

WYOMING FOOD COALITION

WY Food Matters

FOOD FREEDOM ACT FREQUENTLY ASKED QUESTIONS

THIS DOCUMENT IS BASED ON RECENT INFORMATION FROM QUESTIONS POSED TO THE WYOMING DEPARTMENT OF AGRICULTURE CONSUMER HEALTH. IF YOU HAVE SPECIFIC QUESTIONS ABOUT THE WYOMING FOOD FREEDOM ACT AS IT PERTAINS TO YOUR OPERATION, YOU CAN REACH OUT TO THE WYOMING FOOD COALITION AS A LIAISON, THROUGH OUR POLICY OR CONTACT PAGES. YOU CAN ALSO CONTACT CONSUMER HEALTH AT WDA1@WYO.GOV OR CONSUMER HEALTH MANAGER JUSTIN LATHAM AT JUSTIN.LATHAM@WYO.GOV

In 2015, the Wyoming Legislature passed HB0056, creating the Wyoming Food Freedom Act, W.S. 11-49-101 through 11-49-103, which became effective March 3, 2015, subsequently amended several times since to the current version taking effect on July 1, 2023. The general purpose of the Wyoming Food Freedom Act (WFFA) is to allow for the sale and consumption of homemade foods. The FFA is an exemption to the Food Drug and Cosmetic Act, and any failure to follow what is prescribed in the Wyoming Food Freedom Act makes responsible parties liable to the Wyoming Food Drug and Cosmetic Act.

SECTION ONE: DEFINITIONS

1. Q. What is an “informed end consumer?”

A. An “informed end consumer” is a person who is the last to purchase any product, who does not resell the product, and who has been informed that the product is not licensed, regulated, or inspected.

2. Q. What is a “farmers market?”

A. A “farmers market” is a common facility or area where several vendors may gather on a regular, recurring basis to sell a variety of fresh fruits and vegetables, locally grown farm products, and other items directly to consumers.

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3. Q. What is “homemade” food?

A. “Homemade” means food is food that is prepared or processed in a private home kitchen that is not licensed, inspected, or regulated.

4. Q. What is a third-party vendor?

A. A person, facility, or establishment that sells the product for the producer. (third-party sales)

5. Q. What is a designated agent?

A. “Designated agent” means a person employed by the producer for the purposes of sales, marketing, transport, storage, and delivery of food or drink products. A designated agent shall be named in writing by the producer and shall not take ownership of any food or drink product.

6. Q. What is non-potentially hazardous food?

A. “Non-potentially hazardous food” means food that does not require time or temperature control for safety, including limiting pathogenic microorganism growth or toxin formation. “Non-potentially hazardous food” includes, but is not limited to, jams, uncut fruits, and vegetables, pickled vegetables, hard candies, fudge, nut mixes, granola, dry soup mixes excluding meat-based soup mixes, coffee beans, popcorn and baked goods that do not include dairy or meat frosting or filling or other potentially hazardous frosting or filling.

7. Q. What is a commercial food establishment?

A. Commercial food establishment means and includes any place or any area of any establishment that is a wholesale or retail business where foods, drugs, devices, and cosmetics are displayed for sale, manufactured, processed, packed, held, or stored. “Commercial food establishment” shall not include any farmers market; or any producer or informed consumer engaged in transactions pursuant to W.S. 11-49-103.

SECTION TWO: FARMERS MARKETS

1. Q. Are farmer’s markets subject to inspection for compliance with federal, state or local food safety regulations?

A. Yes.

2. Q. Is one vendor a farmers market?

A. No. Is an area where several vendors may gather on a regular, recurring basis

3. Q. How can fish be sold at the Farmer's Market?

A. The sale of farm-raised fish is allowed if the fish is raised in accordance with Title 23 of the Wyoming Statutes. This refers to the Wyoming Game and Fish Statutes. Wild fish cannot be sold at a farmer’s market under the Wyoming Food Freedom Act.

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Catfish is not allowed to be sold uninspected, as it is amenable to the USDA Meat Inspection Act. Any other fish would be considered food and would be able to be sold at a farmers' market.

4. Q. Can a producer prepare food onsite at the farmer's market under the Food Freedom Act?

A. No. Food shall be made in the home. "Homemade" means food that is prepared or processed in a private home kitchen, that is not licensed, inspected, or regulated. If food is made onsite at a farmers market, it shall meet the requirements of a temporary food facility and have a temporary food permit.

5. Q. Can frozen or potentially hazardous food items be sold at a Farmer's Market?

A. Yes, but only the producer of a potentially hazardous food item may sell that item. The exception is a producer, OR their designated agent may sell eggs and dairy products. The third-party seller/designated agent shall be named in writing.

SECTION THREE: MEAT

1. Q. Can poultry and poultry products be sold under this act?

A. Yes, so long as poultry producers maintain compliance with the United States Department of Agriculture's Poultry Products Inspection Act [PPIA Section 464(c)(4)"Section 15 (c)(4)"4; Title 9 CFR §381.10(c)]. A producer must slaughter less than 1,000 poultry during a calendar year, not engage in buying or selling poultry products other than those produced from poultry of his own raising, and only sell such poultry and poultry products within the State of Wyoming. The poultry must not be adulterated or misbranded. The producer shall keep records necessary for the effective enforcement of the Act

Criteria:

1. The poultry grower slaughters no more than 1,000 healthy birds of his or her own raising in a calendar year for distribution as human food;
2. The poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm;
3. The slaughter and processing are conducted under sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food (not adulterated);
4. The producer keeps records necessary for the effective enforcement of the Act [Title 9CFR 381.175]; and

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5. The poultry products do not move in commerce.

Note: Commerce means the exchange or transportation of poultry products between States, U.S. territories (Guam, Virgin Islands of the United States, and American Samoa), and the District of Columbia [PPIA Section 453; Title 9 CFR §381.1(b)].

If any of the five criteria are not met, the owner of the poultry is not eligible for this exemption. Records necessary for the effective enforcement of the Act include slaughter records and records covering the sales of poultry products to customers.

2. Q. Can meat such as beef, pork, lamb, or goat be sold under this act?

A. No, Not under this act. Meat that has the state or federal mark of inspection may be sold by a raw agricultural producer or licensed establishment but that does not fall under this Act.

3. Q. Can a producer sell a live animal intended for slaughter?

A. Yes, but a producer must still comply with the Wyoming Livestock Board's statutes, rules, and regulations regarding the change in ownership and brand inspection requirements.

4. Q. Can the sale of custom portions of live animals for future delivery be made at a farmers market, farm, ranch, home, office, or any location agreed to between the producer and the informed end consumer?

A. Yes, provided that the processing of the portion of the animal is done by a Wyoming-licensed processing facility or federally licensed-facility. Change in ownership of the animal (or portion thereof and all associated record keeping) must take place before the animal is slaughtered. The product must be labeled "not for sale" and can only be delivered to the person(s) who purchased the animal or a share thereof. The producer must still comply with the Wyoming Livestock Board's statutes, rules, and regulations regarding the change in ownership, brand inspections, as well as federal and state laws.

5. Q. Can wild game and game products be sold under this act?

A. No. W.S. 23-3-302 prohibits the sale or barter of wild game, animals, birds, or fish.

6. Q. Is the sale of rabbit meat allowed?

A. Yes.

7. Q. Can I sell fish I buy in the store under this Act?

A. No. The fish would have to be farm-raised in Wyoming and would need to meet the requirements listed in Title 23 of Wyoming statutes and may not include suliformes such as catfish.

8. Q. Can cooked Poultry be sold under this Act?

A. Cooked poultry of the owner's own raising, slaughtered, and processed by the producer under the 1,000 bird exemption may be sold by the producer to the final end consumer. The poultry must not be adulterated or misbranded.

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The producer keeps records necessary for the effective enforcement of the Act. This would not allow for third-party sales or an employee of the producer to sell the product with poultry in it. If sold in conjunction with a licensed facility, the area where the product is sold shall be physically separated from the commercial food establishment with a separate door and separate cash register or point of sale.

SECTION FOUR: SHIPPING/CROSSING STATE LINES

1. Q. Can any of the products be shipped interstate?

A. No. Transactions under the Wyoming Food Freedom Act may only occur in Wyoming and may not involve interstate commerce. 11-49-103 (C) (iii-iv)

2. Q. Can out-of-state producers sell in Wyoming under the WFFA?

A. No. WFFA transactions shall not involve interstate commerce. 11-49-103 (C) (iv)

3. Q. Can a home producer offer internet sales under this Act?

A. Yes, but only for delivery within Wyoming.

SECTION FIVE: LABELING

1. Q. What are the requirements for informing the end consumer?

A. Sales of non-potentially hazardous food and dairy products at a retail location or grocery store shall be clearly and prominently labeled with "this food was made in a home kitchen, is not regulated or inspected, and may contain allergens". The Wyoming Food Freedom Act does not state how the producer shall inform the end consumer of food products sold by the producer directly to the final end consumer. The Act states that the producer shall inform the end consumer "this food was made in a home kitchen, is not regulated or inspected, and may contain allergens"

2. Q. Are allergens required to be listed on the packaging?

A. No, the verbiage on the package shall read: "This food was made in a home kitchen, is not regulated or inspected, and may contain allergens".

3. Q. What are the labeling requirements for these food freedom products?

A. The food shall be labeled as such: "This food was made in a home kitchen, is not regulated or inspected, and may contain allergens". Placards or display panels are no longer allowed for third-party/designated agent sales and the product shall be labeled. Food produced in a licensed establishment shall be clearly and prominently labeled.

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SECTION SIX: WHERE CAN WFFA PRODUCTS BE SOLD

1. Q. Are WFFA products allowed in commercial food establishments?

A. Yes, Food products that are displayed or offered for sale in a commercial establishment shall be on a separate shelf or display and away from food produced in a licensed establishment.

2. Q. Where can Food Freedom Act products be sold?

A. A sale may take place at farmer's markets, ranches, farms, producer's homes, or third-party vendors such as a retail shop or grocery store if the food is non-potentially hazardous or eggs and dairy products. Homemade or uninspected food shall not be served or utilized as an ingredient in a commercial food establishment. 11-49-103 (d)

3. Q. How can I sell foods that are deemed "potentially hazardous" by this act?

A. The seller of a homemade food item consisting of potentially hazardous food shall be the producer of the item; shall occur only in Wyoming; shall not involve interstate commerce; only occur at farmers' markets, farms, ranches, producer's homes, or offices. The exception is eggs and dairy products, where the agent may sell products.

4. Q. How are food freedom products to be marketed at the grocery or retail stores?

A. All food freedom products must comply with the Wyoming Food Freedom Act and be marketed on a separate shelf from licensed and inspected food. Products shall be labeled as such: "This food was made in a home kitchen, is not regulated or inspected, and may contain allergens".

SECTION SEVEN: EGGS

1. Q. What are the labeling requirements for eggs sold under this act?

A. When sold in a retail location, eggs shall be clearly and prominently labeled with "this food is not regulated or inspected." Eggs must be clean and refrigerated. If desired, clean cartons in good condition may be reused if all labeling from original use is marked out. The carton can be labeled with the name and address of the producer, a packaging date and state "ungraded" and "keep refrigerated." Cases and packaging material shall be visibly clean. This is not required by federal regulation and the FFA specifically states that "nothing in this article shall be construed to be more restrictive than applicable federal requirements."

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2. Q. Is there a limit to the number of eggs that can be sold by each producer?

A. Each such sale of restricted eggs shall be limited to no more than 30 dozen eggs.

3. Q. Who can sell eggs?

A. The producer, designated agent, or third-party vendor may sell eggs from the producer's owned flock.

4. Q. Where can a producer sell eggs?

A sale may take place at farmer's markets, ranches, farms, producer's homes, or third-party vendors such as a retail shop or grocery store if the food is non-potentially hazardous or eggs and dairy products.

5. Q. What records does a producer have to keep?

A. Persons involved in the business involving eggs shall have records showing the receipt, delivery, sale, movement, and disposition of all eggs handled by them and upon the request of the regulatory authority, permit the representative, within a reasonable time, to have access to and to copy all such records. Additionally, all egg handlers shall maintain production records. The records (bills of sale, inventories, receipts) shall show the name and address of the shipper and receiver, the date of the transaction, the quality of the eggs (graded eggs, nest-run eggs, dirties, checks, leakers, loss, inedible eggs), and the quantity of the eggs (7 CFR 57, 20).

SECTION SEVEN: MISC

1. Q. What types of homemade foods may be sold under the WFFA?

A. Home-processed foods are processed without meat or wild game. Except as provided by the Act, such as poultry of the producer's own raising that they have slaughtered and processed under sanitary conditions.

2. Q. Does The WFFA allow the sale of raw milk and products made from raw milk?

A. Yes. As of Jul 1, 2023 it will allow for third-party sales of dairy products.

3. Q. Does the WFFA permit the Wyoming Department of Health to investigate any food-borne illnesses?

A. Yes. 35-7-123 (ix) Allows WDA to assist the Department of Health or any local jurisdiction when requested to investigate possible food-borne and water-related illnesses. So, even though WDA is not specifically listed in the FFA, we have the ability to investigate illness. Nothing in this act shall be construed to impede the Wyoming Department of Health in any investigation of food-borne illness.

4. Q. Is a sampling license required to give out samples of WFFA products?

A. No.

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5. Q. Are there maximum sales I can do under “Wyoming Food Freedom Act”?

A. Yes, A producer may not produce more than two hundred fifty-thousand (250,000) individual food or drink products annually and does not exceed two hundred fifty thousand dollars (\$250,000.00) in gross revenue annually from the food and drink products.

6. Q. Can Vending Machines be used for WFFA products?

A. No. Sales through vending machines are not in the spirit of direct-to-consumer sales. Additionally, they can not meet the requirements of an agreed-upon location.

7. Q. Does The WFFA allow alcoholic beverages made in the home to be served?

A. No. The Act does not allow for a commercial food establishment to serve as an ingredient Food Freedom products. A commercial food establishment doesn't have to carry a license.

THIS IS THE MOST ACCURATE INTERPRETATION BY THE WYOMING FOOD COALITION OF THE WYOMING FOOD FREEDOM ACT AT THIS TIME. THE WYOMING FOOD COALITION WILL UPDATE AND MAINTAIN THIS DOCUMENT PERIODICALLY TO REFLECT UPDATES AND NUANCES OF THE WFFA.