



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Agriculture TITLE-SERIES: 61-42

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: Cottage Foods Homemade Potentially Hazardous
Food Items

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

§19-40-4

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

Senate Bill 44 passed by 2026 Legislative Session

PRIMARY CONTACT:

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This rule establishes guidelines for the regulation of the sale of homemade food items, including permitting, inspection, labeling and exemptions for potentially hazardous homemade cottage foods.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC INPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Amie J Minor--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 42
COTTAGE FOODS-HOMEMADE POTENTIALLY HAZARDOUS FOOD ITEMS

§61-42-1. General.

1.1. Scope. -- This legislative rule establishes the framework for regulation of the sale of homemade food items, including permitting, inspection, labeling and exemptions for potentially hazardous homemade cottage food.

1.2. Authority. -- W. Va. Code §19-40-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2032.

§61-42-2. Incorporated by Reference.

2.1. The Homemade Food Items – Cottage Food Vendor Guide, published by the West Virginia Department of Agriculture, is hereby incorporated by reference.

2.2. Regulatory Guidance for Best Practices, Cottage Foods current, published by the Association of Food and Drug Officials, is hereby incorporated by reference.

§61-42-3. Definitions.

3.1. “Acidified foods” means low-acid foods to which acid or acid foods are added with a water activity of greater than 0.85 and a finished equilibrium of pH 4.6 or below. Acidified foods are considered potentially hazardous foods.

3.2. “Commercial kitchen” means a permitted food manufacturing facility designed for food production and food safety and eligible for interstate commerce.

3.3. “Commissioner” means the Commissioner of the West Virginia Department of Agriculture.

3.4. “Community kitchen” means a kitchen that is used by community members for preparing foods, and is considered a non-permitted kitchen.

3.5. “Cottage foods” means a homemade food item intended for human consumption that is produced and packaged at the residential property of the producer and sold directly to a consumer. The term includes non-potentially hazardous and potentially hazardous foods, but excludes meat, meat products, poultry, seafood, and Grade A dairy products.

3.6. "Cottage food vendor" means a home-based permitted business producing and selling cottage food.

3.7. "Delivered" means transferred to the consumer, either immediately upon sale or at a time thereafter.

3.8. "Department" means the West Virginia Department of Agriculture (WVDA).

3.9. "Farm kitchen" means an on-premises food preparation facility manufacturing items for sale at a qualified cottage food for direct consumer purchase and is considered a non-permitted kitchen.

3.10. "Fermented products" means food processed through the conversion of carbohydrates to alcohol or organic acids using microorganisms under anaerobic conditions.

3.11. "Freeze-dried" means that food has been subjected to a process in which water is removed from a product after it is frozen and placed under a vacuum, allowing the ice to change directly from a solid phase to a vapor. The freeze-drying process consists of three separate processes: freezing, primary drying, and secondary drying.

3.12. "Kitchen" means a room or area in which food is prepared, produced, packaged, or cooked.

3.13. "Label" means a panel or panels found on a package food item.

3.14. "Local health department" means a health department serving one or more counties or one or more municipalities or a combination thereof.

3.15. "Low-acid canned food" means any food (other than alcoholic beverages) with a finished equilibrium pH greater than 4.6 and a water activity greater than 0.85, excluding tomatoes and tomato products having a finished equilibrium pH less than 4.7.

3.16. "Non-potentially hazardous cottage food" means a food item that does not require time/temperature controls for safety to limit pathogenic microorganism growth or toxin formation.

3.17. "Pickled products" means a food product that has been processed for preservation either through an anaerobic fermentation in brine or immersion in vinegar.

3.18. "Potentially hazardous cottage food " means any food item that requires time/temperature control or other protocols for safety to limit pathogenic microorganism growth or toxin formation.

3.19. Potentially hazardous cottage food vendor permit" means a permit which allows potentially hazardous cottage foods to be produced and sold.

3.20. "Process authority" or "Process control authority" means a person who has been recognized by the Association of Food and Drug Officials as having expert knowledge of thermal processing requirements for low-acid foods packaged in hermetically sealed containers or has expert knowledge in the acidification and processing of acidified foods and is found in the food processing authorities directory.

3.21. "Sanitize" means to adequately treat cleaned surfaces by a process that is effective in destroying vegetative cells of pathogens, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

3.22. "Uncut produce" means fruits and vegetables that have not been cut beyond field harvest and are offered for sale as a whole item.

3.23. "WVDA" or "the Department" means the West Virginia Department of Agriculture.

§61-42-4. Potentially Hazardous Cottage Food Vendor Registration.

4.1 All potentially hazardous cottage foods vendors shall register with the WVDA on a form provided by the Commissioner to receive a permit.

4.2. Potentially Hazardous Cottage food vendor registrations are effective from January 1 through December 31 of the following year.

4.3. A potentially hazardous cottage food vendor permit, once issued, is valid in all counties in this state. A cottage food produced pursuant to this article shall be sold only within the geographic boundaries of the State of West Virginia.

4.4. Notwithstanding any other provisions of code or rule to the contrary, a potentially hazardous cottage food vendor permittee is not required to obtain a food establishment permit to sell from home.

§61-42-5. Permitted and Prohibited Foods at Cottage Foods.

5.1. All non-potentially hazardous food products may be sold at home as cottage foods without a cottage food vendor permit.

5.2. The following potentially hazardous cottage food products may be sold at home if a potentially hazardous vendor permit has been obtained:

5.2.1. Canned acidified foods, including but not limited to:

5.2.1.a. Pickled products;

5.2.1.b. Sauces, such as hot sauce, marinara, or spaghetti sauce;

5.2.1.c. Salsas;

5.2.1.d. Fermented products;

5.2.1.e. Acidified fruits and vegetables;

5.2.1.f. Acidified condiments; and

5.2.1.g. Non-standardized jams and jellies;

5.2.1.h. Cut produce;

5.2.1.i. All cottage food products that are required to be time or temperature controlled or employ other protocols for safety to limit pathogenic microorganism growth or toxin formation; and

5.2.1.j. Any potentially hazardous freeze-dried foods;

5.3. The following foods are not permitted to be sold as a cottage food;

5.3.1. Wild-harvested mushrooms;

5.3.2. Sprouted seeds; and

5.3.3. Meat, meat products, poultry, seafood, and Grade A dairy products.

§61-42-6. Labeling.

6.1. All potentially hazardous cottage food products made or packaged in West Virginia for direct, non-wholesale, purchase by consumers -whether made in a commercial kitchen inspected by West Virginia Department of Health or local health departments under its jurisdiction, or made in a non-commercial home, farm or community kitchen shall carry product labels, regardless of whether the product is potentially hazardous or non-potentially hazardous.

6.2. Labeling shall generally conform to U.S. Food and Drug Administration rules and guidance unless specifically noted.

6.3. Required label elements shall be of a size and style that is easily legible to the average person and shall consist of:

6.3.1. Statement of identity, which is the common name of the product;

6.3.2. Company name of producer, packer, or distributor. Unless the name given is the actual producer, the name must be accompanied by a statement noting the relation to the product;

6.3.3. City, state and zip code of the producer, packer, or distributor;

6.3.4. Ingredients listed in descending order from greatest weight to least. Single ingredient products shall include an ingredient list to ensure consumers that it is the only ingredient in the product. The ingredient list shall begin with "ingredients:" followed by the list;

6.3.5. Net contents or numerical count located in bottom third of the primary label panel in standard U. S. measures, followed by the metric equivalent in parentheses. Honey shall be measured by weight. Syrups shall be measured by liquid volume;

6.3.6. A statement of any of the major food allergens contained in the product, as specified by U.S. Food and Drug Administration. The statement shall be placed directly below the ingredient list and shall begin with "Contains" followed by the allergens. The current allergens are milk, egg, fish, crustacean shellfish, tree nuts, peanuts, wheat, soybeans and sesame;

6.3.7. Safe handling instructions such as freezing or refrigeration requirements and minimum safe heating temperatures when applicable;

6.3.8. Any date or lot codes that are required elsewhere in these rules for potentially hazardous foods; and

6.39. Product labels must include the following statement: "This product was made in a non-commercial or home kitchen that may not be subject to inspection and may contain cross-contact allergens not included in the allergen statement."

6.4. Cottage food producers shall submit product labels and any associated forms to WVDA for review.

§61-42-7. Requirements For the Sale Of Potentially Hazardous Cottage Foods.

7.1. A producer of canned acidified foods must satisfy the following requirements:

7.1.1. The producer must have the process for preparing and preserving the products approved by a process control authority recognized by WVDA prior to selling the products and must be obtained in a manner approved by the WVDA, as provided in the West Virginia Cottage Food Vendor Guide;

7.1.2. The producer must keep records to demonstrate the source of the produce and all other ingredients in the producer's canned acidified foods. Recordkeeping shall include, but not be limited to:

7.1.2.a. Name of product;

7.1.2.b. Number of units prepared;

7.1.2.c. Record of raw ingredients used and vendor from which ingredients were sourced;

7.1.2.d. Date/Lot code; and

7.1.2.e. Where product/lot was distributed.

7.1.3. If the producer has a private water supply, he or she must have the water supply tested prior to permitting and at least annually thereafter and demonstrate through a written record of testing for coliform bacteria to signify that the water supply is potable. The WVDA may require more frequent testing, or additional testing, if circumstances dictate that such testing is necessary to ensure food safety.

7.1.3.a. Maximum coliform levels shall be <1cfu/100mL.

7.1.3.b. For municipal water sources, a certificate of testing must be available for review and the person utilizing the kitchen for preparation of potentially hazardous foods should verify use during potentially hazardous food production if more than one water source is present.

7.1.3.c. WVDA may establish additional water quality standards in order to meet state water quality guidelines.

7.1.4. The producer must submit proof of or having completed Better Process Control School or other higher-level food safety training, as defined in section 8.6 of this legislative rule.

7.2. A seller of the following potentially hazardous cottage foods must obtain a cottage food vendor permit from the Department. To be eligible for a vendor permit, the applicant must submit proof of holding a Food Handler's Card or having completed other higher-level safety training, as defined in section 8.6. of this legislative rule:

7.2.1. Cut produce;

7.2.2. Baked goods that require time and temperature control;

7.2.3. Infused foods, such as honeys or syrups that have additional flavors or ingredients added;

7.2.4. Condiments;

7.2.5. All other potentially hazardous foods;

7.2.6. A seller of potentially hazardous cottage foods prepared in a facility that is inspected or certified by the Federal Food and Drug Administration (FDA), USDA, WVDH, or local health departments, that has been issued a Food Manufacturing Permit from the Department of Health and Human Resources, Bureau for Public Health, must obtain a vendor permit from the Department to sell at a cottage food. To be eligible for a vendor permit, the applicant must submit proof of inspection or certification by FDA or USDA or a copy of the Food Manufacturing Permit with his or her vendor permit application;

7.2.7. People engaged in production of potentially hazardous cottage foods identified in this rule shall attend and keep current one or more of the following and provide documentation of successful completion of the scope of curriculum from a WVDA-approved food-safety course, such as:

7.2.7.a. ServSafe Food Handler Course offered by the National Restaurant Association;

7.2.7.b. Better Process Control School;

7.2.7.c. Acidified Foods Manufacturing School;

7.2.7.d. Good manufacturing practices (GMP) certificate program; or

7.2.7.e. Other curriculum approved by WVDA.

7.3. A home, community, farm, or commercial kitchen may be used by a potentially hazardous foods vendor. The WVDA reserves the right to limit the preparation and preservation of a particular potentially hazardous food to a certain type of kitchen to ensure food safety.

7.3.1. A potentially hazardous cottage food vendor permit shall state what products the vendor permit covers. Only those products that have been approved by WVDA may be sold by the holder of a cottage food vendor permit.

§61-42-8. Inspections Of Potentially Hazardous Food Kitchens.

8.1. Kitchen inspections for potentially hazardous cottage food product vendors shall be conducted by a WVDA representative upon the initial application and after renewal of the annual application. Non-compliance violations may result in additional inspections.

8.2. Potentially hazardous food vendors will be charged \$27 per hour, excluding travel hours, for inspections, which will be billed directly to the potentially hazardous food vendor. Fees may be prorated as applicable.

8.2.1. Inspection costs will be assessed for both the annual inspection, as well as any follow-up inspections after a violation has occurred.

8.3. During a kitchen inspection, the WVDA will minimally inspect to ensure the following:

8.3.1. That only the specific foods identified on the cottage food vendor permit are being produced in the kitchen during the time of production of those foods.

8.3.2. That the permitted food operation understands that no person other than the vendor permit holder, or a person under his or her direct supervision, may be engaged in the processing, preparing, packaging, or handling of any potentially hazardous food products or be in the home kitchen during the preparation, packaging, or handling of any potentially hazardous food products;

8.3.3. That no preparation, packaging, or handling of potentially hazardous food products is occurring in the home kitchen concurrent with any other domestic activities, such as home meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment. Preparation activities and routine home activities must be clearly separated by time;

8.3.4. That no infants, small children, or pets are in the home kitchen during the preparation, packaging, or handling of any potentially hazardous food products;

8.3.5. That kitchen equipment and utensils being used to produce food products, can be properly cleaned and sanitized;

8.3.6. That all food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any potentially hazardous food products are washed, rinsed, and sanitized before each use;

8.3.7. That all food, food preparation, equipment, and storage areas are free of rodents and insects;

8.3.8. That no person involved in the preparation and packaging of potentially hazardous food products;

8.3.8.a. Are working with exposed food, cleaning equipment, utensils, linens, or working with unwrapped single-service or single-use articles while experiencing the following symptoms:

8.3.8.a.1. Vomiting;

8.3.8.a.2. Diarrhea;

8.3.8.a.3. Jaundice; or

8.3.8.a.4. Sore throat with fever;

8.3.8.a.5. Has a lesion containing pus, such as a boil or infected wound, that is open or draining and is;

8.3.8.a.5.A. On the hands or wrists, unless an impermeable cover such as single-use gloves protect the lesion;

8.3.8.a.5.B. On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or

8.3.8.a.5.C. On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage; or

8.3.8.a.5.D. Has symptoms of any of the following illnesses as diagnosed by a health practitioner.

8.3.8.b. Norovirus;

8.3.8.c. Hepatitis A;

8.3.8.d. Shigella spp;

8.3.8.e. Shiga toxin producing E. coli; or

8.3.8.f. Salmonella.

§61-42-9. Local Permit Requirements.

9.1. Role of the local health departments in cottage foods. If the local health department in the jurisdiction in which the potentially hazardous cottage food vendor permittee is located has reason to believe that an imminent health hazard exists, the local health department may invoke cessation of production until it deems that the hazardous situation has been addressed to the satisfaction of the local health department. A local health department that invokes cessation of production shall do so in consultation with the department.

9.2. WVDA issued Farmers Market Vendor permits are still required for selling of potentially hazardous foods at a farmers market.

9.3. If a cottage food vendor already holds a WVDA-issued Farmers Market Vendor permit, the Farmers Market Vendor permit may be submitted as the required documentation for a Potentially Hazardous Cottage Food Vendor permit; however, only foods approved under the Farmers Market Vendor permit shall be authorized for sale.

9.4. Non-potentially hazardous cottage foods. The production and sale of a non-potentially hazardous food, when done in conformity with W. Va. Code §19-35-6 and the accompanying legislative rule, is not subject to the provisions of this article.

§61-42-10. Enforcement.

10.1. If a potentially hazardous cottage food vendor is not registered, a notice shall be issued stating the vendor has thirty (30) days to register with the WVDA. Failure to register within thirty (30) days shall result in a \$250 civil penalty being assessed. If the penalty is not paid within thirty (30) days of the assessment, the account may be referred to collections.

10.2. The WVDA reserves the right to conduct inspections, collect product samples, and perform random product testing when deemed necessary.