

Cottage Food – Exempt Food

February 8, 2024

Questions & Answers

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Below you will find the summary of the questions and answers (Q & A) from the live Webinar Series. For clarity and brevity, the live session of Q & A was trimmed from the original recording. Please keep in mind that this document is meant as a job aide. It does not create or confer any right for or on any person and does not operate to bind federal, state or local food safety regulatory agencies. The **Missouri Food Code** and the **Cottage Food Law**, as defined in RSMo 196.298, <https://revisor.mo.gov/main/OneSection.aspx?section=196.298> are the regulating documents. You may also find the Missouri Home-Based Food Production Guidance, published August 2023, to be helpful in answering common questions. <https://health.mo.gov/safety/foodsafety/index.php> If you have questions concerning interpretation or application of various portions, please reach out to your District Supervisor for assistance. A current District Map is posted at the top of the page where you found the recording and Q & A document.

General Questions

Q. I just pulled up the Missouri Food Code from the link given and this document is dated June 3, 2013. Is this the newest guide?

A. Yes. However, we are currently in the initial process of reviewing the FDA 2022 Model Food Code to edit to align with Missouri laws.

Q. Can an email with just the power point slides be sent out please?

A. The presentation will be posted on the intranet.

Q. Some of our cities are requesting us to permit these cottage bakers in order to give them a business license. We cannot permit them, what are your suggestions?

A. The health department needs to talk to the city and explain that they are not required, by law, to have a permit. Therefore, a permit cannot be issued.

Q. When freeze dried products, jellies, jams, coffee beans are being sold in a flea market do the products fall under manufactured foods?

A. Possibly. It would definitely not be cottage food, as the producer is not the one selling the product to the end consumer. It could be retail or manufactured food. It could possibly fall under FDA, as well. More detail would be needed. This is good opportunity to provide education. Renting a booth is not the same as being present to sell directly to the end consumer. Flea markets are not places our inspectors typically go into. If you are aware of a situation, you can let the Manufactured Food Program know.

Updated March 5, 2024

Q. Exempt foods are different from cottage foods, correct? Exempt foods cannot be sold under cottage law, correct?

A. Cottage food and exempt food are two different things. The Home-Based Kitchens Guidance provides more detail. <https://health.mo.gov/safety/foodsafety/index.php>

Q. Are the rules for how and where to sell exempt foods the same as cottage foods? Or do they need to be sold retail or wholesale? Report them?

A. The exemption under the definition of Food Establishment only allows for direct sale to end consumer. Wholesaling of product would then fall under DHSS Manufactured Food Program and would require inspection.

Marijuana

Q. Last year we had someone show up at a farmer's market with marijuana infused baked goods as cottage product. We don't regulate marijuana. Suggestions on how to handle this. Do we ask them to leave?

A. Marijuana is regulated by the Division of Cannabis Regulation (DCR) **NOT** by the Division of Community and Public Health (DCPH). If any edible infused with marijuana is being sold at a Farmer's Market, we suggest you work in conjunction with the Farmer's Market Manager. Most of them are on site or you can get their contact information. This gives you a great opportunity to give education on the situation. Explain to them and make sure they understand why the product cannot be sold. Managers should generally be knowledgeable about the vendors, their products and their licensing requirements. The introduction of marijuana into any item, baked or otherwise, removes that product from the DCPH regulation.

Q. Last year, I tried to refer an exempted vendor of cannabis-infused brownies to the Division of Cannabis Regulation. I submitted a complaint form, but it resulted in no response. Is there an easier way to report them?

A. This question was forwarded to the Division of Cannabis Regulation. We have not received an answer at the time of publication.

Mushrooms

Q. What documentation do mushroom sellers have to provide?

A. Wild mushrooms may be sold by an individual who is a wild mushroom identifier. Certificate verifying successful completion of a wild mushroom identification course shall be provided when requested. Certification can be from an accredited college or university or a mycological society.

Q. Is there a definition for "expert" for mushrooms? Where can we find mushroom identifier classes?

A. There is the definition “Wild mushroom identification expert” in the Missouri Food Code in Chapter 1. Kansas State University and Missouri Mycological Society offer courses, but any accredited college or university class could also be accepted.

Q. Do you have a list of approved mushroom identifiers?

A. We do not maintain a list as they do not have to register with DHSS. Q. If someone grows their own mushrooms, are they considered “wild?”

A. No, but the individual still needs to be knowledgeable about the product. Labeling will state what they are growing/selling. The grower/seller does not have to take the wild mushroom identification course. It is encouraged that the individual reach out to Missouri Department of Agriculture to ensure compliance.

Q. For clarity, commercially raised mushrooms do not require documentation?

A. No, with just a harvest cut, they would be considered a raw agricultural commodity. However, additional regulations may apply. They may be classified as a farm and may be subject to produce safety rule enforced by Food and Drug Administration and the Missouri Department of Agriculture. So, there is some potential oversight there, but for the really small growers, they are going to be exempt.

Q. Are they allowed to sell dried mushrooms?

A. This would not be Cottage Food. It could fall under the exemption. More questions would need to be asked. For example: Where does the product come from? What’s the process? Who is it marketed to?

Raw Agricultural Commodities

Q. Is processed honey like whip honey or infused with flavoring a raw agricultural commodity or would it need a permit/inspection?

A. It would be subject inspection. Processing of honey or adding ingredients no longer classifies it as a raw agricultural commodity, therefore, subject to inspection.

Q. The warning on the honey is a request/suggestion, so people in my county are choosing to not include it. After a chat about the reason for the warning, I don't have anything else to do about this, correct?

A. Correct. It is a *recommendation*, not a requirement. It is not enforceable. We can’t force people to put the warning on labels. We are talking about infant botulism and the consequences are really high. If they refuse to put the warning on the label, even after you’ve explained the science behind it, you have done your job. The honey exemption 261.241 does not require the statement regarding honey should not be served to those 2 and under. I have had honey producers tell me they don’t have to put that statement on.

Q. Grains are an agricultural product. Are they still considered as such if they mill it?

A. In its raw, unaltered state, grain is considered a raw agricultural product. Suggest the seller contact Missouri Department of Agriculture Grain Program and follow what they state.

Q. Is corn considered altered if it is out of the husk at a produce stand?

A. No, it's not considered altered as long as they are not cutting into corn and/or it's not further processed.

Coffee Beans

Q. Does roasting coffee beans fall under cottage law?

A. No but might fall under an exemption.

Q. Are the coffee beans inspected under Dept of Agriculture?

A. Coffee beans at wholesale are inspected by DHSS and FDA for food safety.

More information would be needed. Are the coffee beans imported? What level of production would they need inspection? There could be more than one jurisdiction involved. Reach out to your District level staff.

Cottage Foods

Q. Can you address where Cottage Food products can be sold and where they cannot be sold?

A. Cottage Food Law states that the individual produces a cottage food item out of the individual's home and sells the food only directly to consumers. There may be local laws that are stricter. However, our interpretation of the intent of the law is that these are very low risk products and we have to determine whether it's a good use of our resources to track down whether an individual is selling directly out of their home, or simply allow sale of these foods at farmer's markets, roadside stands, pop up events, etc.

Q. Are labels required for ALL cottage foods AND exempt foods?

A. Yes. The label must be legible to the consumer and must include all of the following:

- Full name and address of the cottage food production operation
- Common name of the food
- Name of all ingredients in the food in order of weight in descending or
- Net weight of the food
- List of any allergens in the food
- A statement that the product is prepared in a kitchen that is not subject to inspection by the Missouri Department of Health and Senior Services
- A clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to inspection by the Missouri Department of Health and Senior Services

Q. Does weight really have to put on a bag of cookies or a loaf of bread?

A. Foods that are packaged must be labeled in accordance with MO Food Code 3-602.11 Food Labels, proper labeling to include net weight.

Q. Regarding dried herbs, can the individual dry the herbs themselves or must they be bought commercially?

A. Individual may do their own drying; freeze drying and air drying are both acceptable.

Jams and Jellies

Q. Hot peppers are actually fruit biologically. What is the difference between jalapeno jelly and blueberry jelly in terms of food safety?

Q. Can an approved pickled pepper be used in a pepper jelly?

A. Yes, but that still does not change how we view a pepper jelly. See below.

A. Peppers have a neutral pH so they are not naturally acidic like blueberries or strawberries. Foods in a hermetically sealed container that contain a significant amount of low acid ingredients may be considered acidified foods if the water activity is above 0.85. Jams and jellies that are not traditional fruit jams/jellies, may need to be sent to a Process Authority. A list of those may be found here: <https://www.afdo.org/directories/fpa/>. The Bureau of Environmental Health (BEHS) does not have a preference on which process authority is used.

-Be sure to get everything about their process in writing, so there is no misunderstanding later.

Q. Was there a new document that came out last year regarding jams/jellies and no sugar added jams/jellies? If so, where can we find it?

A. Missouri Home-Based Food Production Guidance, published August 2023

<https://health.mo.gov/safety/foodsafety/index.php>

Q. Are veggie jellies allowed? Example, carrots.

A. Most jams/jellies have controls either with low water activity or low pH; acidic food helps maintain this.

Probably not going to have this with carrots, generally not considered exempt.

- I have had all of my pepper jelly folks have their recipes pH and water activity tested. If the test results are good, I allow the jellies.

- Process Authority: <https://www.afdo.org/directories/fpa/>

Exempt Foods

Q. Is cutting the top off a strawberry considered a harvest cut? Asking for Chocolate strawberries, we have not been approving them.

A. A harvest cut is removing the food from its source, such as a stem. Anything beyond the harvest cut is considered processing.

Q. Why can fruit be dipped but not put on top of baked goods?

A. The Cottage Food Law is very specific. For example, the cake is baked, but not the strawberries. Chocolate covered strawberries could be exempt, but just because something is exempt, does not mean it becomes cottage food. Be careful to differentiate between the two things.

Q. I have been told that chocolate covered strawberries and caramel apples are not covered under the exemption because even though they are not TCS foods, spoilage is an issue. As well as how well the strawberries and apples are cleaned prior to dipping. Also, typically these products are refrigerated.

A. They may be considered for exemption, where local laws allow; just because an item is subject to spoilage, doesn't make it potentially hazardous.

Q. We have had several people wanting to sell fudge. After looking into all the ingredients that go into the product and the preparation process, we have leaned toward it being under cottage law. It also has an extended shelf life from what we have looked into. Would you consider this product to be under cottage law?

A. Not baked but can be considered exempt food.

Q. Freeze-dried Candy. Can you touch on that again?

A. Under the Missouri Food Code, freeze-dried candy would fall under the exemption. The FDA Code does not address this as an exemption. An Informational Release: RFP23-01 was published in April 2023. The exemption only applies, if your local laws allow. If you have further questions, reach out to your district staff to discuss.

Q. Should we differentiate between spices and herbs or should we lump spices in with herbs under cottage food law. The thought process being that they are derived from different aspects of a plant, herbs being typically made from leaves/stems and spices from roots and as such are exposed to different microorganisms.

A. My understanding is that the terms herbs and spices are interchangeable, at least in the food safety world. For example, on a food label you can lump numerous herbs under the term "spices" on the ingredient list: <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/cpg-sec-525750-spices-definitions>

Salsa and Pickles

Q. I have people that want to take the class so they can sell salsa and pickles. How often and when/where are these classes? I have only been aware of one.

A. Better Process Control Training-online version, NC State University; University of MO periodically has one.

Q. Can you send us the website or link for the better processing control school with N.C.? I want to make sure I am taking the correct course.

A. <https://foodbusiness.ces.ncsu.edu/acidified-foods-manufacturing-school/>

Q. Is it correct that those who make salsas also have to do so in an approved kitchen and be under inspection?

A. Yes

Extracts

Q. I had someone ask me about selling baking extracts, such as vanilla extract. Since it is extracted using alcohol, I'm not sure how to advise them.

A. Division of Alcohol and Tobacco Control (ATC) does not need to be involved with making of extracts. ATC tells producers to contact DHSS and/or LPHA when wanting to make extracts to ensure proper compliance. They may fall under the exemption, if local laws allow. Ask more questions about their process to be sure they meet the exemption requirements.