

Cottage food laws allow food-for-profit entrepreneurs

Cole Ehmke

Starting a home bakery or other small food business from your own kitchen is now possible in Wyoming. Collectively known as the cottage food laws, these regulations help artisan food entrepreneurs figure out their niche.

Starting At Home

Low startup costs are the benefit of starting a small food venture at home since an inspected kitchen isn't required in Wyoming.

This opportunity is due to an aggressive revision in 2015 of the way the state considers who can sell processed food, called the Wyoming Food Freedom Act. The legislation allows people to make food at home and sell to others, where previously food had to be processed in a licensed, inspected facility (think commercial kitchen with its structure, equipment, and procedures). Home producers can now sell food directly to consumers, including:

- Homemade baked goods, such as breads, rolls, cakes, cookies, pies;
- Home-prepared canned goods, such as jams, jellies, salsas, pickles;
- Sauerkraut, vinegar, and other fermented foods;
- Eggs;
- Raw honey;
- Raw milk and dairy products such as homemade cheese and yogurt;

- Home-processed domestic rabbit and fish (except catfish);
- Home-processed poultry and poultry products (under a USDA exemption that permits the butcher and annual sale of up to 1,000 birds to the end consumer).

Who can I sell home-processed food to?

Anyone who is an "informed end consumer." Informed end consumer means he or she has learned the food producer is not licensed, regulated, or inspected. The Wyoming Food Freedom Act specifically says such ventures are not subject to an inspection and are exempt from state licensure, permitting, packaging, and labeling requirements, and no training is required.

No specific method of informing the consumer is identified in the food freedom statute, but farmers market vendors (or vendors at their ranches, farms, or homes) often post signs saying the food was not produced in an inspected kitchen.

The UW Extension publication *Food Ventures in Wyoming: A Resource and Regulatory Guide* provides background to the national and state regulations on food and points out the downside for food entrepreneurs thinking of scaling up is that Wyoming Food Freedom Act products cannot be sold to retailers, wholesalers, brokers, or distributors

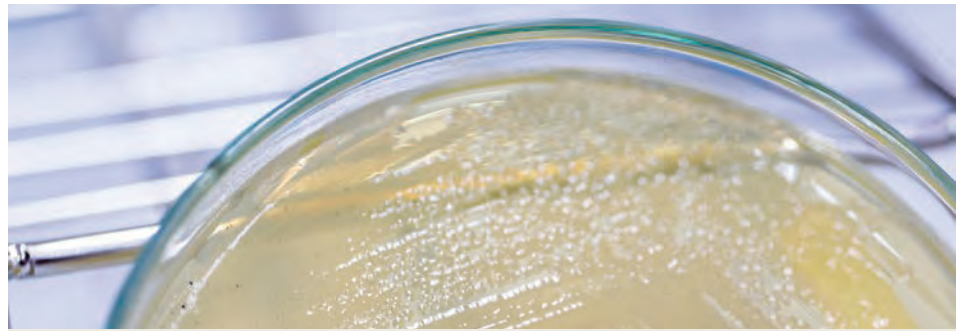


(anyone who is not the end consumer), and prohibits sales outside of the state. While producers can advertise products on the Internet and take orders and money over the Internet, they cannot ship products by mail or by a courier service to consumers. Website information is under “Resources for Food Ventures” on page 13.

What About Meat?

The Wyoming Food Freedom Act changed many things for food processors, but the state still operates within a national framework of food requirements, with implications most notable for meat. Food Freedom products cannot contain non-poultry meat (beef, lamb, pork, goat, seafood). All meat (other than domestic rabbit, fish, and poultry produced under a 1,000 bird limit) must come from a state or federally inspected facility. Wild game, such as deer, antelope, and elk, cannot be sold unless butchered at an inspected facility.

The inflexibility with meat has to do with the nature of the meat processing rules – Congress’ thinking is if any meat could be allowed for sale without going through a state’s meat inspection program, then there wouldn’t be any point to having a state program.



FOOD SAFETY

Bacteria cause most food poisoning, and bacteria grow better in some foods than others. Because reducing food poisoning is such an important part of protecting the public health, numerous regulations have been developed for most businesses along the food chain, from farmers and ranchers to handlers and processors. From the food processor’s perspective, foods with ideal conditions for bacteria growth are:

- Low in acid;
- High in starch or protein, and
- Moist.

To keep customers safe – whether inspected under Wyoming’s Food Safety Rule or uninspected under Wyoming Food Freedom – home producers should pay especial attention to the equipment, the facilities, the processes, and the ingredients (especially if using higher risk foods). And of course, be careful how food is handled after production. Visit the Wyoming Food Safety Coalition at www.wyomingfoodsafety.org and check out the ServSafe course under Classes.

The implication would be that all of Wyoming’s meat processors would have to become USDA-inspected if they wanted to stay in business. Few were likely to make the transition to become a USDA-inspected facility – which would be a severe blow to economic development – so we’ve ended up with limiting home processors in their use of meat.

Buying meat from a supermarket to use in Food Freedom products isn’t acceptable.

Begin with the End in Mind

Many entrepreneurs might be tempted to run their business in a casual way since home-based food businesses are often built out of a hobby. Think like a businessperson. A legal entity, such as an LLC, if properly managed, will keep liabilities of the enterprise separate from the assets of the owners. Other sensible business practices are to carry liability insurance, keep business accounts separate from personal accounts, and register products as trademarks in the company name.



Rising to the Next Level

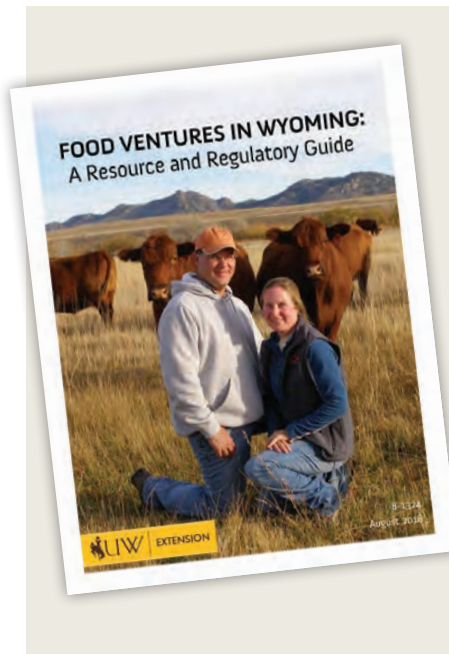
You're ready for a commercial kitchen if the kitchen stove has been outgrown as the center of a food business. In some communities, an inspected kitchen can be rented by the hour – otherwise you're looking at finding an existing one or building a new one. The regulatory environment then becomes more complex – there are more federal and state laws with which to comply.

All states must, at minimum, abide by federal statutes – they are a common basis for state regulations throughout the country. The USDA has regulatory authority over meat, poultry, and eggs, and they can delegate that authority to the state, which does inspections to ensure safety standards are met. The Food and Drug Administration (FDA) regulates all foods not covered by USDA regulations.

The rules for inspected food ventures in Wyoming are in the Wyoming Food Rule enforced by the Wyoming Department of Agriculture's Consumer Health Services Division (<http://wyagric.state.wy.us/divisions/chs>), which has inspectors across the state (although a few counties have their own inspectors).

The division is a good source of information about what is permissible and how to meet the standards – talk to them before sinking money into new facilities. More professional ventures are also likely to be subject to other state and federal regulations, like collecting sales tax, managing employees, creating nutritional labeling, meeting local zoning restrictions, and so on. Do the homework needed for a smooth startup.

Cole Ehmke is the University of Wyoming Extension agricultural entrepreneurship specialist. He can be reached at (307) 766-3782 or at cehmke@uwyo.edu.



RESOURCES FOR FOOD VENTURES

- Food Ventures in Wyoming: A Resource and Regulatory Guide www.uwyo.edu/uwe/programs/food-ventures.html
- The Wyoming Department of Agriculture, Consumer Health Services Division wyagric.state.wy.us/divisions/chs
- Food Safety Begins on the Farm: A Growers Guide – <https://ecommons.cornell.edu/handle/1813/2209>
- Wyoming Food Freedom statute – <http://bit.ly/2O62kat>

Final Thought

In Wyoming – and other states that have gotten on the local foods bandwagon – there are two tracks for food processors to choose from: (1) 'inspected' processors, that can sell to consumers as well as restaurants, wholesalers, and retailers, and also ship products across state lines; and (2) 'Food Freedom' processors, who are not required to process in inspected facilities and are limited to sales directly to an informed end consumer.

If thinking of getting into a food processing business, test the water under food freedom. This way you can start at home then grow into a commercial kitchen.

