



North Dakota Cottage Foods Act
Guidance and Frequently Asked Questions
Effective August 1st, 2017

This Fact Sheet was developed to provide guidance to cottage food operators and informed end consumers as to what can and cannot be produced in a home kitchen under the provisions of the “North Dakota Cottage Foods Act.” This fact sheet is provided by the North Dakota Department of Health, Division of Food and Lodging. Additional information about the Cottage Foods Act may be obtained by visiting www.ndhealth.gov/foodlodging.

What is the effective date of the law?

North Dakota Century Code Chapter 23-09.5 Cottage Food Production and Sales, referred to as the “ND Cottage Foods Act,” becomes effective August 1, 2017. The law can be viewed online at <http://www.legis.nd.gov/cencode/t23c09-5.pdf#nameddest=23-09p5-02>.

Important Note: A list of cottage food products produced in a home kitchen that are approved for sale to the informed end consumer for home consumption are summarized in the enclosed interim guidance. Cottage food products listed in the enclosed interim guidance document are under review until the administrative rules become effective in 2018.

What is an informed end consumer?

An informed end consumer is an individual who purchases a cottage food product intended for home consumption and has been informed the cottage food operator is not licensed, regulated, or inspected.

Certain individuals within the general population, such as toddlers and infants, pregnant women and their fetuses, the elderly, and those with underlying medical conditions (e.g. immunocompromised), may be more susceptible to certain foodborne illnesses or allergic reactions compared to the average healthy adult. It is important that an informed end consumer who may be more vulnerable to disease, or otherwise a parent or guardian responsible for their care, in addition to the general population is made aware of potential health risks from consuming high-risk products. Anyone vulnerable to certain food allergens or food sensitivities should avoid consuming food products that are not labeled with a list of ingredients, common allergies, and a date of production.

How may a cottage food operation differ from other food establishments and food processors that are licensed, regulated, and inspected?

A cottage food operation that is not licensed, regulated, or inspected means there is no oversight by a federal, state, or local regulatory agency to ensure that sanitary conditions meet safety guidelines at the point of production or point of sale. There is no oversight to ensure ingredients are obtained from an approved source or that good manufacturing practices, processing controls, or public health interventions are implemented to mitigate risk factors that are known to cause or contribute to injury or foodborne illness outbreaks. Second or third-party inspections are not required and therefore may not be conducted to validate proper sanitation procedures of food contact equipment and utensils, proper personal hygiene and employee health practices, adequate hand washing, or avoidance of cross contamination by proper use of barriers such as gloves when handling ready-to-eat food.

The cottage food operator may voluntarily request consultation, education, and training as well as conduct self-audits of the cottage food operation to ensure food safety practices are adequately met.

What is a cottage food operator?

A cottage food operator is an individual who produces, processes, or packages cottage food products in a kitchen designed and intended for use by the residents of a private home.

What cottage food products are approved and can be produced and sold under this law?

Approved cottage food products are food and drinks produced, processed, or packaged that are low risk because they are highly acidic in nature ($\text{pH} \leq 4.6$ verified by a calibrated pH meter) and do not require time and temperature control for food safety. Cottage food products produced under this section do not include meal, dining, or catering services.

The following list of examples provides for most types of approved cottage food products:

- Baked goods* (see **Baked Goods and Refrigerated Baked Goods section**)

- Candy (including brittle, caramels, chocolate, chocolate-dipped pretzels, chocolate-dipped Oreos®, cotton candy, sugar art fudge). No candy or chocolates with cream-based fillings

- Coated and uncoated nuts

- Home-Canned jams, jellies, and preserves including apples, cherries, grapes, plums, peaches, strawberries and other berries.

- Chutney containing fruit as the main ingredient

- Fruit butter

- Fruit pies (including pecan pie) and fruit empanadas

- Dehydrated fruits and vegetables, including dry, edible beans

- Popcorn and popcorn balls

- Cereal, including granola

Flour

Honey

Dry herbs, seasonings and herb mixes

Vinegar, cider vinegar, and flavored vinegar

Roasted coffee or dry tea

Farm flock eggs* (see “**Requirements for selling farm flock, shell eggs**” section)

Pickled vegetables, dill or sweet pickles, salsa, tomato products, and other acidified foods, such as barbeque sauces, taco sauce, ketchups and/or mustards, where the equilibrium pH level has been reduced to 4.6 or less and verified using a calibrated pH meter.

Naturally fermented foods such as sauerkraut and kimchi where the equilibrium pH level has been reduced to 4.6 or less and verified using a calibrated pH meter.

What types of foods *are not* considered approved cottage food products and may not be produced and sold under this law?

High-risk food and drink products that are low-acid in nature (pH > 4.6) or require special processing or time and temperature control for food safety (*see exceptions) because they are potentially hazardous and capable of supporting the rapid growth of disease-causing microorganisms or toxin production of *Clostridium botulinum*. The following food items are examples that potentially present a health risk to consumers and are therefore not considered approved cottage food products by definition. *The exception to this rule are farm flock eggs, certain whole, frozen poultry products, and baked goods requiring refrigeration.

Any non-acidified foods processed by either the use of a boiling water bath or by the use of a home pressure cooker unless the pH is reduced to an equilibrium pH equal to 4.6 or less and verified using a calibrated pH meter. These foods include: artichokes, asparagus, beans (lima, string, kidney, Boston style, soy, waxed), beets, broccoli, Brussel sprouts, cabbage, carrots, cauliflower, eggplant, horseradish, kale, mushrooms, most peppers, potatoes, spinach, squash, sweet corn, vegetable soups.

Garlic in oil or other flavored oils

Pesto

Hummus

Freezer jams

Focaccia-style or flat bread with vegetables, meat, fish, seafood, or cheeses

Meat products are not covered by this law. Meat may not be used as an ingredient in cottage food products. An exception is certain whole, frozen poultry products. (See “**Poultry products allowed under the 1,000 poultry exemption**” section.)

Pickled eggs, pickled fish, pickled meats, or pickled seafood

Fish, smoked fish or shellfish products

Milk or dairy products, butter, hard or soft cheeses, cottage cheese and yogurt that require temperature control for safety

Cut fresh fruits or vegetables or food products made with cut fresh fruits or vegetables that are not home canned, home processed, or acidified

Food products made with cooked vegetable products including potato salad, broths, soups, etc.

Fresh fruit dipped in candy or chocolate (for example, chocolate covered strawberries or caramel apples)

Juices made from fresh fruits or vegetables

Ice and/or ice products, flavored water unless from a verified, potable water source

Raw seed sprouts

What baked goods and refrigerated baked goods are allowed?

Baked goods that do not require time and temperature control for safety, such as cakes, cupcakes, rolls, biscuits, cookies, bars, loaf bread, and pastries are low risk and are approved cottage food products without additional requirements.

Bakery goods which require time and temperature controls for safety, such as cream, custard, meringue-toppings, cheesecake, pumpkin pie, cream cheese icings or fillings, etc., are allowed for sale under this chapter, including uncooked dough products*, as long as items are properly labeled with handling instructions, are transported and maintained frozen in addition to displaying the required consumer advisory either on the label or conspicuous sign posted at the point of sale.

*Consumer research indicates that consumer cooking practices are not uniform and that many consumers do not follow some cooking instructions, such as those on frozen foods or directions specifying that a product should be cooked until it reaches a certain temperature (Byrd-Bredbenner 2013; Lando 2010). In 2009, a prepackaged, refrigerated cookie dough was implicated in an *E. coli* O157:H7 outbreak that caused 76 confirmed cases of illness, including 35 hospitalizations (FDA/HHS 2009a; FDA/HHS 2009b).

Safe handling instructions are required on all baked goods that require refrigeration that states these “products must remain frozen until thawed under refrigeration at 41 F or less, are for immediate consumption, or discarded within seven days.”

Only pasteurized dairy products may be added as an ingredient in baked goods. The use of raw (unpasteurized) milk or dairy products is prohibited.

Any baked products considered ready-to-eat shall not contain raw, uncooked egg products.

Are whole fruits and vegetables allowed?

Whole, uncut fruits and vegetables are allowed for direct sale from the producer to the informed end consumer at the operator's home, farm, farmer's market, roadside stand, community event, or point of delivery.

Whole, uncut fruits and vegetables may be wholesaled at certain licensed food establishment settings in North Dakota. Check with your local government entity to determine if any local business licenses are required for wholesaling locally grown, raw uncut produce at retail food/grocery stores, restaurants, or schools.

What are the requirements for selling farm flock, shell eggs?

Cottage food operators selling farm flock eggs may voluntarily be licensed as egg dealers and approved by the North Dakota Department of Agriculture under North Dakota Administrative Code Article 7-11.

Eggs should be handled and labeled according the following egg requirements:

- All eggs being offered for sale must be candled using equipment and procedures allowed by the North Dakota Department of Agriculture.
- Eggs are washed either manually or with the aid of automatic cleaning equipment.
- The temperature of eggs held or offered for sale must be stored in refrigerated compartments maintained at 45 F or lower.
- Cartons of eggs offered for sale must be identified with the producer's name and address.
- "Safe Handling instructions: To prevent illness from bacteria, keep eggs refrigerated, cook eggs until yolks are firm, and cook any foods containing eggs thoroughly."

What poultry products are allowed under the 1,000 poultry exemption?

Whole, frozen poultry products slaughtered by the producer on the farm where poultry is raised if no more than one thousand poultry are slaughtered per calendar year according to North Dakota Administrative Code Section 7-13-01-03.

Whole, frozen poultry products must have safe handling instructions: "To prevent illness from bacteria, keep poultry product frozen or refrigerated once thawed at 41 F or less. Thoroughly cook poultry products to an internal temperature of 165 F."

The label or consumer advisory must also state: "Poultry products do not come from a government-approved source."

How do I sell my cottage food products?

You may sell your cottage food products:

- 1) Directly to the informed end consumer;
- (2) At a community event or farmers' market; or
- (3) Directly from the operators' home to the informed end consumer, to the extent allowed by local ordinance.

(4) If a cottage food product is delivered to the informed end consumer, upon sale of the food product, the individual who prepared the food product must be the person who delivers the food product to the informed end consumer

(5) The point of sale only occurs in North Dakota and the transaction occurs in person, where products are not sold over the internet, shipped, or delivered over state lines involving interstate commerce. Advertisement of products and communication with prospective consumers may occur using the internet. Mail delivery or shipment of products is prohibited.

Where can't you sell cottage food products?

Foods prepared at a cottage food operation may not be sold or used in any licensed food service establishment, food processing plant, or retail food store. Cottage food operators may not transport or ship products across the state line or conduct sales by the internet, mail, phone order or consignment.

Can I use the internet to sell my cottage food products?

The law prohibits sales over the internet, by mail order, or at wholesale. Advertisement of products and communication with prospective consumers may occur using the internet. Mail delivery or shipment of products are prohibited. The point of sale must be direct, in person from the cottage food operator that produced the product to the informed end consumer and must occur in North Dakota.

Am I able to deliver my cottage food products?

Yes, you may deliver your cottage food products directly to the consumer where the point of sale occurs in North Dakota.

How should foods be packaged and labeled?

Cottage food products sold under this law should be packaged in such a way that protects it against cross-contamination from raw food and environmental sources of contamination. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

Cottage food operators are required to display a sign or placard at the point of sale or on a product label, using a font size that is prominent, conspicuous, and easy to read and states the following: "This product is made in a kitchen that is not inspected by the state or local health department."

The following information is recommended on product labels:

- Product name;
- The producer's name, the address where the food was prepared, and the producer's current telephone number or email address;
- The date on which the food was produced;
- A complete list of ingredients and common allergens; and
- Example disclaimer: "This product was produced in a home kitchen that is not subject to state licensure or inspection and that may also process common food allergens, such as tree nuts,

peanuts, eggs, soy, wheat, milk, fish, and crustacean shellfish. This product is intended for home consumption only and is not intended for resale.”

Do cottage food producers need pre-approval prior to initiating their operation?

No. Voluntary education and training is recommended prior to initiating a cottage food operation. Contact NDSU extension 701.231.8944 or visit their website at www.ag.ndsu.edu/food.

Is there a limit to how much I can earn from my cottage food operation?

At this time there is not a limit to gross sales per year defined for cottage food operators. It is the operator’s responsibility to comply with applicable laws, rules, and regulations regarding the collection of sales tax and obligations for state and federal income tax. The cottage food operator is encouraged to maintain liability or other adequate insurance policy.

Can I make pet treats?

Since the ND Cottage foods Act applies to human-grade food only, pet treats do not apply to this law.

How are product complaints and investigations handled?

The NDDOH or your local public health agency may investigate complaints received concerning cottage food products and operations. If your cottage food operation is the subject of a complaint or suspected as a source of injury or foodborne illness, the NDDOH or local public health representatives may contact you to conduct an onsite evaluation of your operation and potentially collect product samples for testing.

What actions could be taken if disallowed or unapproved foods are produced and sold?

If you produce foods that are not allowed under the ND Cottage Foods Act, you would minimally need to immediately cease the production and distribution of the unapproved product. Any person or business operating a food establishment, selling food products, or letting a building or venue used for such business, without first having complied with state law if determined that a license and inspection is required by the North Dakota Department of Health, is guilty of a class B misdemeanor in the state of North Dakota.