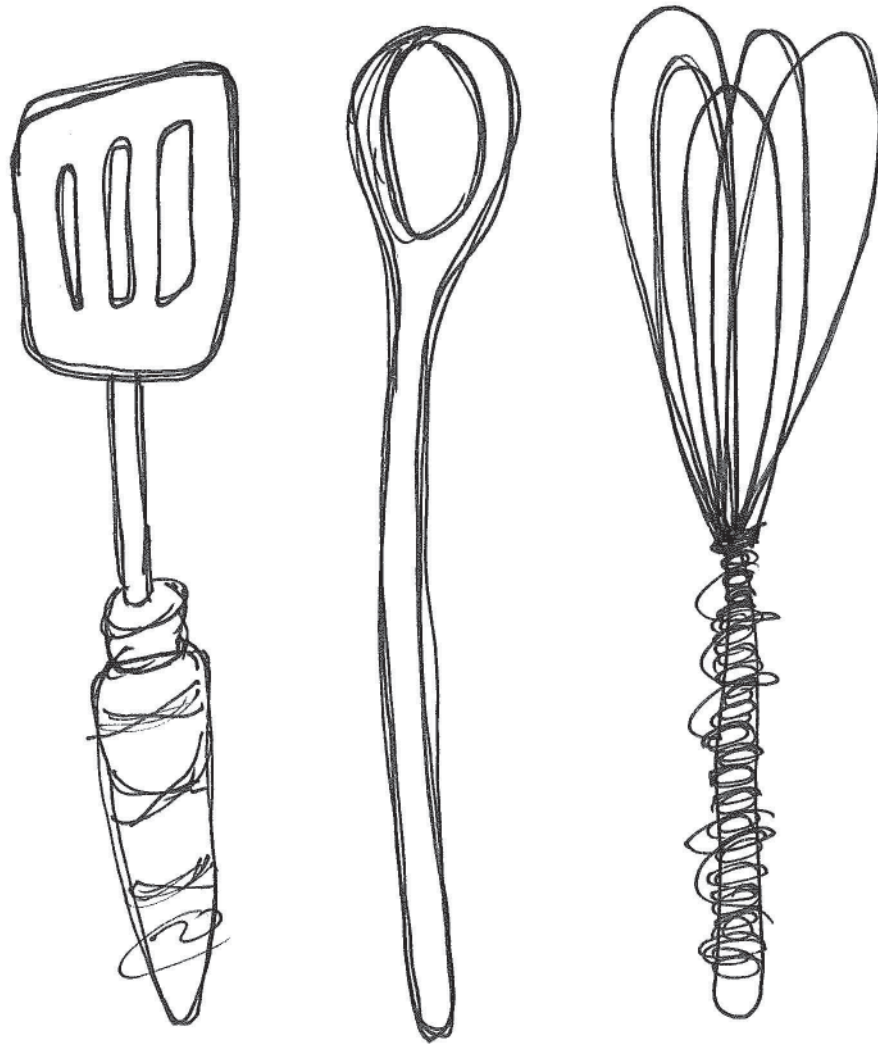


Cottage Food Laws in the United States



August 2013



Harvard
Food Law and Policy Clinic
A Division of the Center for Health Law and Policy Innovation

Author

This report was written by Alli Condra, Clinical Fellow in the Harvard Law School Food Law and Policy Clinic (a division of the Center for Health Law and Policy Innovation), and prepared under the supervision of Emily Broad Leib, Director of the Harvard Law School Food Law and Policy Clinic.

This project was based on prior research, writing, and editing of the following students:

Vanessa Assae-Bille, Harvard Law School
Tareah Ikharo, Harvard Law School
Evan Kubota, Harvard Law School
Vincent Lee, Harvard Law School
Daniel Preysman, Harvard Law School
Raishay Lin, Harvard Law School

Contact

For more information about the Harvard Law School Food Law and Policy Clinic, email flpc@law.harvard.edu.

Table of Contents

Introduction	4
Importance of Passing and Strengthening Cottage Food Laws	6
Summary of U.S. Cottage Food Laws	7
Regulating “Food Establishments”	7
Creating Cottage Food Laws	8
Common Elements Found in Cottage Food Laws	10
Types of Cottage Food Products Allowed	10
Limits on Where Food Can Be Sold	12
Required Registration, Licenses, and/or Permits.....	13
Limits on Total Sales.....	14
Required Labeling	16
Conclusion.....	17

Table of Figures

Figure 1. Fifty-State Review of Cottage Food Laws	5
Figure 2. Types of Cottage Food Products Allowed	11
Figure 3. Limits on Where Cottage Food Products Can Be Sold	12
Figure 4. Required Registration, Licenses, and/or Permits.....	13
Figure 5. Limits on Total Sales.....	15
Figure 6. Required Labeling	16

Introduction

The past few years have seen a marked increase in the amount of local and small-scale food production in the United States. For example, the number of farmers markets throughout the United States has been on the rise over the past decade, increasing by 9.6 percent in one year alone between 2011 and 2012.¹ Along with this recent growth in farmers markets and exploding demand for local foods has come a push to allow individuals to produce and sell non-potentially hazardous foods made in their home kitchens, outside of expensive permitting and licensing procedures.

Many of the food safety laws regulating food production in the United States were designed as one-size-fits-all regulations. For example, commercial food production is almost always required to take place in a certified commercial kitchen. This requirement is based on the idea that commercial kitchens that have met certain requirements (such as including surfaces made of stainless steel, separate hand- and dish-washing sinks, and meeting specific license and inspection requirements) will be safer than producing food in an unlicensed, uninspected kitchen. For some food production, this requirement makes sense. But not all food production is high risk. “Cottage foods,” non-potentially hazardous foods (such as baked goods, jams, and jellies), do not present the same food safety risks as other processed foods. Therefore, allowing producers to make these non-potentially hazardous goods in their homes, rather than in a commercial kitchen, reduces the barriers to entry for small-scale producers while recognizing the low-risk nature of these products.

Food production operations vary in terms of size of operation and type of food produced, turning one-size-fits-all regulations into significant barriers to entry for certain food producers. Because there is no way to completely eliminate all risk in the food system and because the laws that exist create barriers to small-scale producers, there needs to be scale-appropriate laws that balance food safety while maintaining opportunity for small-scale food entrepreneurs to enter the market.

Allowing cottage foods to be sold at farmers markets and in similar locations provides a number of important benefits, including both direct and indirect economic benefits and community benefits. Increasing the number of locally made products available for purchase at farmers markets and similar locations has the direct economic benefit of increasing the amount of money that stays in the local economy. Home food production or cottage food production can also serve as a business incubator by reducing some of the start-up barriers for fledgling entrepreneurs and providing the indirect economic benefit of growing more local businesses. Communities benefit from cottage food production because it provides residents greater access to locally produced foods. Additionally, cottage food laws encourage more people to grow food because the growers know they have an outlet to create value-added products from any excess fresh fruits and vegetables they produce.

A Win-Win Situation

As was noted by Michigan State Representative Pam Byrnes, allowing the production of cottage foods is “a win-win situation—residents looking to launch a startup business will have an easier time setting up shop, and consumers looking for delicious homemade items for their families will have more options.”

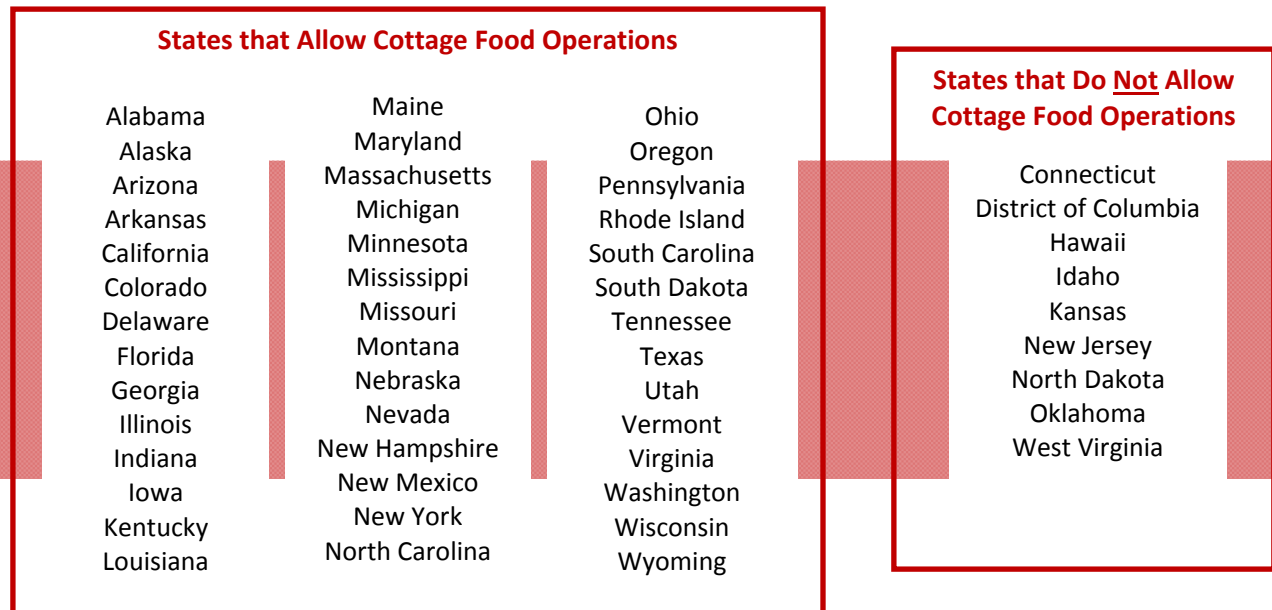
Daniel Lai, *Granholm Signs Cottage Food Operations Bill Into Law*,
HERITAGE NEWSPAPERS.COM, July 12, 2010,
<http://www.heritage.com/articles/2010/07/12/heritagewest/news/doc4c3b698fa1b80714001632.txt>.

¹ *Farmers Markets and Local Food Marketing*, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateS&leftNav=WholesaleandFarmersMarkets&page=WFMFarmersMarketGrowth&description=Farmers%20Market%20Growth> (last visited Jan. 16, 2013).

In light of these benefits, states have passed various versions of cottage food laws over the past few years. Although there are some commonalities between state laws, there are also some very important differences. Currently, no comprehensive analysis of state cottage food laws exists. This report is intended to fill that gap. In order to provide a full picture of the cottage food laws across the United States, this report will explain how cottage food laws work, provide some examples of best practices, and discuss why states should pass new cottage food laws or strengthen existing laws. Finally, this report includes a series of charts that present a summary of the cottage food laws in the fifty states as of May 2013. Based on what is allowed in different states, some may disagree about which states actually have cottage food laws. In our report, we consider a state to have a cottage food law if the state allows for some kind of in-home processing of food. However, it is important to remember that even states that already have a cottage food law can change and improve their cottage food law regime.

Cottage food laws vary widely in the requirements and limits set by the states, and as this report is intended to provide an overview of all the state laws, the information is necessarily limited. Any individual interested in starting up a cottage food business can use this report as a starting point, but should consult an attorney familiar with the state law in effect in his/her state to help navigate the process. Additionally, the information is current as of May 2013, but as states continue to pass laws and develop rules and regulations to implement these laws, it will be important to research your state's laws, regulations, and state department of health and/or agriculture's website for any updates.

Figure 1. Fifty-State Review of Cottage Food Laws



Importance of Passing and Strengthening Cottage Food Laws

At their most basic, cottage food laws permit the in-home production and sale of non-potentially hazardous foods. As of the publication of this report, forty-two states had some sort of cottage food law, and nine states, including Washington, D.C., did not.² Although more than two-thirds of states have cottage food laws, there is no uniformity among the laws. Some states restrict home-based food processing activities to a very narrow category of processors (such as on-farm only).³ Others cap allowable sales at a low amount, such that in-home processing activities can only be a hobby and not a viable business or launching pad for a more traditional food processing business.⁴ Some cottage food laws are relatively easy to find in the states' laws and have clear requirements, while other states' cottage food laws are difficult to find and may not clearly state the requirements for a cottage food operation.

For the nine states that have not yet passed a cottage food law, there is a great opportunity to learn from other states and craft a thoughtful, thorough cottage food law that will be clear, easy to find, and will allow in-home processors to start businesses to support the local economy. In turn, businesses created under these cottage food laws will increase access to local products for their communities.

States with very limited cottage food laws always have the opportunity to review and improve these existing laws, based on the examples of other states. For example, it seems that many cottage food laws were passed with the intention of only allowing cottage food processors to use their home-based food businesses as a side business or hobby. With the increased focus on supporting and growing local economies and providing access to local products, cottage food laws need to be broad enough to allow producers to make their operations viable businesses. Removing or increasing the sales limits for cottage food operations would help establish cottage food operations as important contributors to the local economy. Similarly, removing restrictions that limit cottage food operations to on-farm processors would also allow a significant number of potential cottage food producers to enter the market.

Cottage food laws also need to be easy to find within a state's laws or regulations. When potential in-home processors are looking to start cottage food operations, they should be able to find the laws and regulations governing their businesses relatively easily, and they should be able to understand what is required of them. By having difficult-to-find cottage food laws or hidden exemptions from the requirements for food establishments, states may cause cottage food operators to inadvertently break their state's laws or lead potential cottage food operators to forego starting cottage food businesses. States should review how their laws are structured and direct relevant state agencies to create easy-to-follow guides for potential cottage food operators. To help potential cottage food operators understand and comply with laws and regulations, it is critical to ensure that relevant guidelines are easy to find on the state's department of agriculture and/or department of health's website.

² Nevada is the most recent state to pass a cottage food law: Nevada's governor approved the cottage food bill on May 24, 2013, and the law took effect July 1, 2013. An Act Relating to Food Establishments, 2013 Nev. Laws Ch. 152 (S.B. 206); see Joan Whitely, *Cottage Foods Coming Soon to a Farmers' Market Near You*, KNPR.ORG, July 31, 2013, <http://www.knpr.org/son/archive/detail2.cfm?SegmentID=10332&ProgramID=2840>.

³ See e.g., KY. REV. STAT. ANN. §§ 217.015, .136, .137 (West 2012); 902 KY. ADMIN. REGS. 45:090 (2012).

⁴ See e.g., MINN. STAT. § 28A.15(10(a)) (2012) (limiting cottage food sales to \$5,000 per year).

Summary of U.S. Cottage Food Laws

Cottage food laws have been implemented in a few ways. Many states pass their cottage food laws through legislation. The details of the laws are often then filled out through regulations passed by a state department of health or department of agriculture. For example, Maryland's cottage food law, passed in 2012, directs the Department of Health to adopt regulations to carry out the requirements of the cottage food law.⁵ Other states establish their cottage food rules through regulations only. Georgia's recently enacted cottage food regime is only found in regulations adopted by the Department of Agriculture.⁶ Cottage food laws can also be implemented less formally, through an agreement between the state department of agriculture and state department of health or through guidelines posted on a state website.⁷ It is important to be aware of the variety of ways to create cottage food laws, not only to illustrate how complicated it can be to locate and understand the cottage food regimes operating within various states, but also to show cottage food advocates the various routes to creating or amending cottage food laws in their states.⁸

Regulating "Food Establishments"

States have primary authority over the health and well-being of their residents; as part of this responsibility, states and local governments establish laws and regulations that address the production of food at "food establishments" within the state. States, rather than the federal government, therefore have the ability to decide whether to allow the in-home production of low-risk foods that will be sold within the state, rather than require all food production to occur in a certified commercial kitchen.

Although states have the power to regulate food production, the U.S. Food and Drug Administration (FDA) has published a Model Food Code (FDA Food Code) that states can adopt that sets out model food safety standards for a number of topics, including food production at food establishments. Many states did not allow cottage food production in the past because they had adopted the FDA Food Code's provisions defining and regulating food establishments. The FDA Food Code does not allow any processing to take place outside of commercial kitchens, and the result of states adopting this portion of the Code was a ban on cottage food operations in those states.⁹ As discussed below, in order to allow cottage food operations in states that have adopted the FDA Food Code in its entirety, the state must amend its

FDA Food Code

The U.S. Food and Drug Administration Food Code ("FDA Food Code") is a model code and reference document for state and local governments on food safety laws. The FDA does not require states to adopt the code, but many states have chosen to do so because the code reflects the expertise and attention of dozens of food safety experts. Importantly, the FDA Food Code itself is not law; it only becomes binding when states adopt it by statute or regulation, and states typically add their own modifications by statute or regulation. A new version of the FDA Food Code was published every two years until 2001 and is now published every four years. The latest FDA Food Code was published in 2009.

FDA *Food Code*, U.S. DEP'T OF HEALTH & HUMAN SERVS., FOOD & DRUG ADMIN., <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm> (last visited Jan. 16, 2013).

⁵ MD. CODE ANN., HEALTH-GEN. § 21-330.1 (2012).

⁶ GA. COMP. R. & REGS. 40-7-19-.01-.10 (2012).

⁷ For example, information on North Carolina's home-based food processor regime is only found on the Department of Agriculture's website and not in the state code or regulations.

⁸ Advocates should keep in mind that states cannot pass regulations that conflict with state legislation, however, there may be room to strengthen regulations while still meeting legislative intent.

⁹ FDA FOOD CODE 2009 § 1-201.10 (definition of food establishment).

adopted version of the FDA Food Code to allow cottage food operations. States that have not adopted the FDA Food Code can pass new legislation establishing a cottage food law.

Creating Cottage Food Laws

The two most common ways that states create cottage food regimes are by modifying the definition of “food establishment” to exclude home kitchens or by creating a separate legal structure for cottage food production. For example, Missouri adopted the 1999 FDA Food Code, which does not permit cottage food operations, and modified the definition of “food establishment” to give local governments the authority to allow cottage food operations if they so choose.¹⁰ Missouri’s definition of “food establishment” now exempts

[w]here local codes allow, individual stands in which only foods meeting the following conditions are sold, sampled or served: (AA) Non-potentially hazardous processed foods . . . (BB) The seller is the individual actually producing the food or an immediate family member residing in the producer’s household with extensive knowledge about the food; . . . [and] (DD) All processed packaged foods bear a label stating . . . that the product is prepared in a kitchen that is not subject to inspection by the Department of Health and Senior Services.¹¹

By contrast, California’s cottage food law has its own subchapter of the state’s Retail Food Code entitled “Cottage Food Operations”¹² and defines cottage food operations as

an enterprise that has not more than the amount in gross annual sales that is specified in this subdivision, is operated by a cottage food operator, and has not more than one full-time equivalent cottage food employee, not including a family member or household member of the cottage food operator, within the registered or permitted area of a private home where the cottage food operator resides and where the cottage food products are prepared or packaged for direct, indirect, or direct and indirect sales to consumers pursuant to this part.¹³

Additionally, while most cottage food laws allow any citizen of the state to be a cottage food operator, a few states limit in-home food production to farmers who conduct on-farm processing.¹⁴ To illustrate, Rhode Island’s law allows for “farm home food manufacture and the sale of products of farm home food manufacture at farmers’ markets, farmstands, and other markets and stores operated by farmers for the purpose of the retail sale of the products of Rhode Island farms” provided, in part, that “the farm home food products [are] produced in a kitchen that is on the premises of a farm.”¹⁵ Although we count Rhode Island as allowing cottage food operations, the state provides an example of a very restrictive cottage food law that should be expanded to permit any citizen to be a cottage food operator.

¹⁰ MO. CODE REGS. ANN. tit. 19, § 20-1.025(1)(B)(5) (2012).

¹¹ MO. CODE REGS. ANN. tit. 19, § 20-1.025(1)(B)(5) (2012).

¹² CAL. HEALTH & SAFETY CODE §§ 114365–114365.6 (West 2012).

¹³ CAL. HEALTH & SAFETY CODE §§ 113758 (West 2012).

¹⁴ Delaware, Kentucky, New Hampshire, and Rhode Island limit in-home processing to farmers conducting the processing on the farm. DEL. CODE ANN. tit. 3, § 100 (2012); KY. REV. STAT. ANN. §§ 217.136-.137 (West 2012); N.H. REV. STAT. ANN. § 143A:12 (2012); R.I. GEN. LAWS § 21-27-6.1 (2012).

¹⁵ R.I. GEN. LAWS § 21-27-6.1 (2012).

State Regulation of Food Establishments

State laws (following the FDA Food Code) generally designate all locations where food is produced or sold for pay as “food establishments.” Once a location is considered a “food establishment,” it is subject to a host of rules including requirements such as obtaining a range of licenses and permits, being subject to inspection, requiring multi-compartment sinks, ensuring floors and walls are made out of specific non-absorbent materials, and using specific ventilation systems.¹ These are just some of the hundreds of requirements imposed on such certified kitchens. According to the FDA Food Code, home kitchens used for household food preparation cannot be certified kitchens, so anyone wishing to prepare food for sale must have access to a separate certified kitchen outside the home.² This also means that none of the versions of the FDA Food Code allow for commercial sales of foods produced in a home kitchen.³

There are a few important exceptions to the definition of food establishment in the FDA Food Code. The most relevant exception is for charity bake sales and religious events. Home kitchens that are used to produce non-potentially hazardous food for sale at charity bake sales and religious events are excluded from the definition of food establishments, as long as the consumer is notified that the food was produced in an unregulated and uninspected home kitchen.⁴ This exception allows individuals to prepare in a home kitchen foods identified as non-potentially hazardous, such as baked goods, jams, jellies, granola, popcorn, coffee, and tea, when those foods are being sold at a charity bake sale or similar function.

The fact that this exception is in the FDA Food Code is evidence that the FDA itself has deemed home production of foods to be safe when those foods are not “potentially hazardous.” This exception provides a model for applying the same logic to sales of non-potentially hazardous foods in other locations, such as farmers markets. Indeed, many states allow for cottage food operations by extending the exemption for the sales of homemade non-potentially hazardous food to farmers markets. To do so, states simply add the words “farmers markets” after “charity organization’s bake sale” in the language adopted from the FDA Food Code.⁵

¹ See FDA FOOD CODE 2009 § 1-103.10 (“This Code establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension.”); §§ 8-301–304 (Permit to Operate); §§ 8-401–406 (Inspection and Correction of Violations); § 4-301.12 (Manual Warewashing, Sink Compartment Requirements); §§ 6-101.11, 201.11 (facility materials and design); § 4-204.11 (Ventilation Hood Systems, Drip Prevention).

² FDA FOOD CODE 2009 § 6-202.111. Note that in some states, one modification allowing for in-home production merely allows the Health Department to certify home kitchens for production of some food items.

³ FDA FOOD CODE 2009 § 1-201.10 (definition of food establishment).

⁴ FDA FOOD CODE 2009 § 1-201.10 (definition of food establishment).

⁵ Alabama followed this model for their in-home processing law. “In-home processing” is another way to describe cottage food production. ALA. ADMIN. CODE r. 420-3-22-.01(4)(a)(11) (2012).

Common Elements Found in Cottage Food Laws

Analysis of the fifty states' laws found five main types of restrictions that states have used in their cottage food laws: types of cottage food products allowed; limits on where cottage food products can be sold; required registration, licenses, and/or permits; limits on total sales; and required labeling.

Types of Cottage Food Products Allowed

For the most part, states limit cottage food production to foods that are “not potentially hazardous.” Some states provide a detailed list of allowed foods, while others simply require the food to be not potentially hazardous. For example, in Arkansas, the law states that cottage food operations may only produce “non potentially hazardous foods, including without limitation: (A) Bakery products; (2) Candy; (C) Fruit butter; (D) Jams; (E) Jellies; and (F) Similar products specified in rules adopted by the Department of Health.”¹⁶ However, the Arkansas Department of Health and the Department of Agriculture have indicated that they do not plan to add any new foods to the list in the near future; therefore, only those five types of products are allowed to be sold as cottage food products.¹⁷ California’s law lists sixteen foods that are approved for cottage food operations and directs the Department of Health to adopt and post to its website a list of other approved foods.¹⁸ The sixteen foods that California’s cottage food law allows are:

- Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas.
- Candy, such as brittle and toffee.
- Chocolate-covered nonperishable foods, such as nuts and dried fruit.
- Dried fruit.
- Dried pasta.
- Dry baking mixes.
- Fruit pies, fruit empanadas, and fruit tamales.
- Granola, cereals, and trail mixes.
- Herb blends and dried mole paste.
- Honey and sweet sorghum syrup.

What is a “Potentially Hazardous” Food?

The definition of “potentially hazardous” food in the FDA Code is detailed and technical, referring to the acidity of a given food to determine whether it is considered potentially hazardous. The focus is on whether a particular item is likely to develop bacteria or viruses that carry disease. The main question is whether the food supports “pathogenic microorganism growth or toxin formation.” Meat, dairy, and shellfish are all examples of potentially hazardous foods. However, less obvious foods such as low-sugar jams, cooked vegetables, and low-acidity pickles and salsa are also considered potentially hazardous because they can support viral or bacterial growth if not properly stored. In effect, if the food has the potential to cause harm to consumers when not kept under proper temperature and storage conditions, the food is considered “potentially hazardous.”

According to the 2009 FDA Code, the following are considered potentially hazardous foods: meat, poultry, and eggs; fish and shellfish; cooked vegetables; dairy products; mushrooms; cut melons; unmodified cut tomatoes or mixtures of cut tomatoes; untreated garlic-in-oil mixtures; baked goods subject to spoilage (such as cream-filled pastries or others that must be refrigerated); reduced sugar jams and jellies; pickles and salsa; and, raw seed sprouts.

FDA Food Code 2009 § 1-201.10.

¹⁶ ARK. CODE ANN. § 20-57-201(1) (2012).

¹⁷ ARK. DEP’T OF HEALTH, COTTAGE FOOD GUIDE (May 2012),

<http://www.healthy.arkansas.gov/programsServices/environmentalHealth/foodProtection/Documents/CottageFoodGuidelines.pdf>; ARK. DEP’T OF HEALTH & AGRIC. DEP’T, FARMERS’ MARKET VENDOR GUIDE: A GUIDE FOR FARMERS AND CONSUMERS (May 2012), <http://www.healthy.arkansas.gov/programsServices/environmentalHealth/foodProtection/Documents/FarmersMarketGuidelines.pdf>.

¹⁸ CAL. HEALTH & SAFETY CODE § 114365.5 (West 2012).

- Jams, jellies, preserves, and fruit butter that comply with federal standards for fruit butter.¹⁹
- Nut mixes and nut butters.
- Popcorn.
- Vinegar and mustard.
- Roasted coffee and dried tea.
- Waffle cones and pizelles.²⁰

Utah and New Mexico’s cottage food laws, on the other hand, only specify that cottage foods cannot be potentially hazardous foods (and do not provide a list of allowed cottage food products).²¹ Cottage food operators in both states, however, must have the food products they want to produce approved by the government prior to producing the food for sale.²² Mississippi’s cottage food law simply defines cottage food products as those that are “nonpotentially hazardous food products” and instructs the State Board of Health to provide more details about what falls under the category of “nonpotentially hazardous food products.”²³ Wisconsin’s in-home processing law, sometimes referred to as the “pickle bill,” only allows processed vegetables or fruits that meet a certain pH value, such as pickled fruits and vegetables (but not refrigerator pickles), sauerkraut, salsas, chutneys, jams and jellies, and applesauce.²⁴ Vermont’s law is also limited and only allows baked goods, or breads, cakes, pies or other food products made either wholly or in part from flour.²⁵

Figure 2. Types of Cottage Food Products Allowed

Broad List of Allowed Foods	e.g., “non-potentially hazardous foods, including...” or “non-potentially hazardous foods” generally	Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Iowa, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming
Limited List of Allowed Foods	e.g., “non-potentially hazardous foods, limited to...”	Arkansas, Colorado, Illinois, Montana, Nevada, New Hampshire, Ohio
Other (More Restrictive)	e.g., no home canned goods made using pressure cooker, primary ingredients must be grown by microprocessor, pickled products only	Indiana, Kentucky, Louisiana, Maine, Maryland, Minnesota, Oregon, Vermont, Wisconsin

¹⁹ Note that other states, such as Georgia, expressly prohibit fruit butters from the list of approved cottage foods. GA. COMP. R. & REGS. 40-7-19-.05 (2012). Illinois allows certain fruit butters (apple, apricot, grape, peach, plum, quince, and prune), but not others (pumpkin, banana, and pear). 410 ILL. COMP. STAT. 625/4 (2012).

²⁰ California’s cottage food law passed in 2012. CAL. HEALTH & SAFETY CODE § 114365.5 (West 2012).

²¹ N.M. CODE R. § 7.6.2.16(C)(2) (Weil 2012); UTAH CODE ANN. § 4-5-9.5(1)(a) (2012).

²² N.M. CODE R. § 7.6.2.16(C)(2) (Weil 2012); UTAH ADMIN. CODE r. 70-560-3 (2012).

²³ Act of April 1, 2013, ch. 481, 2013 Miss. Laws Ch. 481 (S.B. 2553) (an act to exempt cottage food production operations from regulation).

²⁴ WIS. STAT. ANN. § 97.29(2)(b)(2) (West 2012).

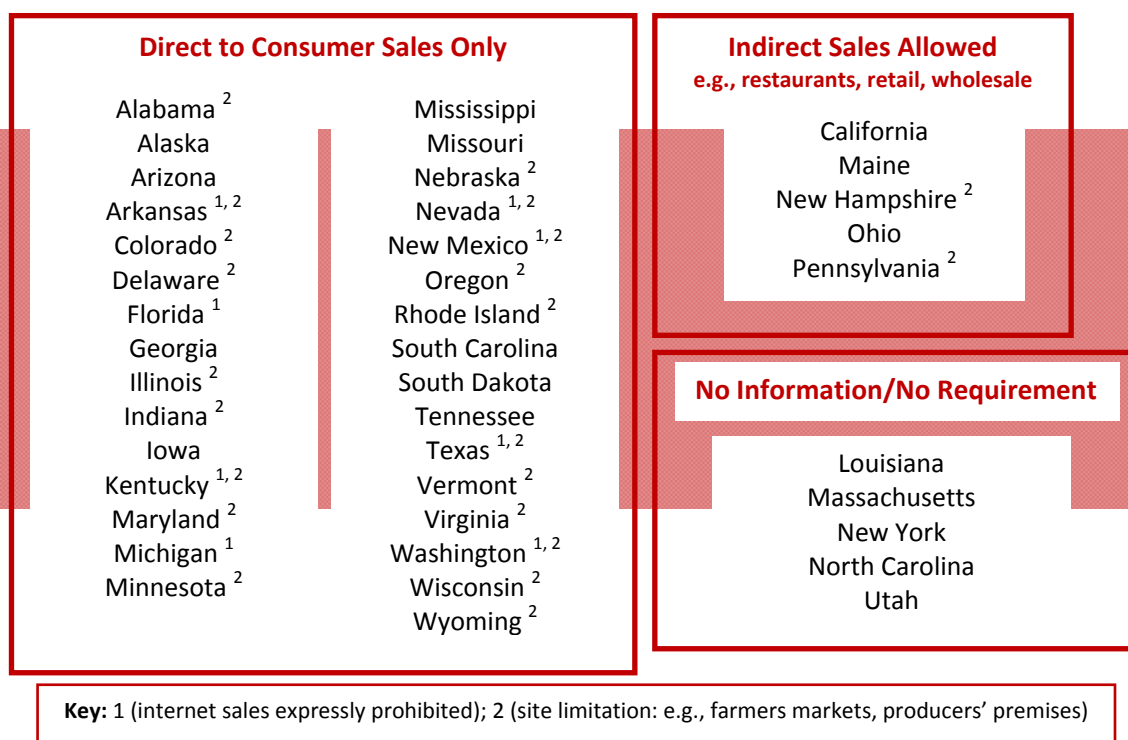
²⁵ VT. STAT. ANN. tit. 18, § 4451 (2012).

Limits on Where Food Can Be Sold

In our analysis, we found that some state cottage food laws limit the places at which cottage food products can be sold. Nearly all states restrict cottage food operations to selling directly to consumers and do not permit sales to restaurants or other retail food establishments. States vary in the limits they impose on sales locations by restricting sales to, for example, farmers markets, county fairs, roadside stands, on the producer’s premises, and through community supported agriculture operations (CSA).

To illustrate, Tennessee’s law states that cottage food products “may be sold at that person’s personal residence, a community or social event, including church bazaars and festivals, flea markets, or at farmers’ markets located in this state.”²⁶ By contrast, California’s cottage food law allows broader sales than most states. In California, there are two levels of cottage food operations, each bearing distinct regulations on the locations of sales allowed: Class A cottage food operations are authorized to sell direct to consumers only; Class B operations may engage in both direct and indirect sales, meaning they can sell to restaurants and other retail food establishments.²⁷

Figure 3. Limits on Where Cottage Food Products Can Be Sold



Additionally, a handful of states expressly prohibit mail order and/or internet sales of cottage food products.²⁸ This limitation makes sense because of the way state and federal laws interact; because cottage food laws are state-based, cottage food products cannot be sold across state lines without becoming subject to federal regulations. Cottage food products, therefore, can only be sold within the state in which they were made. As an example of this kind of limitation, Michigan’s cottage food law

²⁶ TENN. CODE ANN. § 53-8-117(b) (West 2012).

²⁷ CAL. HEALTH & SAFETY CODE § 113758(a) (West 2012).

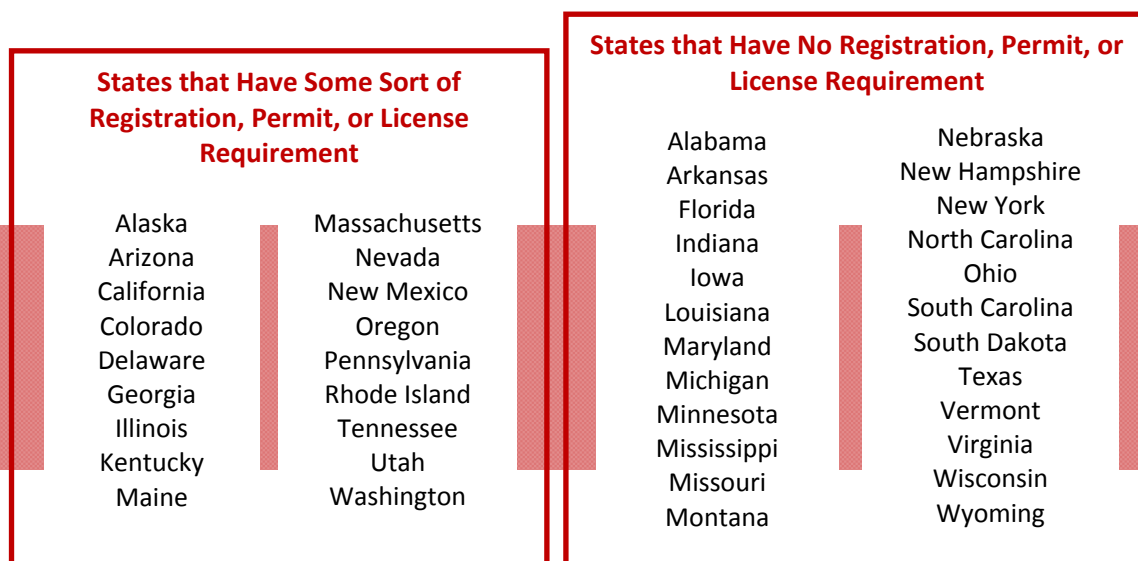
²⁸ See e.g., FLA. STAT. ANN. § 500.80(2) (2012); 902 KY. ADMIN. REGS. §§ 45:090(2)(12), (3)(8) (2012); MICH. COMP. LAWS § 289.4201(4) (2012); N.M. CODE R. 7.6.2.16(C)(4) (Weil 2012); TEX. HEALTH & SAFETY CODE ANN. § 437.0194 (Vernon 2012); WASH. REV. CODE § 69.22.020(4) (2012).

stipulates that “[c]ottage food products may be sold directly from the cottage food operation to the consumer only, and not by internet or mail order.”²⁹ Georgia, on the other hand, explicitly allows internet sales so long as the sale is from a producer directly to an end consumer located in Georgia.³⁰ Arkansas’ cottage food law itself does not expressly prohibit internet sales, but an Arkansas Department of Health guidance document clearly prohibits the sale of cottage food products over the internet.³¹

Required Registration, Licenses, and/or Permits

States vary widely as to whether or not a cottage food operation must be licensed and/or permitted, as well as what requirements must be met for such authorization. Some states do not require any licensing or permits for cottage food operations. For example, Florida, Maryland, and Michigan, expressly do not require licenses for cottage food operations.³² Other states, such as Texas, make no mention of a license requirement, which suggests that no license is required.³³

Figure 4. Required Registration, Licenses, and/or Permits



Some states require specific licenses: for example, Alaska requires cottage food operators to obtain a business license;³⁴ Colorado requires a certificate in safe food handling and processing, but no other license or permit;³⁵ Washington requires a food and beverage service worker’s permit;³⁶ and Utah requires a valid food handler’s permit.³⁷ Other types of permits may also be required. In Pennsylvania,

²⁹ MICH. COMP. LAWS § 289.4201(4) (2012).

³⁰ Georgia’s cottage food law says nothing about internet sales, but a document on the Georgia Department of Agriculture’s website, *Cottage Foods: Frequently Asked Questions*, clearly states that internet sales are allowed. *Cottage Foods: Frequently Asked Questions*, GA. DEP’T OF AGRIC., http://agr.georgia.gov/Data/Sites/1/media/ag_consumerprotection/cottage_food/files/cottagefoodsfaq.pdf (last visited Jan. 17, 2013).

³¹ ARK. DEP’T OF HEALTH, COTTAGE FOOD GUIDE 3 (May 2012), <http://www.healthy.arkansas.gov/programsServices/environmentalHealth/foodProtection/Documents/CottageFoodGuidelines.pdf>.

³² FLA. STAT. ANN. § 500.80(1)(a) (2012); MD. CODE ANN., HEALTH—GEN. § 21-330.1(b) (2012); MICH. COMP. LAWS § 289.4102(1) (2012).

³³ 25 TEX. ADMIN. CODE § 229.661 (2012).

³⁴ ALASKA ADMIN. CODE tit. 18, § 31.012(a)(4) (2012).

³⁵ COLO. REV. STAT. ANN. § 25-4-1614(1)(c) (2012).

³⁶ WASH. REV. CODE § 69.22.030(2) (2012).

³⁷ UTAH CODE ANN. § 4-5-9.5(4)(a) (2012).

for example, “home food processors” must have their kitchens inspected as part of the registration process to ensure that the kitchen facilities meet the applicable laws and regulations.³⁸ There are often fees associated with licensing and permitting: some states have low fees (\$20 fee in Maine),³⁹ while others have a number of different fees associated with the varying permits required. For example, in Washington state, there is a \$125 inspection fee, a \$75 public health review fee, and a \$30 processing fee.⁴⁰

Limits on Total Sales

About half of the states that allow cottage food production place a limitation on the amount of income a cottage food operation can earn and still qualify as a cottage food operation. For the most part, states frame the limit in terms of a dollar amount in sales per year. These sales limits range from \$5,000/year up to \$50,000/year. For example, Texas limits the sale of cottage foods to \$50,000 per year.⁴¹ Louisiana, Minnesota, and Wisconsin, however, cap annual sales for cottage food operations at only \$5,000/year.⁴² Both Michigan and California provide for a gradual increase in the annual ceiling over a period of years. In Michigan, until 2017, cottage food operations are capped at \$20,000 in sales; after 2017, Michigan cottage food operators can make up to \$25,000.⁴³ In California, cottage food operations are limited to \$35,000 in 2013; \$45,000 in 2014; and \$50,000 in 2015 and beyond.⁴⁴

Colorado sets a \$5,000/year sales limit for *each eligible food item*, and a cottage food producer may have multiple eligible food items (each individual flavor of jam, each type of cake, and each type of cookie represents an eligible food item).⁴⁵ Florida, on the other hand, limits cottage food operations in the state to \$15,000 for *all products in all locations*.⁴⁶

A handful of states frame their sales limits in terms other than a dollar amount per year. For example, Tennessee limits cottage food operations to 100 units of sale a week.⁴⁷ A “unit of sale is the form of packaging in which the product is normally offered for sale to the consumer,” such as one loaf of bread, one dozen cookies, or one container of jelly.⁴⁸ South Carolina does not explicitly place a limit on the amount of money a cottage food operation can make, but imposes different requirements on the operation based on the amount of money made. For example, a home-based food operation that makes less than \$500/year is exempt from all provisions regulating home-based food operations, whereas a home-based food operation that makes more than \$500 but less than \$15,000/year may apply to the Department of Agriculture for an exemption from inspection and label review.⁴⁹ Vermont measures its cottage food sales in terms of dollar per week; a cottage food operator in Vermont is limited to \$125/week of sales (equal to \$6,500/year).⁵⁰

³⁸ *Home Food Processing: Description*, PA. DEP’T OF AGRIC., http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_24476_10297_0_43/agwebsite/ProgramDetail.aspx?name=Home-Food-Processing&navid=12&parentnavid=0&palid=134& (last visited July 25, 2013).

³⁹ 01-001-345 ME. CODE R. § 8(A) (2012); 01-001-330 ME. CODE R. § 2 (2012).

⁴⁰ WASH. REV. CODE § 69.22.030(1) (2012).

⁴¹ TEX. HEALTH & SAFETY CODE ANN. § 437.001(2-b) (Vernon 2013).

⁴² LA. REV. STAT. ANN. § 4:9(B) (2012); MINN. STAT. § 28A.15(10(a)) (2012); WIS. STAT. § 97.29(2)(b)(2)(c) (2012).

⁴³ MICH. COMP. LAWS § 289.4102(5) (2012).

⁴⁴ CAL. HEALTH & SAFETY CODE § 113758(a) (West 2012).

⁴⁵ COLO. REV. STAT. § 25-4-1614(2)(e) (2012); *Cottage Foods Fact Sheet & Guidance*, COLO. DEP’T OF PUB. HEALTH & ENV’T, <http://www.colorado.gov/cs/Satellite/CDPHE-DEHS/CBON/1251586894464> (last visited Jan. 18, 2013).

⁴⁶ FLA. STAT. § 500.80(1) (2012).

⁴⁷ TENN. COMP. R. & REGS. 0080-04-11-.03 (2012).

⁴⁸ TENN. COMP. R. & REGS. 0080-04-11-.02 (2012).

⁴⁹ S.C. CODE ANN. § 44-1-143(G)-(H) (2012).

⁵⁰ VT. STAT. ANN. tit. 18, § 4451 (2012).

Figure 5. Limits on Total Sales

States with Sales Limits				
State	\$500 to \$15,000	\$15,000 to \$25,000	\$25,000 and above	Other
Alaska			█	
California			█	
Colorado				█
Delaware			█	
Florida	█			
Illinois			█	
Indiana		█		
Iowa				█
Kentucky			█	
Louisiana	█			
Maryland				█
Michigan		█		
Minnesota	█			
Mississippi		█		
Nevada			█	
New Hampshire	█			
Oregon		█		
South Carolina				█
Tennessee				█
Texas			█	
Vermont	█			
Washington	█			
Wisconsin	█			
States with No Sales Limit				
Alabama	Missouri	Pennsylvania		
Arizona	Montana	Rhode Island		
Arkansas	Nebraska	South Dakota		
Georgia	New Mexico	Utah		
Indiana	New York	Virginia		
Maine	North Carolina	Wyoming		
Massachusetts	Ohio			

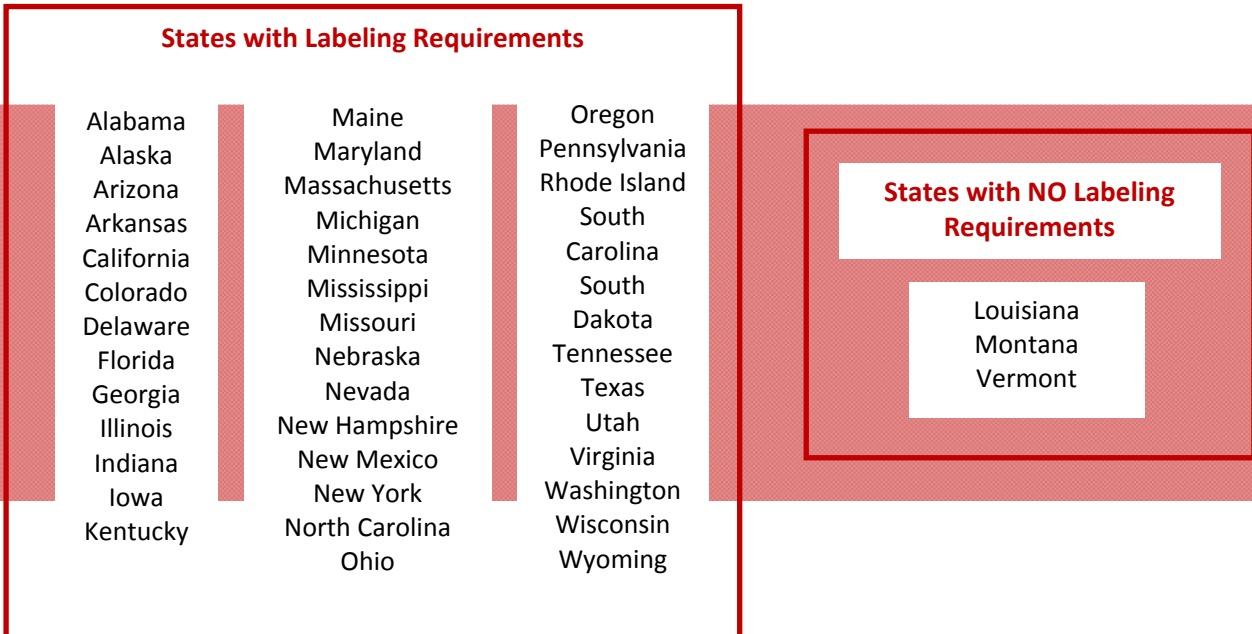
Required Labeling

Almost all states with cottage food laws have labeling requirements.⁵¹ Generally, cottage food products are required to be labeled with some combination of the following information:

- Name and address of producer;
- Common or usual name of product.
- Ingredients of product in descending order of predominance by weight;
- Any food allergens;
- Net weight and volume of food product by standard measure or numerical count;
- Date on which the food was processed; and
- A statement similar to the following: “Made in a home kitchen that has not been inspected by the (state)’s department of health (or agriculture).”

To illustrate, Maryland requires the name and address of the cottage food business; the name of the cottage food product; the ingredients of the cottage food product in descending order of the amount of each ingredient by weight; the net weight or net volume of the cottage food product; allergen information as specified by federal labeling requirements; if any nutritional claim is made, nutritional information as specified by federal labeling requirements; and the following statement printed in 10 point or larger type in a color that provides a clear contrast to the background of the label: “Made by a cottage food business that is not subject to Maryland’s food safety regulations.”⁵² On the other hand, Virginia only requires the cottage food label to read: “NOT FOR RESALE—PROCESSED AND PREPARED WITHOUT STATE INSPECTION”⁵³ and Louisiana has no labeling requirement at all.⁵⁴

Figure 6. Required Labeling



⁵¹ The only states that do not have any sort of labeling requirement are: Louisiana, Montana, and Vermont.

⁵² MD. CODE ANN., HEALTH—GEN. § 21-330.1(c)(2) (West 2012).

⁵³ VA. CODE ANN. § 3.2-5130(A)(3) (2012).

⁵⁴ LA. REV. STAT. ANN. § 40:4.9 (2012).

Conclusion

Allowing for cottage food operations is an easy way that states can support the development of small businesses and increase the availability of local products within their borders. The fact that forty-two states allow some sort of in-home processing of non-potentially hazardous foods demonstrates that these types of operations are important and valuable to the citizens of those states.

States continue to introduce new cottage food laws or amend their existing cottage food structures, which means there are numerous opportunities for advocates to get involved and make change. In the most recent legislative session, several states without cottage food laws introduced legislation to allow cottage food production in the state. For example, the state legislatures in New Jersey and Nevada both introduced bills that would permit cottage food production in those states;⁵⁵ Nevada's cottage food bill passed, while New Jersey's did not.⁵⁶ Additionally, a few states that already allow cottage food production have introduced, and in some cases passed, legislation that clarifies and strengthens their cottage food laws.

There are a number of ways states can improve their cottage food laws:

- First, states should make sure their cottage food laws are easy to find and understand. States do not need to go so far as to introduce a new law. States should ensure there are clear guidance documents that cottage food producers can find and use to start their cottage food operations.
- Second, states should expand their cottage food laws to make sure that all citizens (not just farmers) can participate, and broaden the types of foods that can be sold (e.g., not just pickles or baked goods).
- Third, states should consider allowing cottage food producers to sell indirectly to consumers at restaurants and retail establishments (like in California).
- Fourth, states should eliminate sales limits or set higher thresholds. A business with annual sales of \$5,000 (even \$25,000) would qualify as a hobby or, at best, a very small business. If states want to encourage local economic development, increasing the sales threshold for cottage food operations is a necessary step toward accomplishing that goal.
- Fifth, some states place many requirements on cottage food operations, in some cases imposing the same standards that other food processing establishments must meet. For example, in addition to limiting the in-home processing of nonpotentially hazardous foods to on-farm kitchens, Rhode Island requires the kitchen to

be equipped at minimum with either a two (2) compartment sink or a dishwasher that reaches one hundred fifty (150) degrees Fahrenheit after the final rinse and drying cycle and a one compartment sink; . . . [and] have drain boards and food preparation surfaces that shall be of a nonabsorbent corrosion

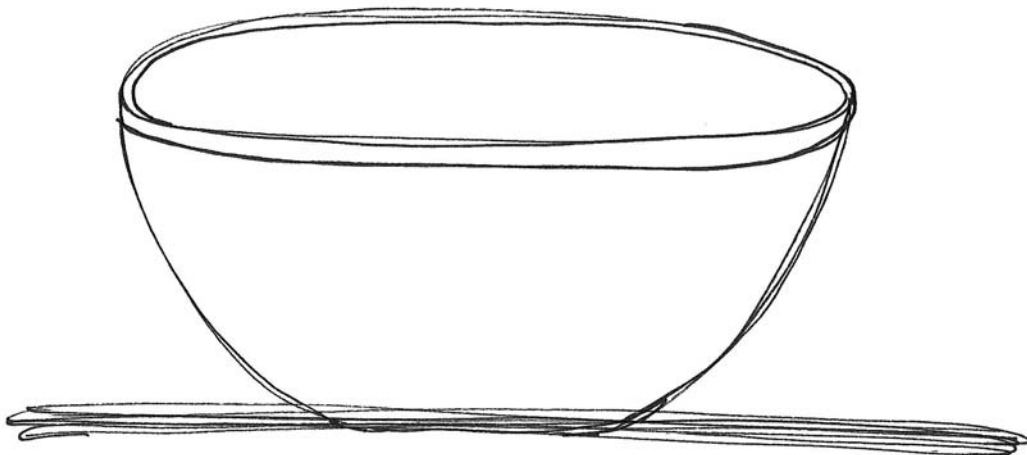
⁵⁵ S.B. 206, 77th Leg., Reg. Sess. (Nev. 2013) (“This bill adds to the list of entities that are excluded from the definition of ‘food establishment’ a cottage food operation that: (1) manufactures or prepares certain food items for sale; (2) meets certain requirements relating to the preparation, labeling and sale of those food items; and (3) registers with the health authority. This bill also prohibits a local government from adopting any ordinance or other regulation that prohibits a person from preparing food in a cottage food operation within the person's private home.”); A.B. 1761, 215th Leg., First Annual Sess. (N.J. 2012).

⁵⁶ An Act Relating to Food Establishments, 2013 Nev. Laws Ch. 152 (S.B. 206).

resistant material such as stainless steel, formica or other chip resistant, nonpitted surface.⁵⁷

States such as Rhode Island should ensure that the regulations they place on cottage food operations reflect the small size and low-risk nature of these operations and that the requirements are not overly burdensome.

As more consumers become interested in supporting local food economies and more producers begin starting their own food businesses, states need to make sure that those local businesses can survive and thrive. Although many states have cottage food or home-based food processing laws on their books, there are still a number of ways in which states can update and improve their cottage food regimes to match the growing demand and opportunity for cottage food operations.



⁵⁷ R.I. GEN. LAWS § 21-27-6.1(1) (2013).