

Dried Herbs and the Cottage Food Requirements

Direction from Ed Evanson,
Food and Consumer Safety, Department of Health and Human Services

It is important to keep food safety at the forefront in our discussion. Dried herbs have been linked with illnesses in the past, and Salmonella contamination is fairly common for this product. You can read more about it [here](#). Any discussion of licensure should be taken in light of the fact that this product has a history of causing disease.

Drying at retail is exempt for the grower or harvester (see below). There is no reason for them to register as a cottage food operator because they can do direct sales under the retail exemption. This does not free them from liability, though. If an individual sells a contaminated product that gets someone sick, they are still responsible for that product and liable for damages.

To produce a safe product, the attached guidelines are used for growing to limit pathogen contamination and a kill step is achieved during processing. The quick summary is dried herbs are exempt at retail, so there is no need for cottage food registration. If wholesaling, they need a license. **In either case the goal is a pathogen free product.**

- Cottage Foods (37.110.501 ARM) – not really a reason to register as most individual would already be exempt from retail (see below)
 - Please note an individual may purchase commercially processed herbs and make their own mix for sale as a cottage food. This is already included on the list.

- Dried Herbs are exempt from licensure under the retail food definition, if they are being sold by the grower or harvester or if they are being sold from a food stand. Please see the section of MCA below found in MCA 50-50-102.
 - (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.

 - (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 rooming house, 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.

- Wholesale Food
 - Wholesale food does not have the same exemptions as retail. Below is the definition of wholesale. In wholesale, a raw and unprocessed farm product is exempted but drying is not exempted. Further, food processing as defined in the CFR includes dehydration.
 - MCA 50-57-102 (11) (a) "Wholesale" means the sale or provision of food to a retail food establishment or to another person engaged in retail sales who sells or provides the food directly to the consumer.
 - (b) The term does not include the sale or provision of food at retail.
 - (12) (a) "Wholesale food manufacturing establishment" means a facility and the facility's buildings or structures used to manufacture or prepare food for human consumption at wholesale.
 - (b) 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; or
 - (iii) producers or harvesters of raw and unprocessed farm products.

- Food, Drug and Cosmetic Act 21 CFR Part 110 (adopted in MCA by Montana)
 - (gg) The term "processed food" means any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, or milling.

If wholesaling, we would review on a case-by-case basis as each process and manufacturing operation is different.