Direct Sale of Homemade Food Items

§19-35-6

Farmers Markets
Definition

• 19-35-20 – “Homemade food item”-means a non-potentially hazardous food item, including a nonalcoholic beverage, which is produced and/or packaged at the private residence of the producer.
Definition

• §19-35-3.26. “Non-potentially hazardous foods” means foods that do not require time or temperature controls in order to remain safe for consumption. It includes jams, jellies, candy, dried mixes and other such food that do not meet the definition of potentially hazardous food.
§19-35-6. Direct sale of homemade food items.

• (a) The production and sale of homemade food items, when done in conformity with this section, are exempt from licensing, permitting, inspection, packaging, and labeling laws of this state.
§19-35-6. Direct sale of homemade food items

(b) The following conditions apply to the sale and delivery of homemade food items:

(1) The homemade food item must be sold by the producer to the consumer, whether in person or remotely, or by an agent of the producer or a third-party vendor; and

(2) The homemade food items must be delivered to the consumer by the producer, an agent of the producer, a third-party vendor, or a third-party carrier.
§19-35-6. Direct sale of homemade food items.

(c) The following information must be provided to the consumer, in the format required by subsection (d) of this section:

(1) The name, home address, and telephone number of the producer of the homemade food item;

(2) The common or usual name of the homemade food item;

(3) The ingredients of the homemade food item in descending order of predominance; and

(4) The following statement:

“This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens.”.
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• (d) The information required by subsection(c) of this section must be provided:
  • (1) On a label affixed to the package, if the homemade food item is packaged;
  • (2) On a label affixed to the container, if the homemade food item is offered for sale from a bulk container;
  • (3) On a placard displayed at the point of sale, if the homemade food item is neither packaged nor offered for sale from a bulk container;
  • (4) On the webpage on which the homemade food item is offered for sale, if the homemade food item is offered for sale on the Internet; or
  • (5) On a receipt or other document provided to the customer with the homemade food item.
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(e) The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the federal Meat Inspection Act and federal Poultry Products Inspection Act, unless the production and sale of the items are within the exemption in 9 C.F.R. §303.1(d), §381.10(c), or §381.10(d) and comply with other applicable federal regulations.
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(f) This section shall not be construed to:

1. Impede the authority of a local health department or the department to investigate or cease the production or sale of food items reported to have caused a foodborne illness;
2. Preclude the department from providing assistance, consultation, or inspection at the request of the producer of a homemade food item;
3. Preclude the production or sale of food items otherwise allowed by law;
4. Exempt a producer, seller, third-party vendor, or third-party agent from any applicable tax law;
5. Exempt producers or sellers of homemade food items from any law that requires the producer, seller, third-party vendor, or third-party agent to register its business name, address, and other identification information with the state;
6. Exempt producers or sellers of homemade food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or
7. Exempt producers or sellers of homemade food items from any applicable law of another state.
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• (g) This section preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of homemade food items: Provided, That such preemption shall not include space rentals at government-owned or operated facilities, government-sanctioned or operated events, or product placement agreements with government-owned facilities, as well as temporary events 14 days or less in duration.
Some Foods that may be sold as a Non-Potentially Hazardous Food

- Baked goods-loaf breads, rolls, biscuits
- Cakes- including celebration
- Non-Dietary Jams
- Non-Dietary Jellies
- Candy and confections
- Applebutter
- Sorghum
- Molasses
- Maple syrup
- Honey
- Fruit pies
- Cereals, trail mixes, granola
- Popcorn, popcorn balls, cotton candy
- Condiments
- Tomato sauce and juice
- Jerky
- Freeze dried fruits and vegetables
- Dried mixes
Potentially Hazardous Foods not eligible for Direct Sale of Homemade Foods

- Baked Goods with custards, dairy, or other time-temperature products inside or on top
- Mustard
- Relish
- Bean Salads
- Sauces-hot, marinara, spaghetti, chimichurri, sweet and sour, etc.
- Barbeque Sauces
- Garlic-in-oil-mixtures
- Cooked Rice and Pasta
- Cheese-homemade
- Dairy Products-including desserts
- Fermented Foods-kefir, sauerkraut, tempeh, natto, kombucha, miso, kimchi, salami, chichi, ganjang, sour cabbage, soured milk, ketchup
- Pepper Jelly and Jams
- Pumpkin Butter
- Mayonnaise
- Salad Dressings
- Sweet Potato Pie
- Meringue Pie
- Pickled Products-horseradish, chutney, corn relish, catsup, chow chow, gherkin, ginger pickle
- Cooked and Canned Beans
- Salsa
- Meats
- Cut Fruits and Vegetables
Chocolate Chip Cookies
Betty Homemaker, 587 Elm Street Charleston, WV 25305
304-123-8798

Ingredients: Enriched Flour (Wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin, folic acid), butter (milk, salt), chocolate chips (sugar, chocolate, liquor, cocoa butter), butterfat (milk), soy, lecithin (as an emulsifier) sugar, eggs, salt, natural vanilla extract, baking soda.

Net Wt. 3 oz. (85g)
Contains wheat, eggs, milk, soy

“This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens.”.

Made on August 11, 2020
- Statement of Identity: “Honey”, “Pure Honey”, “Raw Honey”
- Contact Information
- Net Quantity Statement
- Ingredients: only if there is more than honey
- Statement: Label Must State- “Do not feed honey to infants under 1 year of age”
- US Customs Service of the Dept of Treasury requires commodities to show origin of the product: Product of USA
Granda's
100 Maple St.
Charleston, WV
304-234-2314

APPLE BUTTER

APPLES, APPLE CIDER, HONEY, CINNAMON, CLOVES, NUTMEG GINGER,

This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens.

1 pint (16 oz.)
Any Questions