

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 2 of the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code §§ 7-742.01 *et seq.* (2017 Supp.)) (Act), Sections 4902(a) and (b) of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code §§ 7-731 *et seq.* (2012 Repl. & 2017 Supp.)), and Mayor's Order 2007-63, dated March 8, 2007, hereby gives notice of the adoption of new cottage food regulations in a new Subtitle K (Cottage Food Regulations) in Title 25 (Food Operations and Community Hygiene Facilities) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this final rulemaking is to provide regulatory oversight of cottage food businesses, determine which non-potentially hazardous foods are safe to produce, package, or sell as a cottage food product, and protect public health and safety by conducting pre-operational and complaint-based inspections.

On October 14, 2016, the Notice of Proposed Rulemaking was published in the *D.C. Register* at 63 DCR 012812. The Department received public comments from one member of the public and three (3) organizations identified below and made minor edits to Subsections 103.5(l), 103.5(m), 105.1(j) and 106.1(p) of the regulations for clarification in response to the public comments, which are documented below. However, no substantive changes were made by the Department to these rules. The comments received by the Department are summarized below; common comments have been grouped in numbered sets; each of the Department's responses is labelled as DOH Response.

1. Revenue limit:

Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

Comment: Increase the revenue threshold to \$50,000 from \$25,000 to uplift families out of poverty (Note: California has set an income gap of \$50,000 and an increased income gap is justified based on cost of living in DC compared to our neighbors.)

DOH Response: No changes were made due to D.C. Official Code § 7-742.01(2)(C). The annual revenues sale of \$25,000 is set by the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.01(2)(C)) and cannot be changed by regulation.

2. Approved processes, including canning:

Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

Comment: Expand approved processes to include canning with appropriate required and enhanced safety measures

Commenter: Individual Member of the Public

Comment: Canning of fruits, vegetables, pickled products, vegetables, butters, salsas, jams, jellies, marmalades, and preserves should be an allowed process (excepting low-acid or low-sugar foods canning) so long as the cottage food business operator and all other authorized persons preparing food complete a Better Food Process course approved by the Department (see Maryland regulations for comparable example).

I recommend that Section 105.1(g) “Can any food products, including but not limited to fruits, vegetables, vegetables butters, salsa, and similar foods” be allowed under the Cottage Food Regulations. The regulation as it now reads is an impediments/barrier for canning products/business[es] that generate \$25,000 or less per year. These business[es] can sell everything it produces but its production capacity is limited (1000 units or less) because the owner that makes the product do not want to mass produce the product.

There are businesses that have products that want to comply with DC regulations. I believe the current regulatory environment may force some business to consider relocating to other jurisdictions because entry into the D.C. market is cost prohibitive for the amount of product that is produce. Therefore, Section 105.1(g) “Can any food products, including but not limited to fruits, vegetables, vegetables butters, salsa, and similar foods” be allowed under the Cottage Food Regulations.

DOH Response: No changes were made to Subsection 105.1(g) of the regulations.

According to the Food Code Regulations published in Subtitle A of Title 25 of the District of Columbia Municipal Regulations (DCMR) “canning” is a specialized process in which food establishments need to have approved plans to conduct.

“Canning” is a very dangerous process which increases the risk of botulism. There have been several examples of botulism outbreaks associated with home canning. In 2015, the state of Ohio experienced a large outbreak, in which 77 people were ill and 29 were hospitalized.

Further, the State of Maryland restricts food products that require temperature control for safety identified in Subsections 105.1(a) through 105.1(i) of the regulations and foods that are not allowed identified in Subsections 106.1(a) through (t) of the regulations to the following licenses:

- 1. On Farm Home Processing License – Must be a farmer and sales must be less than \$40,000.00 annually. If sales are more than \$40,000, a “Processing License” is required along with a FDA Better Process School Training course.
- 2. Processing License – Must meet commercial requirements. This license cost \$400.00.

Thus, pursuant to the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.02(c)(2)(G)), the Department has determined that the processes and activities identified in Section 105 of the regulations, and the prohibited foods identified in Section 106 of the regulations are too risky to be performed in a cottage food business that is not regulated by the District’s Food Code Regulations or the District’s Food Processing Operations Code.

3. Third-party sales:

Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

Comment: Include an additional Class B license that will allow the sale of cottage food products to third party vendors (*i.e.*, grocery store, food trucks, etc.)

DOH Response: No changes were made due to D.C. Official Code § 7-742.01(3). By whom and where cottage food products can be sold is set by the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.01(3)) and cannot be changed by regulation.

4. Waive inspections:

Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

Comment: Waive inspection for food products that do not engage in business to business sales.

DOH Response: No changes were made due to D.C. Official Code § 7-742.01(3). Business to business sales are not permitted by the Cottage Food Amendment Act of 2013 and cannot be changed by regulations.

5. Inspection flexibility:

Commenter: NAACP DC Branch

Comment: Allow photo submission in lieu of in-home inspection to accommodate District residents challenged with availability during regular business hours for business-to-business sales.

Commenter: DREAMING OUT LOUD, Inc.

Comment: Include inspection times on weekends to accommodate District residents challenged with availability during regular business hours.

Commenter: Individual Member of the Public

Comment: Some limited inspection times should be available on evenings and/or weekends, to accommodate cottage business owners whose schedules may prohibit them from being available during standard DOH Monday to Friday business hours.

DOH Response: No changes were made to Subsections 108.1 through 108.13 of the regulations.

The Department is required to conduct an inspection by statute and this requirement cannot be changed by regulation.

The Food Safety and Hygiene Inspection is unable to conduct weekend inspections without paying staff overtime. Additionally, the staff will be visiting private residents for the first time and the full complement of supervisory staff is needed to handle any issues the inspector may encounter.

6. Allowable products:

Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

Comment: Inclusion of canning of fruits, vegetables, pickled products, vegetables butters, salsas, jams, jellies, marmalades, and preserves under allowable items.

Commenter: DC Food Policy Council, Office of Planning

Comment: Are jams and jellies that are shelf stable falls on the allowed list or the prohibited list? The not prohibited products list only mentions sugar-free jams and jellies.

Some of the farmer’s market regulations from DOH allow additional products beyond this list, so are they now in conflict? See

<http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/New%20DOH%20Guidance%20For%20Farmer%27s%20Market.pdf>

Is nut butter allowed?

DOH Response: Jams and jellies are allowed. Subsection 103.5 of the regulations was amended as follows:

(l) Jams, jellies, syrups, marmalades and other preserves[.]

Farmer's markets are authorized to sell items listed in the link at: <http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/New%20DOH%20Guidance%20For%20Farmer%27s%20Market.pdf>, and are not in conflict with the Cottage Food Business Regulations.

Cottage food businesses are not allowed to produce, package, or sell potentially hazardous food products – which require temperature control for safety, as specified in Sections 105 and 106 of the regulations.

According to the Food Code Regulations published in Subtitle A of Title 25 of the District of Columbia Municipal Regulations (DCMR) “canning” is a specialized process in which food establishments need to have approved plans to conduct.

“Canning” is a very dangerous process which increases the risk of botulism. There have been several examples of botulism outbreaks associated with home canning. In 2015, the state of Ohio experienced a large outbreak, in which 77 people were ill and 29 were hospitalized.

Thus, pursuant to the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.02(c)(2)(G)), the Department has determined that the processes and activities identified in Section 105 of the regulations, and the prohibited foods identified in Section 106 of the regulations are too risky to be performed in a cottage food business that is not regulated by the District's Food Code Regulations or the District's Food Processing Operations Code.

7. Providing information:

Commenter: NAACP DC Branch

Comment: The Department should offer information sessions and online information to ensure residents understand and comply with the law.

DOH Response: Although no section was identified, the Department agrees with this assessment.

The Department is partnering with the DC Department of Small and Local Business Development (DSLBD) in disseminating “Outreach Materials”, *i.e.*, Brochures and Frequently Asked Questions (FAQs), and holding meetings with potential cottage food business owners to ensure accurate and factual information.

8. Partnering with others:

Commenter: NAACP DC Branch

Comment: Encourage the Department to partner with Department of Human Services SNAP Employment and Training Program, TANF vendors and community partners to engage residents into creating cottage food businesses.

DOH Response: No section was identified. However, the Department is partnering with the DC Department of Small and Local Business Development.

9. Food safety:

Commenter: DC Food Policy Council, Office of Planning

Comment: Where can these food safety training classes be obtained in DC and what is the cost associated with it?

DOH Response: No changes were made to Subsection 102.2(c) of the regulations.

Subsection 102.2(c) refers to food safety training classes offered by nationally accredited providers. Applicants would then bring the class results to the Department to get a District of Columbia Certified Food Protection Manager Certificate.

Comment: Is Subsection 102.2(d) of the regulations perceived as different than Subsection 102.2(c) that directly precedes it?

DOH Response: Yes. Subsection 102.2(c) refers to food safety training classes offered by nationally accredited providers, and Subsection 102.2(d) refers to a District-issued Certified Food Protection Manager Certificate that can be obtained at the Department. The cost is thirty-five dollars (\$35.00).

In addition, information on the food safety course will be available in “Outreach Materials” on the Department’s website along with the Application for Cottage Food Business.

Comment: Why does this time frame for this certificate differ from the Certified Food Protection Manager? Is it purposeful? It would make it easier for businesses to have this match the 3 year certification for food safe handling (especially since it could take 45 days after the business applies to get fully approved, which cuts into their first year being certified.)

DOH Response: No changes were made to Subsection 102.2(g) of the regulations.

The Certified Food Protection Manager (CFPM) is totally different from the Cottage Food Business Registration. DOH does not offer the Certified Food Protection Manager course and cannot control when the test is offered.

Additionally, many individuals who apply for the Cottage Food Business Registration are already certified as a Food Protection Managers.

Comment: Does this refer to DCRA in this instance, rather than DOH as is indicated by “The Department”?

DOH Response: No changes were made to Subsection 102.5 of the regulations.

The term “the Department” means the Department of Health as cited in the definitions section of the regulations.

Comment: Which agency will conduct the inspection?

DOH Response: No changes were made to Subsection 102.6 of the regulations.

The term “the Department” who conducts inspections means the Department of Health as cited in the definitions section of the regulations.

Comment: Will this be listed or shared publically?

DOH Response: No changes were made to Subsection 102.7(b) of the regulations.

Owners of cottage food businesses are operating out of their homes and have an expectation of privacy. However, the Application for Cottage Food Business will allow owners to select what business information – if any – they would like the Department to share with the public.

Comment: Where does honey and honeycomb fall on this permitted or not permitted list?

DOH Response: Subsection 103.5(m) of the regulation was amended as follows:

Honey and honeycomb. Applicants for cottage food businesses shall comply with “Sustainable Urban Agriculture Apiculture Act of 2012”, and provide proof they are registered with the Department of Energy and Environment in accordance with Subtitle B of the Act – “Promoting Urban Agriculture through Beekeeping”[.]

Comment: Are sections b, h, g, etc. intended to prohibit the preparation and sale of jams and jellies? Or are they allowed, but certain types of processes to make them are not allowed? Many other states that have cottage food provisions allow for jams and jellies as long as they are shelf stable.

DOH Response: No changes were made to Subsections 105.1(b), 105.1(g), and 105.1(h) of the regulations.

The sales of jams and jellies are allowed, however canning, jarring, and hermetically sealing is not allowed. These processes remove oxygen from the container which increases the risk of botulism.

According to the Food Code Regulations published in Subtitle A of Title 25 of the District of Columbia Municipal Regulations (DCMR), “canning” is a specialized process in which food establishments need to have approved plans to conduct.

“Canning” is a very dangerous process which increases the risk of botulism. There have been several examples of botulism outbreaks associated with home canning. In 2015, the state of Ohio experienced a large outbreak, in which 77 people were ill and 29 were hospitalized.

Thus, pursuant to the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.02(c)(2)(G)), the Department has determined that the processes and activities identified in Section 105 of the regulations, and the prohibited foods identified in Section 106 of the regulations are too risky to be performed in a cottage food business that is not regulated by the District’s Food Code Regulations or the District’s Food Processing Operations Code.

Comment: There needs to be a reference back to the allowed exception in Subsections 103.3-4 if an item is on the list or not on the permitted list they may go through the lab ph testing process and make the request to the Department.

DOH Response: The language in Subsection 105.1(j) of the regulations was amended to reference Subsections 103.3 and 103.4, as follows:



- (j) Produce food products not expressly listed in Subsection 103.5 [,] except as specified in Subsections 103.3 and 103.4 of these regulations[.]

Comment: Does sugar-free apply to only the first thing in the list or all the following items?

DOH Response: Sugar-free applies to all food products in paragraph (p). Therefore, Subsection 106.1(p) of the regulations was amended as follows:

- (p) Sugar-free products, such as jams, jellies, syrups, marmalades and other preserves[.]

Comment: Must all cottage food products be stored in the same location as they are originally prepared? Is that the intention, I don't find it clear currently from my reading of this.

DOH Response: No changes were made to Subsection 109.1(i) of the regulations.

In accordance with the Cottage Food Amendment Act of 2013, ingredients and supplies for cottage food products, and the finished food products are required to be stored on the premises of the cottage food business.

To avoid contaminating cottage food products with foods prepared and consumed by the residents living on the premises, the Department requires cottage food business owners to store, prepare, and package all cottage food products separate from foods intended for home use.

Section 2(e) of the Cottage Food Amendment Act of 2013, requires a sixty (60)-day Council review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The Council approved these rules on December 18, 2017 by PR 22-0432. These rules were adopted as final on February 8, 2017 and will take effect immediately upon publication of this Notice in the *D.C. Register*.

**A new Subtitle K of Title 25 DCMR, FOOD OPERATIONS AND COMMUNITY HYGIENE FACILITIES, is added to read as follows:**

**SUBTITLE K COTTAGE FOOD REGULATIONS**

**Chapter 1: REGISTRATION PROCEDURES, MENU, AND REQUIREMENTS**

<b>100</b>	<b>Title</b>
<b>101</b>	<b>Intent and Scope</b>
<b>102</b>	<b>Application Procedures and Requirements</b>
<b>103</b>	<b>Approved Food Product List</b>

- 104 Cottage Food Product Labeling Requirements
- 105 Processes and Activities That Are Not Allowed
- 106 Foods That Are Not Allowed
- 107 Cottage Food Sampling Requirement
- 108 Required Inspections and Administrative Remedies
- 109 Safe Food Practices

**Chapter 99: DEFINITIONS**

- 9900 General Provisions
- 9901 Definitions

**CHAPTER 1 REGISTRATION PROCEDURES, MENU, AND REQUIREMENTS**

**100 TITLE**

100.1 These provisions shall be known as the Cottage Food Regulations, hereinafter referred to as “these Regulations”.

**101 INTENT AND SCOPE**

101.1 The purpose of these regulations is to: (1) regulate cottage food businesses operating in the District of Columbia; (2) identify food items that are approved for sale in cottage food businesses; (3) identify food items and specialized food processes that are prohibited in cottage food businesses; (4) ensure cottage food businesses comply with storage and labeling requirements; and (5) authorize the Department to conduct initial inspections of cottage food businesses before selling any food items, as well as complaint inspections.

101.2 Cottage food products shall only be sold at farmers’ markets and public events in accordance with Section 4931(3) of Section 2 of the Cottage Food Amendment Act of 2013 effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.01(3) (2016 Supp.)).

101.3 Pursuant to Section 4932(a) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(a) (2016 Supp.)), these regulations do not:

- (a) Apply to a food establishment that is required to have a food establishment license under Department regulations; or
- (b) Exempt a cottage food business from any applicable District or federal tax laws.

**102 APPLICATION PROCEDURES AND REQUIREMENTS**

- 102.1 No one shall operate as a cottage food business or produce, package, store, or sell cottage food products without first obtaining a Cottage Food Business Registry Identification Number and Certificate issued by the Department.
- 102.2 To qualify as cottage food business, an applicant for a cottage food business shall complete a registry application on a form provided by the Department and submit the following documentation together to the Department for review and approval:
- (a) A Home Occupancy Permit issued by the Department of Consumer and Regulatory Affairs (DCRA) (original only);
  - (b) For food sold by weight, proof of calibrated scales that comply with DCRA regulations;
  - (c) Proof of successfully passing a nationally accredited Certified Food Protection Manager Course approved by the Department;
  - (d) A District-issued Certified Food Protection Manager Certificate, obtained by the owner(s) of the cottage food business, which shall be valid for three years from the date of exam;
  - (e) A list of food products the cottage food business intends to produce, package, and sell, as specified in Subsection 103.5 of this subtitle. The Department may request a copy of recipes if deemed necessary;
  - (f) Packaging labels with the information specified in Section 104 of this subtitle for each food product; and
  - (g) A registration fee in the amount of fifty dollars (\$50) for one (1) Cottage Food Business Registration Certificate that is valid for a two (2) year period.
- 102.3 Additional Cottage Food Business Registration Certificates are available at a cost of five dollars (\$5.00) each.
- 102.4 In addition to Subsection 102.2, an applicant for a cottage food business attests that, by completing the registry application, he or she:
- (a) Understands that only the cottage food products listed on their registry application are authorized by the Department to be produced, packaged, stored, or sold by the cottage food business;
  - (b) Expressly grants the Department of Health right of entry to the premises of the cottage food business during normal business hours or at other

reasonable times, to determine compliance with these regulations or Department Directives, and to investigate consumer complaints alleging violations of these regulations, foodborne outbreaks, or other public health emergencies, including but not limited to operating in an unsanitary manner; and

- (c) Understands that refusing to allow the Department of Health entry during normal business hours or at other reasonable times, or failing to comply with Orders to Cease and Desist or any Department Directive, shall result in immediate suspension or removal of the cottage food business from the Department's Cottage Food Business Registry Identification Number.

102.5 The Department shall approve or deny a Cottage Food Registry Application within thirty (30) business days of receiving a properly completed application, as specified in Subsections 102.2 and 102.4.

102.6 If a registry application is approved, the Department shall conduct a preoperational inspection of the applicant's premises within fourteen (14) business days of application approval.

102.7 If the applicant for the cottage food business passes the preoperational inspection, the Department shall:

- (a) Assign the cottage food business an identification number which shall be valid for two (2) years from the passing date of the food safety inspection;
- (b) Add the cottage food business to the Department's Cottage Food Business Registry; and
- (c) Issue a Cottage Food Business Registration Certificate to the Owner with the following information:
  - (1) Registry Identification Number;
  - (2) The cottage food products submitted by the applicant and approved by the Department; and
  - (3) An expiration date.

102.8 Each cottage food business shall have an original Cottage Food Business Registration Certificate in a conspicuous location at each event.

102.9 If a registration application is denied, the Department shall provide the applicant in writing of the following:

- (a) The reason(s) for the denial; and

- (b) Actions, if any, the applicant can take to qualify for a registration.

### **103 APPROVED FOOD PRODUCT LIST**

- 103.1 A cottage food business is authorized to produce, package, and sell certain non-potentially hazardous food products identified in Subsection 103.5 that do not support the rapid growth of bacteria that could lead to a foodborne illness when held outside of refrigerated temperatures.
- 103.2 The list identified in Subsection 103.5 will be maintained and updated by the Department each quarter, if necessary, through the rulemaking process. When the Department adds or deletes food products from the approved list in Subsection 103.5, the Department shall state the:
- (a) Reason for the change;
  - (b) Authority for the change; and
  - (c) Nature of the change to the approved food products list in Subsection 103.5.
- 103.3 If an owner of a cottage food business requests to produce, package, or sell a recipe or food product that is not on the approved list of foods in Subsection 103.5, the owner of a cottage food business shall submit confirmation of the food product's pH value and water activity from any state accredited laboratory to the Department for review.
- 103.4 The Department will determine if the recipe or food product is safe to produce, package, or sell as a cottage food product based on the laboratory analyses required in Subsection 103.3.
- 103.5 The Department approves the sale of the following non-potentially hazardous products by cottage food businesses at farmers' markets or public events within the District of Columbia:
- (a) Baked goods, without cream, custard, cheese, or meat fillings, such as breads, biscuits, churros, muffins, rolls, scones, and sweet breads;
  - (b) Unfilled, baked donuts;
  - (c) Waffle cones;
  - (d) Pizzelles;
  - (e) Roasted coffee, whole beans or ground;

- (f) Cakes, including celebration cakes (birthday, anniversary, and wedding);
- (g) Cereals, trail mixes, and granola;
- (h) Candies, such as brittles, toffee, chocolates, cotton candy, fudge, truffles, and confections;
- (i) Pastries, pies, brownies, cookies, and tortillas;
- (j) Snacks such as caramel corn, chocolate-covered nonperishable foods, nuts and dried fruits, crackers, pretzels, seeds, popcorn, or popcorn balls;
- (k) Fruit pies, fruit empanadas, and fruit tamales;
- (l) Jams, jellies, syrups, marmalades and other preserves;
- (m) Honey and honeycomb. Applicants for cottage food businesses shall comply with “Sustainable Urban Agriculture Apiculture Act of 2012”, and provide proof they are registered with the District’s Department of Energy and Environment in accordance with Subtitle B of the Act, “Promoting Urban Agriculture through Beekeeping”;
- (n) Dried pasta;
- (o) Dry herbs, herb blends, and seasonings blends;
- (p) Dry tea blends;
- (q) Dry baking mixes; and
- (r) Vinegar and flavored vinegars.

#### **104 COTTAGE FOOD PRODUCT LABELING REQUIREMENTS**

- 104.1 A cottage food business shall label each food product in accordance with Section 4932(c)(2) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(c)(2) (2016 Supp.)), and in accordance with 21 CFR part 101 (2016), Food Labeling.
- 104.2 A cottage food business shall sell only approved cottage food products that are:
- (a) Stored on the premises of the cottage food business; and
  - (b) Prepackaged with a label that contains the following information:

- (1) The cottage food business identification number;
- (2) The name of the cottage food product;
- (3) The ingredients of the cottage food product in descending order of the amount of each ingredient by weight;
- (4) The net weight or net volume of the cottage food product;
- (5) Allergen information as specified by federal labeling requirements in 21 CFR part 101, Food Labeling;
- (6) If any nutritional claim is made, nutritional information as specified by federal labeling requirements in 21 CFR part 101, Food Labeling and 9 CFR part 317, subpart B, Nutrition Labeling; and
- (7) A statement printed in ten (10)-point or larger type letters in a color that provides a clear contrast to the background of the label that reads:

Made by a cottage food business that is not subject to  
the District of Columbia’s food safety regulations

104.3 A label sample is shown below.

<p><b>Cottage Food Business Identification Number</b></p> <p><b>Chocolate Chip Cookies</b>  <b>2550 Kingston Lane</b>  <b>York, PA 17702</b></p> <p><b>Ingredients:</b> Enriched flour (Wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin, walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda.</p> <p><b>Contains:</b> Wheat, eggs, milk, soy, walnuts</p> <p><b>Net Wt. 3 oz.</b></p> <p style="text-align: center;"><b>MADE BY A COTTAGE FOOD BUSINESS THAT IS NOT SUBJECT TO THE DISTRICT OF COLUMBIA’S FOOD SAFETY REGULATIONS</b></p>
---

**105 PROCESSES AND ACTIVITIES THAT ARE NOT ALLOWED**

105.1 A cottage food business shall not produce, package, or sell food products which require temperature control for safety. A cottage food business shall not:

- (a) Process potentially hazardous foods;

- (b) Process acidified and low acid canned food;
- (c) Process food using reduced oxygen packaging;
- (d) Smoke or cure food;
- (e) Press juices or vegetables;
- (f) Pasteurize;
- (g) Can any food products, including but not limited to fruits, vegetables, vegetable butters, salsas, and similar foods;
- (h) Hermetically seal food in jars;
- (i) Offer for sale adulterated or misbranded food;
- (j) Produce food products not expressly listed in Subsection 103.5, excepted as specified in Subsections 103.3 and 103.4; or
- (k) Sell the cottage food products specified in Subsection 103.5 outside of the District of Columbia.

## **106 FOODS THAT ARE NOT ALLOWED**

106.1 A cottage food business shall not sell potentially hazardous foods as defined in Section 991 below and by the District Food Code Regulations (Title 25-A DCMR) including but not limited to the following food:

- (a) Fish or shellfish products;
- (b) Fresh, dried, or dehydrated meat or meat products, including jerkies;
- (c) Fresh, dried, or dehydrated poultry or poultry products;
- (d) Baked goods that require any type of refrigeration such as cream, custard, or meringue pies and cakes or pastries with cream cheese icings or fillings;
- (e) Cheese made with unpasteurized milk;
- (f) Focaccia-style breads with vegetables and/or cheeses;
- (g) Raw-seed sprouts, including but not limited to alfalfa sprouts or bean sprouts;



- (h) Raw cookie dough;
- (i) Canned pickled products such as corn relish, pickles, or sauerkraut;
- (j) Milk and dairy products including hard, soft and cottage cheeses, and yogurt;
- (k) Mushrooms;
- (l) Cut fresh fruits and/or vegetables;
- (m) Food products made from cut fresh fruits or vegetables;
- (n) Food products made with cooked vegetable products;
- (o) Garlic and/or vegetable in oil mixtures;
- (p) Sugar-free products, such as jams, jellies, syrups, marmalades and other preserves;
- (q) Pumpkin or fruit butters;
- (r) Ice or ice products;
- (s) Barbeque sauces, ketchups and/or mustards; or
- (t) Foods not intended for human consumption such as pet foods and/or treats.

**107**      **COTTAGE FOOD SAMPLING REQUIREMENT**

107.1      All food products, including those produced and packaged by a cottage food business, are subject to collection, examination and sampling/testing of food by the Department or an authorized representative, to determine if a food product is misbranded or adulterated. The Department shall collect cottage food products without cost. A component of the food sampling conducted pursuant to this section may include the performance of sample analyses in accordance with Section 4932(d)(4) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(d)(4) (2016 Supp.)).

**108**      **REQUIRED INSPECTIONS AND ADMINISTRATIVE REMEDIES**

108.1      When conducting preoperational inspections, the Department shall enter the premises of an applicant requesting a cottage food business on an agreed upon scheduled date and time during normal business hours from Monday through Friday.

- 108.2 The Department shall also inspect the premises of a registered cottage food business in response to a foodborne illness outbreak, consumer complaint, or other public health emergency.
- 108.3 The Department shall inspect during normal business hours, or at other reasonable times, whenever the Department has reason to believe the cottage food business is operating in violation of these regulations or is operating in an unsanitary manner.
- 108.4 A Department representative shall present official credentials and request to enter a cottage food business upon the Department's receipt of a complaint to investigate the cottage food business' compliance with these regulations, in accordance with Sections 4932(d)(1) and (2) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(d)(1) and (2) (2016 Supp.)) and Subsection 108.3 of these regulations.
- 108.5 The owner of a cottage food business shall grant a Department representative who requests entry access to inspect the premises to determine the cottage food business' compliance with these regulations, in accordance with Section 4932(d)(3)(A) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(d)(3)(A) (2016 Supp.)) and Subsection 108.3 of these regulations.
- 108.6 If the Department representative is unable to gain access to conduct an inspection, the Department shall leave a Notice of Attempt to Conduct an Inspection. The owner of the cottage food business shall be required to contact the Department within seventy-two (72) hours of posting of the Notice of Attempt to Conduct an Inspection.
- 108.7 Failure to contact the Department within the required seventy-two (72) hour period may result in the summary suspension of the Cottage Food Business Registry Identification Number.
- 108.8 The Department shall inspect a cottage food business operation's to ensure that:
- (a) The production, packaging, storage, or sale of cottage food products listed on the cottage food business registry application and approved by the Department are the only food products being produced, packaged, stored, or sold by the cottage food business;
  - (b) Authorized persons other than the owner of the cottage food business, or persons under the direct supervision of the owner, are the only individuals engaged in the processing, preparing, packaging, or handling of any cottage food products, or are the only individuals in the home kitchen during the preparation, packaging, or handling of any cottage food products;

- (c) Authorized persons involved in the preparation, packaging, or handling of cottage food products:
  - (1) Are not working in the home kitchen when ill;
  - (2) Wash their hands thoroughly before any food preparation and food packaging activities; and
  - (3) Use single-service gloves, bakery papers, tongs, or other utensils to avoid bare hand contact with ready-to-eat foods.
- (d) The preparation, packaging, or handling of cottage food products is not taking place in the home kitchen at the same time as any domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;
- (e) Infants or small children are not in the home kitchen during the preparation, packaging, or handling of any cottage food products;
- (f) Pets are excluded from the kitchen during the preparation, packaging or handling of cottage food products;
- (g) Only standard, residential (non-commercial) kitchen equipment and utensils are used to produce the cottage food products;
- (h) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products are smooth and easily cleanable, and are washed, rinsed, and sanitized before each use;
- (i) The home kitchen is free from the presence of insects, rodents and other pests, and there are no entry points for insects, rodents and other pests in the home kitchen; and
- (j) All cottage food products and equipment are properly stored.

108.9 The owner of a cottage food business shall not interfere with any inspection by a Department representative of the business, in accordance with Section 4932(d)(3)(B) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(d)(3)(B) (2016 Supp.)).

108.10 The Department may summarily suspend a Cottage Food Business Registry Identification Number by issuing a Summary Suspension Order if it determines following an inspection that there is a suspected foodborne outbreak or other public health emergency, including but not limited to operating in an unsanitary

manner, non-compliance with an Order to Cease and Desist or a Department Directive, or non-compliance with these regulations.

- 108.11 A summary suspension shall remain in effect until the conditions cited in the Summary Suspension Order no longer exist and abatement of the cited conditions has been confirmed by the Department through re-inspection or other means, as appropriate.
- 108.12 A Cottage Food Business Registry Identification Number that has been summarily suspended shall be reinstated when the Department determines that the public health hazard cited in the Summary Suspension Order no longer exists. The Department shall provide the owner of the cottage food business with a notice of reinstatement.
- 108.13 If the owner of a cottage food business does not comply with any provision of these regulations or refuses to comply with an Order to Cease and Desist, Summary Suspension Order, or any Department Directive, the cottage food business shall be removed from the Cottage Food Business Registry and the owner shall be required to file a new application to the Registry.

## **109**      **SAFE FOOD PRACTICES**

- 109.1 The owner of a cottage food business should apply, at a minimum, the following safe food practices, which help to limit the potential for foodborne illnesses:
- (a)    Proper Handwashing
    - (1)    Authorized persons involved with the preparation, packaging or handling of cottage food products should clean their hands and exposed portions of their arms before starting food processing, and after any activity that might contaminate their hands; and
    - (2)    Liquid soap, paper towels, and water warm to the touch should be used for handwashing, and should be available at the handwashing sink at all times.
  - (b)    Bare-Hand Contact with Ready-to-Eat Foods

Bare-hand contact with ready-to-eat foods shall be avoided. Single-service gloves, bakery paper, tongs, or other utensils should be used when handling ready-to-eat foods.
  - (c)    Hair Restraint and Clean Outer Garments

Hair restraints and clean outer garments must be worn by all persons in the home kitchen during processing, preparation, packaging, or handling of cottage food products.

(d) Eating, Drinking, or Smoking

Owners of a cottage food business or persons under the owner's direct supervision should not eat, drink, or smoke or engage in any smoking activity (including but not limited to any form of tobacco, any form of hookah, any form of marijuana, or use of any e-cigarette) in the home kitchen during processing, preparation, packaging, or handling of cottage food products.

(e) Preventing Contamination When Tasting

Owners of a cottage food business or persons under the owner's direct supervision should not use a utensil more than once to taste any cottage food product.

(f) Personal Health

Owners of a cottage food business or persons under the owner's direct supervision should not process, prepare, package or handle cottage food products if they have any of the following symptoms:

- (1) Diarrhea;
- (2) Vomiting;
- (3) Jaundice;
- (4) Sore throat with fever; or
- (5) Lesion containing pus, unless protected by an impermeable cover.

(g) Unauthorized Persons

Owners of a cottage food business or persons under the owner's direct supervision are the only persons authorized to be in the kitchen while producing, packaging or handling cottage food products.

(h) Food Contact Surfaces

The food-contact surfaces of all utensils and equipment should be clean to the sight and touch before beginning processing cottage food products,

and cleaned often while in use to limit the potential for contamination of the food or the ingredients.

(i) Proper Storage of Ingredients and Finished Products

Ingredients for cottage food products and the finished food products should be stored separately from all residential foods and food supplies, and in a manner that will prevent contamination from the premises and non-authorized persons.

(j) Proper Use and Storage of Chemicals

(1) Personal care items, as defined in Section 991, should not be stored or allowed in the home kitchen unless stored in such a manner that does not allow contamination of food products or food-contact surfaces;

(2) Spray bottles containing cleaning solutions should be labeled with the name of the solution;

(3) Pest control chemicals should not be used or stored in the home kitchen, in order to prevent contamination of food products and food-contact surfaces.

(k) Pests

Pests should not be present in the home kitchen. This area should be kept clean to prevent harborage of pests, and the premises should allow for easy visual inspection of pest activity.

(l) Pets

Pets are not allowed in the home kitchen at any time during the preparation, packaging or handling of cottage food products.

## CHAPTER 99 DEFINITIONS

### 9900 GENERAL PROVISIONS

9900.1 The terms and phrases used in this title shall have the meanings set forth in this chapter, unless the text or context of the particular chapter, section, subsection, or paragraph provide otherwise.

**9901 DEFINITIONS**

9901.1 As used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Authorized premises of cottage food business** – the portion of a domestic residence housing the home kitchen where the preparation, packaging, storage, or handling of cottage food production occurs, and that has been inspected and approved by the Department to operate as a cottage food business in compliance with these regulations.

**CFBR** – the Cottage Food Business Registry within the Department of Health.

**Consumer** – a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food sales establishment or food processing plant, and does not offer the food for resale.

**Cottage food business** – a business that:

- (a) Produces or packages cottage food products in a residential kitchen;
- (b) Sells the cottage food products in accordance with Section 4932 of Section 2 of the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code §§ 7-742.01 *et seq.* (2016 Supp.)), and Subsection 103.5 of these regulations;
- (c) Has annual revenues from the sale of cottage food products in an amount not exceeding twenty-five thousand dollars (\$25,000); and
- (d) Has obtained a home occupancy permit from the Department of Consumer and Regulatory Affairs pursuant to Section 251 of Title 11 (Zoning Regulations of 2016), Subtitle U (Use Permissions), of the District of Columbia Municipal Regulations (11-U DCMR § 251).

**Cottage food product** – a non-potentially hazardous food, as specified in regulations adopted by the Department of Health, that is sold at a farmer's market or public event in accordance with Section 4932 of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02 (2016 Supp.)) and Subsection 103.5 of these regulations.

**Department** – Department of Health.

**Domestic residence** – a single-family dwelling or an area within a rental unit where a single person or family actually resides. This term does not include any group or communal residential setting within any type of structure, or any outbuilding, shed, barn, or other similar structure.

**Easily cleanable** – a characteristic of a surface that:

- (a) Allows effective removal of soil by normal cleaning methods;
- (b) Depends upon the material, design, construction, and installation of the surface; and
- (c) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

**Equipment** – a normal household article that is used in the manufacture of cottage food products such as a freezer, grinder, hood, ice maker, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device, or warewashing machine. This term does not include industrial or commercial grade equipment that, due to their size, cannot be effectively cleaned in residential sinks or dishwashers.

**Food** – a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

**Foodborne disease outbreak** – the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

**Hermetically sealed container** – a container that is designed and intended to be secure against the entry of microorganisms or, in the case of low acid canned foods, designed and intended to maintain the commercial sterility of its contents after processing.

**Home kitchen** – a kitchen in a cottage food business owner's primary domestic residence, with a home occupancy permit from the Department of Consumer and Regulatory Affairs, which contains one or more stoves or ovens designed for residential use only (such as a double oven) and does not include any type of commercial equipment.

**Non-potentially hazardous foods** – foods that do not require temperature control because they are incapable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms.



**Owner of a cottage food business** – a person who produces cottage food products only in the home kitchen of that person’s primary domestic residence and only for sale directly to the consumer.

**Packaged** – food contained in a carton, bottled, canned, securely bagged, or securely wrapped, in a cottage food operation. This term does not include a wrapper, carry-out box, or other nondurable container used to containerize food for the purpose of food protection during service or receipt of the food by the consumer.

**Personal Care Items** – items or substances that may be poisonous, toxic, or a substance of contamination and are used to maintain or enhance a person’s health, hygiene, or appearance; which may include items such as medicines, first aid supplies, cosmetics, and toiletries such as toothpaste and mouthwash.

**Potentially hazardous foods** – foods requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms, or the growth and toxin production of *Clostridium botulinum*.

**Public event** – any event open to the general public, including but not limited to farmers markets, exhibitions, fairs, festivals, entertainment, or fundraising activities.

**Public market and private market** – as regulated by the Department of Consumer and Regulatory Affairs (DCRA) Vending Regulations as codified at Title 24 (Public Space and Safety), Chapter 5 (Vendors) of the District of Columbia Municipal Regulations (24 DCMR §§ 500 – 599).

**Ready-to-eat food** – food that is edible and does not require additional preparation to achieve food safety.

**Reduced oxygen packaging** – packaging of food using the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen, displacing the oxygen with another gas or combination of gases, or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere (twenty-one percent (21%) oxygen), or a process as specified in this definition that involves a food for which *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form. This term includes any of the following:

- (a) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as *sous vide*;

- (b) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, and an increase in the proportion of other gases such as carbon dioxide or nitrogen;
- (c) Controlled atmosphere packaging, in which the atmosphere of a packaged food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, non-respiring food, and impermeable packaging material;
- (d) Cook chill packaging, in which cooked food is hot-filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychotropic pathogens; or
- (e) *Sous vide* packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychotropic pathogens.

**Smoking or to smoke** – pursuant to the Smoking Restriction Amendment Act of 2013, effective December 13, 2013 (D.C. Law 20-48; D.C. Official Code § 7-1702(7)) (2016 Supp.):

- (a) The act of puffing, having in one's possession, holding, or carrying a lighted or smoldering tobacco product, including through the use of smoking equipment of any kind including a pipe, or cigarette papers or tubes; or
- (b) The lighting of a tobacco product, including through the use of smoking equipment of any kind including a pipe, or cigarette papers or tubes.

**Special Event** – as regulated by the Department of Consumer and Regulatory Affairs (DCRA) Vending Regulations as codified at Title 24 (Public Space and Safety), Chapter 5 (Vendors) of the District of Columbia Municipal Regulations (24 DCMR §§ 500 – 599).

**Specialized food processes** – including but are not limited to:

- (a) Smoking food as a method of food preservation rather than as a method of enhancing flavor;
- (b) Curing food;
- (c) Using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement, or otherwise rendering food so that is not potentially hazardous (time/temperature control for food safety);
- (d) Packaging food using a reduced oxygen method, except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled;
- (e) Operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption;
- (f) Custom processing animals that are for personal use as food and not for sale or service;
- (g) Preparing food by methods not approved by the Department; and
- (h) Sprouting seeds or beans.