WEST VIRGINIA CODE CHAPTER 19 ARTICLE 40

WV Legislature

§19-40-1. Definitions.

For purposes of this article:

“Acidified food” means as that term is defined in §19-35-2.

“Cottage food” means a food item intended for human consumption that is produced and, if packaged, packaged at the residential property of the producer and sold directly to a consumer. The term includes nonpotentially hazardous foods, but excludes meat, meat products, poultry, poultry products, seafood, and Grade A dairy products.

“Cottage food vendor” means a home-based business producing and selling cottage foods.

“Delivered” means transferred to the consumer, either immediately upon sale or at a time thereafter.

“Department” means the Department of Agriculture.

“Grade A dairy products” means milk and milk products that are manufactured in accordance with the Pasteurized Milk Ordinance, 2023 Revision, as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.

“Nonpotentially hazardous” means as that term is defined in §19-35-2.

“Potentially hazardous” means as that term is defined in §19-35-2.

“Potentially hazardous cottage food vendor permit” means a permit which allows potentially hazardous cottage foods to be produced and sold.

"Produce” means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising, or other process.

“Producer” means the person who produces a cottage food item.

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§19-40-2. Potentially hazardous cottage food vendor permits.

(a) Except as provided in subsection (d) of this section, a person wanting to sell potentially hazardous cottage food shall apply for a potentially hazardous cottage food vendor permit from the department.

(b) A potentially hazardous cottage food vendor permit, once issued, is valid in all counties in this state. A cottage food produced pursuant to this article shall be sold only within the geographic boundaries of the State of West Virginia.

(c) Notwithstanding any other provisions of code or rule to the contrary, a potentially hazardous cottage food vendor permittee is not required to obtain a food establishment permit to sell from home.

(d) The following are exempt from obtaining a potentially hazardous cottage food vendor permit:

(1) A person selling fresh, uncut produce;

(2) A person selling nonpotentially hazardous foods; and

(3) A person selling other farm and food products that are identified by the department.

(e) The department shall establish the conditions and procedures for issuance of a potentially hazardous cottage food vendor permit. As a condition of obtaining a potentially hazardous cottage food vendor permit, a person may be required to satisfy additional requirements, including, but not limited to, submitting to inspections, and obtaining and maintaining certain additional licenses or certifications, as provided by legislative rule.

(f) A potentially hazardous food vendor permittee when acting under this article is not required to obtain a farmer’s market vendor permit as required by §19-35-3(a).

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§19-40-3. Role of local health departments in cottage foods.

If the local health department in the jurisdiction in which the potentially hazardous cottage food vendor permittee is located has reason to believe that an imminent health hazard exists, the local health department may invoke cessation of production until it deems that the hazardous situation has been addressed to the satisfaction of the local health department. A local health department that invokes cessation of production shall do so in consultation with the department.

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§19-40-4. Legislative rules.

The department shall propose emergency or legislative rules for approval in accordance with the provisions of §29A-3-1 *et seq*. of this code for the purposes of implementing this article, including the setting of any fees.

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§19-40-5. Potentially hazardous foods.

(a) Notwithstanding any provision of §16-1-1 *et seq*. of this code or any rules or regulations to the contrary, the department shall regulate potentially hazardous cottage food sold in West Virginia.

(b) A home, farm, community, or commercial kitchen may be used by a potentially hazardous cottage food vendor, as determined by the department.

(c) Potentially hazardous cottage food standards shall be determined, including acidified foods, and other categories identified and defined by the department.

(d) Potentially hazardous cottage foods shall be labeled in compliance with the department's labeling standards and provide information about its content and sources.

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§19-40-6. Nonpotentially hazardous foods.

The production and sale of a nonpotentially hazardous food, when done in conformity with §19-35-6 and the accompanying legislative rules, is not subject to the provisions of this article.

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