

AN ACT concerning health.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Food Handling Regulation Enforcement Act is amended by changing Section 4 as follows:

(410 ILCS 625/4)

Sec. 4. Cottage food operation.

(a) For the purpose of this Section:

A food is "acidified" if: (i) acid or acid ingredients are added to it to produce a final equilibrium pH of 4.6 or below; or (ii) it is fermented to produce a final equilibrium pH of 4.6 or below.

"Canned food" means food ~~preserved in air-tight, vacuum-sealed containers~~ that ~~has been~~ are heat processed sufficiently under United States Department of Agriculture guidelines to enable storing the food at normal home temperatures.

"Cottage food operation" means an operation conducted by a person who produces or packages food or drink, other than foods and drinks listed as prohibited in paragraph (1.5) of subsection (b) of this Section, in a kitchen located in that person's primary domestic residence or another appropriately designed and equipped kitchen on a farm ~~residential or commercial-style kitchen on that property~~ for direct sale by the owner, a family member, or employee.

"Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. "Cut leafy greens" does not mean cut-to-harvest leafy greens.

"Department" means the Department of Public Health.

"Equilibrium pH" means the final potential of hydrogen measured in an acidified food after all the components of the food have achieved the same acidity.

"Farmers' market" means a common facility or area where farmers gather to sell a variety of fresh fruits and vegetables and other locally produced farm and food products directly to consumers.

"Leafy greens" includes iceberg lettuce; romaine lettuce; leaf lettuce; butter lettuce; baby leaf lettuce, such as immature lettuce or leafy greens; escarole; endive; spring mix; spinach; cabbage; kale; arugula; and chard. "Leafy greens" does not include microgreens or herbs such as cilantro or parsley.

"Local health department" means a State-certified health department of a unit of local government in which a cottage food operation is located.

"Local public health department association" means an association solely representing 2 or more State-certified local health departments.

"Low-acid canned food" means any canned food with a finished equilibrium pH greater than 4.6 and a water activity (aw) greater than 0.85.

~~"Main ingredient" means an agricultural product that is the defining or distinctive ingredient in a cottage food~~

~~product, though not necessarily by predominance of weight.~~

"Microgreen" means an edible plant seedling grown in soil or substrate and harvested above the soil or substrate line.

"Potentially hazardous food" means a food that is potentially hazardous according to the Department's administrative rules. Potentially hazardous food (PHF) in general means a food that requires time and temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

"Sprout" means any seedling intended for human consumption that was produced in a manner that does not meet the definition of microgreen.

~~(b) A cottage food operation may produce homemade food and drink provided that all of the following conditions are met: Notwithstanding any other provision of law and except as provided in subsections (c), (d), and (e) of this Section, neither the Department nor the Department of Agriculture nor the health department of a unit of local government may regulate the transaction of food or drink by a cottage food operation providing that all of the following conditions are met:~~

~~(1) (Blank).~~

~~(1.3) A cottage food operation must register with the local health department for the unit of local government in which it is located, but may sell products outside of the unit of local government where the cottage food operation is located. A copy of the certificate of registration must be available upon request by any local health department.~~

~~(1.5) A cottage food operation may produce homemade food and drink. However, a cottage food operation, unless properly licensed, certified, and compliant with all requirements to sell a listed food item under the laws and regulations pertinent to that food item, shall not sell or offer to sell the following food items or processed foods containing the following food items, except as indicated:~~

~~(A) meat, poultry, fish, seafood, or shellfish;~~

~~(B) dairy, except as an ingredient in a non-potentially hazardous baked good or candy, such as caramel, subject to paragraph (4), or as an ingredient in a baked good frosting, such as buttercream (1.8);~~

~~(C) eggs, except as an ingredient in a non-potentially hazardous food, including baked good or in dry noodles, or as an ingredient in a baked good frosting, such as buttercream, if the eggs are not raw;~~

~~(D) pumpkin pies, sweet potato pies, cheesecakes, custard pies, creme pies, and pastries with potentially hazardous fillings or toppings;~~

~~(E) garlic in oil or oil infused with garlic, except if the garlic oil is acidified;~~

~~(F) low-acid canned foods; canned foods, except for the following, which may be canned only in Mason-style jars with new lids:~~

~~(i) fruit jams, fruit jellies, fruit preserves, or fruit butters;~~

~~(ii) syrups;~~

~~(iii) whole or cut fruit canned in syrup;~~

~~(iv) acidified fruit or vegetables prepared and offered for sale in compliance with paragraph (1.6); and~~

~~(v) condiments such as prepared mustard, horseradish, or ketchup that do not contain~~

~~ingredients prohibited under this Section and that are prepared and offered for sale in compliance with paragraph (1.6);~~

(G) sprouts;

(H) cut leafy greens, except for cut leafy greens that are dehydrated, acidified, or blanched and frozen;

(I) cut or pureed fresh tomato or melon;

(J) dehydrated tomato or melon;

(K) frozen cut melon;

(L) wild-harvested, non-cultivated mushrooms;

(M) alcoholic beverages; or

(N) kombucha.

(1.6) In order to sell canned tomatoes or a canned product containing tomatoes, a cottage food operator shall either:

(A) follow exactly a recipe that has been tested by the United States Department of Agriculture or by a state cooperative extension located in this State or any other state in the United States; or

(B) submit the recipe, at the cottage food operator's expense, to a commercial laboratory according to the commercial laboratory's directions to test that the product has been adequately acidified; use only the varietal or proportionate varietals of tomato included in the tested recipe for all subsequent batches of such recipe; and provide documentation of the annual test results of the recipe submitted under this subparagraph upon registration and to an inspector upon request during any inspection authorized by ~~paragraph (2) of~~ subsection (d).

(2) In order to sell a fermented or acidified food, a cottage food operation shall either:

(A) submit a recipe that has been tested by the United States Department of Agriculture or a cooperative extension system located in this State or any other state in the United States; or

(B) submit a written food safety plan for each category of products for which the cottage food operator uses the same procedures, such as pickles, kimchi, or hot sauce, and a pH test for a single product that is representative of that category; the written food safety plan shall be submitted annually upon registration and each pH test shall be submitted every 3 years; the food safety plan shall adhere to guidelines developed by the Department.

(3) A fermented or acidified food shall be packaged according to one of the following standards:

(A) A fermented or acidified food that is canned must be processed in a boiling water bath in a Mason-style jar or glass container with a tight-fitting lid.

(B) A fermented or acidified food that is not canned shall be sold in any container that is new, clean, and seals properly and must be stored, transported, and sold at or below 41 degrees.

(4) In order to sell a baked good with cheese, a local health department may require a cottage food operation to submit a recipe, at the cottage food operator's expense, to a commercial laboratory to verify that it is non-potentially hazardous before allowing the cottage food operation to sell the baked good as a cottage food.

(5) For a cottage food operation that does not utilize a municipal water supply, such as an operation using a private well, a local health department may require a water sample test to verify that the water source being used meets public safety standards related to E. coli coliform. If a test is requested, it must be conducted at the cottage food operator's expense.

(6) A person preparing or packaging a product as part of a cottage food operation must be a Department-approved certified food protection manager.

(7) Food packaging must conform with the labeling requirements of the Illinois Food, Drug and Cosmetic Act. A cottage food product shall be prepackaged and the food packaging shall be affixed with a prominent label that includes the following:

(A) the name of the cottage food operation and unit of local government in which the cottage food operation is located;

(B) the identifying registration number provided by the local health department on the certificate of registration and the name of the municipality or county in which the registration was filed;

(C) the common or usual name of the food product;

(D) all ingredients of the food product, including any color, artificial flavor, and preservative, listed in descending order by predominance of weight shown with the common or usual names;

(E) the following phrase in prominent lettering: "This product was produced in a home kitchen not inspected by a health department that may also process common food allergens. If you have safety concerns, contact your local health department.";

(F) the date the product was processed; and

(G) allergen labeling as specified under federal labeling requirements.

(8) Food packaging may include the designation "Illinois-grown", "Illinois-sourced", or "Illinois farm product" if the packaged product is a local farm or food product as that term is defined in Section 5 of the Local Food, Farms, and Jobs Act.

(9) In the case of a product that is difficult to properly label or package, or for other reasons, the local health department of the location where the product is sold may grant permission to sell products that are not prepackaged, in which case other prominent written notice shall be provided to the purchaser.

(10) At the point of sale, notice must be provided in a prominent location that states the following: "This product was produced in a home kitchen not inspected by a health department that may also process common food allergens." At a physical display, notice shall be a placard. Online, notice shall be a message on the cottage food operation's online sales interface at the point of sale.

(11) Food and drink produced by a cottage food operation shall be sold directly to consumers for their own consumption and not for resale. Sales directly to consumers include, but are not limited to, sales at or through:

(A) farmers' markets;

(B) fairs, festivals, public events, or online;

(C) pickup from the private home or farm of the cottage food operator, if the pickup is not prohibited by any law of the unit of local government that applies equally to all cottage food operations; in a municipality with a population of 1,000,000 or more, a cottage food operator shall comply with any law of the municipality that applies equally to all home-based businesses;

(D) delivery to the customer; and

(E) pickup from a third-party private property with the consent of the third-party property holder.

(12) Only food that is non-potentially hazardous may be shipped. A cottage food product shall not be shipped out of State. Each cottage food product that is shipped must be sealed in a manner that reveals tampering, including, but not limited to, a sticker or pop top.

(c) A local health department shall register any eligible cottage food operation that meets the requirements of this Section and shall issue a certificate of registration with an identifying registration number to each registered cottage food operation. A local health department may establish a self-certification program for cottage food operators to affirm compliance with applicable laws, rules, and regulations. Registration shall be completed annually and the local health department may impose a fee not to exceed \$50.

(d) In the event of a consumer complaint or foodborne illness outbreak, upon notice from a different local health department, or if the Department or a local health department has reason to believe that an imminent health hazard exists or that a cottage food operation's product has been found to be misbranded, adulterated, or not in compliance with the conditions for cottage food operations set forth in this Section, the Department or the local health department may:

(1) inspect the premises of the cottage food operation in question;

(2) set a reasonable fee for the inspection; and

(3) invoke penalties and the cessation of the sale of cottage food products until it deems that the situation has been addressed to the satisfaction of the Department or local health department; if the situation is not amenable to being addressed, the local health department may revoke the cottage food operation's registration following a process outlined by the local health department.

(e) A local health department that receives a consumer complaint or a report of foodborne illness related to a cottage food operator in another jurisdiction shall refer the complaint or report to the local health department where the cottage food operator is registered.

(f) By January 1, 2022, the Department, in collaboration with local public health department associations and other stakeholder groups, shall write and issue administrative guidance to local health departments on the following:

(1) development of a standard registration form, including, if applicable, a written food safety plan;

(2) development of a Home-Certification Self Checklist Form;

(3) development of a standard inspection form and inspection procedures; and

(4) procedures for cottage food operation workspaces that include, but are not limited to, cleaning products, general sanitation, and requirements for functional equipment.

(g) A person who produces or packages a non-potentially hazardous baked good for sale by a religious, charitable, or nonprofit organization for fundraising purposes is exempt from the requirements of this Section.

(h) A home rule unit may not regulate cottage food operations in a manner inconsistent with the regulation by the State of cottage food operations under this Section. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

~~(1.7) A State-certified local public health department that regulates the service of food by a cottage food operation in accordance with subsection (d) of this Section may require a cottage food operation to submit a canned food that is subject to paragraph (1.6), at the cottage food operator's expense, to a commercial laboratory to verify that the product has a final equilibrium pH of 4.6 or below.~~

~~(1.8) A State-certified local public health department that regulates the service of food by a cottage food operation in accordance with subsection (d) of this Section may require a cottage food operation to submit a recipe for any baked good containing cheese, at the cottage food operator's expense, to a commercial laboratory to verify that it is non-potentially hazardous before allowing the cottage food operation to sell the baked good as a cottage food.~~

~~(2) The food is to be sold at a farmers' market, with the exception that cottage foods that have a locally grown agricultural product as the main ingredient may be sold on the farm where the agricultural product is grown or delivered directly to the consumer.~~

~~(3) (Blank).~~

~~(4) The food packaging conforms to the labeling requirements of the Illinois Food, Drug and Cosmetic Act and includes the following information on the label of each of its products:~~

~~(A) the name and address of the cottage food operation;~~

~~(B) the common or usual name of the food product;~~

~~(C) all ingredients of the food product, including any colors, artificial flavors, and preservatives; listed in descending order by predominance of weight shown with common or usual names;~~

~~(D) the following phrase: "This product was produced in a home kitchen not subject to public health inspection that may also process common food allergens.";~~

~~(E) the date the product was processed; and~~

~~(F) allergen labeling as specified in federal labeling requirements.~~

~~(5) The name and residence of the person preparing and selling products as a cottage food operation are registered with the health department of a unit of local government where the cottage food operation resides. No fees shall be charged for registration. Registration shall be for a minimum period of one year.~~

~~(6) The person preparing or packaging products as a cottage food operation has a Department approved Food Service Sanitation Management Certificate.~~

~~(7) At the point of sale, a placard is displayed in a~~

~~prominent location that states the following: "This product was produced in a home kitchen not subject to public health inspection that may also process common food allergens.".~~

~~(c) Notwithstanding the provisions of subsection (b) of this Section, if the Department or the health department of a unit of local government has received a consumer complaint or has reason to believe that an imminent health hazard exists or that a cottage food operation's product has been found to be misbranded, adulterated, or not in compliance with the exception for cottage food operations pursuant to this Section, then it may invoke cessation of sales of cottage food products until it deems that the situation has been addressed to the satisfaction of the Department.~~

~~(d) Notwithstanding the provisions of subsection (b) of this Section, a State-certified local public health department may, upon providing a written statement to the Department, regulate the service of food by a cottage food operation. The regulation by a State-certified local public health department may include all of the following requirements:~~

~~(1) That the cottage food operation (A) register with the State-certified local public health department, which shall be for a minimum of one year and include a reasonable fee set by the State-certified local public health department that is no greater than \$25 notwithstanding paragraph (5) of subsection (b) of this Section and (B) agree in writing at the time of registration to grant access to the State-certified local public health department to conduct an inspection of the cottage food operation's primary domestic residence in the event of a consumer complaint or foodborne illness outbreak.~~

~~(2) That in the event of a consumer complaint or foodborne illness outbreak the State-certified local public health department is allowed to (A) inspect the premises of the cottage food operation in question and (B) set a reasonable fee for that inspection.~~

~~(i) (e) The Department may adopt rules as may be necessary to implement the provisions of this Section.~~

~~(Source: P.A. 100-35, eff. 1-1-18; 100-1069, eff. 8-24-18; 101-81, eff. 7-12-19.)~~

Section 99. Effective date. This Act takes effect January 1, 2022.

Effective Date: 1/1/2022