Cottage Food Laws: Adequately Addressing Food Safety and Economic Opportunity?

Emily Adams and Peggy Kirk Hall
Ohio State University Extension

Why do we have cottage food laws?

*U.S. Food and Drug Administration Model Food Code*

- § 3-291.11(B) Food prepared in a private home **may not** be used or offered for human consumption in a **food establishment**.
- § 1-201.10(B) "**Food establishment**" means an operation that:
  - (a) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption...
  - (b) relinquishes possession of food to a consumer directly, or indirectly through a delivery service
- **Limited exceptions** to “food establishment” include:
  - Pre-packaged not time/temperature controlled foods
  - Produce
  - Home prepared for a service or function such as bake sale, small day care or bed and breakfast
  - Catered food in private home
Why do we have cottage food laws?

- States adopted to FDA Food Code
- But questions raised over whether the law prohibit the sale of “potentially non-hazardous foods” produced in a private home?
  - Food safety basis for doing so?
  - Economic reasons for allowing?
- State laws enacted to revise FDA Food Code restrictions on home produced foods.

What is potentially hazardous?

- According to the FDA it may create public health risk
- Any food that has ingredients, packaging and/or storage conditions that could lead to human health risk
- Requires temperature control because it is a form that is capable of supporting disease causing microorganisms
- The definition includes a food with a pH greater than 4.6 and water activity greater than 0.85

Source: Purdue Extension – Cooking up a Food Business in the Home Kitchen
Chemical properties of food

pH
- A measurement that indicates how acidic or alkaline a substance is
- Measured on a scale from 1 to 14, with 7 being neutral

Low pH = high acid
High pH = low acid

Why does pH matter?

What is so significant about the pH value of 4.6?
- Most pathogenic bacteria are not a concern in foods with lower pH, because they cannot live in acidic conditions
- *Clostridium botulinum* can survive in foods with pH lower than other pathogens that aren’t destroyed by heat
- It does not grow at pH below 4.6
- Therefore the critical pH value for food safety is 4.6
- The toxin from this bacteria causes botulism (forms spores)
Low acid and acidified foods

• Low acid food
  • Any food with a finished equilibrium pH greater than 4.6
  • Veggies, milk, meat

• Acidified food
  • A low acid food (pH greater than 4.6) to which acids have been added
  • Could have added vinegar or lemon juice
  • Not naturally low in pH before the acid is added
    • Cucumber + acid = pickles
    • Cabbage + acid = sauerkraut

Why does moisture or water activity matter?

Another factor besides pH is water activity ($A_w$)

- This is essentially the amount of water available that microorganisms can use to grow
- *Staphylococcus aureus* can survive at lower $A_w$ than other pathogens
- But it will not grow below 0.85
- Therefore the critical food safety value for $A_w$ is 0.85
What kinds of images come to your mind when you think of the phrase...

“processed food”?  

??????

???
Food processing

• It is any way that we alter a whole food
  • i.e., “a change in the physical state or form of the product”
• There are six main ways to process foods
  • Mixing: Wet or dry
  • Size adjustment: Slicing, dicing, grinding
  • Mass transfer: Drying or evaporation
  • Heat transfer: Heating, cooling, freezing

We process foods for two reasons

<table>
<thead>
<tr>
<th>Safety</th>
<th>Some microorganisms have the potential to:</th>
<th>Foods are processed or handled in ways to:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>cause foodborne illness</td>
<td>greatly reduce pathogen contamination risk</td>
</tr>
<tr>
<td>Quality</td>
<td>reduce shelf life - taste, color, etc.</td>
<td>reduce potential for spoilage microorganisms</td>
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</table>

But processing is not the only way we address safety
Labeling can help address safety

• Most states have requirements for at least basic labeling
  • What is the food?
  • What are the ingredients?
  • How much is there?
  • Who made it?

• Often a statement is required that the food has been made in a home

• Not all require that allergens be labeled

Photo source: https://farrp.unl.edu/informallbig8

Cottage Foods Best Practices Report

• Association of Food and Drug Officials, 2012
• Regulatory guidance to food safety officials for the oversight of cottage food operations and “standards that preserve public health while still allowing for economic opportunity.”
Cottage Food Laws in the United States

• Alli Condra, Harvard Law School Food Law and Policy Clinic, 2013
• Many variations from state to state
• Recommendations for strengthening laws

Variations in cottage food laws

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<th>Definition of cottage foods</th>
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<th>Expandable list of foods</th>
<th>Definition only</th>
<th>Case-by-case determination</th>
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<td>Who can sell?</td>
<td>Farmers only</td>
<td>Anyone</td>
<td></td>
<td></td>
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<tr>
<td>Limitations on sales amount</td>
<td>Gross sales limits</td>
<td>Sales unit limits</td>
<td>No limits</td>
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<td>Location</td>
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<td>License, inspection, permit requirements</td>
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<td>Labeling requirements</td>
<td>Required labeling</td>
<td>No labeling</td>
<td></td>
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</tbody>
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### Definition of cottage foods—AFDO Report

<table>
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<tr>
<th>Allowed Foods--Examples</th>
<th>Not Allowed Foods--Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Loaf breads, rolls, biscuits</td>
<td>• Fresh or dried meat or meat products including jerky</td>
</tr>
<tr>
<td>• Cakes including celebration</td>
<td>• Fresh or dried poultry or poultry products</td>
</tr>
<tr>
<td>cakes (birthday, anniversary, wedding)</td>
<td>• Canned fruits, vegetables, vegetable butters, salsas etc.</td>
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<tr>
<td>• Pastries and cookies</td>
<td>• Fish or shellfish products</td>
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<tr>
<td>• Candies and confections</td>
<td>• Canned pickled products such as corn relish, pickles, sauerkraut</td>
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<tr>
<td>• Fruit pies</td>
<td>• Raw seed sprouts</td>
</tr>
<tr>
<td>• Jams, jellies and preserves</td>
<td>• Bakery goods which require any type of refrigeration such as cream, custard or meringue pies and cakes or pastries with cream cheese icings or fillings</td>
</tr>
<tr>
<td>• Dried fruits</td>
<td>• Tempered and/or molded chocolate or chocolate type products</td>
</tr>
<tr>
<td>• Dry herbs, seasonings and</td>
<td>• Milk and dairy products including hard, soft and cottage cheeses and yogurt</td>
</tr>
<tr>
<td>mixtures</td>
<td>• Cut fresh fruits and/or vegetables</td>
</tr>
<tr>
<td>• Cereals, trail mixes and</td>
<td>• Food products made from cut fresh fruits or vegetables</td>
</tr>
<tr>
<td>granola</td>
<td>• Food products made with cooked vegetable products</td>
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<tr>
<td>• Coated or uncoated nuts</td>
<td>• Garlic in oil mixtures</td>
</tr>
<tr>
<td>• Vinegar and flavored vinegars</td>
<td>• Juices made from fresh fruits or vegetables</td>
</tr>
<tr>
<td>• Popcorn, popcorn balls,</td>
<td>• Ice and/or ice products</td>
</tr>
<tr>
<td>cotton candy</td>
<td>• Barbecue sauces, ketchups and/or mustards</td>
</tr>
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<td></td>
<td>• Focaccia-style breads with vegetables and/or cheeses</td>
</tr>
</tbody>
</table>

### Definition of cottage foods
Ohio (OAC 901:3-20-04)

1. Non-potentially hazardous bakery products;
2. Jams;
3. Jellies;
4. Candy, not including fresh fruit dipped, covered, or otherwise incorporated with candy;
5. Flavored honey which has been produced by a beekeeper exempt under division (A) of section 3715.021;
6. Fruit chutneys;
7. Fruit butters;
8. Granola, granola bars, granola bars dipped in candy, if fruit is used in any of these products it must be commercially dried;
9. Maple sugar produced by a maple syrup producer exempt under division (A) of section 3715.021;
10. Popcorn, flavored popcorn, kettle corn, popcorn balls, caramel corn, not including popping corn;
11. Unfilled baked donuts;
12. Waffle cones and waffle cones dipped in candy;
13. Pizzelles;
14. Dry cereal and nut snack mixes with seasonings;
15. Roasted coffee, whole beans or ground;
16. Dry baking mixes in a jar, including cookie mix in a jar;
17. Dry herbs and herb blends;
18. Dry soup mixes containing commercially dried vegetables, beans, grains, and seasonings;
19. Dry seasoning blends; and
Definition of cottage foods
Arkansas (AR Code 20-57-201)

(1) "Cottage food production operation" means a person who produces food items in the person's home that are not potentially hazardous foods, including without limitation:
   (A) Bakery products;
   (B) Candy;
   (C) Fruit butter;
   (D) Jams;
   (E) Jellies;
   (F) Chocolate-covered fruit and berries that are not cut; and
   (G) Similar products specified in rules adopted by the Department of Health;

Definition of cottage foods
Utah (Utah Code 4-5-9.5)

(a) "Cottage food production operation" means a person, who in the person's home, produces a food product that is not a potentially hazardous food or a food that requires time/temperature controls for safety.
(c) “Potentially hazardous food” or “food that requires time/temperature controls for safety”:
(i) means a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation and is in a form capable of supporting:
(A) the rapid and progressive growth of infections or toxigenic microorganisms;
(B) the growth and toxin production of Clostridium botulinum; or
(C) in shell eggs, the growth of Salmonella enteritidis;
(ii) includes:
(A) an animal food;
(B) a food of animal origin that is raw or heat treated;
(C) a food of plant origin that is heat treated or consists of raw sprouts;
(D) cut melons;
(E) cut tomatoes; and
(F) garlic and oil mixtures that are not acidified or otherwise modified at a food establishment in a way that results in mixtures that do not support growth as specified under Subsection (1)(c)(i); and
(iii) does not include:
(A) an air-cooled hard-boiled egg with shell intact;
(B) a food with an actual weight or water activity value of 0.85 or less;
(C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;
(D) a food, in an unopened hermetically sealed container, that is processed to achieve and maintain sterility under conditions of non refrigerated storage and distribution;
(E) a food for which laboratory evidence demonstrates that the rapid and progressive growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:
(I) has an actual weight and a pH level that are above the levels specified under (1)(c)(ii)(B) and (C); or
(II) contains a preservative or other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or
(F) a food that does not support the growth of microorganisms as specified under Subsection (1)(c)(i) even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

Definition of cottage foods
Minnesota (Minn. Stat. 28A.152)

• Not potentially hazardous foods
• Home-processed and home-canned food products if the following requirements are met:
  (i) the products are pickles, vegetables, or fruits having an equilibrium pH value of 4.6 or lower;
  (ii) the products are home-processed and home-canned in Minnesota;
  (and labeling requirements)
Limits on sales

AFDO Report

The regulatory agency may set limitations of total annual gross sales for a cottage food operation. If gross sales exceed the maximum annual gross sales amount allowed, the cottage food operation must either obtain a food processing plant license or cease operations. The regulatory authority may request, in writing, documentation to verify the annual gross sales figure.
Limits on sales

- No limit (22 states)
- Minnesota: $5,000 per year (microprocessors)
- Vermont: $125 per week
- Florida: $15,000 per year
- Michigan: $25,000 per year
- Texas: $50,000 per year
- Colorado: $10,000 per year per food item
- Tennessee: 100 units per week

Point of sale

AFDO Report

Products produced by a cottage food operation must be sold directly to the consumer. Direct sales at farmers markets, craft fairs, and charitable organization functions are permitted. Sales by internet, mail or phone order, or consignment, and sales to grocery stores and restaurants or at wholesale are prohibited. A cottage food operation may not operate as a food service establishment, retail food store, or wholesale food manufacturer.
Point of sale

• Direct to consumer only
  • At producer’s premises
  • At farmers markets, festivals, flea markets
• Indirect sales permitted
  • Restaurants
  • Retail
  • Wholesale
• Online sale restrictions

Registration, permit, license requirements

• AFDO report: “all cottage food operations must be permitted annually...prior to permitting, the regulatory authority will examine the premises...”
• No requirements: 24 states
Registration, permit, license requirements
Washington (RCW 69.22.030)

(1) All cottage food operations must be permitted annually by the department on forms developed by the department. All permits and permit renewals must be made on forms developed by the director and be accompanied by an inspection fee as provided in RCW 69.22.040, a seventy-five dollar public health review fee, and a thirty dollar processing fee. All fees must be deposited into the food processing inspection account created in RCW 69.07.120.

(2) In addition to the provision of any information required by the director on forms developed under subsection (1) of this section and the payment of all fees, an applicant for a permit or a permit renewal as a cottage food operation must also provide documentation that all individuals to be involved in the preparation of cottage foods [cottage food products] have secured a food and beverage service worker’s permit under chapter 69.06 RCW.

Registration, permit, license requirements
Colorado (Colo. Rev. Stat. 25-4-1614(1)(c))

• (c) A producer must take a food safety course that includes basic food handling training and is comparable to, or is a course given by, the Colorado state university extension service or a state, county, or district public health agency, and must maintain a status of good standing in accordance with the course requirements, including attending any additional classes if necessary.
Registration, permit, license requirements
Kentucky

• Homebased processor
  • Registration
• Homebased microprocessor certification
  • Application
  • University workshop attendance and passing tests
  • Recipe and label approval
  • Verification of approved water source

Labeling requirements

AFDO Report

A cottage food operation may only sell cottage food products which are prepackaged with a label affixed that contains the following information (printed in English):
• The name and address of the cottage food operation;
• The name of the cottage food product;
• The ingredients of the cottage food product, in descending order of predominance by weight;
• The net weight or net volume of the cottage food product;
• Allergen information as specified by federal labeling requirements;
• Nutritional labeling as specified by federal labeling requirements is required if any nutrient content claim, health claim, or other nutritional information is provided; and
• The following statement printed in at least 10-point type in a color that provides a clear contrast to the background label: “Made in a Cottage Food Operation that is not Subject to Routine Government Food Safety Inspection.”
Labeling requirements

- Ohio: “This product is home produced.”
- Maryland: “Made by a cottage food business that is not subject to Maryland’s food safety regulations.”
- Virginia: “Not for resale—processed and prepared without state inspection.”

Adequately addressing food safety and economic development?

- Which law, regulations and approaches make sense from a food safety perspective?
- Are there unnecessary barriers for cottage food producers?
- How could states improve their cottage food laws?
Emily Adams
Extension Educator, Agriculture and Natural Resources
Adams.661@osu.edu

Peggy Kirk Hall
Assoc. Professor, Agricultural & Resource Law
Hall.673@osu.edu