

Frequently Asked Questions Cottage Food Operations

This document covers questions received by IDPH regarding cottage food operations with implementation of Public Act 102-0633/SB2007 amending Section 4 of the Food Handling Regulation Enforcement Act (410 ILCS 625/4).

Public Act 102-0633: <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0633>

Food Handling Regulation Enforcement Act (410 ILCS 625):
<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1578&ChapterID=35>

What Foods/Drinks Can Cottage Food Operations Make

Pie fillings must be non-TCS. If this is unknown, the operator can use a proven recipe or have the product tested. Where do we find a proven recipe?

If a CFO would like to produce a pie that may be considered TCS and the registering local health department is unsure, the CFO may voluntarily submit their recipe for laboratory testing to confirm it is not TCS.

Are teas ok to make and sell?

Yes. Teas are permitted provided they do not include ingredients listed in the Food Handling Regulation Enforcement Act (410 ILCS 625/4) subsection (b)(1.5)(A)-(N).

Can baked good fillings include dairy ingredients?

No. Dairy is prohibited except as an ingredient to non-potentially hazardous baked goods or candy or as an ingredient in a baked good frosting per the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(b)(1.5)(B). Dairy fillings such as cream cheese fillings are potentially hazardous or TCS and not permitted to be sold by CFOs.

Would canned horseradish be allowed, would it require a food safety plan or approved recipe?

Prepared horseradish may include vinegar. If the recipe includes vinegar, the CFO should comply with the Food Handling Regulation Enforcement Act (410 ILCS 625/4) subsections (b)(1.6)(2) and (b)(1.6)(3). Horseradish sauce may include dairy which is a prohibited ingredient in the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(b)(1.5)(B).

When registering CFOs, local health departments should ask CFOs for a listing of ingredients and how the product is made to make final determination if the product is allowed or not allowed.

Can CFOs sell freeze dried fruits and candies?

Yes, except foods items or processed food items listed in the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(b)(1.5)(A)-(N).

Can CFOs sell raw or cooked meat, poultry, fish, or shellfish products?

No. CFOs shall not sell or offer to sell food items or processed foods containing items listed in the Food Handling Regulation Enforcement Act (410 ILCS 625/4) subsection (b)(1.5)(A)-(N), including meat, poultry, fish, seafood, or shellfish.

Can mushroom products be sold by cottage food operations?

Yes, however, sale of wild-harvested, non-cultivated mushrooms are prohibited by the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(b)(1.5)(L). Cultivated mushrooms may be sold or processed and sold. To meet applicable labeling requirements, the mushroom species should be known in order to properly identify common/use name of the mushroom.

Any guidance for nut butters, i.e. cashew, macadamia and the like, and for vegan cheeses?

Nut butters and vegan cheese would be permitted. If vegan cheese is fermented, the CFO shall comply with the Food Handling Regulation Enforcement Act (410 ILCS 625/4) (b)(2) and (b)(3). All products should contain appropriate allergen labeling.

Can cottage food operations use ingredients that are foraged/wild foods?

Foraged/wild foods may be used by cottage food operations permitted they are not food items prohibited in the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(b)(1.5)(A)-(N). For the purposes of labeling, foraged food should be known and properly identified by the common/usual name. Please refer to the previous answer when discussing wild-harvested mushrooms.

Can cannabis infused products be produced or sold by CFOs?

No. Under the Illinois Food, Drug and Cosmetic Act, all additive regulations and supplements thereto or revisions thereof adopted under the authority of the Federal Food, Drug and Cosmetic Act are the food regulations in Illinois. As THC and CBD have not been approved as food additives or identified as generally recognized as safe for use in food, they are considered adulterants and not permitted to be added to food or drinks in Illinois. However, hulled hemp seed, hemp seed protein powder, and hemp seed oil may be used as they are generally recognized as safe.

For more information please see FDA's website linked here: <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd#food>.

Can "homegrown" produce be sold by CFOs?

Yes. CFOs may sell homegrown produce in food and drink products unless prohibited under subsection (b)(1.5)(A)-(N) in Section 4 of the Food Handling Regulation Enforcement Act. All products should comply with the requirements of Section 4.

Are there food or process, i.e. water bath versus pressure, restrictions associated with canning?

There are two restrictions associated with canning. The first is associated with tomatoes. To sell canned tomatoes or a canned product containing tomatoes, a CFO must either follow a recipe tested by the USDA or by a state cooperative extension located in the United States or submit a recipe, at the CFOs expense, to a commercial laboratory to test that the produce has been adequate acidified.

Second, fermented or acidified foods that are canned must be processed in a boiling water bath in a mason-style jar or glass container with a tight-fitting lid.

Pressure canning is used to process low acid foods, cottage food operations may not sell low-acid canned foods per the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(b)(1.5)(F).

Are there restrictions on reduce oxygen/modified atmosphere packaging (ROP/MAP)?

The Act does not restrict reduce oxygen or modified atmosphere packaging. When registering CFOs, local health departments should discuss appropriate precautions for ROP/MAP.

Can CFOs use or produce TCS frosting such as buttercream?

Yes. Dairy, as an ingredient in a baked good frosting, such as buttercream, can be used and produced by a CFO. TCS foods should be properly stored at 41 degrees or below.

Can CFOs sell juices in plastic or poly and what type of seal is required?

CFOs may sell juice. IDPH recommends CFOs package juice in accordance with 3-202.110 of the 2017 FDA Food Code.

Are processed honeys including in infused honey allowed?

Yes. Processed honeys are permitted provided they do not include ingredients listed in the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(b)(1.5)(A)-(N).

Is there a sugar calculation we can use with a recipe when reviewing questionable jams and jellies?

Foods may be determined to be “potentially hazardous foods” with criteria identified under the Food Code (77 Ill. Adm. Code 750).

Acidified and Fermented Foods

How can local health departments confirm that an approved recipes are utilized? / How does a LHD know that a CFO is using an approved recipe if no testing is required?

If IDPH or a local health department has reason to believe that an imminent health hazard exists or that a CFO’s product has been found to be misbranded, adulterated, or not in compliance with the conditions for CFOs, IDPH or the local health department may inspect the premise, set a reasonable fee for inspection, and 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 IDPH or the local health department. If the situation is not amenable to being addressed, the local health department may revoke the CFOs registration following a process outlined by the local health department.

Local health departments should request a copy or link to the recipe used during registration.

Should sourdough starter be treated the same as other fermented foods?

Fermented foods are not defined in the Act. As sourdough starter is a live culture CFOs should either submit a tested recipe or a written food safety plan. Such foods should also be packaged in accordance with the requirements in the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(b)(3).

Who will be responsible for ensuring certain requirements such as acidification are verified? Is there a standard for reference or companies or labs that are allowed to give such claim?

Local health departments will be responsible for verifying acidified foods meet applicable requirements during registration. To sell acidified foods, a CFO shall either submit a recipe tested by the USDA or a cooperative extension system located in the United States or submit a written food safety plan per the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(b)(2).

How can someone access recipes tested by the USDA or a cooperative extension?

Approved recipes can be found at the links and organizations below:

National Center for Home Food Preservation: <https://nchfp.uga.edu/>

So Easy to Preserve, 6th Edition: <https://setp.uga.edu/>

USDA Complete Guide to Home Canning: https://nchfp.uga.edu/publications/publications_usda.html

Recipes from University of Illinois Extension or other Extension offices: <https://extension.illinois.edu/>

What are the appropriate test strips for pH testing foods?

Per NEHA/FDA's Special Processes training manual on acidifying food, chemist grade pH indicator strips are now available that are accurate to ± 0.05 pH units and can be used with accuracy similar to that of pH meters. This requires a 4-color match test strip. A 3-color match provides results only in whole pH units such as 4.0 or 5.0 and is generally not accurate enough. The 4-color indicator strips are permitted, but a pH meter is highly recommended for retail purposes.

Is there a list of laboratories available?

IDPH does not maintain a listing of commercial laboratories.

What constitutes a category when submitting a recipe?

The Act does not define categories when submitting a recipe. However, the Food Handling Regulation Enforcement Act (410 ILCS 625/4)(2)(B) states that CFOs may submit written food safety plans for products that uses the same procedures.

Labeling

Can refrigeration or laboratory analysis be required for any TCS foods?

TCS foods must be held at 41 degrees or below. Laboratory testing may be used to determine whether or not a food item is TCS but cannot be required by the local health department. CFOs have the option of either storing TCS foods below 41 degrees or completing laboratory testing. Laboratory testing is only required for canned tomatoes or canned products containing tomatoes.

If a product is a TCS food, does it have to be labeled "Keep Refrigerated"?

TCS foods are not required to be labeled "Keep Refrigerated". IDPH recommends TCS foods be labeled "Keep Refrigerated" to prevent foodborne illness.

What labeling is required for fresh-pressed juices?

Per 21 CFR 101.17(g) fresh-pressed juices should be labeled: WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune system.

Water Testing for Cottage Food Operations on Private Water

Is testing is required for CFOs not utilizing a municipal water supply such as 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 CFOs expense.

What water parameters are CFOs required to test?

Local health departments may require a water sample test to verify that the water source being used meets public safety standards related to *E. coli* coliform.

Where Cottage Foods Can be Produced

Can unbottled juices or drinks be sold concession-style on-site?

No. Cottage food products must be produced or packaged in the person's primary domestic residence or another appropriately designed and equipped kitchen on a farm. Cottage food products cannot be produced or packaged outside of these sites.

Can CFOs operate out of a rented residence?

Yes. CFOs can operate out of the person's primary domestic residence or another appropriately designed and equipped kitchen on a farm.

Where Cottage Foods can be Sold and Cottage Food Sales

Can CFOs set-up a table and leave goods for sale?

No. Food and drink produced by a CFO shall be sold directly to consumers for their own consumption and not resale. Direct sale includes sales by the owner, a family member, or employee.

Can CFOs set up outside of a local business or must it be in conjunction with an event?

CFOs may sell products for pick-up from a third-party private property with the consent of the third-party property holder. This does not have to be in conjunction with an event.

Are CFOs allowed to sell products inside of licensed food establishments?

Food produced by CFOs is not permitted to be sold inside licensed food establishments. 3-201.11 of the 2017 FDA Food Code states "Food prepared in a private home may not be used or offered for human consumption in a food establishment."

Where farmers' markets, fairs, festivals, public events may occur in event centers or other areas where a food establishment may be located on-site, CFOs may sell products in areas designated for the market or event.

Can a CFO use a third-party delivery service for delivery to customer or another registered CFO for delivery?

No. CFOs must sell products directly to consumers by the owner, a family member, or employee.

Are CFOs required to comply with permit requirements to set up outside of local businesses?

CFOs must follow all applicable rules and regulations surrounding home businesses and any applicable zoning laws.

Do zoning requirements apply to CFOs selling from residences and/or private properties?

Pick up of food and drink produced by a CFO from a private home or farm of the operator is permitted if the pickup is not prohibited any law of the unit of local government that applies equally to all CFOs.

Can cottage food operations from other states sell cottage food products in Illinois?

No. Sale of food over state lines is considered interstate commerce and subject to federal rules and regulations.

Is there an income cap for CFOs? How do they pay tax on their sales?

The Food Handling Regulation Enforcement Act (410 ILCS 625/4) does not establish an income cap for CFOs. CFOs must still pay taxes and follow other laws pertaining to businesses. CFOs should contact their local taxing body or small business development center for more information.

Registration of Cottage Food Operations

Is there a standardized registration number that should be used by local health departments when registering CFOs?

No. Local health departments may establish their own policies for creating registration numbers.

Are certificates provided by local health departments required to have expiration dates?

Certificates are not required to have expiration dates. However, registration of CFOs must be completed annually, and certificates should relate annual standing.

Is there a statewide database of registered CFOs?

Currently, there is not a statewide database of registered CFOs. IDPH will evaluate options for maintaining a database.

How can LHDs confirm the registration status of CFOs registered to another LHD?

When encountering CFOs, LHDs should request a copy of the registering LHDs certificate. If there are concerns regarding the CFOs registration status, the registering LHD should be contacted.

Can local health departments legally require registered CFO to carry insurance?

No. Regulation of cottage food operations must be consistent with the regulation by the State under Section 4 of the Food Handling Regulation Enforcement Act (410 ILCS 625).

Are local health departments still required to inspect Farmers' Markets?

Local health departments should continue inspections of farmers' markets to ensure vendors are registered cottage food operations in compliance with Section 4.

Can a registered CFO use their home as a commissary for a food truck operation with a temporary permit or annual permit?

No. Food produced by CFOs is not permitted to be sold inside licensed food establishments. 3-201.11 of the 2017 FDA Food Code states "Food prepared in a private home may not be used or offered for human consumption in a food establishment."

Complaints/Investigations of Cottage Food Operations

Are there any guidelines for handling complaint investigations?

Yes. IDPH has worked with stakeholders to develop Cottage Food Operations Inspection Guidance to be used in conjunction with the Cottage Food Operation Inspection Report form. Both documents are available on IDPH's partner site.

How are LHDs made aware of complaint investigations of CFOs?

When conducting a complaint investigation, the registering LHD should interview the CFO about locations of operation. As appropriate, the registering LHD should notify other LHDs regarding the status of the investigation or CFOs registration.

How does IDPH define a "reasonable" fee for inspection?

IDPH nor the Food Handling Regulation Enforcement Act (410 ILCS 625/4) define a "reasonable" fee for inspection.

If a home is currently under a lead investigation, can they continue to produce cottage food products?

If IDPH or local health department believes that an imminent health hazard exists, IDPH or the local health department can inspect and invoke penalties and the cessation of sale of cottage food products until it deems that the situation has been addressed to the satisfaction of the IDPH or local health department. If the situation is not amenable to being addressed, the local health department may revoke the CFO's registration following a process outlined by the local health department.