Homemade Food Act

Updated August 16, 2021

Beginning July 1, 2021, individuals may prepare certain low-risk food items in their private farm, ranch or residence and sell them directly to consumers without a permit from NMED. The Homemade Food Act outlines certain food safety requirements that must be met by sellers participating in the program and are briefly discussed below.

Beginning July 1, NMED will no longer issue Homebased Food Processor permits. If you are currently permitted as a Homebased Processor by NMED, your permit will be valid until its expiration date but will not be renewed after the expiration date.

NMED permitted food facilities may not use homemade foods as ingredients in their food items and grocery stores or similar facilities may not purchase or resell prepackaged homemade foods.

1. What is the Homemade Food Act?

The Homemade Food Act (Act) is a New Mexico law that became effective July 1, 2021 which allows individuals to make certain low-risk foods (see #2 below) in their private farm, ranch or residence without a food permit from NMED and then market/sell those products directly to consumers.

2. What food items can be produced and sold under the Homemade Food Act?

Food produced must be non-time/temperature control for safety (Non-TCS). Food that meets this definition only requires simple production steps and does not require refrigeration when complete.

Examples of non-TCS food include:

- Non-cream filled baked goods that do not require refrigeration, such as cakes, cookies, yeast breads, pies, pastries
- Candy
- Popcorn
- Chocolate covered pretzels
- Dehydrated fruits
- Granola/dry mixes
- Roasted coffee
- Whole fruits and vegetables
- Standard high sugar fruit jams/jellies

Please note that this is not an exhaustive list, nor does it dictate what you may or may not sell under the Act.

3. What food items are not allowed to be produced at home under the Act?

TCS Foods, alcohol-containing food, or alcoholic beverages may not be produced at a private farm, ranch or residence. TCS foods must be produced in an NMED-permitted commercial kitchen. Individuals producing alcoholic food or beverages should contact the New Mexico Alcoholic Beverage Control Division.

Examples of TCS food that are not allowed under the Act include:

- Meat and meat products, including jerky
- Salsa
- Fish and fish products like smoked fish
- Foods containing CBD, hemp, or hemp extract (see question #4)
- Vegetable jams/jellies (e.g., hot pepper jelly)
- Canned fruits or vegetables
- Canned pickled products like corn relish, pickles, or sauerkraut
- Pies or cakes that require refrigeration like banana cream, pumpkin, lemon meringue or custard pies; cheesecake; and cakes with glaze or frosting that requires refrigeration (e.g., cream cheese frosting)
- Milk and dairy products like cheese or yogurt
- Cut fruits and vegetables
- Caramel apples
- Hummus
- Garlic in oil mixtures
- Beverages like fruit/vegetable juices, Kombucha tea, and apple cider
- Sprouts
- Food products with fresh vegetables, fruits and/or cheeses
- Salad dressings
- Acidified foods

Please note that this is not an exhaustive list, nor does it dictate what you may not produce under the Act.

4. Can I make food containing CBD without a food permit from NMED?

No. All food operations that make products containing hemp, hemp extract or CBD must be permitted as a commercial hemp manufacturing facility by NMED. You can find more information on our hemp program here.

5. How can I get help determining if the food I want to produce is non-TCS?

The definition of TCS food on page 21 of the NMED Retail and Manufactured Food Field Guide may provide the assistance you need. You may also contact a Process Authority to assist you in making the determination. Here is the contact information for one Process Authority in NM: Dr. Willis Fedio, NMSU Food Safety Laboratory, wfedio@nmsu.edu, on the web.

If you are a Process Authority and would like to be added to this list, please send a request (include qualifications) to food.program@state.nm.us.

6. Where can I sell my homemade items?

You may sell your homemade food items directly to consumers within the state of New Mexico at places like farmers' markets, festivals, on the internet, at roadside stands, at the seller's home for pick-up or delivery or through mail delivery.

Homemade items may not be sold to a restaurant, a wholesaler or distributor, or outside the state of New Mexico. If you would like to produce food items to be sold to these types of facilities a commercial manufactured food permit from NMED is required.

7. Do I have to be certified to produce items in my private residence?

Yes. You must obtain a Food Handler Card from an approved food handler card program before beginning production.

8. What requirements do I have to meet when producing and transporting food?

The following are required in the Act:

- Maintain a sanitary kitchen.
- Practice good personal hygiene.
- Protect kitchen from rodents and pests at all times. Only use pest control products in accordance with the label and that are approved for food service areas.
- Keep pets and children out of kitchen while in production.
- Store food in a sanitary manner at all times.
- Transport food in a sanitary manner, protecting it from pets, children and other hazards. For example, vehicle compartments used to transport animals must not be used to transport food.

9. Are there specific labeling requirements for food items outlined in the Act as well?

Yes. You must provide consumers the information listed in question #10 in one of the following ways:

- On a package label.
- On a label attached to a bulk container (when items are offered from a bulk container).
- On a place card displayed at the point of sale (when items are not packaged or offered from a bulk container).
- On a webpage where the items are offered for sale.

10. What information must be on the label or place card for each food item?

The following is required on labels/place cards:

- The name, home address, telephone number and email address of the processor of the food item.
- The common or usual name of the food item (i.e. "chocolate chip cookies")
- The ingredients of the food item listed from most to least present in the item.
- All sub-ingredients must be included on the ingredients statement. For example, when including "butter" on the ingredients statement, you must include all ingredients listed on the butter package like this: "butter (cream (milk), salt)".
- The following statement must be on the label: "This product is home produced and is exempt from state licensing and inspection. This product may contain allergens."

Refer to the Act for additional information on labeling requirements.

11. How does NMED regulate my Homemade Food operation?

NMED is responsible for enforcing the requirements of the Act. If NMED receives a complaint that your product is not labeled properly, NMED will require you to correct the issue immediately or you may be fined. NMED and/or the New Mexico Department of Health may also investigate foodborne illness complaints.