

**REGULATION OF COTTAGE FOOD**

**PRODUCTION OPERATION**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Roger E. Barrus**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Utah Wholesome Food Production Act to provide for the registration of cottage food production operations as food establishments.

**Highlighted Provisions:**

This bill:

- ▶ defines terms, including cottage food production operation and potentially hazardous food product;
- ▶ requires the Department of Agriculture and Food to develop administrative rules to register cottage food production operations as food establishments; and
- ▶ clarifies the jurisdiction of the Department of Agriculture and Food and local health departments regarding the regulation of cottage food production operations.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**4-5-9.5**, Utah Code Annotated 1953



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

29 Section 1. Section **4-5-9.5** is enacted 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.

34 (b) "Home" means a primary residence:

35 (i) occupied by the individual who is operating a cottage food production operation;

36 and

37 (ii) which contains:

38 (A) a kitchen designed for common residential usage; and

39 (B) appliances designed for common residential usage.

40 (c) "Potentially hazardous food":

41 (i) means a food that requires temperature control because it is in a form capable of  
42 supporting:

43 (A) the rapid and progressive growth of infections or toxigenic microorganisms;

44 (B) the growth and toxin production of *Clostridium botulinum*; or

45 (C) in shell eggs, the growth of *Salmonella enteritidis*;

46 (ii) includes:

47 (A) an animal food;

48 (B) a food of animal origin that is raw or heat treated;

49 (C) a food of plant origin that is heat treated or consists of raw seed sprouts;

50 (D) cut melons; and

51 (E) garlic and oil mixtures that are not acidified or otherwise modified at a food

52 establishment in a way that results in mixtures that do not support growth as specified under

53 Subsection (1)(c)(i); and

54 (iii) does not include:

55 (A) an air-cooled hard-boiled egg with shell intact;

56 (B) a food with an actual weight or water activity value of 0.85 or less;

57 (C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;

58 (D) a food, in an unopened hermetically sealed container, that is processed to achieve

59 and maintain sterility under conditions of nonrefrigerated storage and distribution;

60 (E) a food for which laboratory evidence demonstrates that the rapid and progressive  
61 growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:

62 (I) has an actual weight and a pH level that are above the levels specified under  
63 Subsections (1)(c)(iii)(B) and (C); or

64 (II) contains a preservative or other barrier to the growth of microorganisms, or a  
65 combination of barriers that inhibit the growth of microorganisms; or

66 (F) a food that does not support the growth of microorganisms as specified under  
67 Subsection (1)(c)(i) even though the food may contain an infectious or toxigenic  
68 microorganism or chemical or physical contaminant at a level sufficient to cause illness.

69 (2) (a) The department shall adopt rules pursuant to Title 63, Chapter 46a, Utah  
70 Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food  
71 supply.

72 (b) Rules adopted pursuant to this Subsection (2) shall provide for:

73 (i) the registration of cottage food production operations as food establishments under  
74 this chapter;

75 (ii) the labeling of products from a cottage food production operation as "Home  
76 Produced"; and

77 (iii) other exceptions to the chapter that the department determines are appropriate and  
78 that are consistent with this section.

79 (3) Rules adopted pursuant to Subsection (2):

80 (a) may not require:

81 (i) the use of commercial surfaces such as stainless steel counters or cabinets;

82 (ii) the use of a commercial grade:

83 (A) sink;

84 (B) dishwasher; or

85 (C) oven;

86 (iii) a separate kitchen for the cottage food production operation; or

87 (iv) the submission of plans and specifications before construction of, or remodel of, a  
88 cottage food production operation; and

89 (b) may require:

90 (i) an inspection of a cottage food production operation:  
91 (A) prior to issuing a registration for the cottage food production operation; and  
92 (B) at other times if the department has reason to believe the cottage food production  
93 operation is operating:

94 (I) in violation of this chapter or an administrative rule adopted pursuant to this  
95 section; or

96 (II) in an unsanitary manner; and

97 (ii) the use of finished and cleanable surfaces.

98 (4) (a) The operator of a cottage food production operation shall register with the  
99 department as a cottage food production operation before operating as a cottage food  
100 production operation.

101 (b) Notwithstanding the provisions of Subsections 4-5-9(1)(a) and (c), the department  
102 shall issue a registration to an applicant for a cottage food production operation if the applicant  
103 for the registration:

104 (i) passes the inspection required by Subsection (3)(b);

105 (ii) pays the fees required by the department; and

106 (iii) meets the requirements of this section.

107 (5) Notwithstanding the provisions of Section 26A-1-114, a local health department  
108 does not have jurisdiction to regulate a cottage food production operation.

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**Legislative Review Note**  
**as of 1-23-07 11:09 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 339 - Regulation of Cottage Food Production Operation**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Cottage food production operations would now be subject to inspection and fees.

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*1/26/2007, 1:57:36 PM, Lead Analyst: Djambov, I.*

**Office of the Legislative Fiscal Analyst**