

## Chapter 33-33-10 Preparation of Cottage Food Products for Sale

The following Sections are created as follows:

- 33-33-10-01 Definitions
- 33-33-10-02 Cottage Food Products
- 33-33-10-03 Safe Handling Instructions and Product Disclosure Statement
- 33-33-10-04 Illness or Environment Health Complaint Investigation
- 33-33-10-05 Infectious Disease

**33-33-10-01. Definitions.** For purposes of this chapter:

1. "Adulterated" has the same definition as under section 19 - 02.1 - 09.
2. "Baked goods" means a food usually produced from dough or batter which is baked before consuming, including bread, quick bread, lefse, fruit pies, custard pies, cakes, cheesecakes, cookies, biscuits, crackers, doughnuts, rolls, pastries with or without fillings, candies, or chocolates, or similar products, regardless of whether the food requires time and temperature control for safety.
3. "Commercial consumption" includes use of food in a food establishment, food processing plant, retail food store, or any other food operation requiring licensure under section 23 - 09 - 16.
4. "Cottage food production area" means the portion of a private home or home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.
5. "Department" means the state department of health.
6. "Environmental health hazard" means a chemical agent, physical object, biological hazard, or any source of filth, cause of illness or injury, or condition that is a hazard to the public or to the environment.
7. "Food establishment" has the same definition as under section 23 - 09 - 01.
8. "Food requiring time and temperature control for safety" means perishable food that is not modified in a way to limit the growth of undesirable micro-organisms or toxin formation unless maintained at a safe holding temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below.
9. "Fresh cut fruit or vegetable" means a fruit or vegetable in its raw or natural state, altered from its whole state by cutting, slicing, chopping, shredding, or tearing. The harvest cut of the stem or stalk is not included in this definition.
10. "Frozen" means a food is maintained at a temperature no greater than zero degrees Fahrenheit [-17.8 degrees Celsius] or in a solid state.
11. "High acid foods" or "acidified foods" means foods naturally high in acid or foods that have been acidified by adding acid or by the action of a culture to reduce the equilibrium pH to four and six - tenths or below.
12. "Investigation" means entering, evaluating, photographing, and securing any samples, photographs, or other evidence from any cottage food operator, cottage food production area, point of sale, venue, or component thereof.
13. "Home-canned products" means high acid or acidified fruit or vegetables where the end product does not require time and temperature control for safety.
14. "Home-consumption" means the same as used in chapter 23-09.5. Home-consumption does not include the sale of cottage food products for commercial consumption.

15. "Home-processed products" means additional handling of food for dehydrating, freeze drying, or blanching and freezing fresh cut fruits and vegetables.
16. "Misbranded" means any false or misleading labeling of a food product; food offered for sale under the name of another food; or a food container made, formed, or filled as to be misleading.
17. "Point of Sale" means the venue where the transaction involving the sale of cottage food products occurs.
18. "Private home" means a single-family residence or an area within a rental unit where a single person or family resides; but does not include any group or communal residential setting within any type of structure; or outbuilding, shed, barn, or other similar structure.
19. "Safe moisture level" means a level of moisture low enough to prevent the growth of undesirable micro-organisms in the finished food product. The measurement of moisture level or water activity at eighty - five hundredths or less is low enough to inhibit the growth of undesirable micro-organisms.
20. "Undesirable micro-organisms" means yeasts, molds, bacteria, viruses, protozoa, and parasites, and includes disease-causing pathogens having public health significance which subject food to decomposition, indicate food is contaminated with filth, or otherwise may cause food to be adulterated.
21. "Venue" means a farm, ranch, farmer's market, roadside produce stand, or group of booths where transactions involving cottage food products occur. Venue does not include establishments otherwise prohibited by law such as an establishment requiring licensure under chapter 23-09.

History:

General Authority: North Dakota Century Code 23-01-03(3)

Law Implemented: North Dakota Century Code 23-09.5

**33-33-10-02. Cottage Food Products.**

The following food products are not within the definition of cottage food products as used in chapter 23-09.5-01(1) and therefore not authorized for sale under chapter 23-09.5:

1. Meat, wild game, poultry, fish, seafood, or shellfish, or products containing such items. A cottage food operator may sell uninspected raw poultry or shell eggs as authorized by chapter 23-09.5. Pursuant to 23-09.5-02(07) such products requiring time and temperature control for safety must be transported and maintained frozen and include the required safe handling instructions and product disclosure statement.
2. Home-canned products, unless the products are high acid or acidified foods that are processed and canned in this state and the pH level is verified by a calibrated pH meter.
3. Food requiring time and temperature control for safety, unless the food is otherwise authorized under this section or meets the requirements of this subsection. Food requiring time and temperature control for safety must be transported and maintained frozen and include the required safe handling instructions and product disclosure statement. Cottage food products authorized for sale under this subsection are the following:
  - a. Baked goods;
  - b. Home-processed fresh cut fruits and vegetables that are dehydrated or freeze dried and have a safe moisture level; or
  - c. Home-processed fresh cut fruits and vegetables that are blanched and frozen.
4. Dairy, unless properly pasteurized and used as an ingredient.
5. Wild-harvested, non-cultivated mushrooms.
6. Alcoholic beverages.

7. Animal feed or any products not intended for human consumption.

History:

General Authority: North Dakota Century Code 23-01-03(3)

Law Implemented: North Dakota Century Code 23-09.5

**33-33-10-03. Safe Handling and Product Disclosure Statement.**

1. A cottage food operator may not sell an adulterated or misbranded cottage food product.
2. A cottage food operator shall label all cottage food products that require time and temperature control for safety with safe handling instructions and a product disclosure statement as required under 23-09.5-02(7). The safe handling instructions and product disclosure statement required under chapter 23-09.5(7) shall:
  - a. Appear on the product packaging labeled prominently and conspicuously and in a legible type size;
  - b. Include the phrase "safe handling instructions" in bold capital letters; and
  - c. Contain the following safe handling instructions where applicable:
    - (1) For baked goods that required time and temperature control for safety: "Previously Handled Frozen for your Protection - Refreeze or Keep Refrigerated."
    - (2) For fresh cut fruits and vegetables that are blanched and frozen: "Handled Frozen for your Protection -Refreeze or Keep Refrigerated."
    - (3) For uninspected raw poultry: "Previously Handled Frozen for your Protection – Refreeze or Keep Refrigerated. Thaw in a refrigerator or microwave. Keep poultry separate from other foods. Wash cutting surfaces, utensils, and hands after touching raw poultry. Cook thoroughly."

History:

General Authority: North Dakota Century Code 23-01-03

Law Implemented: North Dakota Century Code 23-09.5-02; 19-02.1

**33-33-10-04. Illness or Environment Health Complaint Investigation.**

1. Authorized representatives of the department or local regulating authority may access a cottage food production area of a cottage food operator's private home, point of sale, or venue where transactions of cottage foods take place to conduct an investigation upon complaint of an illness or environmental health. The cottage food operator may request to see the representatives' credentials.
2. If the department or local regulatory authority determines, as part of an investigation conducted in accordance with chapter 23-09.5-02(9) the source of an environmental health hazard or an illness complaint is associated with preparation, processing, packaging, or point of sale of a cottage food product, or otherwise associated with the cottage food operation, and poses a threat to public health or safety, where all reasonable measures have not been taken to ensure a cottage food product is not adulterated, contaminated by undesirable microorganisms, or that cottage food product is misbranded or misrepresented to the informed end consumer, the cottage food operator will be notified and the department will act in accordance with chapter 19-02.1.
3. The cottage food operator shall prepare and submit to the department a plan of correction in accordance with the minimum standards of these rules and North Dakota Century Code chapter 23-09.5. The plan shall contain adequate information to enable

the department to determine whether the proposed corrective action measures will abate or prevent ongoing threat to public health.

History:

General Authority: North Dakota Century Code 23-01-03(3)

Law Implemented: North Dakota Century Code 23-09.5-02(9); 19-02.1

**33-33-10-05. Infectious Disease.** A cottage food operator or member of the cottage food operator's private home afflicted with symptoms consistent with a contagious or infectious disease shall not knowingly:

1. Handle or prepare cottage food products, or
2. Work in a cottage food production area.

History:

General Authority: North Dakota Century Code 23-01-03(3)

Law Implemented: North Dakota Century Code 23-01-03(3); 23-09.5

PROPOSED RULES