

Recommended Structure and Contents of Montana's Cottage Foods Program

February 14, 2014

This document describes the Northwest Sanitarians Association's recommendations for cottage foods in Montana. The overarching structure would be contained in law, and the details would be established in rule. Note that this document does not contain recommendations for actual statutory or regulatory language.

The recommendations in the document are based in large part on the "Regulatory Guidance for Best Practices: Cottage Foods," April 2012 by the Association of Food and Drug Officials. It also conforms to the recommendations of the National Environmental Health Association, as established in the "Consensus on Cottage Food Movement" resolution, adopted April 21, 2012.

The concept is to expand the opportunities for very small businesses to engage in food preparation and sale, while safeguarding the public's health. This program is intended to take the place of the existing baked goods and drink exemptions at Farmer's Market in Montana state law.

Making changes to Montana's food laws and regulations will provide opportunities for more Montanans to prepare limited quantities of non-potentially hazardous foods in home kitchens for sale. In part, this gives them a chance to test the market and hone their products. Some cottage food entrepreneurs will want to expand upon their success and reach even larger audiences, at which point they will need to meet the same rules and standards of licensed food businesses throughout Montana.

The reasons for some of the recommendations may not be clear at first. Food safety is paramount. In addition, the laws and regulations have to delineate a clear line between a business that can prepare food at home, and one that is large enough to require licensure, inspections and commercial equipment. Many cottage food programs in other states rely on gross sales to cap cottage food production. This does not work in Montana, because without a sales tax there isn't an agency that collects gross sales information. So instead, we recommend limiting where the products can be sold. In addition, the AFDO recommendations further limit the amount of food that can be produced before requiring a licensed kitchen by restricting production to a home kitchen, and prohibiting the use of large commercial equipment.

These recommendations will allow cottage foods to be prepared and sold in a safe and reasonable way, while also ensuring that those small businesses that choose to open retail candy stores, bakeries and wholesale operations are treated fairly, with their investments protected.

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DEFINITIONS

- (1) "Cottage food operation" means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence and only for sale directly to the consumer at a public event. A cottage food operation may not operate as a food service establishment, retail food store, or a wholesale food manufacturer.
- (2) "Cottage food products" means non-potentially hazardous baked goods, jams, jellies and other non-potentially hazardous foods produced at a cottage food operation.
- (3) "Department" means the Montana Department of Public Health and Human Services.
- (4) "Domestic residence" means a single family dwelling unit where the cottage food operator actually resides. A domestic residence does not include a group or communal residential setting, or an outbuilding, shed, barn or other similar structure.
- (5) "Home kitchen" means a kitchen designed and intended for use by the residents of a home but that is also used by a resident to produce cottage food products. It may contain one or more stoves or ovens of the size of typical residential uses. It may not include commercial types of equipment that are of the size typically used for large wholesale manufacturing.
- (6) "Permitted area" means that portion of a domestic residence, which houses a home kitchen where the preparation, packaging, storage or handling of cottage food products occurs.
- (7) "Public event" means a farmers market, craft fair, bazaar, or similar community event that has been organized for the purpose of selling crafts and foods, and which has multiple vendors and is not a retail space in a private home or retail business.

PREREQUISITE REQUIREMENTS

- (1) All cottage food operations must register annually with the local health department on forms approved by the Department.
- (2) In order to register, the cottage food operation must submit:
 - a. A list of products proposed to be made and sold;
 - b. Proposed labels for each product;
 - c. A signed document attesting that the cottage food operation agrees to operate according to the rules established by the Department;
 - d. A signed statement and that, by opting to register, the cottage food operation expressly grants to the local health department the right to enter the domestic residence at reasonable times to investigate as established in the rules;
 - e. A fee established by rule and payable to the local health department that reflects the local health authority's cost of registration services;
 - f. Evidence of relevant food safety training within the last 5 years; and
 - g. If the cottage food operation is served by a private water supply, evidence that the water supply has been tested within the last year, and shown to be potable;

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- h. If the cottage food operation is served by an onsite wastewater treatment and disposal system, evidence that the system is adequate for the proposed use, and
- i. If applicable, evidence that the cottage food operation complies with applicable county and municipal laws and zoning ordinances that apply to conducting a business from one's home residence.
- j. Registration fees (established in rule).

COTTAGE FOOD PRODUCTS

(1) A cottage food operation may produce food items which do not require temperature control for safety or include an inherent risk for botulism. The following foods are examples of products that may be prepared in a home kitchen, as long as the ingredients or processes don't result in a potentially hazardous food. While this list is not all inclusive, it provides for most types of approved cottage food products.

- Breads, rolls and biscuits
- Cakes
- Pastries and cookies
- Candies and confections
- Fruit Pies
- Jams, jellies and preserves
- Dried Fruits
- Dry herbs, seasonings and mixtures
- Cereals, trail mixes and granola
- Coated or uncoated nuts
- Flavored vinegars
- Popcorn, popcorn balls, cotton candy
- Raw honey (no flavorings added)
- Dried legumes and grains
- Hot coffee and tea, without fresh cream or milk

(2) A cottage food operation may not produce items that require temperature control for safety or foods that present a food safety risk such as many canned foods. The following foods are examples of foods which may not be produced in a cottage food operation. Although the list is not all inclusive, it provides for most types of unapproved cottage food products.

- Bakery goods which require refrigeration such as those with cream cheese fillings and frostings and cream, custard or meringue pies.
- Focaccia-style breads or muffins, topped with meats, vegetables or cheeses
- Milk and dairy products including hard, soft and cottage cheeses and yogurt.
- Canned fruits, vegetables, fruit or vegetable butters, salsas, etc.
- Acidified foods, like ketchup, barbeque sauces and salsas
- Low acid canned foods, like heat and pressure canned tomatoes, green beans, etc.
- Canned pickled products such as corn relish and pickles
- Fermented foods such as Kim Chi, sauerkraut and Kombucha
- Raw seed sprouts

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- Fresh or dried meat, fish, or poultry or meat, fish or poultry products, including jerky
- Cut fresh fruit or vegetables
- Products made with cooked vegetable products
- Garlic in oil mixtures
- Juices made from fresh fruits or vegetables
- Ice and ice products
- Moist carbohydrates, such as batters
- Soups, stews, etc.

SALES VENUES

- (1) Products produced by a cottage food operation must be sold directly to the consumer at a public event. The cottage food operation must have permission from the event organizer to sell food at the event.
- (2) Sales by internet, mail or phone order are prohibited. Cottage food operations may not sell food in a permanent retail setting, by consignment, or to licensed food establishments. A cottage food operation may not operate as a food service establishment, retail food store, or wholesale food manufacturer.
- (3) A cottage food operation must display a copy of its registration at the public events where they are selling cottage foods.

OPERATING REQUIREMENTS

- (1) No person, other than the registrant or a person under the direct supervision of the registrant may be engaged in preparing, packaging or handling of cottage food products or be in the home kitchen during the preparation, packaging or handling of cottage food products.
- (4) No preparation, packaging or handling of cottage food products may occur in the home kitchen concurrent with any other domestic activities such as family meal preparation or clean up, clothes washing, kitchen cleaning, or guest entertainment.
- (5) No infants, small children or pets may be in the home kitchen during the preparation, packaging or handling of cottage food products.
- (6) Only residential-sized equipment may be used to produce cottage food products.
- (7) All food contact surfaces, equipment and utensils used for the preparation, packaging or handling of cottage food products must be washed, rinsed and sanitized before each use.
- (8) All food preparation and food and equipment storage areas must be maintained free of rodents and insects.

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- (9) A person involved in the preparation, packaging or handling of cottage food products may not work in the home kitchen when ill.
- (10) A person involved in the preparation, packaging or handling of cottage food products shall wash their hands before preparing or packaging cottage food products.
- (11) Bare hand food contact with ready-to-eat foods must be eliminated through the use of single-service gloves, bakery papers, tongs or other utensils.
- (12) Cottage food operations using private water supplies must ensure the water supply is potable by completing the annual water sampling as established by the Department in rule. A cottage food operation may not operate without adequate hot and cold potable water available under pressure at all appropriate fixtures.
- (13) Cottage food products must be packaged in sales units in the home kitchen.
- (14) Packaging must contain a label meeting the requirements in the label section below.

FOOD LABELING

A cottage food operation may only sell cottage food products which are pre-packaged with a label affixed that contains the following information (printed in English):

- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- Allergen information as specified by federal labeling requirements;
- The date the food was made;
- A statement that the food was made in a home kitchen that is not subject to routine safety inspections (e.g, HOME PRODUCED WITHOUT INSPECTION.)

A label sample is shown below.

HOME PRODUCED WITHOUT INSPECTION

Chocolate Chip Cookies

Ashley Bryant
2550 Kingston Lane
Montana City, Montana 55555

Ingredients: Enriched flour (wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin, walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda.

Contains: Wheat, eggs, milk, soy, walnuts.

Made on December 3, 2015

ENFORCEMENT AND INSPECTIONS

- (1) Unless they are registered with the regulatory authority, a cottage food operation may not prepare, package, handle or sell cottage food products to the public.
- (2) It is the responsibility of the cottage food operation to prepare, package and handle food in compliance with the operating requirements.
- (3) The regulatory authority may investigate a home kitchen when it has reason to believe that the cottage food operation is not following the operating requirements or is operating in an unsanitary manner. The regulatory authority may also investigate the home kitchen in response to a potential foodborne illness outbreak, consumer complaint or public health emergency.
- (4) If the regulatory authority finds that the cottage food operation is not substantially following the operating requirements or that they are operating in an unsanitary manner, the regulatory authority may require a plan of correction or may revoke the cottage food operation's registration.

OTHER CONSIDERATIONS

- (1) The details of required food safety training should be established by the Department in rule. Food safety training must cover topics that are relevant to cottage food operations. Approvable training must be widely available, and include an on-line option. Cottage food producers are not required to, but may choose to take more comprehensive training.

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- (2) Testing and potable water requirements should be defined in rule by the Department and at a minimum should include annual sampling for bacteria and every three sampling for nitrate.
- (3) Licensed food businesses selling the types of food that qualify as cottage food products may sell those products at a public event without an additional license (temporary food license) from the Department.

Frequently Asked Questions:

Where can I sell my cottage food products?

Cottage food items may only be sold directly to the consumer at Farmer's Markets, craft bazaars, and other similar public events. See definition of "public event".

What types of cottage foods can I produce in my home?

You may produce the foods listed in the guidance document.

Will I need to meet local zoning or other laws?

Cottage food producers must comply with all requirements in their jurisdiction, zoning or otherwise. That being said, requirements may vary from jurisdiction to jurisdiction. Contact local agencies to determine if there are any requirements that may apply. Also note that local jurisdictions may restrict some cottage food operations even if they are allowed by state law.

The farmers market where I want to sell my products says I need a food license, even though I am a cottage food business. Can the market require a license?

Yes. Even though an entity may meet the requirements of a cottage food operation and be permitted, some farmers markets or other direct marketing venues may require vendors to have a food establishment license or to meet other requirements. Local policies enacted by farmers market boards and other local governing bodies are generally outside the scope of any cottage foods regulations.

Can I utilize commercial equipment?

While commercial equipment is not required in a cottage food operation, commercial grade equipment may be used if they are not designed to create batches in excess of residential size. Commercial grade equipment designed to produce large, commercial batch-sizes like (e.g. steam jacketed kettles and floor-stand rotary mixers) are beyond the scope of a cottage food operation.

Does my equipment, stove and/or refrigerator need to be NSF (National Sanitation Foundation, an equipment evaluation group) certified?

No. As a cottage food operation, you are not required to meet NSF standards; however, you will need residential equipment that can meet your needs.

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My home is not served by a municipal or public water supply. What special requirements does my home on-site well need to meet?

Your water supply must meet potable water standards. It is your responsibility to have the well tested at least annually for coliform bacteria, and at least every three years for nitrates. If your water supply doesn't meet the drinking water standard, you cannot operate until it does.

Where can I get my water tested?

There are several certified labs in Montana that can meet your testing needs. Contact your local health department for information.

Why are some items not allowed under the cottage food exemption?

While there is a risk of foodborne illness with all types of food, the items allowed under the exemption are those which are the lowest risk from a food safety perspective. The idea is that if the foods are prepared in a clean environment and handled properly by the producer, licensing and inspection requirements can be waived with minimal risk to the public. On the other hand, foods that are higher risk must be produced in a licensed, inspected facility to ensure that proper controls are met for the protection of public health.

Are pet treats covered under the exemption?

No. Please contact the Montana Department of Agriculture for more information: 406-444-3144.

Can I produce and sell cooked vegetable products, like salsas, tomato or barbecue sauces, spaghetti sauces, or focaccia bread with roasted vegetables?

Except for vegetables that have been incorporated into batter and baked (e.g. zucchini bread), food products that are made with cooked vegetables do not fall under the exemption. This is because most items made with cooked vegetables have the ability to support the growth of dangerous bacteria if not stored at safe temperatures.

In addition, sauces and salsas that have been bottled or canned can support the growth of *Clostridium botulinum*, the cause of botulism, if not prepared under strict controls. Due to the risks associated with these foods, they cannot be prepared outside of a licensed and inspected facility.

Can I roast coffee beans in my home kitchen and sell them?

Yes. You can roast and sell whole bean coffee or ground coffee. You may also sell it as a hot beverage as long as you do not offer it with fresh cream or milk.

Can I make and sell apple butter, pumpkin butter, or other fruit butters?

No. Fruit butters have significantly less sugar than a traditional jam or jelly. It is the combination of acid, sugar, pectin, and heat that assures the safety of the jam/jelly. In fruit butters, the combination of sugar and pectin is not large enough to protect the food from the growth of harmful bacteria. Additionally, with lower sugar and pectin levels, spoilage organisms are more likely to survive the cooking process.

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Can I press and sell apple cider or other fruit juices?

No. Apple cider and other fruit juices are not allowed under the cottage food exemption. This is because the juicing process introduces pathogens like *E. coli*, *Salmonella* spp. and parasites, as well as mold toxins. In order for juices and ciders to be served safely, they must be done in a licensed facility with the proper food safety controls in place.

Are honey and maple syrup covered under the exemption?

Depending on your product and your method of production, honey or syrup may be exempt. Raw honey in the comb, or raw honey that is extracted and bottled, do fall under the exemption, but flavored honey does not. To determine if your honey or syrup product is exempt, contact your local health department.

I lease a space in retail building where I operate a small gift shop. As a cottage food producer, can I sell my products at my shop?

The exemption only covers direct sales at Farmer's Markets, craft bazaars, street fairs, and similar public events.

Can I make and sell candies, lollipops, popcorn, and baked goods?

Yes. All of these items are listed as approved low-risk items under the exemption.

Can I make and sell sweet breads, muffins, or other baked goods made with fresh fruits and vegetables like zucchini, pumpkin, and strawberries?

Yes, as long as the fruits or vegetables are washed thoroughly, and then incorporated into the batter and properly baked. The baked goods may not be decorated or garnished with fresh fruits or vegetables however.

Can I use fruits and vegetables that I grew at home?

Yes, providing that they are thoroughly washed before use, and then incorporated into the batter and properly baked. Baked goods cannot be decorated or garnished with fresh fruits or vegetables.

Can homegrown produce be canned and used for making baked goods, like sweet breads, at a later date?

No, but you can use commercially canned products for baked goods. Home-canned products, with the exception of jams and jellies, are not approved under the exemption. This is due to the risk of botulism associated with canned foods.

Can I freeze homegrown produce to use later in baked goods and sweet breads?

Yes, as long as the fruit is thoroughly washed before freezing or after it is thawed, and then incorporated into the batter and properly baked. Baked goods cannot be decorated or garnished with fresh or frozen fruits or vegetables.

Can I make and sell dry bread or "instant" bread mixes?

Yes. Dry mixes are approved under the exemption.

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Does my chocolate fountain business qualify as a cottage food operation? I deliver and set up the fountain, and provide chocolate sauce and items to dip that I have prepared in my home kitchen.

No. This type of food service would require a retail food license and a commercial kitchen.

Are food safety classes required? If so, where can I get training and what will the courses cover?

Yes, food safety classes are required as a part of the exemption, and providing documentation of training is required at the time of registration. The reason for the training is simple—protect your operation and your customers. This training component is especially important considering that you may not have an opportunity to interact with a public health professional to learn how to address potential risks in the kitchen. Getting training is simple. There are many online resources and some local classes at your health department. The class does not need to be a full manager certification course; however, it does need to cover the basics: cleaning and sanitizing, health and hygiene, and proper handling. Packaging, labeling, and allergen best practices may also be included.

Do I have to put a label on my cottage food products?

Yes, you do need to label your cottage food items. The minimum information required on the label is as follows:

- The name and address of your cottage food operation.
- Name of the cottage food product (if the name doesn't clearly indicate what type of food it is, include the common name of the food, e.g. Montana Jam doesn't tell the consumer what type of jam, so include Huckleberry Jam below the name)
- The ingredients of the cottage food product, in descending order of predominance by weight. If you use a prepared item in your recipe, you must list the sub ingredients as well. For example soy sauce is not acceptable; soy sauce (wheat, soybeans, salt) would be acceptable.
- Potential allergens
- Date the food was made; and
- Disclosure statement: Home produced without inspection.

Hand written labels are allowed if they are legible and written in permanent ink.

Will the health department or the state review my labels for accuracy?

As part of your registration process, the local health department will review to make sure that your labels contain all the required elements, but they will not verify that you have listed all the ingredients or the known allergens. It is your responsibility to ensure that your products are labeled correctly and that all information is disclosed. There are resources online that can help you.

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What does “allergen labeling as specified in federal labeling requirements” mean?

It means that you must identify if any of your ingredients are made from one of the following food groups: milk, eggs, wheat, peanuts, soybeans, fish (including shellfish, crab, lobster or shrimp) and tree nuts (such as almonds, pecans or walnuts.) So, if you have an ingredient made with a wheat-based product, you have two options:

1. Include the allergen information in the ingredient list. For example, a white bread with the following ingredient listing: whole wheat flour, water, salt and yeast. In this example, the statement “whole wheat flour” meets the requirements of federal law.
2. Include an allergen statement (“Contains”) after the ingredient list. For example a white bread with the following ingredients: whole wheat flour, water, sodium caseinate, salt and yeast. Contains wheat and milk.

If a customer is concerned about allergens, what do I do?

Food allergies can be severe and life threatening and customers have a right to know if the product you sell contains a potential allergen. This is why allergen labeling is required by Federal Law on all consumables with the exception of raw agricultural products. In addition to labeling the product with the ingredients, you should think about possible cross contamination. If you cannot guarantee that the product is free from the allergen of concern, tell the customer that there is a potential risk and encourage them to buy something else. Ensuring that the customer has all of the information they need to make a safe, educated decision is your responsibility.

Are there any special requirements for tree nut labeling?

Yes. You must disclose which tree nut your product contains.

For example, if you made Nut Bread, an acceptable ingredient list would be:

Ingredients: wheat flour, water, almonds, salt, yeast.

The following would not be acceptable:

Ingredients: flour, water, nuts, salt, yeast.

Do I have to include my home address on my product labeling or is a post office box sufficient?

You must use the physical address of your home kitchen on your product label, not a post office box. The purpose of including an address on the label is to be able to locate the business in case of a recall or traceback associated with a foodborne illness complaint or outbreak.

Am I required to send my products to a laboratory to obtain an official ingredient list, or is it something I can put together on my own?

You are not required to have your product analyzed by a laboratory to obtain an official ingredient list. You must, however, list all ingredients, in descending order of predominance by weight. If you use a prepared item in your recipe, you must list the sub-ingredients as well. For example, if you use soy sauce as an ingredient, listing “soy sauce” is not acceptable; “soy sauce (wheat, soybeans, salt)” would be acceptable. Allergen labeling, as specified in federal labeling requirements must also be included.

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Am I required to send my product to a laboratory to show that they are non-potentially hazardous?

If your products are on the approved list, you do not need to send them out for testing. However, if there is a product that is not on the approved list such as cream cheese filling or frosting, you may ask the health department if testing for water activity and/or pH may demonstrate its acceptability under the exemption. If you have questions regarding testing, consult your local health department. Note that depending on the food or the process, you may not be able to produce the food you wish despite water activity or pH levels.

If I make wedding cakes and deliver them, am I a cottage food producer?

No. If you are in the business of taking orders and delivering the food that you make, you are operating outside of the exemption and need to license.

Why can't I sell my cottage food products to my favorite restaurant or grocery store?

You are not a licensed, inspected manufacturing facility and your products are not considered an approved source for use in a grocery store or restaurant. In addition, you are not required to meet the full labeling standards required by the FDA for wholesale producers, or their operational requirements.

Can I make and sell products from my motor home kitchen, or summer home?

The cottage food exemption only applies to products made out of your primary residence. Second homes, vacation homes, etcetera, do not meet this requirement.

Can I make products in a rented kitchen and sell them?

No. The cottage food guidance document applies only to an approved set of non-potentially hazardous food items made in the kitchen of your primary residence. If you want to use a commercial kitchen to expand what you can create, you must license.

Can I make cottage food products in an outbuilding on my property, like a shed or barn?

No. The exemption requires cottage food items to be made in the kitchen of your primary residence.

Where can I store ingredients and finished products?

Ingredients and finished products may be stored in your primary residence where they are made. This includes the kitchen, spare room, or basement that is free from dampness, water, pests, or other unsanitary conditions. You may not use a garage, shed, or other outbuilding as a storage area.

Can non-profit organizations produce and sell cottage foods?

No. Non-profits do not operate out of a primary residence; however, there are exemptions for non-profits that may apply.

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Can I sell my cottage foods over the internet?

No. While you may advertise your product on the internet, you cannot take orders over the internet and ship the product. Sales must be direct to the end consumer as a person-to-person transaction at a public event, and not delivered by mail.

Can I sell my cottage foods to a wholesaler, broker, or distributor?

No. Sales must be direct to the end consumer at a public event. Sales to second parties like distributors would require a wholesale food license for indirect sales.

Can I advertise my products on my website?

Yes; however, you cannot take orders over the internet and ship the product. Sales must be direct to the end consumer as a person-to-person transaction at a public event and not delivered by mail.

Can I advertise my business in the newspaper or at trade shows?

Yes. Advertising is allowed; however, the actual sale must be made person-to-person between you and the end consumer at a public event.

What about liability? Will I need liability insurance? What happens if someone gets sick?

There is the potential for liability if someone gets sick or injured. Whether or not liability coverage is needed is a question that should be directed to an insurance agent or attorney.

What if I want to sell over the internet, open a store front, or sell at venues not covered under the exemption?

You would need to contact your local health department and obtain a license in a commercial kitchen that meets your needs.

I have decided to expand beyond what is allowed as a cottage food vendor. How do I get a commercial kitchen?

Contact your local health department. They can provide you with plan review information if you would like to build your own commercial kitchen. However, you do not need to build your own kitchen unless that is what you choose to do. There are many kitchens available that can act as a commissary kitchen for renters: places like restaurants, community kitchens, community centers, schools, churches, and the like. The key points when it comes to a commercial kitchen are 1) does the facility have everything that you need to produce your product, and 2) can you separate your operation by time or space from another user.

What does it take to register?

Contact your local health department with list of the products that you would like to sell under the exemption. In addition, bring a copy of your food safety training card or certificate of completion. If you have questions about products or where to get food safety training, contact your local health department.