



AGRICULTURAL & FOOD
LAW CONSORTIUM

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

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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

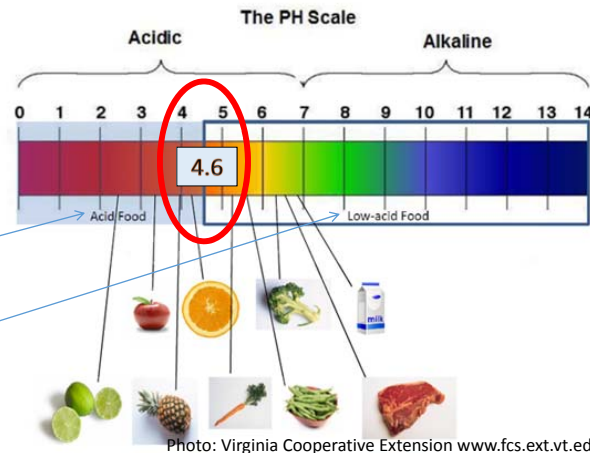


Source: Purdue Extension – Cooking up a Food Business in the Home Kitchen

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

	Some microorganisms have the potential to:	Foods are processed or handled in ways to:
Safety	cause foodborne illness	greatly reduce pathogen contamination risk
Quality	reduce shelf life - taste, color, etc.	reduce potential for spoilage microorganisms

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?

The Big-8

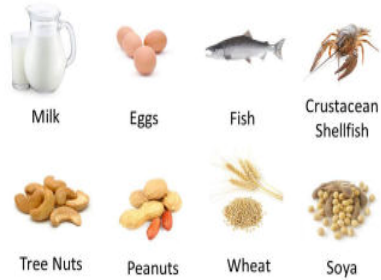


Photo source:
<https://farrp.unl.edu/informallbig8>

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

- Not all require that allergens be labeled

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.”
- http://www.afdo.org/resources/temp/Cottage_Foods_013.pdf

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
- https://www.chlpi.org/wp-content/uploads/2013/12/FINAL_Cottage-Food-Laws-Report_2013.pdf

Variations in cottage food laws				
Definition of cottage foods	Limited list of foods	Expandable list of foods	Definition only	Case-by-case determination
Who can sell?	Farmers only	Anyone		
Limitations on sales amount	Gross sales limits	Sales unit limits	No limits	
Point of sale restrictions	Direct to consumer	Indirect to consumer	Location --Online --Site limitations	No restrictions
License, inspection, permit requirements	License or permit required	Registration required	No requirements	
Labeling requirements	Required labeling	No labeling		

Definition of cottage foods—AFDO Report

Allowed Foods--Examples	Not Allowed Foods--Examples
<ul style="list-style-type: none"> • Loaf breads, rolls, biscuits • Cakes including celebration cakes (birthday, anniversary, wedding) • Pastries and cookies • Candies and confections • Fruit pies • Jams, jellies and preserves • Dried fruits • Dry herbs, seasonings and mixtures • Cereals, trail mixes and granola • Coated or uncoated nuts • Vinegar and flavored vinegars • Popcorn, popcorn balls, cotton candy 	<ul style="list-style-type: none"> • Fresh or dried meat or meat products including jerky • Fresh or dried poultry or poultry products • Canned fruits, vegetables, vegetable butters, salsas etc. • Fish or shellfish products • Canned pickled products such as corn relish, pickles, sauerkraut • Raw seed sprouts • 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 • Tempered and/or molded chocolate or chocolate type products • Milk and dairy products including hard, soft and cottage cheeses and yogurt • Cut fresh fruits and/or vegetables • Food products made from cut fresh fruits or vegetables • Food products made with cooked vegetable products • Garlic in oil mixtures • Juices made from fresh fruits or vegetables • Ice and/or ice products • Barbeque sauces, ketchups and/or mustards • Focaccia-style breads with vegetables and/or cheeses

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 or 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 seed 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)(iii)(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)

FARM FRIENDLY LEGISLATION: HOUSE BILL 391

Signed into law November 1, 2003, Kentucky House Bill 391 creates some exceptions to food manufacturing requirements. This visionary legislation allows Kentuckians to sell home-processed products in certain locations if the final product contains a primary or predominant Kentucky-grown ingredient that was grown, harvested, and processed by the farmer. HB 391 addresses only horticultural or agronomic food ingredients. The regulations allow foods to be sold **ONLY** from:

- Approved farmers markets
- The processor's farm
- Certified roadside stands

Prohibited foods include but are not limited to: crème-filled pies, meringues, custards, cheesecake, raw seed sprouts, garlic-in-oil mixtures, vacuum-packaged foods, baby food, and products containing meat, poultry, or fish. Any product requiring refrigeration is prohibited.

Registrations and certifications are nontransferable and are available in two categories:

- Homebased Processor and
- Homebased Microprocessor.



HOMEBASED PROCESSOR

Homebased processors may produce and sell any of the following lower-risk products:

- Dried fruits and vegetables
- Dried or fresh herbs and nuts
- Fruit jams, jellies, preserves, and fruit butters
- Maple syrup and sorghum
- Breads, cakes, pies, and cookies that contain a fruit, vegetable, nut, or herb grown by the processor

No fee is associated with becoming a homebased processor. An application form must be filed with the Kentucky Cabinet for Health Services, Food Safety Branch.



HOMEBASED MICROPROCESSOR

Once all requirements for certification are completed, homebased microprocessors are permitted to sell higher-risk, shelf-stable acid or low acid foods, including:

- Pressure canned vegetables
- Pickled fruits and vegetables
- Tomatoes and tomato products
- Salsa
- Barbecue sauce
- Pepper or herb jellies
- Herbal vinegars
- Low- or no-sugar jams and jellies



HOMEBASED MICROPROCESSOR CERTIFICATION REQUIREMENTS

- Grow, harvest, and process the product for sale.
- Attend and successfully complete the University of Kentucky Homebased Microprocessor Workshop. Good for 5 years. Cost: \$50.
- Have a standardized recipe for each item that has been approved by the University of Kentucky. Cost: \$5 per recipe.
- Submit draft product labels.
- Submit verification of approved work source.
- Complete and file application with the Kentucky Cabinet for Health Services, Food Safety Branch, annually. Cost: \$50.

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 RCW69.07.120.

(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?



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