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Cottage Food Laws:

*New Mexico*



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# A National Agricultural Law Center Research Publication

## Cottage Food Laws: New Mexico

### N.M. Stat § 25-12-1 through 5 N.M. Code R. § 7.6.2.15

#### **N.M. Stat. § 25-12-1. Short title**

Sections 1 through 5 [25-12-1 to 25-12-5 NMSA 1978] of this act may be cited as the "Homemade Food Act".

#### **N.M. Stat. § 25-12-2. Definitions**

As used in the Homemade Food Act:

- A. "department" means the department of environment; provided that when a class A county and a home rule municipality that have established a combined local health department pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] for the purpose of local health regulation, "department" means the combined local health department;
- B. "homemade food item" means a food item or non-alcoholic beverage that is produced at the private farm, ranch or residence of a processor, including homemade food items that are packaged at the processor's private farm, ranch or residence;
- C. "label" means a display of written, printed or graphic matter upon the immediate container of any article;
- D. "not time and temperature control" refers to food items that do not require time and temperature control to ensure safety;
- E. "person" includes an individual, partnership, corporation and association;
- F. "processor" means a person who produces a homemade food item;
- G. "seller" means a person who sells a not-time-and-temperature-control homemade food item to a consumer;
- H. "time and temperature control" means a control requirement for certain foods to ensure safety and limit pathogenic microorganism growth; and
- I. "to produce" means to prepare a homemade food item by baking, cooking, cutting, dehydrating, drying, fermenting, growing, mixing, preserving, raising or other process designated by the environmental improvement board by rule.

#### **N.M. Stat. § 25-12-3. Homemade food items; licensing, permitting, inspection and labeling exemptions; requirements; investigations**



A. The production and sale of homemade food items shall be regulated pursuant to the provisions of the Homemade Food Act and are exempt from other requirements pursuant to the Food Service Sanitation Act [Chapter 25, Article 1 NMSA 1978 ] and the New Mexico Food Act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978]; provided that:

- (1) the food items are not-time-and-temperature-control food items;
- (2) the seller sells directly to consumers within the state, including at farmers' markets, at festivals, on the internet, at roadside stands, at the seller's home for pick-up or delivery or through mail delivery;
- (3) the seller completes a food handler certification course approved by the department;
- (4) the seller maintains a sanitary kitchen, practices good hygiene, protects the kitchen from rodents and pests and keeps pets and children out of the kitchen while producing food;
- (5) if the seller transports food items pursuant to the Homemade Food Act, the seller ensures that the food is transported in a sanitary manner and is protected from pets, children and other hazards; and
- (6) the seller labels or otherwise provides to the consumer the information required by Subsection C of this section.

B. A seller shall provide to the consumer the information required by Subsection C of this section in the following manner:

- (1) on a label affixed to a package of a homemade food item when the package is the unit of sale;
- (2) on a label affixed to a container when the homemade food item is offered for sale from a bulk container;
- (3) on a placard displayed at the point of sale when the homemade food item is neither packaged nor offered for sale from a bulk container;
- (4) on a webpage on which the homemade food item is offered for sale; and
- (5) when a homemade food item is sold by telephone or custom order, a label is not required for the homemade food item; however, the seller shall disclose to the consumer that the homemade food item is produced at a private residence that is exempt from state licensing and inspection and may contain allergens.

C. A seller shall provide the following information about the seller's homemade food items to the consumer:

- (1) the name, home address, telephone number and email address of the processor of the food item;



- (2) the common or usual name of the food item;
- (3) the ingredients of the food item in descending order of predominance; and
- (4) the following statement: "This product is home produced and is exempt from state licensing and inspection. This product may contain allergens."

D. A seller shall have the information required by Subsection C of this section readily available and shall provide it to a consumer upon request.

E. The department may operate a voluntary permit system for the sale of homemade food items. A seller may apply for such a permit from the department.

F. A class A county and a home rule municipality that have established a combined local health department pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] for the purpose of local health regulation may operate a mandatory or a voluntary permit system for the sale of homemade food items within the jurisdictions of the respective county and municipality; provided that such permit system allows the sale of all food items at all locations authorized by the Homemade Food Act.

G. The department shall enforce the Homemade Food Act and may investigate any suspected food-borne illness or stop the sale of any suspected contaminated foods; provided that the department shall first issue a written warning regarding any violation before imposing a fine. Failure to comply with a written warning shall be a misdemeanor, and upon conviction the violator shall be subject to a fine not to exceed one hundred dollars (\$100) per violation.

#### **N.M. Stat. § 25-12-4. Interpretation of act; consultations**

No provision of the Homemade Food Act shall be construed so as to:

- A. preclude the department from providing assistance, consultation or inspection at the request of the processor of a homemade food item;
- B. preclude the production or sale of homemade food items otherwise allowed by law;
- C. change the regulation of other goods and services where homemade food items are also produced or sold;
- D. exempt sellers from applicable business registration or tax law;
- E. require private farmers' markets or other private venues to allow the sale of homemade foods; or
- F. conflict with federal law.

#### **N.M. Stat. § 25-12-5. State preemption**



Except as otherwise provided in the Homemade Food Act, a political subdivision of the state, including a home rule municipality, or an institution of the state shall not adopt a law, policy or resolution that regulates or attempts to regulate the production or sale of homemade food items.

### **N.M. Code R. § 7.6.2.15. Home-Based Food Processing**

#### **A. Plan review, permitting, inspection, and training requirements.**

- (1) No person shall operate a home-based food processing operation without a permit.
- (2) In addition to meeting the applicable requirements of 7.6.2.8 NMAC and 7.6.2.11 NMAC, home-based food processing operations shall comply with the requirements specified in this section.
- (3) Home-based food processing operations shall meet the requirements of Paragraph (1) of Subsection D of 7.6.2.8 NMAC and Part 2-1 of the food code.
- (4) The permit issued shall be displayed at the home-based food processing operation. A copy of the permit shall be displayed at places at which the operator sells food at times when the operator is selling the home-based processed foods.

#### **B. Food protection requirements.**

- (1) Home-based processed food products and components shall be stored separate and apart from residential foods and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.
- (2) Home-based food processing operations must keep a sample of each processed food batch for 14 days. The samples shall be labeled with the production date and time.
- (3) Vehicles used in transporting home-based processed food products shall be maintained in a safe and sanitary manner. Vehicle compartments used to transport animals shall not be used for transporting home-based processed foods.

#### **C. Exceptions and limitations.**

- (1) The following provisions from the food code, as amended in 7.6.2 NMAC, shall not apply to home-based food processing operations:
  - (a) 8-407.11;
  - (b) 5-501.11;
  - (c) 4-803.11;
  - (d) 6-202.112;



- (e) 4-803.13(A);
- (f) 4-402.11;
- (g) 4-402.12;
- (h) 4-205.10;
- (i) 8-101.10(B);
- (j) 6-202.14;
- (k) 6-201.14;
- (l) 6-201.13;
- (m) 4-701.10;
- (n) 5-204.11;
- (o) self-closing doors as required in 6-202.15(A)(3); and
- (p) 5-501.10.

(2) Food products processed by home-based food processing operations shall not be time/temperature control for safety foods and shall be approved by the regulatory authority.

(3) Home-based food processing operations shall only sell their products at farmer's markets, roadside stands, festivals, or other venues in which the producer sells directly to the consumer.

(4) Products processed by a home-based food processing operation shall not be sold, used, or offered for consumption in food establishments including, but not limited to, restaurants, grocery stores and convenience stores, by internet sales, or sold in interstate commerce.

(5) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during home-based food processing related activities.

(6) Non-employees shall not be allowed entry into the kitchen during home-based food processing related activities. Home-based food processing operations shall not wash out or clean pet cages, pans or similar items in the kitchen.

(7) Household cooking may not occur in the kitchen during home-based food processing-related activities.

(8) The following provisions from the food code, as amended in 7.6.2 NMAC, are applicable to home-based food processing operations only during home-based food processing related activities:



- (a) 2-103.11;
- (b) 2-401.11;
- (c) 3-304.11;
- (d) 4-701.10;
- (e) 5-204.11;
- (f) 5-205.11;
- (g) 5-501.13;
- (h) 6-301.12; and
- (i) 6-501.115.

(9) Home-based food processing operations shall submit a detailed procedure to be used to clean and sanitize the kitchen sink before and during home-based food processing related activities.

(10) Home-based food processing operations shall comply with Section 5-402.11 of the food code unless an alternative method is approved.

D. Home-based food labeling. A home-based food processing operation shall properly label all foods in accordance with Subsection C of 7.6.2.11 NMAC and include the words "home produced" in bold conspicuous 12 point type on the principal display panel.

