Cottage Foods Act- Frequently Asked Questions

WEBINAR AND RESOURCES

For more information, check the Colorado Department of Public Health and Environment Division of Environmental Health and Sustainability Cottage Foods Producer Brochure:
http://www.cdphe.state.co.us/cp/CottageFoodProducerBrochureFINAL_04_27_12.pdf

Q: Is this webinar recorded?
A: Yes, the link is posted on the Colorado Farm to Market web site on the cottage foods page at www.cofarmtomarket.com/value-added-products/cottage-foods/.

Q: What if I have more questions after viewing the webinar?
A: Use the “Contact Us” link at the bottom of the Colorado Farm to Market home page to email in your questions and we will respond to them as quickly as possible.

TRAINING

Q: Is it true that I need to have my food handling/safety training done before I start selling?
A: Yes, the Colorado Cottage Foods Act requires “producers to be certified in safe food handling and processing by a third-party certifying entity, comparable to and including the United States Department of Agriculture or the Colorado State University Cooperative Extension Service, and must maintain a status of good standing in accordance with the certifying entity practices and procedures, including attending any classes required for certification.”

Q: I have food safety certification through the national registry of food safety professionals (not the types listed by CDPHE). This was taken at a university. Does this count?
A: No. There are currently only two types of food safety training courses accepted in Colorado, relevant to the Cottage Food Act:

1. ServSafe® Food Protection Manager Certification

   Offered by Colorado State University Extension as well as through other local health agencies. See http://www.ext.colostate.edu/safefood/safetyworks/servsafe.pdf or contact your local public health agency to find ServSafe® training in your area.

   Online certification offered through the National Restaurant Association Educational Foundation (NRAE) at http://www.servsafe.com/home.
2. National Environmental Health Association's Certified Professional Food Manager

Details can be found at http://www.nehatraining.org/.

Q: Is there a ServSafe® class available online?
A: Yes, the training is available online but the cost varies and the exam must be proctored by a qualified instructor. Here is the link for more information: http://www.servsafe.com/home

Q: How much do the certified safe food handling/processing courses cost?
A: The cost varies from around $120.00 to $150.00 due to costs of the course materials, lunch, snacks, and room rental fees.

Q: Do all employees in my business need safe food handling/processing training?
A: Yes. All employees directly handling food products are under the same guidelines of the Colorado Cottage Foods Act as stated above and need to have the same safe food handling/processing training and certification.

Q: Does watching this webinar allow me to get any kind of certification applicable under the Colorado Cottage Foods Act?
A: No, this webinar is only an introduction and an orientation to Colorado’s new Cottage Foods Act. You will need to take one of the two trainings outlined above in order to have appropriate safe food handling/processing training as a cottage producer.

ELIGIBLE PRODUCTS

Q: Where can I get tested canning recipes and directions for proper canning of jams/jellies?
A: The book So Easy to Preserve (available from many county Extension offices), The National Center For Home Food Preservation (University of Georgia) http://www.uga.edu/nchfp/, the Ball Blue Books of Preserving, the USDA Complete Guide to Home Canning - 2009 revision, and State University Extension fact sheets are all good sources of tested recipes.

Q: Can I make Pumpkin Butter? It is sold in the stores and I have a great recipe.
A: No. There is too much variation in viscosity among different batches of home-prepared pumpkin purees to safely permit any calculations for home processing. Since there is no available safe process for making canned pumpkin butter, it is not one of the allowed foods in Colorado under the Cottage Food Act.
Q: What about cotton candy? Candy mints?
A: Yes, cotton candy and most candy mints are acceptable. They must be non-potentially hazardous foods, therefore, ingredients like cream cheese would not be allowed.

Q: Are all pies allowed or just peach pie?
A: Many pies are allowed, and peach pie was just an example. However, potentially hazardous pies such as some pumpkin and cream pies are not allowed since they support pathogenic growth and therefore require refrigeration.

Q: Would specialty baked items be allowed (like gluten free and dairy free using almond or coconut flours and milks)?
A: Yes, but only non-potentially hazardous baked goods are allowed. Certain baked goods are actually potentially hazardous, for example, some pumpkin and cream pies, cheese cakes and pastries that will support pathogenic growth and therefore require refrigeration.

Q: Will cupcakes be allowed with butter cream frosting?
A: Only butter cream frosting that does not require refrigeration, for instance, if the recipe uses shortening instead of butter.

Q: Would frozen jam/jelly be allowed?
A: No, frozen foods are not allowed cottage foods under the Colorado Cottage Foods Act.

Q: What about using all your own home grown goods? Do I need a license to use them?
A: You are allowed to use home grown produce and herbs in the products you produce for sale. You do not need a license, but safe food handling/processing guidelines should be followed. Colorado State University Extension has information on handing produce/herbs safely. More information is available from http://farmtotable.colostate.edu/.

Q: Why is jam production allowed but canned fruits are not allowed?
A: The preserved products allowed in Colorado as cottage foods (jams, jellies, some fruit butters) have different characteristics than canned fruits and vegetables. Higher amounts of sugar in these products lower the water activity and therefore inhibit the growth of microorganisms.

Q: Do pet treats fall under Colorado’s Cottage Food Act?
A: No, pet treats are not included in Colorado’s list of allowed cottage foods.
Q: Are traditionally fermented foods allowed, for instance, lacto-fermented pickles and such?

A: No, fermented foods are not covered under the Colorado Cottage Foods Act.

Q: I have a question about mayonnaise – making it can include lemon juice or vinegar - is that considered an acidified food?

A: Mayonnaise is considered an acidified food and is, therefore, not allowed under the Colorado Cottage Foods Act.

Q: If the recipe is on my pectin box, is that "tested?"

A: Yes, the recipe included on the pectin box should be a “tested” or “standardized” recipe. CSU Extension has a listing of recommended resources for tested recipes.

Q: When using a recipe from the Ball Blue Book can you substitute honey for sugar?

A: Not necessarily. Any substitutions can impact the safety of a preserved product. If you want to experiment with modified preservation recipes, you may need to have your product tested to ensure it still meets the criteria for a non-potentially hazardous food.

Q: I want to sell canned little cakes and quick breads, is that allowed?

A: No, cakes and quick breads baked in a canning jar are not allowed, as they are not a safe product. Dry mixes that are labeled can be packed in a canning jar. The only canned products allowed under the Act are jams, jellies, and fruit butters (with the exception of jalapeno jelly and pumpkin butters which are not allowed).

LABELING

Q: How do you label a wedding cake that is unpackaged?

A: For cakes that are not easily packaged, you must include all labeling requirements on the invoice and deliver the invoice with the cake directly to the consumer (purchaser). Smaller cakes must be boxed and the label must be included on the box.

Q: If I have a cupcake truck and am selling single cupcakes without a package, can I put a sign up on the counter with the ingredients and the disclaimer?

Cottage foods may not be sold from a truck or other venue that is not the producer’s home, at the producer’s roadside stand, or at a farmers’ market, community-supported agriculture organization, or similar. This type of sale would require licensing through your local health department. Please consult http://cofarptomarket.com/value-added-products/baked-goods/breads-rolls-and-muffins/.
FOOD SAFETY

Q: Do I need to have my product tested by some lab? What would that involve?

A: Provisions for products that must be tested are not mentioned in the bill. However, if in doubt as to whether your product is non-potentially hazardous, you can verify with laboratory testing. If you have a question regarding the production of a particular cottage food product please contact your local county health agency or the Division of Environmental Health and Sustainability at 303-692-3645. A listing of local public health agencies by county can be found at: http://www.cdphe.state.co.us/opp/locallist.html

Q: For canning, it would be so much easier if I could just pour the hot product into jars and then turn them upside down...isn't that OK because they seal?

A: No, preserves need to be processed in a boiling water bath to assure safety. Open-kettle canning and the processing of freshly filled jars in conventional ovens, microwave ovens, or dishwashers are not recommended, because these practices do not prevent all risks of spoilage and do not create a safe product that is shelf stable. The temperatures obtained in open kettle canning are not high enough to destroy all spoilage and harmful microorganisms that may be in the food. Also, the food can become contaminated with microorganisms when it is transferred from the kettle to jar.

Q: Can I use the microwave to can my jams and jellies?

A: No, jams and jellies need to be processed in a boiling water bath to assure safety. Open-kettle canning and the processing of freshly filled jars in conventional ovens, microwave ovens, or dishwashers are not recommended, because these practices do not prevent all risks of spoilage.

Q: I was thinking about dehydrating herbs to sell to consumers.....how do I do it safely?

A: Dehydrator drying is a fast and easy way to dry high quality herbs because temperature and air circulation can be controlled. Solar drying is not recommended as a safe processing method.

Q: Do you have a recipe for making my own fruit and veggie wash?

A: The Food and Drug Administration (FDA) recommends thoroughly washing produce under running water before eating, cutting or cooking. Use of soap, detergent, or commercial produce washes is not recommended. CSU Extension has a publication on produce washes available at: http://www.ext.colostate.edu/pubs/foodnut/09380.pdf.

Q: What about a sanitizer for my counter top and sink area?

A: A sanitizer for your kitchen counters could be mixed in a food grade plastic spray bottle: 1 scant teaspoon of unscented household bleach (5.25% to 6%) in a quart of water. Spray onto your counter and let stand for one minute and then wipe off. CSU Extension has a fact sheet on cleaning and sanitizing in the kitchen (http://www.ext.colostate.edu/pubs/foodnut/kitchen-sanitize.pdf).
HOME KITCHEN

Q: When a home is mentioned, does that also apply to your apartment?
A: Yes, as long as the kitchen is in your primary residence. Do check on the policies for your HOA about operating a small business out of your home.

Q: Would a home with a mother-in-law living space converted into a second kitchen be allowed as well?
A: No, the kitchen must be in your primary residence.

Q: I live in a co-housing community. There is a large kitchen in our Common House shared by all at various times. Can I use this kitchen?
A: Yes, as long as the common kitchen is in your primary residence. Remember that anyone that handles the food product must have the safe food handling/processing training.

SALES & MARKETING

Q: Can you sell cottage foods to a small grocery store?
A: No, the foods produced must be sold directly to the consumer and only from the producer’s home, at the producer’s roadside stand, or at a farmers’ market, community-supported agriculture organization, or similar venue. These foods can only be sold directly to the end user (“ultimate consumer”), and shall not be sold or distributed further. Selling or providing these food products to grocery stores or other retail food establishments is prohibited.

Q: If I want to sell dairy products (such as goat cheese) and free-range eggs -- what do I need to do to sell those?

Q: Is the $5,000 a year in various categories or just total as a whole?
A: You are allowed to produce individual flavors/recipes of jams, spices, cakes, etc., each of which has a value of $5,000 in gross revenue.
Q: Can I sell edible cake toppers though online on forums like ETSY?

A: No. You are able to promote your products online, but sales must be made direct to consumer in the state of Colorado. Sites like ETSY sell products across state lines, which would not make them eligible under the Colorado Cottage Foods Act. Note that if your product is sold across state lines, it falls under FDA regulations.

Q: How about selling to a person sponsoring an event, an open house for example?

A: Foods can only be sold directly to the end user (“ultimate consumer”). You are not responsible for how the “ultimate consumer” shares or uses the product.

Q: How about selling online?

A: You are able to promote or advertise your products online, but sales must be made directly to consumer in the state of Colorado. Sites like ETSY sell products across state lines, which would not make them eligible under the Colorado Cottage Foods Act.

LICENSURE & INSURANCE

Q: I’m unsure of when I would need a commodity handler’s license. Only if I am buying direct from a farmer? If I am buying from the grocery store and making cakes with it? What are the requirements?

A: What this means for you is that if you are buying peaches, strawberries or other fruits or vegetables at a farmers’ market or directly from the farmers on their farms, you need a Farm Product Dealer’s license through the Colorado Department of Agriculture. If you plan on purchasing grains or seeds from a farmer in order to make flour for breads, you will need to have a Commodity Handlers License. These licenses do not apply to purchases made from the grocery store, only to those made directly from an agricultural producer. See http://cofarmtomarket.com/food-regulations-licensing/general-licensing-requirements/ for more information.

Q: Are we expected to pay self-employment tax on our cottage business?

A: Self-employment tax is a tax consisting of Social Security and Medicare taxes primarily for individuals who work for themselves. It is similar to the Social Security and Medicare taxes withheld from the pay of most wage earners. You must pay self-employment tax and file Schedule SE (Form 1040) if either of the following applies:

- Your net earnings from self-employment (excluding church employee income) were $400 or more.
- You had church employee income of $108.28 or more.
Note: The self-employment tax rules apply no matter how old you are and even if you are already receiving Social Security or Medicare.

Therefore, if you operate a cottage food business, and you pay yourself from this business, and you earn $400 or more in net income from this business during the year, you must pay self-employment tax. See http://www.irs.gov/businesses/small/selfemployed/index.html for more information.

Q: How do I register my business?

A: If you are using a trade name that is different from your own legal name, you must register it with the Colorado Secretary of State (for sole proprietorships & general partnerships).

http://www.sos.state.co.us/pubs/business/fileAForm.html

If your spouse is a co-owner in the business, then the Colorado Department of Revenue considers your business a general partnership and you must register accordingly. You can search the Secretary of State’s database of business names to see if your proposed one is taken. However, just because you register your trade name doesn’t mean it’s yours alone. To gain exclusive right to a name, you need to use it over time and/or file for a trademark.