

**DIRECT FOOD SALES AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott D. Sandall**

Senate Sponsor: Evan J. Vickers

---

---

**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:*



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

29 **4-5-9.5. Cottage food production operations.**

30 (1) For purposes of this chapter:

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

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 (b) "Cottage food product" means a ~~Ĥ~~→ **baked good that is:**

41 ~~—— (i) produced at a cottage food operation; and~~

42 ~~—— (ii) not a potentially hazardous food.]~~ **non-potentially hazardous baked good, jam, jelly,**

42a **or other non-potentially hazardous food produced in a home kitchen.** ←Ĥ

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:],  
 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.

---

---

**Legislative Review Note**  
**Office of Legislative Research and General Counsel**