Alive at Five” or some Farmer’s Markets. This is not allowed under current statute, the two new definitions expand the time a temporary event can operate and also allow for these recurring events with a single fee.

**Section 14 -** Amends section 50-50-202, MCA to clarify the retail food establishment licensing exemptions and specify that cottage food operations exchanging food in non-monetary transactions are exempt from licensure. In addition many more exemptions were struck from this section as they have been moved so that they are all in one place in the statute.

**Reason** – There are many exemptions in the current statute, this section was re-written to tie those together so that it is easier to understand while also making it clear that cottage food operations are not to be licensed as retail food establishments.

**Section 15:** Amends section 50-50-203, MCA to clarify the license and permit application requirements along with wording that makes temporary food establishments the purview of local health departments.

**Reason** – Clarifying the wording makes it easier for operators to understand what is expected of them. Putting the temporary event permits in the hands of local health departments makes sense because often these operators are licensed, and inspected at the event before the state even has time to process the license.

**Section 16:** Amends section 50-50-205, MCA, to allow the department to set licensing fees in rule based on retail food establishment complexity. The amendments also allow the department to collect plan review fees for mobile establishment review conducted by the department, while setting some limits on those fees and stating how those fees shall be used. This section also **exempts sales of whole shell eggs from paying fees.**

**Reason** – Setting fees based on establishment complexity is important because it allows the department to charge establishments doing less, less money, and those doing more, more money which is directly related to the amount of time it takes to conduct inspections of those facilities. Other parts of the proposed rule bring plan review of mobile food establishments to the state; this would allow the state to charge for that review to offset the cost of the new workload. However it also sets limits on those fees so that they are not exorbitant or over reaching. The need to exempt shell egg sales from paying fees is to ensure they aren't confused with another type of establishment that does need to pay fees.

**Section 17:** Amends section 50-50-208, MCA, to require that local boards of health submit a list of temporary food establishments and cottage food operations in their jurisdiction.

**Reason** – This is important so that if the department needs to issue a recall notice or contact these operators for health and safety reasons the ability exists.

**Section 18:** Amends section 50-50-209, MCA, clarifies the process for canceling retail food establishment licenses, mobile food establishment licenses, and temporary food establishment permits.

**Reason** – This section was modified to clarify procedures should it become necessary to cancel a retail or mobile license or temporary permit.

**Section 19:-** Amends section 50-50-211, MCA, to clarify the due process awarded to a license or a temporary permit holder prior to cancelation of a license or permit.

**Reason** – This language is necessary to ensure that each holder is awarded due process before a license or permit is revoked.

**Section 20:** Amends section 50-50-221, MCA, to add wording related to locally held temporary food establishment permits and the process for cancellation when they are establishments that are licensed to do multiple activities, for example a retail grocery with a deli.

**Reason** – Needed to ensure that a cancellation procedure exists if that becomes necessary.

**Section 21:** - Amends section 50-50-213, MCA, to include mobile establishment's licenses and temporary establishment permits when returning a license is necessary.

**Reason** – Similar to section 19 and 20 the new license and permit types require that these parts of the code be amended to include them.

**Section 22:** Amends section 50-50-214, MCA, to specify how mobile establishment under the new model of plan review will have their licenses validated. It also adds a section that specifies how a temporary food establishment permit will be validated.

**Reason** – Provides a license validation procedure similar to that used for other establishment types.

**Section 23:** Amends 50-50-215, MCA, to add language indicating what must occur if a local health officer refuses to validate a license or permit in the case of mobile food establishments, temporary food establishments, and cottage food operations as opposed to only retail food establishments.

**Reason** – This is important because it needs to be clear what happens to the newly proposed license and permit types when the health officer in a jurisdiction refuses to validate a license.

**Section 24:** Amends 50-50-301, MCA, to include a section making it clear that cottage food operations are not subject to inspections unless they are the focus of a complaint or outbreak investigation. Though they may request and pay for an inspection if they so choose.

**Reason** – Cottage food operations are exempt from a number of things one of them being inspections. However this section is important because it makes it clear that if they are the subject of a complaint or an illness investigation then they may be inspected during reasonable hours. Given the nature of foods, non-potentially hazardous, and direct sales restriction such approaches are common.

**Section 25:** Amends 50-50-302, MCA, to include wording that allows the regulatory authority free access for investigations of complaints, illness, and outbreaks at all reasonable hours of cottage food operations and temporary food establishments.

**Reason** – Needed to ensure cottage food or temporary food establishments can be examined if implicated in an illness investigation to minimize further risks to the public.

**Section 26:** Amends 50-50-303, MCA, to include the term “registrant” in addition to licensed establishments that may need to furnish a sample during an illness investigation.

**Reason** – Important addition because the term “registrant” applies to the new cottage food industry.

**Section 27:** Amends 50-50-305, MCA, to include payments to local boards of health for inspections of mobile food establishments.

**Reason** – Clarifies that mobile food establishment license are included and that counties are paid for their inspections of those establishments.

**Section 28:** Amends 50-57-102, MCA, to alter the definition of “Retail food establishment” so that it is consistent with other sections of the MCA.

**Reason** – Necessary to make this section of the MCA consistent with other sections to alleviate confusion.

**Section 29:** Amends 81-22-208, MCA, to clarify when a retail food establishment license is needed in the context of a manufactured dairy products plant.

**Reason** – Important to clarify when a retail food establishment license is needed.

**Contacts for additional information:**

Todd Harwell, Administrator, Public Health and Safety Division

Jim Murphy, Bureau Chief, Communicable Disease Control & Prevention