

IN EFFECT AUGUST 7, 2007

R70. Agriculture and Food, Regulatory Services.

R70-560. Inspection and Regulation of Cottage Food Production Operations.

R70-560-1. Authority and Purpose.

- (1) Authority. Promulgated under authority of Section 4-5-9.5, Utah Code Annotated.
- (2) Purpose. The Department shall adopt rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food supply.
- (3) Adopted and Referenced. The Utah Department of Agriculture and Food hereby adopts and references the applicable provisions of the Food Protection Rule, Utah Administrative Code R70-530 issued by The Utah Department of Agriculture and Food, with specific exemptions as provided by Utah Code Annotated Title 4, Chapter 5, Section 9.5.

R70-560-2. Definitions.

The following definitions apply in the interpretation and application of this rule:

- (1) "Department" means the Utah Department of Agriculture and Food.
- (2) "Food Processing Plant" does not include a Cottage Food Production Operation.
- (3) "Section 26A-1-114" means Title 26A, Chapter 1, Section 114, Utah Code Annotated.
- (4) "Section 26-15a-102" means Title 26, Chapter 15a, Section 102, Utah Code Annotated.

R70-560-3. Approval of Food.

- (1) Prior to producing a food, the operator of a cottage food production operation shall:
 - (a) At the discretion of the Department, provide written confirmation from a Department approved food laboratory or process authority that the food is not potentially hazardous; and
 - (b) Receive approval from the Department to produce the food.
- (2) A cottage food production operation may only sell Department approved foods to the public.
- (3) When food includes fruits or vegetables grown by the operator of a cottage food production operation, the operator must have a current private pesticide applicator certification issued by the Department under Title 4, Chapter 14, Utah Code Annotated.

R70-560-4. Production Requirements.

- (1) A cottage food production operation shall:
 - (a) Ensure that each operator holds a valid food handler's permit;
 - (b) Use finished and cleanable surfaces;
 - (c) Maintain acceptable sanitary standards and practices;
 - (d) Provide separate storage from domestic storage, including refrigerated storage;
 - (e) Provide written evidence of compliance with zoning, building and other regulatory codes;
 - (f) Provide for annual water testing if not connected to a public water system; and
 - (g) Keep a sample of each food for 14 days. The samples shall be labeled with the production date and time.
- (2) A cottage food production operation shall comply with R70-530, except that it shall not be required to:
 - (a) Have commercial surfaces such as stainless steel counters or cabinets;
 - (b) Have a commercial grade sink, dishwasher or oven;

- (c) Have a separate kitchen; or
- (d) Submit plans and specifications before construction or remodeling;
- (3) A cottage food production operation is prohibited from all of the following:
 - (a) Conducting domestic activities in the kitchen when producing food;
 - (b) Allowing pets in the kitchen;
 - (c) Allowing free-roaming pets in the residence;
 - (d) Washing out or cleaning pet cages, pans and similar items in the kitchen; and
 - (e) Allowing entry of non-employees into the kitchen while producing food.
- (4) A cottage food must be prepared by following the recipe used to prepare the food when it was submitted for the approval testing required in Subsection R70-560-3(1). When a process authority has recommended or stipulated production processes or criteria for a food, these must be followed when the food is produced. The recipe and process authority recommendations and stipulations shall be available in the facility for review by the department.

R70-560-5. Inspections, Registration and Investigations.

- (1) The Department shall inspect a cottage food production operation:
 - (a) Prior to issuing a registration for the cottage food production operation; and
 - (b) If the Department has reason to believe the cottage food production operation is in violation of this chapter, or administrative rule, adopted pursuant to this section, or is operating in an unsanitary manner.
- (2) A cottage food production operation must register with the Department as a food establishment pursuant to Rule R70-540 and pay the required fee.
- (3) Notwithstanding the provisions of Rule R70-540, the Department shall issue a registration to an applicant for a cottage food production operation if the applicant:
 - (a) Applies for the registration;
 - (b) Passes the inspection required by Subsection R70-560-5(1);
 - (c) Pays the fee required by the department;
 - (d) Meets the requirements of this section;
 - (e) Provides written evidence of compliance with local zoning and business codes;
 - (f) Complies with all other, state, municipal, county codes, including plumbing codes, electrical codes and safety codes.
- (4) The registration issued under R70-540 shall be displayed at the cottage food production operation. A copy of the registration shall be displayed at farmers markets, roadside stands and other places at which the operator sells food from a fixed structure that is permanent or temporary and which is owned, rented or leased by the operator of the cottage food production operation.

R70-560-6. Cottage Food Labeling.

- (1) A cottage food production operation shall:
 - (a) Properly label all foods in accordance with state and federal law, including 21 CFR 1 - 199;
 - (2) Label information shall include:
 - (a) The name specified by regulation or, in the absence thereof, the name commonly used for that food or an adequately descriptive name;
 - (b) A list of ingredients in descending order of predominance by weight, when the food is made from two or more ingredients;

- (c) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient;
- (d) An accurate declaration of the net quantity of contents;
- (e) The name and place of business of the cottage food production operation;
- (f) The telephone number of the cottage food production operation;
- (g) Nutritional labeling unless the product qualifies for an exemption; and
- (h) The words "Home Produced" in bold and conspicuous 12 point type on the principal display panel.

R70-560-7. Food Distribution and Storage.

- (1) Food shall be obtained from sources that comply with the law.
- (2) An ingredient used in a cottage food production operation, that is from a hermetically-sealed container, must have been produced at a food processing plant that is regulated by the appropriate food regulatory agency with jurisdiction over the plant.
- (3) A food offered for sale shall be safe, unadulterated, and honestly presented.
 - (a) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
 - (b) Food or color additives, colored over-wraps, or lights may not be used to misrepresent the true appearance, color, or quality of the food.
 - (c) Food may not contain unapproved food additives, additives in unsafe amounts, or additives that exceed the amount necessary to achieve the needed effect.
 - (d) Food shall be protected from contamination, including contamination from chemical and pesticide hazards.
- (4) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.
- (5) Food that is unsafe, adulterated, or not honestly presented shall be discarded.
- (6) Except for unprocessed raw agricultural products, foods shall not be displayed or stored on the ground.
- (7) Ingredients used in a cottage food shall be in good condition, unspoiled and otherwise unadulterated. Ingredients cannot be used past the expiration date on the container if produced at a regulated food processing facility. Other ingredients may not be used if over 9 months old.

R70-560-8. Regulatory Jurisdiction.

- (1) Notwithstanding the provisions of Section 26A-1-114, a local health department:
 - (a) Does not have jurisdiction to regulate the production of food at a cottage food production operation, operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and
 - (b) Does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.
- (2) A food service establishment as defined in Section 26-15a-102, may not use a product produced in a cottage food operation as an ingredient in any food that is prepared by the food establishment and offered by the food establishment to the public for consumption.
- (3) Interstate sales of cottage food production operation produced foods are prohibited.

R70-560-9. Enforcement and Penalties.

A violation of any portion of this rule may result in civil or criminal action pursuant to Sections 4-2-12, 14 and 15, Utah Code Annotated.

KEY: food, cottage food, food establishment registration
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