

DIRECT FOOD SALES AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

Senate Sponsor: Evan J. Vickers

Cosponsor: Marc K. Roberts

LONG TITLE

General Description:

This bill modifies the requirements for a cottage food production operation.

Highlighted Provisions:

This bill:

- ▶ modifies definitions and defines terms;
- ▶ modifies the rulemaking authority of the Department of Agriculture and Food in regard to a cottage food production operation;
- ▶ requires the operator of a cottage food production operation to package a cottage food product with a label, as specified by the Department of Agriculture and Food in rule; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-5-9.5, as last amended by Laws of Utah 2008, Chapter 382

Be it enacted by the Legislature of the state of Utah:

29 Section 1. Section 4-5-9.5 is amended to read:

30 **4-5-9.5. Cottage food production operations.**

31 (1) For purposes of this chapter:

32 (a) "Cottage food [~~production~~] operation" means a person~~[, who in the person's home,~~
33 ~~produces a food product that is not a potentially hazardous food or a food that requires~~
34 ~~time/temperature controls for safety] who produces a cottage food product in a home kitchen.~~

35 [~~(b) "Home" means a primary residence:~~

36 [~~(i) occupied by the individual who is operating a cottage food production operation;~~
37 ~~and]~~

38 [~~(ii) which contains:~~

39 [~~(A) a kitchen designed for common residential usage; and]~~

40 [~~(B) appliances designed for common residential usage.]~~

41 (b) "Cottage food product" means a non-potentially hazardous baked good, jam, jelly,
42 or other non-potentially hazardous food produced in a home kitchen.

43 (c) "Home kitchen" means a kitchen:

44 (i) designed and intended for use by the residents of a home; and

45 (ii) used by a resident of the home for the production of a cottage food product.

46 [~~(e)~~] (d) "Potentially hazardous food" [~~or "food that requires time/temperature controls~~
47 ~~for safety": (i) means a food] means:~~

48 (i) a food of animal origin;

49 (ii) raw seed sprouts; or

50 (iii) a food that requires time [and] or temperature control, or both, for safety to limit
51 pathogenic microorganism growth or toxin formation [and is in a form capable of supporting:]₂
52 as identified by the department in rule.

53 [~~(A) the rapid and progressive growth of infections or toxigenic microorganisms;]~~

54 [~~(B) the growth and toxin production of Clostridium botulinum; or]~~

55 [~~(C) in shell eggs, the growth of Salmonella enteritidis;]~~

56 [~~(ii) includes:]~~

57 ~~[(A) an animal food;]~~
58 ~~[(B) a food of animal origin that is raw or heat treated;]~~
59 ~~[(C) a food of plant origin that is heat treated or consists of raw seed sprouts;]~~
60 ~~[(D) cut melons;]~~
61 ~~[(E) cut tomatoes; and]~~
62 ~~[(F) garlic and oil mixtures that are not acidified or otherwise modified at a food~~
63 ~~establishment in a way that results in mixtures that do not support growth as specified under~~
64 ~~Subsection (1)(c)(i); and]~~
65 ~~[(iii) does not include:]~~
66 ~~[(A) an air-cooled hard-boiled egg with shell intact;]~~
67 ~~[(B) a food with an actual weight or water activity value of 0.85 or less;]~~
68 ~~[(C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;]~~
69 ~~[(D) a food, in an unopened hermetically sealed container, that is processed to achieve~~
70 ~~and maintain sterility under conditions of nonrefrigerated storage and distribution;]~~
71 ~~[(E) a food for which laboratory evidence demonstrates that the rapid and progressive~~
72 ~~growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:]~~
73 ~~[(F) has an actual weight and a pH level that are above the levels specified under~~
74 ~~Subsections (1)(c)(iii)(B) and (C); or]~~
75 ~~[(H) contains a preservative or other barrier to the growth of microorganisms, or a~~
76 ~~combination of barriers that inhibit the growth of microorganisms; or]~~
77 ~~[(F) a food that does not support the growth of microorganisms as specified under~~
78 ~~Subsection (1)(c)(i) even though the food may contain an infectious or toxigenic~~
79 ~~microorganism or chemical or physical contaminant at a level sufficient to cause illness:]~~
80 (2) [(a)] The department shall adopt rules pursuant to Title 63G, Chapter 3, Utah
81 Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food
82 supply.
83 ~~[(b) Rules adopted pursuant to this Subsection (2) shall provide for:]~~
84 ~~[(i) the registration of cottage food production operations as food establishments under~~

85 ~~this chapter;~~

86 ~~[(ii) the labeling of products from a cottage food production operation as "Home~~
87 ~~Produced"; and]~~

88 ~~[(iii) other exceptions to the chapter that the department determines are appropriate and~~
89 ~~that are consistent with this section.]~~

90 (3) Rules adopted pursuant to Subsection (2) may not require:

91 ~~[(a) may not require:]~~

92 ~~[(i)]~~ (a) the use of commercial surfaces such as stainless steel counters or cabinets;

93 ~~[(ii)]~~ (b) the use of a commercial grade:

94 ~~[(A)]~~ (i) sink;

95 ~~[(B)]~~ (ii) dishwasher; or

96 ~~[(C)]~~ (iii) oven;

97 ~~[(iii)]~~ (c) a separate kitchen for the cottage food production operation; or

98 ~~[(iv)]~~ (d) the submission of plans and specifications before construction of, or remodel
99 of, a cottage food production operation~~[-; and].~~

100 ~~[(b) may require:]~~

101 ~~[(i) an inspection of a cottage food production operation:]~~

102 ~~[(A) prior to issuing a registration for the cottage food production operation; and]~~

103 ~~[(B) at other times if the department has reason to believe the cottage food production~~
104 ~~operation is operating:]~~

105 ~~[(F) in violation of this chapter or an administrative rule adopted pursuant to this~~
106 ~~section; or]~~

107 ~~[(H) in an unsanitary manner; and]~~

108 ~~[(ii) the use of finished and cleanable surfaces.]~~

109 (4) ~~[(a)]~~ The operator of a cottage food production operation shall:

110 ~~[(i)]~~ (a) register with the department as a cottage food production operation before
111 operating as a cottage food production operation; ~~[and]~~

112 ~~[(ii)]~~ (b) hold a valid food handler's permit~~[-]; and~~

113 (c) package a cottage food product with a label, as specified by the department in rule.

114 [~~(b)~~] (5) Notwithstanding the provisions of Subsections [4-5-9\(1\)\(a\)](#) and (c), the
115 department shall issue a registration to an applicant for a cottage food production operation if
116 the applicant for the registration:

117 [~~(i)~~ ~~passes the inspection required by Subsection [\(3\)\(b\)](#);]~~

118 [~~(ii)~~] (a) pays the fees required by the department; and

119 [~~(iii)~~] (b) meets the requirements of this section.

120 [~~(5)~~] (6) Notwithstanding the provisions of Section [26A-1-114](#), a local health
121 department:

122 (a) does not have jurisdiction to regulate the production of food at a cottage food
123 production operation operating in compliance with this section, as long as the products are not
124 offered to the public for consumption on the premises; and

125 (b) does have jurisdiction to investigate a cottage food production operation in any
126 investigation into the cause of a food born illness outbreak.

127 [~~(6)~~] (7) A food service establishment as defined in Section [26-15a-102](#) may not use a
128 product produced in a cottage food production operation as an ingredient in any food that is
129 prepared by the food establishment and offered by the food establishment to the public for
130 consumption.