



## Comments on “New Rules I through XI Pertaining to the Production and Sale of Cottage Food Products”

The Grow Montana Food Policy Coalition has structured our comments as follows. The section of the NEW RULE on which we are commenting is reprinted, and our comments follow in italics. The comments follow the order of the proposed rules.

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NEW RULE III(1)(c): repackaged, commercially dried fruit from an approved source as described in [NEW RULE VIII(2)], except that cottage food operators may not dry or package fresh fruits or vegetables.

*Grow Montana Comments: We believe that this prohibition against cottage food operators making dried fruit violates the statutory language passed in House Bill 478. HB 478 amended Section 50-50-102 of the Montana Code Annotated to read:*

*“(4) ‘Cottage food products’ means foods that are not potentially hazardous and are processed or packaged in a cottage food operation, including jams, jellies, **dried fruit**, dry mixes, and baked goods [emphasis added]. Other similar foods that are not potentially hazardous may be defined by the department by rule.”*

*HB 478 clearly included dried fruit as an allowed cottage food product. In talking with Montana DPHHS’ Food and Consumer Safety staff, we learned that there was much internal discussion about the decision to write dried fruit out of the rules. This decision appears to be based on information provided by an out-of-state food processing authority and Food and Drug Administration guidelines dealing with both acidic versus non-acidic fruits, the temperatures needed during preparation to produce dried fruit safely, and packaging. Staff told us that, if a cottage food operator is able to prove it could make dried fruit in a safe and non-hazardous*

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*The Grow Montana Food Policy Coalition is a broad-based coalition whose common purpose is to promote community economic development and education policies that support sustainable Montana-owned food production, processing, and distribution which improves all Montanans’ access to healthy Montana foods. Housed at and coordinated by the Butte-based National Center for Appropriate Technology, the organizations comprising Grow Montana’s steering committee are Alternative Energy Resources Organization (Helena), Community Food and Agriculture Coalition (Missoula), Lake County Community Development Corporation (Ronan), Montana Academy of Nutrition and Dietetics (Bozeman), Montana Farmers Union (Great Falls), Montana Office of Public Instruction (Helena), National Center for Appropriate Technology (Butte), and Northern Plains Resource Council (Billings).*

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*manner, the operator could ask the local county health department to approve the product under the case-by-case provision found in NEW RULE III(3).*

*Given this background, Grow Montana suggests that DPHHS not prohibit dried fruit in these cottage food rules, since it violates HB 478's intent and what the bill placed into statute. Instead, we encourage DPHHS to redraft NEW RULE III(1)(c) along the lines below:*

- (c) cottage food operators may dry and package fresh fruits as long as they can prove their manufacturing process achieves the following:
  - (i) knowledge of the natural acid level (pH) of the fruit being processed (e.g. high-acid fruits vs. low-acid fruits) and limiting the drying process to fruits with a pH level of 4.0 according to the guidelines from the Food and Drug Administration found here: <http://www.fda.gov/Food/FoodbornellnessContaminants/CausesOfIllnessBadBugBook/ucm122561.htm>;*
  - (ii) prove the ability to maintain temperatures for the following time periods during the fruit drying process:
    - (a) reach 160° Fahrenheit within one hour of slicing/processing for lethality;*
    - (b) maintain 140° Fahrenheit for the rest of the drying process;**
  - (iii) use appropriate packaging materials for the product, which cannot be vacuum packaging.**

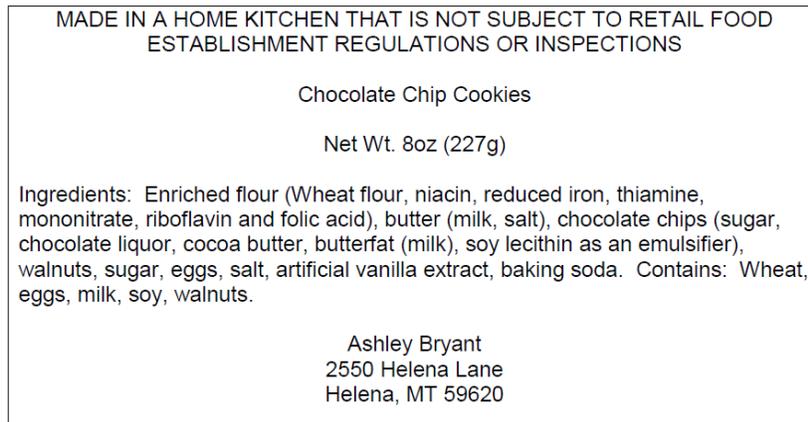
*This suggested language was put together based on information we received from DPHHS staff. We know that it would need to be modified and made more accurate for the final rules. However, we strongly believe that modifying NEW RULE III(1)(c) along these lines will accomplish a few goals. First, it will clearly state that dried fruit can be a cottage food product, which matches the intent and language passed in HB 478. Second, by putting the cooking and packaging requirements that make the dried-product process safe into the rules, public health will be protected. Third, by listing the requirements, both cottage food operators and local county health departments will know exactly what needs to be done to guarantee the product is safe. The last point addresses one of the purposes for HB 478, which was to cut down on the subjectivity of regulations that led to unequal enforcement from county to county.*

NEW RULE III(3): Other products may be approved on a case-by-case basis by the department in consultation with the local health department of the county in which the cottage food operator is registered.

*Grow Montana Comments:* *We appreciate DPHHS including this line in the rules. It gives cottage food operators the ability to prove a product that is not*

*specifically listed in NEW RULE III can be non-hazardous and produced in accordance with the rules' provisions. We are glad that DPHHS is not restricting cottage food to just one set list of products, which upholds House Bill 478's intent.*

NEW RULE IV(2): The following is representative of a label meeting the requirements of (1):



*Grow Montana Comments: We like that DPHHS included an example of the type of label that meets the rule's requirements. This label example clearly illustrates the exact pieces of information that must be provided by the cottage food operator. We believe the overall rules could be strengthened by including more concrete examples that will help both cottage food operators and local health departments know exactly what is required.*

NEW RULE VIII(2): Food must be obtained from approved sources, including:

- (a) retail and wholesale establishments licensed by the state of Montana;

*Grow Montana Comments: We know that many people taking advantage of cottage food production will want to buy ingredients directly from their local farmers (say for something like Flathead cherry jam) or purchase them at farmers markets or from a CSA (Community Supported Agriculture). In speaking with Montana DPHHS' Food and Consumer Safety staff, we were told that anything approved for use by a retail establishment could be used by a cottage food operation, including most materials from farms. We encourage DPHHS to include such language in NEW RULE VIII(2), so it is clear that cottage food operators can support local farmers by using local ingredients. If there are common items that cannot be used from local farmers, we encourage DPHHS to include a list of those items in the rules.*

NEW RULE IX(6): The registrant must demonstrate that the water for the cottage food operation is either:

- a) from an approved public water system; or

- b) meets minimum drinking water standards from a certified laboratory by providing results for total coliform and nitrates from the private well serving the domestic residence that is being registered for the cottage food operation;
- (i) nitrates must be below 10 mg/L from a sample within the last 12 months;
  - (ii) total coliforms must be absent from a sample within the last 6 months;

*Grow Montana Comments: We have received questions regarding the sections of NEW RULE IX when it comes to the registration requirements. One of the areas specifically mentioned is this portion of the rule dealing with water quality. Potential cottage food operators are wondering how frequently they will have to submit test results if they use a well. They are wondering if they will have to submit results on an annual basis or only if the composition of their well water changes, which would seem to fall under the requirements of NEW RULE IX(7). We feel the entire NEW RULE IX would be strengthened by specifically stating that these registration requirements are a one-time process, unless the changes meet criteria listed in NEW RULE IX(7) for new operational practices, which would require re-registration.*

NEW RULE IX(7): A registration fee of \$40.00 must be paid to the county in which the cottage food operation is registered. The cottage food operation must register again with the local regulatory authority and pay the registration fee if it wishes to change the location of its cottage food operation or produce new products. Recipe changes to an existing approved product that necessitate redetermination as to whether that product constitutes a non-potentially hazardous food or contains a major allergen are new products for the purposes of this rule.

*Grow Montana Comments: We feel this is another area where providing a few examples could be helpful. In talking with Montana DPHHS' Food and Consumer Safety staff, it seems clear they only want an operator to re-register if he/she changes location, uses a different production technique, decides to make brand new products, or changes an ingredient that could make the registered product potentially hazardous. However, the language in the rule is still a little difficult to understand. In order to help make sure that operators and county health departments are interpreting the rule the same way, we encourage DPHHS to include a few examples of scenarios to help crystalize the intent and procedure of the rule. For instance, DPHHS could include examples like the following, which have been crafted based on our understanding of the registration process gleaned through conversations with Food and Consumer Safety staff:*

- *If a cottage food operation registers to make one product and never changes its location or production technique, it would pay the \$40 registration fee once.*

- *If a cottage food operation moves to another house, county, etc., it would have to register again and pay \$40.*
- *If a cottage food operator changes a recipe, it would have to re-register if the change could potentially make the product hazardous, for instance changing a recipe from regular frosting to cream cheese frosting.*
- *If a cottage food operator changes a recipe but it doesn't make the product potentially hazardous—such as changing from chocolate chips to white chocolate chips in cookies—the operation would not have to re-register.*
- *If a cottage food operation starts making a new product (so making jelly in addition to cereal), it would need to re-register*

*If the goal of the rule is to make it as easy as possible for both cottage food operators and county health departments to understand, we believe that a few examples like those we've included above could help standardize the interpretation and execution of the registration and re-registration process.*