

CHAPTER 23-09.5 COTTAGE FOOD PRODUCTION AND SALES

23-09.5-01. Definitions.

As used in this chapter:

1. "Cottage food operator" means an individual who produces or packages cottage food products in a kitchen designed and intended for use by the residents of a private home.
2. "Cottage food product" means baked goods, jams, jellies, and other food and drink products produced by a cottage food operator.
3. "Delivery" means the transfer of a cottage food product resulting from a transaction between a cottage food operator and an informed end consumer.
4. "Farmers market" means a market or group of booths where farmers and other cottage food operators sell cottage food products directly to consumers.
5. "Home consumption" means food consumed within a private home or food from a private home consumed only by family members, employees, or nonpaying guests.
6. "Informed end consumer" means an individual who is the last individual to purchase a cottage food product and has been informed the cottage food product is not licensed, regulated, or inspected.
7. "Transaction" means the exchange of buying and selling.

23-09.5-02. Direct producer to consumer sales of cottage food products.

1. Notwithstanding any other provision of law, a state agency or political subdivision may not require licensure, permitting, certification, inspection, packaging, or labeling that pertains to the preparation or sale of cottage food products under this section. This section does not preclude an agency from providing assistance, consultation, or inspection, upon request, of a producer.
2. Transactions under this section must be directly between the cottage food operator and the informed end consumer and be only for home consumption. Transactions may occur at a farm, ranch, farmers market, farm stand, home-based kitchen, or any other venue not otherwise prohibited by law or through delivery.
3. Transactions under this section may not:
 - a. Involve interstate commerce;
 - b. Be conducted over the internet or phone, through the mail, or by consignment;
 - c. Include the sale of uninspected products made from meat, except as provided under subdivision d; or
 - d. Include the sale of uninspected products made from poultry, unless:
 - (1) The cottage food operator slaughters no more than one thousand poultry raised by the cottage food operator during the calendar year;
 - (2) The cottage food operator does not buy or sell poultry products, except products produced from poultry raised by the cottage food operator; and
 - (3) The poultry product is not adulterated or misbranded.
4. Except for whole, unprocessed fruits and vegetables, food prepared by a cottage food operator may not be sold or used in any food establishment, food processing plant, or food store.
5. The cottage food operator shall inform the end consumer that any cottage food product or food sold under this section is not certified, labeled, licensed, packaged, regulated, or inspected.
6. This section does not change any requirement for brand inspection or animal health inspections.
7. A cottage food operator shall label all cottage food products that require refrigeration, such as baked goods containing cream, custard, meringue, cheesecake, pumpkin pie, and cream cheese, with safe handling instructions and a product disclosure statement indicating the product was transported and maintained frozen.
8. A cottage food operator shall display a consumer advisory sign at the point of sale or place a label on the cottage food product with the following statement:

"This product is made in a home kitchen that is not inspected by the state or local health department."

9. The state department of health or a local regulating authority may conduct an investigation upon complaint of an illness or environmental health complaint.