FARM COMMONS

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Legal Guide for North Dakota Botanical Producers

This factsheet helps botanical producers make informed decisions about how to best market and manufacture their products to avoid unknowingly triggering additional product regulations.

NORTH CENTRAL EXTENSION RISK MANAGEMENT EDUCATION

This material is based upon work supported by USDA/NIFA under Award Number 2023-70027-40444.

USDA National Institute of Food and Agriculture
U.S. DEPARTMENT OF AGRICULTURE

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Getting Started

This factsheet aims to help botanical producers make well-informed decisions about how to market and manufacture their products. Familiarity with dietary supplement regulations will allow botanical businesses to continue to thrive. Botanical products can exist in a gray area between food, dietary supplement, and cosmetic regulations. Botanical producers unaware of the applicable regulations risk violating labeling, Current Good Manufacturing Practices (cGMPs), and marketing rules. Consequences could include:

- the FDA sends a letter challenging the botanical product's marketing and requiring immediate changes,
- a market or online sales platform refuses to sell the product, or
- the state forces a producer to change their business name.

Determining whether a particular botanical product will be regulated as a 'food' versus a 'dietary supplement' can be challenging. This factsheet discusses the key factors in making this determination: the product's marketing, its intended use, and the ingredients used.

For purposes of this factsheet, we define botanical producers as those who grow some or all of their own inputs and create value-added goods for their customers' health, wellness, or beautification. These producers could grow fruits, spices, medicinal herbs, mushrooms, beeswax, honey, or maple syrup. The value-added products include but are not limited to dry teas (blends or single herbs), tinctures, syrups, oxymels, salves, and hydrosols.

Tobacco, cannabis, and hemp are all regulated separately and are not covered in this factsheet.

What type of botanical product am I making and selling?

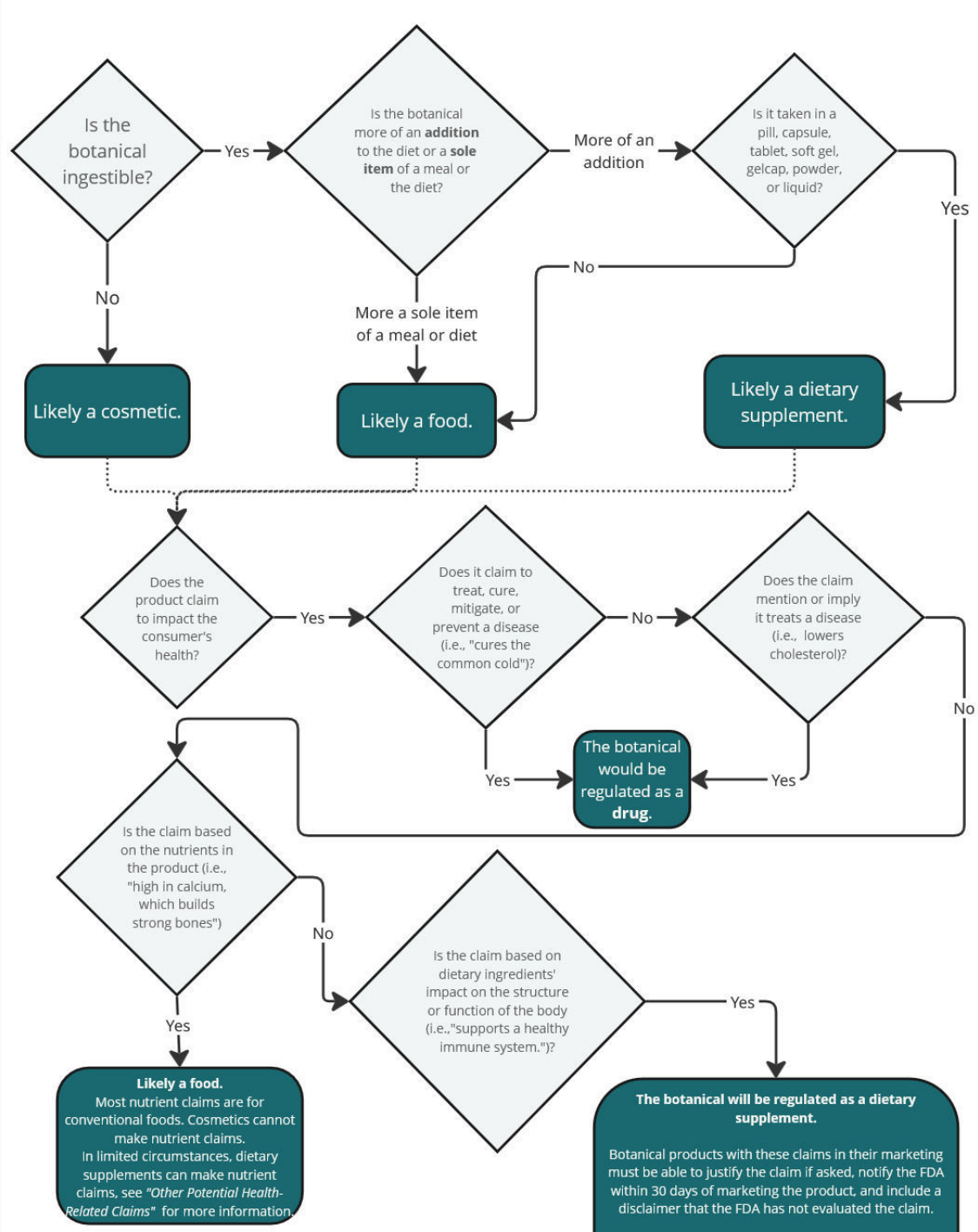
Botanical products might be legally classified as foods, dietary supplements, cosmetics, or even (potentially) drugs. For example, a producer could sell a dried herbal tea blend as **a food**; many producers do just that. However, if the producer changes the tea's marketing to include a statement that the tea "supports a healthy immune system," then the tea would be regulated as **a dietary supplement** rather than a conventional food. If the marketing claim were even bolder, saying the tea would "cure the common cold," then the product would be regulated as **a drug**. Finally, if the producer incorporates the same dried herbs into a salve and markets it as a topical moisturizer, it would be regulated as **a cosmetic**.

Another common example is elderberry. The fruit is often made into syrups, dried teas, or jelly. Depending on how they are marketed, most of these could be classified as conventional foods or dietary supplements. Elderberry syrup, for example, could be sold as a food with the suggested use of pouring it over pancakes. More often, we see elderberry syrup marketed as a dietary supplement, with the suggested use of ingesting it by the tablespoon for immune-supportive benefits.

This resource assumes botanical producers want to avoid drug classification because drugs require FDA pre-approval. But the other categories—cosmetics, conventional foods, or dietary supplements—are all valid options for botanical producers. **Each classification has different rules on labeling, production and manufacturing, allowable health-related claims, and even state taxes.**

Botanical producers must ask themselves a series of questions about their products to determine whether they will be classified as conventional foods or dietary supplements. The flow chart on the next page will help clarify if a product is a dietary supplement, conventional food, or cosmetic and explain basic regulatory information about each category.

Once we know how a product is classified, we can figure out how it's regulated.



Any botanical product that, due to its marketing, ends up regulated as a product it is not (i.e., a cosmetic as a drug) will be considered misbranded and could face FDA and other enforcement actions.

Product ingredients can also impact a product's regulatory category. For example, generally speaking, ingredients that aren't listed on the FDA's generally recognized as safe (GRAS) list cannot be included in products marketed as foods. This includes common herbs like echinacea and ashwagandha. Furthermore, the FDA subjects some non-GRAS dietary supplement ingredients to a higher level of scrutiny, and others aren't allowed in ingestible products (e.g., comfrey).

As you consider whether your botanical product is a food, dietary supplement, or cosmetic, do a gut check against the legal definitions provided below. If the flowchart and legal definitions align, we have a pretty good idea of the classification of the botanical product.

Dietary Supplement: a subcategory of food that is subject to both food regulations and specific dietary supplement regulations. Dietary supplements are defined as a product:

1. Intended to supplement the diet that contains one or more of the following: a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance, a concentrate, metabolite, constituent, extract, or a combination of any of these ingredients.
2. That is intended for ingestion in pill, capsule, tablet, soft gel, gelcap, powder, or liquid form or, if not taken that way, is not represented as a conventional food and is not represented for use as a sole item of a meal or diet.

Cosmetic: articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance.

The flowchart and definitions above should get producers closer to understanding how their product is classified. Once we understand how a product is classified, we can explore how each category is regulated.

What can I say about the health benefits of my product?

Botanical producers may want to tout the health-related claims of their tinctures, salves, and other products. Using this kind of marketing requires producers to follow federal marketing regulations. This is true whether the health-related claim is on the product's label, in advertisements, or on a website blog.

Producers can make two main types of marketing claims for their botanical products: structure/function claims or disease claims.

> A **structure/function claim** describes how a nutrient or dietary ingredient affects or maintains the normal structure or function of the human body or general well-being.
>
> A **disease claim** claims a product can treat, mitigate, or cure a disease.

Only **drugs** (or certain medical devices) can use disease claims. Any botanical product (conventional food, dietary supplement, or cosmetic) that claims to treat, mitigate, or cure a disease would be regulated as a drug. Therefore, a cosmetic that claims to "treat eczema" could be considered a misbranded drug and be subject to FDA enforcement action.

Cosmetics are very limited in what claims can be made about them; even structure/function claims are not allowed. Advertising that a cosmetic can "increase collagen production" would be impermissible marketing because it implies it can change the skin's structure. No cosmetic can claim to impact the structure or function of the body because it is only used outside or on the body. The law doesn't recognize the ability of any topically applied product to absorb into the body and impact any bodily structures or functions. The few permissible descriptions for cosmetics include (but are not limited to) words like "cleansing," "beautifying," or "moisturizing."

Any cosmetic claiming to impact the structure/function of the body or claiming to treat, mitigate, or cure a disease will be regulated as a drug. Producers should also be aware the U.S. is unique in regulating all sunscreens as drugs. This means no cosmetic can claim to have sun-protective qualities. Lastly, the regulation on the term "antimicrobial" might be surprising. Claims that a botanical kills or prevents microbial growth are considered drug claims.

Conventional foods can use structure/function claims in one limited way. For example, a claim based on nutrients, like "calcium builds strong bones," can be used to market foods, but only if the food has calcium meeting or exceeding the established Daily Value (DV). DVs are established by the FDA as the recommended amounts of nutrients to consume or not to exceed each day. Conventional foods that use a structure/function claim that isn't a nutrient claim, like "supports wellness," would be considered a dietary supplement and would no longer be regulated as a conventional food.

Dietary supplements have the most flexibility in using structure/function claims in their marketing strategy. This is one benefit of producing dietary supplements—the producer can market the product by sharing how the supplement benefits the customer's health and general well-being. If applicable, dietary supplements can also make nutrient content claims, like in the case of vitamins with established DVs.

This flexibility comes at a cost. Crafting a permissible dietary supplement structure/function claim can take time and effort. Still, once farmers understand the general guidelines, they can assert that a botanical positively impacts the body's structure (e.g., bones) or function (e.g., immune system).

Producers can start learning to craft permissible structure/function claims by eliminating what they *cannot say*.

Health-related claims for dietary supplements **cannot**:

- Say or imply that the product can diagnose, treat, cure, or prevent any disease,
- Mention any disease (even the common cold!) in the claim, nor

- Suggest the product relieves the *symptoms* characteristic of a specific disease.

A botanical producer cannot make a St. John's Wort tincture and market it with the phrase "treats mild to moderate depression." There are two problems with this claim. First, the claim says that the product can **treat** a disease. Secondly, it blatantly mentions a **disease**—depression. This claim is a disease claim, not a structure/function claim, and would cause the botanical to be regulated as **a drug**.

Even implying that a product relieves a disease by describing symptoms can be impermissible. For example, a botanical product cannot claim to "reduce cholesterol." From a legal standpoint, this claim implies that the reduction is from high cholesterol, and the FDA considers that a symptom inextricably tied to cardiovascular disease.

What can a farmer say about their botanical products marketed as dietary supplements?

Legally, all that can be said in marketing is that botanical products support the normal or healthy functioning of the body. In practice, what does this mean?

Let's look at some permissible structure/function claims:

- "Improves absentmindedness."
- "Helps to maintain cholesterol levels that are already within the normal range."
- "Regulates mild mood changes and cramps associated with the menstrual cycle."
- "Helps support cartilage and joint function."
- "Supports immunity."
- "Supports urinary tract health."
- "Promotes joint health."

A claim must, of course, be true. In fact, producers need reliable scientific evidence to back up their marketing claims. Since the FDA doesn't pre-approve structure/function claims, producers are not required to present this evidence to start selling. However, producers are expected to have this evidence and be able to provide it if the FDA asks for it.

These dietary supplement structure/function claims must be accompanied by the FDA disclaimer: *"This [or these] statement[s] has [have] not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."* This disclaimer does not remove the producer's responsibility to ensure the health-related claim complies with the regulations.

> **Cosmetics** do not require the FDA disclaimer because it qualifies a structure/function claim. Structure/function claims aren't allowed for cosmetics anyway, so the qualifier isn't relevant!

Finally, a producer making a dietary supplement structure/function claim must notify the FDA within 30 days of putting the product up for sale. Botanical producers do not need FDA approval before making structure/function claims on their products. However, the FDA requires businesses to notify them about any such claims. No later than 30 days after first marketing the dietary supplement, companies must send a notification letter to the FDA, which includes the text of the structure/function claim you've made. Here is an FDA guide to submitting these notifications. Submitted notification letters are publicly available on the database described above.

Steps for Successfully Marketing a Dietary Supplement with a Structure/Function Claim

1. Craft a permissible health-related claim that markets the product as supporting health.
2. Find and keep scientific evidence that the claim is true and not misleading on file.
3. Include the FDA disclaimer on all dietary supplement labels.
4. Notify the FDA of the structure/function claim within 30 days of selling the product.

What happens if my product is regulated as a drug?

If a producer makes a disease-related claim about a botanical, the law will classify that botanical as a drug. Drugs must follow strict pre-approval processes and health and safety regulations designed for pharmaceuticals. If a product is marketed as a drug without complying with these processes and regulations, it will be subject to FDA enforcement, which could include product seizures and fines.

The initial enforcement mechanism for disease claims on products that aren't approved drugs is a "courtesy letter" from the FDA. This letter states which marketing claims were impermissible and why. Businesses are expected to immediately alter the product's label and all advertisements, websites, and other materials to remove the impermissible claims.

What happens if my product is regulated as a dietary supplement?

Botanical producers using structure/function claims must automatically follow other dietary supplement-specific rules. These include federal marketing regulations, dietary supplement labeling, and cGMP regulations.

Should I worry about laws around pharmacies or practicing medicine?

North Dakota is less restrictive than other states regarding drug-related business names. Many states prohibit the use of the word "apothecary," among others, unless the business owner is a licensed pharmacist. North Dakota's laws only restrict the words "drugs," "drugstore," or "pharmacy" to use by a registered pharmacist.

North Dakota, like all states, has a law making it illegal to practice medicine without a license. Generally, these statutes define practicing medicine rather broadly, including practices that are obviously in a doctor's wheelhouse, like surgery, but also adding to the definition of relatively more common acts like diagnosing, treating, and curing. North Dakota's statute defines the practice of medicine as (1) a person that holds out to the public as being engaged with this state in the diagnosis or treatment of diseases or injuries of human beings, (2) a person that suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment…with the intention of receiving compensation, (3) a person that maintains an office for the examination or treatment of individuals afflicted with disease or injury of the body or mind, (4) or used the title M.D., surgeon, doctor, D.O., osteopathic physician or similar word or abbreviation. North Dakota's statute exempts domestic administration of family remedies, some religious ceremonies, and licensed naturopaths or acupuncturists from practicing medicine without a license statute.

A minority of states, eleven in total, have passed bills that help protect farmers, among others, growing and selling herb products from claims of practicing medicine without a license. **North Dakota is not one of those states.**

Due to the broad language of these statutes and the lack of an exception in North Dakota for herbalists and other healers, many different types of healing arts—traditional healers, herbalists, and those touting the health benefits of foods—are limited in what they can do and how they can describe their services. Farmers who suggest herbs they've grown or processed could heal or treat an illness in a customer may violate this

statute. Botanical producers should be aware that advising customers in a way that could be construed as diagnosing or offering treatment could create legal vulnerability.

Are there rules around the production and manufacturing of botanical products?

A variety of state and federal laws control how a botanical product must be produced or manufactured. Similar to marketing regulations, production and manufacturing regulations also differ depending on whether the product is a conventional food, a cosmetic, or a dietary supplement.

Cosmetics

The Modernization of Cosmetics Regulation Act (MoCRA) regulates cosmetics. Small businesses with gross annual sales of less than $1 million are exempt from the legally defined cosmetic good manufacturing practices, as well as facility registration and product listing requirements. Producers developing cosmetics that exceed the annual sales threshold should use a web browser to search for the FDA's website with more information on MoCRA.

Dietary Supplements

Dietary supplements are subject to rules around their manufacture. These rules are called current Good Manufacturing Practices, or "cGMPs" for short. cGMPs are a set of rules that describe (among many things) the equipment that must be used, quality controls implemented, tests made, and other standards around the production of these products. However, the FDA does not enforce cGMPs for herbalists who prepare products for individual clients. All other producers—including those selling tinctures at the local farmers' market and wholesale value-added products to retailers—must follow the cGMPs.

Many farmers are already familiar with production regulations through the Food Safety Modernization Act's Preventative Controls Rule. Dietary supplement cGMPs are similar.

For example, they have many of the same sanitation, material choice, and worker health and safety rules. However, cGMPs for dietary supplements have additional requirements focused on product purity and consistency that are more stringent than conventional food cGMPs.

Dietary supplement cGMPs are stricter because of the unique characteristics of botanicals. Too much cheese in a cheese cracker will only impact the product's taste, not its safety. However, many ingredients in a dietary supplement could be dangerous if too concentrated. Misidentified herbs could be harmful, and the concentration of the end product can vary based on the part of the plant used. These botanical qualities necessitate a different cGMP approach.

A foundational aspect of the dietary supplement cGMPs is product specification. The botanical producer determines the specifications (ingredients, concentrations, etc.) for each of their own products. Once those specifications are set, each batch must be tested against the producer-established specifications. Therefore, botanical producers have the freedom to set their parameters but are, after that, constrained and held to the specifications they set. Each product batch must be tested, and one sample from each batch must be retained for 2 years.

The most burdensome part of a cGMP program is often the paperwork. Producers must log the sanitation, maintenance, and training steps they take. Any facility producing dietary supplements must also register with the FDA. For more information on the full dietary supplement cGMP program, see the FDA's Guidance Documents.

Botanical producers who do not want to comply with dietary supplement cGMPs can pursue alternative ways to market their products. Some options include selling unprocessed botanicals wholesale to other companies who produce dietary supplements, reevaluating product lines and marketing strategies so that you are only producing botanical products that can be marketed as conventional foods or cosmetics, or outsourcing processing of your farm-grown botanicals to a facility that provides cGMP compliance.

Conventional Foods

Federal food safety regulations have authority over food sold in interstate commerce. Traditionally, states have regulatory control over food safety regulations for foods sold within their state borders. Despite this state and federal division, all states rely on the FDA Food Code as a starting point for their own state-level food codes. Therefore, food safety regulation is similar across states, but states do add their own requirements and exemptions.

State rules typically require licenses/permits, food safety training, and inspection. Food safety is regulated on the federal level by FSMA's Produce Safety Rule (PSR) and Preventive Controls Rule (PCR). FSMA's PSR applies to farm-grown botanicals that are merely dehydrated and sold whole. However, these botanicals cannot be cut or mixed with other botanicals. Any processing beyond dehydration (other than packing and labeling) makes the product subject to PCR cGMP regulation.

For example, cutting, mixing, cooking, fermenting, or baking means the producer will have to follow the PCR cGMPs. The PCR has exemptions for certain low-risk manufacturing and processing conducted by small businesses on farms for specific low-risk foods, retail food establishments, and qualified facilities. Many producers will still need to register with the FDA, however. cGMPs under the PCR address worker health and safety, sanitation, equipment requirements, traceability programs, recall readiness, and more.

Here are some examples of botanical products and the health and safety or cGMP regulations that might apply to them.

Application of Botanical Regulations

cGMPs = current Good Manufacturing Practices, **PSR** = FSMA Produce Safety Rule, **PCR** = FSMA Preventive Controls Rules, **MoCRA** = Modernization of Cosmetics Regulation Act

Example	Do cGMPs apply?	Notes
An herbalist works 1:1 with clients and prepares tinctures for them based on an individualized assessment.	No	FDA exercises its enforcement discretion to allow these botanical producers to prepare botanical products for 1:1 clients without adhering to DS cGMPs.
A farmer grows herbs and makes tinctures to sell at the farmers' markets. The products are marketed with phrases such as "supports a healthy immune system," "promotes restful sleep," and "maintains healthy breathing."	Yes	These are marketed as dietary supplements and are subject to the federal dietary supplement cGMPs. This botanical producer must follow the dietary supplement cGMPs.
A farmer grows herbs and then dehydrates them on-farm to sell at the local farmers' market.	No	If covered by the PSR, this farmer will only be subject to the food safety rules found in the PSR. These activities fall within the definition of 'farm.'
A farmer grows multiple herbs, dehydrates them, cuts them, sifts them, and mixes them for tea blends that are sold at retail.	Depends on claims made	Are structure/function claims made? The tea will be subject to the federal dietary supplement cGMPs. If there are no structure/function claims made, then the farmer will be subject to the cGMPs of the PCR… if not eligible for a PCR exemption.

A botanical producer grows herbs and processes them into hand creams, salves, and hair rinses they sell at their farm stand.	Depends on size of business	These products would be cosmetics and subject to MoCRA. However, if the producer grosses less than $1 million/year, they are exempt from the cosmetic cGMPs and registration requirements.

Can I make botanical products in my home kitchen under a cottage food law?

States can decide whether some foods can be made in home kitchens without the need to obtain a license or be subject to state food safety inspection. States make these exemptions explicit by passing 'cottage food laws.' Each state has different rules on which products are cottage foods, often limiting which foods qualify or how much can be sold.

Botanical producers who want to process their products at home or on-farm may assume they could if they comply with North Dakota's cottage food laws. However, if the product is a dietary supplement, the producer must follow the federal dietary supplement cGMPs. A home or on-farm kitchen will likely not comply with federal dietary supplement cGMPs.

North Dakota's Cottage Food Law

North Dakota has an expansive cottage food law. Producers can sell any shelf-stable food made in their home kitchen without a license. Some foods requiring refrigeration are even allowed, such as acidified, low-acid canned goods, fermented foods, and home-cooked meals. Below, we will discuss what botanical products can be produced in the home kitchen in North Dakota. But first, we'll look at the other criteria for home production.

Sales Caps and Restrictions

North Dakota cottage food producers do not have an annual sales cap. They can sell from home, at farmers' markets, roadside stands, and festivals. Since 2025, North Dakota cottage food producers can also sell their products over the internet, phone, or through mail. Homemade food can only be eaten in a private home.

Regulation

Home kitchens are not subject to inspection, but all producers must still follow safe food handling practices. Regardless of where foods are produced, they must be safe and unadulterated. If the health department receives a complaint of illness, they may conduct a home kitchen inspection. However, producers are not required to get recipes approved or products lab-tested.

Cottage food producers do not have to register anywhere; no food handler training is required. Cottage food labels must warn, "This product is made in a home kitchen that is not inspected by the state or local health department." If the product requires refrigeration, the label must state that.

Botanical Products that Could be Sold Without a License in North Dakota

North Dakota's cottage food law allows many foods, including baked goods, jams, jellies, and other food and drink products. The only banned food products are those containing meat.

Dried herbs, teas (mixed or single herb), tinctures, herbal extracts, baked goods including herbs or other botanicals, jams, jellies, and syrup—notwithstanding their pH or whether they need refrigeration—are all allowed. However, if any of these products are marketed as dietary supplements by including health-related claims, the cottage food law will not apply (federal dietary supplement regulations will take over).

Products Marketed as Dietary Supplements

If any product allowed to be homemade is marketed with a structure/function claim like "supports wellness," it will be regulated as a dietary supplement. That means compliance with dietary supplement cGMPs will be expected, regardless of whether the product would otherwise be considered exempt from licensing under North Dakota's Cottage Food Law.

Talking to a Food Inspector in Your State

North Dakota's Department of Health and Human Services regulates cottage foods. You can contact the Food and Lodging Unit from that webpage. If you prefer to connect with cottage food advocates, North Dakota Food Freedom is one such organization.

Contact your local government to determine if local regulations, such as zoning restrictions or business licenses or permits, will affect your business.

Do Sales Taxes Apply to My Product?

Food and food ingredients are exempt from North Dakota general use and sales tax, but this exemption does **not** include dietary supplements *or* prepared foods. Cosmetics are not food or food ingredients, so they are also subject to the sales tax. Whether or not your product falls under the statewide sales tax exemption, it could still be subject to local taxes. Use a web browser to search for information on local city and county taxes in North Dakota.

Moving Forward

Reflect to Move Forward

Take some time to consider the ways you describe each of your botanical products on labeling and marketing materials, including print and digital:

Are you describing any health benefits the product has on the body? If so, what do you say the product does for the body?

Will any of those health claims present problems for you? Are there edits you can make that would be less risky?

What changes can you envision making right away to how you're marketing those products to reduce your risks of unintentionally triggering additional regulations?

Now that we've covered key details about how the different types of botanical products are regulated, what action steps do you need to take to boost the legal resilience of your botanical products?

- Adjust and finetune the health claims used to market your botanical product(s).
- Connect with a peer to brainstorm new ways to market your botanical products and/or review some of your marketing claims.
- Research FDA Courtesy Letters to better understand allowable health-related claims.
- Read Farm Commons' *Farmers' Legal Guide to Botanical Products* to understand what details your botanical product labels should include.
- Seek clarity on how your product would be classified in the eyes of the law by calling the appropriate state agency.
- Research the cottage food laws in your state to figure out if any of your products can be made in a home kitchen.

Foraging Rights in North Dakota

Many botanicals are foraged or harvested from the wild or areas that weren't cultivated or tended during the plant's growth. For most of human history, people survived by foraging. The rise of agriculture, colonialization, urbanization, and commercial food production caused foraging to become discouraged or outright prohibited by law. Now, botanical producers interested in foraging must be aware of the relevant federal, state, local, and Tribal regulations.

Most foraging rules allow some foraging for personal use without a permit. However, the quantities allowed are often limited to what a household could consume in a week. Producers who intend to sell what they forage will have to get further permits if available.

To determine what foraging is allowed on a particular parcel, the forager must first determine who owns the land they want to forage. Is it private land, federally owned, state-owned, or owned by a municipality? One will often need to know even more about the land's management. For example, if it is federally owned, which agency manages it? If state-owned, how is the land classified?

Private land can only be foraged with the express permission of the owner. A producer seeking to forage private land should get written permission from the landowner. Any foraging agreement should spell out specific terms. For example, how long will the agreement last (one season, one year, or multiple years), and what plants are you allowed to harvest? Are there quantity limitations? When will you be able to access the land? And, are there any particular concerns about your use of the land? For example, are there gates that need to be closed after use? A written agreement outlining the terms of a producer's permission to forage on the private land will help protect the producer's botanical sourcing.

Below is some specific information about foraging on publicly owned lands in North Dakota.

State Parks

Collecting fruit or plant materials is prohibited. Any person who violates this subsection is guilty of a class 3 noncriminal offense.

ND Game & Fish Lands

Berries and fruit may be picked for noncommercial use unless prohibited by posted signs at public road entry points. Trees, shrubs, vines, plants, or crops cannot be clipped, cut, or removed from a wildlife management area without a permit.

U.S. National Parks

About 75% of U.S. National Parks do allow foraging of some kind. It is up to each individual park whether or not wild harvesting is allowed. Theodore Roosevelt National Park, for example, allows the collection of fruits, nuts, or berries by hand for personal use or consumption only. Buffaloberry, choke cherry, currant berry, juneberry, juniper berry, wild mushroom, plum, rose hip, skunkbush sumac berry, and wild strawberry are limited to one quart per person per day. These rules are subject to change based on demand and the health of the plants.

Also of note, since 2016, the National Park Service has allowed members of federally recognized Indian Tribes to gather and remove plants or plant parts for traditional purposes. Unless Tribes have other treaty or statutory rights specifically authorizing plant gathering, they must have a plant gathering agreement with the NPS that specifies which plant, the amounts to be foraged, and what individuals of the Tribe are permitted to do so. However, none of this collection can be for commercial purposes.

North Dakota School Trust Lands

Removal of plants or plant parts for commercial sale or purpose is prohibited.

Bureau of Land Management

Small amounts of plants, plant parts, seeds, flowers, mushrooms, and berries may be collected for personal use in most areas. No species federally listed as threatened or

endangered, designated by BLM as Bureau sensitive species, or listed as a protected plant by the state may be collected without a specific permit. Any collection for commercial purposes requires a permit and, in some cases, a contract.

U.S. Fish and Wildlife National Wildlife Refuge

Visitors cannot disturb or take any plants without authorization.

Moving Forward with Foraging

Now that you have an idea of how foraging is regulated across Tribal, Federal, State-owned, and private lands, it's time to assess what you need to do to build your resilience moving forward.

Reflect on the questions below to help you identify your next steps:

- ***Do you forage on land that is privately owned?*** If so, make a plan to get written permission to forage on that land if you haven't already done so. Any foraging agreement should spell out specific terms, such as:
    - *How long will the agreement last (one season, one year, or multiple years)?*
    - *What plants are you allowed to harvest?*
    - *Are there quantity limitations?*
    - *When will you be able to access the land?*
    - *Are there any particular concerns about your use of the land? For example, are there gates that need to be closed after use?*
- ***Do you forage for commercial production on public lands?*** If so, identify the government agency that owns or manages the public lands you forage on. Spend some time looking into the policies associated with commercial foraging on that land and ensure you understand the rules and limitations. If you find that you are in need of a permit, make a plan to call the relevant authorities to inquire about the permitting process for commercial foraging.

Funder Acknowledgments

The work was supported by USDA/NIFA under Award Number 2023-70027-40444.

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