

**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony in OPPOSITION to SB 379**  
**RELATING TO FOOD**

SENATOR JOSH GREEN, CHAIR  
SENATE COMMITTEE ON HEALTH

Hearing Date: February 12, 2015  
Time: 3:40 PM

Room Number: 414

**Fiscal Implications:** This bill has significant fiscal implications that would require resources not provided in the Executive budget

**Department Testimony:** The department opposes this bill as a comprehensive food safety regulation was recently adopted that incorporates the most current science in controlling risk factors known to cause foodborne illness. The measure amends HRS 328 and conflicts with and creates confusion with existing Hawaii Administrative Rules (HAR) which currently regulates the food industry. HAR Chapter 50, Food Safety Code already provides the Home-Made food industry the opportunity to produce non-potentially hazardous foods (i.e., cookies, breads, jams, etc.) from their homes for direct sales to consumers. This bill is contrary to HAR Chapter 50 as well as The FDA Model Food Code, which is the national standard for regulating the food industry. The bill introduces the concept of “self-certification,” and requires the department to issue permits but is explicitly prohibited from conducting initial and routine inspections, and limits the frequency of governmental inspections. It also includes unnecessary complexities such as multiple classes of “Cottage Foods” and the implementation of an approval process to add or delete foods for each class of cottage foods. This bill does not address legal and constitutional issues regarding governmental entry and inspection of a person’s domicile and the possible need for search warrants when inspections are refused or interfered with by the operator.

Pursuant to legislative resolution SCR 97 (2014), the department has been an integral part of the “Home Made” food industry working group which was tasked to address “Cottage Food Industry” issues and will be making recommendations to this legislature regarding the progress made. The department is willing to amend existing Administrative Rules, as long as it does not increase the possibility of food illness risk-factors known to cause foodborne illness.

Thank you for the opportunity to testify.

**Offered Amendments:** None.

**COUNTY COUNCIL**

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Arryl Kaneshiro  
KipuKai Kualii  
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February 10, 2015

**TESTIMONY OF KIPUKAI KUALII**  
**COUNCILMEMBER, KAUAI COUNTY COUNCIL**  
**ON**  
**SB 379, RELATING TO FOOD**  
**Committee on Health**  
**Committee on Agriculture**  
**Thursday, February 12, 2015**  
**3:40 p.m.**  
**Conference Room 414**

Dear Chair Green, Chair Ruderman, and Members of the Committee:

Thank you for this opportunity to submit testimony in strong support of SB 379, Relating to Food. My testimony is submitted in my capacity as the Economic Development & Intergovernmental Relations Committee Chair and as an individual Councilmember on the Kaua'i County Council.

SB 379 expands and creates new categories for homemade food processing for sale to the public. This endeavor is much needed as the State deals with local food issues which are increasingly becoming more challenging each day. I believe this Bill assists in promoting local food sustainability which provides a boost to the local agriculture community and provides an additional source of fresh, healthy food for our people. As the Economic Development & Intergovernmental Relations Committee Chair, I support all efforts to boost economic development on Kaua'i especially if it warrants a win-win situation for our local fishermen, farmers, ranchers, other agricultural producers, and consumers.

For the reasons stated above, I strongly encourage the Senate Joint Committee to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

KIPUKAI KUALII  
Councilmember, Kaua'i County Council

AB:lc

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**SB379**

Submitted on: 2/10/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Courtney Turner	Individual	Support	No

Comments: I think this would be a nice bill to have to support local agriculture, food security, and local food processing.

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**SB379**

Submitted on: 2/6/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Cory	Individual	Support	No

Comments: Aloha legislators, Please support strengthening our local economy and decreasing our reliance on imported food. Mahalo!

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**SB379**

Submitted on: 2/7/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Doug Phillips	Individual	Support	No

Comments:

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**Date:** Saturday, February 07, 2015 10:10:57 AM

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**SB379**

Submitted on: 2/7/2015

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Submitted By	Organization	Testifier Position	Present at Hearing
Rosemarie Patronette	Individual	Support	No

Comments:

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**SB379**

Submitted on: 2/10/2015

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Submitted By	Organization	Testifier Position	Present at Hearing
vicki levin	Individual	Support	No

Comments:

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**Date:** Sunday, February 08, 2015 2:28:53 AM

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**SB379**

Submitted on: 2/8/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Simon Russell	Hawaii Farmers Union United	Support	No

Comments:

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**Subject:** Submitted testimony for SB379 on Feb 12, 2015 15:40PM  
**Date:** Sunday, February 08, 2015 4:37:26 AM

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**SB379**

Submitted on: 2/8/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Ken Love	Individual	Support	No

Comments: This bill is essential for small farm sustainability in Hawaii. It is essential for the promotion of food safety, food security and economic benefit to small farm producers. it increases safety by mandatory training for advanced product sales form made value added products. I would rather buy something made by someone in a home kitchen who has had training than by someone making it in a certified kitchen who has no idea what they are doing but can afford to rent a kitchen. This is an opportunity for Hawaii to support small farm family producers by enabling them to make and sell products at home after they have had training.

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**SB379**

Submitted on: 2/10/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Ned Whitlock	Individual	Support	No

Comments: Aloha, We have a 28 acres farm in Kauai with four 4 acres vegetable and the rest in fruit trees. Our crops are not always the best and this bill will enable us to process our seconds into value added products enhancing the economic viability of our operation. Please support this bill. Mahalo, Ned and Marta Whitlock

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**Date:** Monday, February 09, 2015 10:26:14 PM

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**SB379**

Submitted on: 2/9/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Sakala	Hawaii Farmers Union United, Kona Chapter	Support	No

Comments: Aloha Committee, Thank you for hearing SB379 and I strongly support this bill moving forward in the committee process. One thing I continual hear from small scale producers on this island is we need more ways to value add our products. This bill would be a positive step towards those ends. Mahalo, Steve Sakala Democratic Chair District 5

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**SB379**

Submitted on: 2/9/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Ano Hanamana	Individual	Support	No

Comments:

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**SB379**

Submitted on: 2/9/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Nate Hayward	Hawaii Farmers Union United	Support	No

Comments: Aloha, my name is Nate Hayward and I am the vice president of the Kohala chapter of the Hawaii Farmers Union United. I am also a small farmer here on the Big Island and I am writing today in support of the upcoming Bill sb 379. This bill does a lot to support small scale production and sales of local agricultural products, two things we desperately need more of in the Hawaiian Islands. Please lend your support to Hawaii's up and coming local food movement by voting for this bill. If we ever truly want food sustainability in Hawaii, we need to pass laws that support that idea today and help it to grow. Mahalo

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**Date:** Monday, February 09, 2015 9:06:40 PM

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**SB379**

Submitted on: 2/9/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Clive Cheetham	Koa'e Community Association	Support	No

Comments:

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**Date:** Monday, February 09, 2015 8:37:48 PM

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**SB379**

Submitted on: 2/9/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Sugerman	Individual	Comments Only	No

Comments: My wife and I have a small farming business where we reside selling value added dried fruit products. It is quite an imposition to have to transport and prepare our products in a commercial kitchen offsite. By preparing our products at our home we can devote more time to our business rather than taking valuable extra time getting our products to an outside facility. We have both taken numerous classes in the area of agribusiness and proper food handling techniques. In addition, my wife has a certificate from a training on proper food handling. As a small farmer I see the potential for substantial growth in the agricultural community which will not only help the local farmer but also help Hawaii become more sustainable. There is much competition from countries that employ workers as extremely low wages, therefore the more we can produce locally, the better it will be for all concerned. Hawaii has a long and rich tradition in the food industry with the vast array of delicious crops that grow on the islands. Let's work together to make it easier for the small farmer to earn a living, not more difficult; we will all benefit here in Hawaii.

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**SB379**

Submitted on: 2/9/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Harriet Witt	Individual	Support	No

Comments: We need this for the grass roots of a sustainable economy.

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**SB379**

Submitted on: 2/9/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
jahnava baldassarre	Individual	Support	No

Comments:

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**SB379**

Submitted on: 2/9/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Murray	Individual	Support	No

Comments: I support SB379 in support of small cottage industries. This will play an integral role in Hawaii's future food sustainability. Our people must be empowered to create their own networks and marketplaces.

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**SB379**

Submitted on: 2/9/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Sugerman	Individual	Support	No

Comments:

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**From:** [Steelgrass Farm](#)  
**To:** [HTHTestimony](#)  
**Subject:** In Support of Senate Bill 379  
**Date:** Monday, February 09, 2015 9:53:41 AM

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TO: Agriculture and Health Committee  
RE: Testimony in support of Senate Bill 379  
Hearing date: February 12th, 2015, 3:40pm Room 414

Dear Senator Green,

We are a small family farm on Kauai, and for years now have been economically disadvantaged by the lack of affordable ways to package our farm's value-added products, and market them directly to end-users.

Instead, we are often obliged to sell at wholesale to processors or distributors, thus reducing the amount of money we could otherwise earn.

We urge you to support Bill 379, which if enacted will substantially reduce our costs in bringing our home-grown and home-made Kauai farm products to market.

Yours sincerely,

The Lydgate Family

Steelgrass Farm  
P.O. Box 68  
Kapaa, HI 96746  
808-821-1857  
[info@steelgrass.org](mailto:info@steelgrass.org)

**From:** [Benjamin Ferris](#)  
**To:** [HTHTestimony](#)  
**Subject:** HB 1233 Senate Bill 379  
**Date:** Monday, February 09, 2015 9:45:34 AM

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To Whom It May Concern,  
I am writing in Support of HB1233 - concerning the value added cottage bill.  
Senate Bill 379 Agriculture and Health Committee Hearing  
February 12th, 2015 3:40pm Room 414  
Health Chair: Senator Josh Green  
Agriculture Chair: Senator Russel Ruderman

We are a small business that farms and the ability to incorporate value added products from our farm is very important in being able to add to the income needed to keep a small farm profitable here in the State of Hawaii.  
Thank you for your support of this bill.

Aloha  
Colette Ferris  
Kolo Kai Organic Farm  
Kilauea HI 967545

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Ben and Colette Ferris  
Kolo Kai Organic Farm  
PO Box 211  
Kilauea HI 96754  
808-828-1712  
8 am - 4 pm Hawaii Standard Time

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**Date:** Wednesday, February 11, 2015 9:25:18 AM

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**SB379**

Submitted on: 2/11/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Gaylene L Barron	Individual	Support	No

Comments:

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## SENATE COMMITTEES ON HEALTH AND AGRICULTURE

Thursday, February 12, 2015 — 3:40PM — Room 414

### **The Kohala Center Strongly Supports SB 379, Relating to Food**

Dear Chair Green, Chair Ruderman, Vice Chair Wakai, Vice Chair Riviere, and Members of the Committees:

**The Kohala Center strongly supports SB 379.** The bill addresses important concerns of the cottage food industry and reflects the input of members of the Cottage Food Business Working Group organized from SCR 97 from the 2014 Legislative session, including Mark Ferguson, Chief Organic Officer, Down to Earth (O'ahu), Terri Langley, Ma'o Organic Farm (O'ahu), Ken Love, Executive Director, Hawai'i Master Food Preservers, and Executive Director, Hawai'i Tropical Fruit Growers (Hawai'i Island), Janine Lynne, Owner, Black Dog Farms (Kaua'i), Jamie Ronzello, Owner, Barking Deer Farm (Moloka'i), and Dr. Chris Speere, Maui Culinary Academy and 'Made on Maui' labeling (Maui). The Kohala Center served as facilitator for the Working Group and wrote the Hawai'i Cottage Food Business Working Group Report, 2014, attached hereto.

At the heart of SB 379 is one primary goal: to allow cottage food operations to sell non-potentially hazardous foods to retailers, such as hotels, cafes, and restaurants. Such sales are referred to as "indirect sales." Current regulations promulgated by the Hawai'i Department of Health (HDOH) allow direct-to-consumer sales only and prohibit indirect sales of non-potentially hazardous foods made by cottage food operations.

HDOH prohibits indirect sales of non-potentially hazardous foods despite the fact that:

1. non-potentially hazardous food are foods with a low risk of causing foodborne illness; and
2. five of the ten most populous states in the nation allow their cottage food industries to sell low risk foods to retailers; namely, California, New York, Pennsylvania, Ohio, and North Carolina. In addition, Massachusetts, Louisiana, Utah, Maine, and New Hampshire also allow sales to retailers. From our research, these states have not received reports of foodborne illness from registered cottage food operations.

HDOH has stated that their reluctance to allow indirect sales stems from the generally held principle in food safety that adverse risk increases with increased volume of food distributed. However, when discussing risk mitigation, it is important to consider the degree of risk associated with the proposed activity. Non-potentially hazardous foods are by definition low risk foods – foods that do not require time or temperature controls to limit pathogenic microorganism growth or toxin formation because of

its pH or water activity values, or interaction of pH and water activity values. Prohibitions on low-risk activities are unnecessary for protecting consumer health when alternative risk mitigation measures exist.

Laws should be narrowly tailored to achieve a goal or interest, and should represent the least restrictive means for achieving such goal or interest. An outright ban on indirect sales is unnecessary from a food safety perspective and fails to consider effective, alternative means of mitigating risk. SB 379 proposes several food safety measures designed to mitigate risk and protect consumer health, including food handler training, certification of compliance with safe food handling practices, inspections by HDOH, and for certain foods, product testing. These proposed measures exceed HDOH's current requirements for homemade food producers under the temporary food establishment permit, and create an alternative framework for mitigating risk other than an outright ban on indirect sales.

HDOH's position also unnecessarily deprives Hawai'i's economy of an important economic opportunity. Local value-added food businesses provide a market for local produce, offer locally-made alternatives to national brands, create employment opportunities, and hold the potential to keep more dollars circulating within Hawai'i's economy and increase tax revenue. There are many talented, industrious food entrepreneurs in the state, but the high startup cost of acquiring a certified kitchen is a considerable barrier to entering the value-added food industry. SB 379 offers cottage food operations an opportunity to evolve into an established commercial food business that can afford a certified kitchen, while providing substantial means of mitigating risk and protecting consumer health that exceed current HDOH requirements.

In response to HB 1233 – the companion bill to SB 379 – HDOH submitted written testimony containing the following concerns. Our responses are as follows:

**HDOH Concern #1:** The bill has significant fiscal implications that would require resources not provided in the Executive budget.

Response: The bill, in proposed §328-I(e), states that HDOH may charge a reasonable permit fee for class B and C cottage food operations which takes into account costs of inspection and related administrative costs.

**HDOH Concern #2:** The bill conflicts with comprehensive food safety regulation recently adopted by HDOH that incorporates the most current science in controlling risk factors known to cause foodborne illness.

Response: The recent updates to Hawai'i's Food Safety Code pertain to the new pass/fail inspection system for food establishments, such as restaurants. However, HDOH's temporary food establishment permit system for homemade food producers was developed by HDOH years ago. In the interim, numerous states have updated their laws for homemade food producers through cottage food legislation that aims to protect

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consumer health while supporting the development of small food businesses. The bill draws upon cottage food laws and regulations from across the nation, and incorporates measures to control risk factors known to cause foodborne illness by recommending food safety training, product testing, kitchen inspections, and food handling rules.

**HDOH Concern #3:** HAR Chapter 50, Food Safety Code already provides the Home-Made food industry the opportunity to produce non-potentially hazardous foods (i.e., cookies, breads, jams, etc.) from their homes for direct sales to consumers.

Response: The bill goes beyond the current Food Safety Code and creates a system for cottage food producers to sell non-potentially hazardous foods, including acidified foods, to retailers, such as restaurants and hotels, provided that producers consent to kitchen inspections, undergo sufficient training, and for certain foods, submit their products for testing.

**HDOH Concern #4:** This bill is contrary to The FDA Model Food Code, which is the national standard for regulating the food industry.

Response: The FDA Model Food Code is not law but a set of recommendations. Federal law does not prohibit the sale of foods produced in home kitchens, including acidified foods made in home kitchens. Instead, current FDA rules and regulations require that food producers adhere to certain processes and administrative requirements to ensure food safety. The bill follows suit, by requiring cottage food producers to obtain permits, submit to inspections, undergo training, present products for testing, and produce only allowed foods.

The FDA Model Food Code does not consider a kitchen in a private home a food establishment unless only food that is not “time/temperature control for safety food” is prepared for sale or service at a function such as a religious or charitable organization’s bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority.

Cottage food laws passed in the majority of states conflict with the FDA Model Food Code by allowing the sale of food produced in a home kitchen beyond the limited circumstances described in the paragraph above. From our research, these states have not experienced reports of foodborne illness from registered cottage food operations.

**HDOH Concern #5:** The bill introduces the concept of “self-certification.”

Response: The bill includes a self-certification provision not only to ensure that cottage food producers are aware of safe food handling practices, but also to obtain agreement from producers that they will follow these practices. The current temporary food establishment permit does not have a mechanism for ensuring that food producers are

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aware of safe food handling practices. The self-certification requirement is consistent with HDOH's mandate to minimize the risk of foodborne illness.

**HDOH Concern #6:** The bill requires the department to issue permits but is explicitly prohibited from conducting initial and routine inspections, and limits the frequency of governmental inspections.

Response: The bill allows routine annual inspections for class B and C permits, and allows inspections of any cottage food operation for which HDOH has received a complaint.

The bill does not include routine inspections for class A permits because class A permits allow only direct sales of non-potentially hazardous foods, similar to HDOH's current temporary food establishment permit for which HDOH does not conduct inspections.

The industry members of the Hawai'i Cottage Food Business Working Group recommended inspections despite HDOH's significant concerns with conducting inspections of private property due to the additional administrative work involved, and the possible risk of harm and/or liability from conducting inspections of private property. The industry members of the Hawai'i Cottage Food Business Working Group, as well as members of the public that responded to The Kohala Center's request for public comment on the initial proposed recommendations, indicated a willingness to submit to HDOH inspections conducted at a reasonable frequency.

**HDOH Concern #7:** The bill includes unnecessary complexities such as multiple classes of "Cottage Foods."

Response: The bill proposes multiple classes of cottage food permits in order to create a system that limits administrative requirements to specific measures that are necessary to protect consumer health.

Class A does not require routine inspections or product testing because the permit only allows direct sales of non-potentially hazardous foods, similar to the current temporary food establishment permit for which HDOH does not conduct inspections or product testing.

Class B requires inspections because it allows indirect sales of non-potentially hazardous foods. The additional inspection requirement is meant to more closely monitor producers seeking to sell to a broader market.

Class C requires inspections, product testing, and advanced training, because it allows sales of acidified and fermented foods, which may be safely made at home by producers that are adequately trained and whose product and production process have been verified by a "process authority." This approach is consistent with the FDA's requirements for the production of acidified foods.

The bill proposes that HDOH sets reasonable permit fees for class B and C cottage food operations to cover costs of inspection and related administrative costs. The industry members of the Hawai'i Cottage Food Business Working Group, as well as members of the public that responded to The Kohala Center's request for public comment on the initial proposed recommendations, indicated a willingness to pay reasonable permit fees.

**HDOH Concern #8:** The bill includes unnecessary complexities such as the implementation of an approval process to add or delete foods for each class of cottage foods.

Response: The bill includes an approved list of foods that may be produced by a cottage food operation in order to facilitate transparency with the public and to ensure that all HDOH sanitariums on all of the islands understand what is allowed. An approved list should be considered a time saving measure that prevents sanitariums from having to spend time explaining to the public what foods may and may not be produced in a home kitchen.

The bill outlines a process to add and delete items from the approved list so that HDOH can be responsive to trends. It provides a process for adding items so that HDOH can be responsive to developments in food safety and food science. It provides a process for deleting items so that HDOH can take steps to mitigate risk. It allows for public comments to allow for transparency, dialogue and civic engagement.

**HDOH Concern #9:** This bill does not address legal and constitutional issues regarding governmental entry and inspection of a person's domicile and the possible need for search warrants when inspections are refused or interfered with by the operator.

Response: Many government agencies in Hawai'i and nationwide inspect private property. Like these agencies, HDOH will have to comply with federal and state law if refused entry.

The bill allows for automatic revocation of a cottage food permit if a cottage food operator wilfully denies access to HDOH. To ensure that buyers can stay apprised of the status of a cottage food operation's permit, The bill requires that HDOH maintain on its website a list of cottage food operations whose permits have been revoked.

SB 379 proposes a new legal framework for cottage food operations – one that achieves the dual purpose of protecting consumer health and expanding economic opportunity for small food businesses. As demonstrated by California, New York, Pennsylvania, Ohio, North Carolina, Massachusetts, Louisiana, Utah, Maine, and New Hampshire, achieving both goals is possible.

Thank you for your consideration of SB 379 and this opportunity to submit testimony.

Respectfully,



Anna-Lisa Okoye  
on Behalf of The Kohala Center

*Founded in the year 2000, The Kohala Center is an independent, community-based center for research, conservation, and education. We turn research and traditional knowledge into action, so that communities in Hawai'i and around the world can thrive – ecologically, economically, culturally, and socially. Our main areas of interest are energy self-reliance, food self-reliance, and ecosystem health.*

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**Hawai'i Cottage Food Business Working Group Report, 2014**

**January 13, 2015**

**Prepared by: The Kohala Center**

**For Ulupono Initiative and the Cottage Food Business Working Group**

## INTRODUCTION

Pursuant to legislative mandate S.C.R. No. 97 (2014), Ulupono Initiative convened a Cottage Food Business Working Group comprised of representatives from the Hawai‘i Department of Health (HDOH) and the cottage food industry. A list of the members of the Working Group is included in **Appendix A**.

On October 15, 2014, representatives from the cottage food industry gathered in Honolulu to discuss the current regulatory framework governing the sale of homemade food in Hawai‘i, and to develop draft recommendations for a new legal framework to promote growth in Hawai‘i’s cottage food industry while protecting public health.

In developing the recommendations, the industry group was guided by the following principles:

- Local food production is integral to Hawai‘i’s economic development and food security
- Food safety is essential
- Education and training are important means of achieving food safety
- Proper product labeling is necessary
- Permits can help promote regulatory compliance
- HDOH requires sufficient resources to implement laws and regulations

The industry group also acknowledged state and federal mandates to increase local food production, including:

- Hawai‘i’s “Increased Food Security and Food Self-Sufficiency Strategy,” which notes that “replacing just 10% of the food Hawai‘i currently imports would amount to approximately \$313 million dollars” remaining in the State’s economy (Office of Planning, Department of Business Economic Development & Tourism; [http://files.hawaii.gov/dbedt/op/spb/INCREASED\\_FOOD\\_SECURITY\\_AND\\_FOOD\\_SELF\\_SUFFICIENCY\\_STRATEGY.pdf](http://files.hawaii.gov/dbedt/op/spb/INCREASED_FOOD_SECURITY_AND_FOOD_SELF_SUFFICIENCY_STRATEGY.pdf)); and
- The United States Department of Agriculture’s allocation of \$27 million in competitive grants to support local food efforts such as food hubs and local processors.

On October 16, 2014, members of the industry group met with HDOH to discuss the current rules regulating sales of homemade food and potential changes to the legal framework. HDOH noted that it has rulemaking authority to adopt a revised framework for homemade food operations, and requested that the industry group give HDOH an opportunity to review and respond to proposed recommendations before seeking new legislation. HDOH recognized that new legislation would be required to implement changes that HDOH is unwilling to implement through rule changes.

During November 2014, The Kohala Center solicited feedback on the draft recommendations from HDOH and the public. The original draft recommendations can be found in **Appendix B**, with HDOH’s response in **Appendix C**, and comments from the public in **Appendix D**.

After reviewing the feedback from HDOH and the public, the industry group developed revised recommendations, outlined below.

## **CURRENT LEGAL FRAMEWORK**

Hawai‘i Revised Statutes Section 328-11 provides HDOH with the authority to prescribe regulations providing for the issuance of permits for the manufacturing, processing, and packing of foods that may pose a health risk to consumers by reason of contamination with microorganisms. Pursuant to this authority, the Hawai‘i Department of Health has adopted the “Food Safety Code” (Hawai‘i Administrative Rules, Chapter 11-50), which requires “food establishments” and “temporary food establishments” to undergo a permitting process for the sale of food to the public.

### **Food Establishments**

HDOH defines “food establishments” as any place used for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, or otherwise handling food at the retail or wholesale level, and any operation where food is provided to the public, with or without charge. Food establishments include restaurants, cafes, coffee shops, and grocery stores. All food establishments must operate with a valid permit from HDOH, with exceptions including establishments selling only whole uncut fruits and vegetables and establishments selling only prepackaged, shelf-stable foods.

The Food Safety Code requires food establishment kitchens and facilities to receive certification from HDOH. The requirements for certified kitchens include a number of specific equipment and building parameters.

The Food Safety Code prohibits food establishments from selling food made in a private kitchen.

### **Temporary Food Establishments (“TFE”)**

HDOH defines “temporary food establishments” as any food establishment that operates at a fixed location for a limited period of time and does not exceed 20 days in any 120-day period and does not sell products to other food establishments. Temporary food establishments include farmers markets and community events such as fairs, sporting events, and bake sales.

HDOH allows the sale of homemade non-potentially hazardous foods at temporary food establishments, including cookies, breads, jams, jellies, candies, chocolates, whole produce, cut fruit (except for cantaloupes, melons, and tomatoes), cotton candy, dry herbs, nuts, rubs, and spices. However, such foods may only be sold directly to consumers and may not be sold to other food establishments. Potentially hazardous foods (foods that require temperature controls to limit bacterial growth) sold at temporary food establishments must be produced in a certified kitchen.

### **Limitations of Current Regulatory Framework**

The current regulatory framework creates several challenges for value-added food producers in Hawai‘i, including:

1. Restricting sales of homemade food to direct-to-consumer sales, even when products are non-potentially hazardous.
2. Restricting sales of homemade food to 20 days within any 120-day period (per temporary food establishment location), even when products are non-potentially hazardous.

In order to overcome these challenges, producers of non-potentially hazardous foods must produce food in a certified kitchen that adheres to HDOH’s requirements. Acquiring land and building a commercial kitchen is an expensive endeavor that is unaffordable for many new and small businesses. With respect to leasing certified kitchen space, there are very few certified kitchens available for rent in Hawai‘i, especially in rural areas. For example, Hawai‘i Island’s Puna and Kona Districts lack any certified

community kitchens, and the entire island of Kaua‘i lacks any certified community kitchens, although one is currently under construction on the north shore.

For the few certified community kitchens that are available, use of these facilities is unfeasible for many producers. Hourly rental rates quickly become cost prohibitive for small food businesses, especially for those who make foods with long processing times, such as dried fruit. In addition, many community kitchens have limited equipment and insufficient space for storage and refrigeration, which restricts the types and quantities of products that may be produced. Low population density in rural areas often means that certified community kitchens, if available, are many miles away. With gas prices in Hawai‘i being the highest in the nation, traveling long distances can be cost prohibitive for small businesses.

## **RECOMMENDATIONS FOR HOMEMADE FOOD OPERATIONS IN HAWAI‘I**

In order to mitigate the challenges facing value-added food producers in Hawai‘i while protecting public health, the industry group proposes the following recommendations for a new legal framework for homemade food operations in Hawai‘i, defined as an enterprise that produces – in a home or farm kitchen that conforms to the building code of the county in which the kitchen is located – allowable foods for sale to the public. Laws applicable to homemade food operations would not apply to temporary food establishments.

The proposed regulatory framework draws upon cottage food laws adopted by forty-one states and includes the following elements to minimize the risk of foodborne illness:

- A. Food Safety Training;
- B. Safe Food Handling Guidelines;
- C. Product Labeling;
- D. Limiting the Types of Allowable Foods for Home Production; and
- E. Permits.

### **A. FOOD SAFETY TRAINING**

#### ***Recommendation:***

Homemade food operations must demonstrate adequate food safety training by completing one of the following training courses and passing the accompanying food safety test:

1. eFoodHandlers™ Basic Food Safety Course, offered online at [www.hifoodhandlers.com](http://www.hifoodhandlers.com); or
2. ServSafe® Food Handler Program, offered online at [www.servsafe.com/ss/foodhandler](http://www.servsafe.com/ss/foodhandler); or
3. HDOH’s two-day Food Safety Certification Workshop, offered in person.

#### ***Rationale:***

It is well established that certain food-handling practices can prevent or reduce the risk of foodborne illness. Under current rules and regulations, Hawai‘i encourages but does not require food handler training. The industry group recommends that homemade food operations complete basic food handler training to ensure that these operations understand common foodborne illnesses and key food handling practices.

HDOH currently offers a voluntary two-day Food Safety Certification Workshop at no cost. However, requiring all homemade food operations to take this course would require HDOH to increase the availability of these workshops, at a significant cost to HDOH.



Instead, the industry group recommends that in addition to offering a free Food Safety Certification Workshop, the State should accept one or more online food safety courses as proof of adequate training for homemade food operations. Online food safety courses are easily accessible, affordable, and currently accepted as adequate food safety training by numerous jurisdictions across the country that mandate food safety training for food handlers.

For example, [hifoodhandlers.com](http://hifoodhandlers.com) offers the eFoodHandlers™ Basic Food Safety Course, a 90-minute online course offering core training for food servers, handlers, and preparers, followed by a test. California, Texas, Illinois, Arizona, and Oregon accept the eFoodHandlers™ online Basic Food Safety Course as adequate food handler training. The eFoodHandlers™ course and test are free, while proof of course completion costs \$10.

In addition, the National Restaurant Association offers the ServSafe® Food Handler Program, a 90-minute online course on basic food safety covering personal hygiene, cross-contamination and allergens, time and temperature controls, and cleaning and sanitation, followed by a test. California, Alaska, Oregon, Illinois, and Florida, as well as numerous counties across the country, accept the ServSafe® online Food Handler Program as adequate food handler training. The ServSafe® Food Handler Program costs \$15.

## **B. SAFE FOOD HANDLING GUIDELINES**

### ***Recommendation:***

Homemade food operations must comply with the safe food handling guidelines taught in an approved food safety training course, as well as the following requirements:

1. No [homemade] food preparation, packaging, or handling may occur in the home kitchen concurrent with any other domestic activities, such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.
2. No infants or pets may be in the home kitchen during the preparation, packaging, or handling of any [homemade] food products.
3. Kitchen equipment and utensils used to produce [homemade] food products shall be clean and maintained in a good state of repair.
4. All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any [homemade] food products shall be washed, rinsed, and sanitized before each use.
5. All food preparation, and food and equipment storage areas shall be maintained free of rodents and insects.
6. Smoking shall be prohibited in the portion of a private home used for the preparation, packaging, storage, or handling of [homemade] food products and related ingredients or equipment, or both, while [homemade] food products are being prepared, packaged, stored, or handled.<sup>1</sup>

### ***Rationale:***

As indicated above, it is well established that certain food handling practices can prevent or reduce the risk of foodborne illness. To protect public health, homemade food operations should be required to comply with safe food handling guidelines.

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<sup>1</sup> California Homemade Food Act (California Health and Safety Code, Section 114365(a)(1)(A)), available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_1601-1650/ab\\_1616\\_bill\\_20120921\\_chaptered.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1601-1650/ab_1616_bill_20120921_chaptered.html).

The above-listed requirements are consistent with the requirements of the California Homemade Food Act.

### **C. LABELING**

#### ***Recommendation:***

All homemade food products produced and sold pursuant to a homemade food operation permit must include a label indicating that the product was “Made in a home kitchen that has not been inspected by the Hawai‘i Department of Health,” along with the name and address of the producer and an ingredient list by weight.

Homemade food operations selling acidified foods must also comply with United States Food & Drug Administration (FDA) labeling requirements.

#### ***Rationale:***

Notifying consumers that the product was made in a home kitchen allows consumers to differentiate between products processed in a commercial kitchen that is routinely inspected by HDOH and products made in a home or farm kitchen. Requiring the name and address of the producer allows HDOH to contact homemade food operators in the event of a consumer complaint. Ingredient lists inform consumers and HDOH of the content of the product to ensure that the product is an allowable food for homemade production.

### **D. ALLOWABLE FOODS FOR HOME PRODUCTION**

#### ***Recommendation:***

Homemade food operators may produce and sell non-potentially hazardous foods, based on water activity ( $A_w$ ) and pH, as defined in the Food Safety Code (see below).

Non-potentially hazardous foods include, but are not limited to:

1. Baked goods, such as breads, biscuits, churros, cookies, pastries, and tortillas
2. Candy, such as brittle and toffee
3. Chocolate-covered nonperishable foods, such as nuts and dried fruit
4. Jams, jellies, preserves, chutneys, and fruit butters
5. Whole produce
6. Cut fruit (except for cantaloupe, melon, and tomatoes)
7. Cotton candy
8. Shave ice
9. Doughnuts, andagi, mochi
10. Dried fruit
11. Dried pasta
12. Dry baking mixes
13. Dry herbs, herb blends, and seasoning blends and rubs
14. Fruit pies
15. Nuts
16. Granola, dry cereal, and trail mixes
17. Nut mixes and nut butters
18. Popcorn
19. Roasted coffee and dried tea
20. Vinegar and mustard
21. Waffle cones and pizelles
22. Fresh fruit juice made from fruits other than cantaloupe, melon, and tomatoes

23. Hand-pounded poi
24. Some sauces and liquids/beverages
25. Pickles and acidified foods
26. Fermented foods

With respect to items 24-26, HDOH shall require homemade food operators to submit these items to a process authority – a qualified person recognized by HDOH as having expert knowledge acquired through appropriate training and experience in the processing of such foods – for product testing and production process review and recommendations.

In addition, homemade food operators must comply with FDA acidified food regulations (21 CFR 114), including the completion of an approved food processing course.<sup>2</sup> Producers of acidified foods shall acidify foods to the Hawai'i Master Food Preservers accepted pH range of 3.5-4.0 for acidified foods produced in the tropics.

Homemade potentially hazardous foods may not be sold to the public. Such foods include, but are not limited to:

1. Low-acid canned foods
2. Refrigerated foods
3. Frozen foods
4. Dairy products
5. Seafood products
6. Dried meats and fish

***Rationale:***

Under current HDOH rules, “potentially hazardous food” means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation. Potentially hazardous food does not include a food that, because of its pH or  $A_w$  value, or interaction of  $A_w$  and pH values, is designated as a non-potentially hazardous food by the HDOH.

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<sup>2</sup> Dr. Aurora A. Saulo, Extension Specialist in Food Technology, College of Tropical Agriculture & Human Resources (CTAHR) University of Hawai'i at Mānoa Cooperative Extension Service Food Technology Program offers a “Better Process Control School For Managers and Supervisors of Food Processing Operations” (<http://manoa.hawaii.edu/ctahr/pacific-afsp/wp-content/uploads/2012/06/Brochure-Aug6-9-20132.pdf>), which meets FDA training requirements for the production of acidified foods. North Carolina State University has developed an “Acidified Foods Manufacturing School” program, comprised of an online segment and an in-person segment (<http://foodsafety.ncsu.edu/acidified-foods-manufacturing-school-ncsu/>), which meets the FDA training requirement for the production of acidified foods. Fletcher Arritt, Ph.D., the developer of the North Carolina State University course and the director of the Entrepreneurial Initiative for Food Program within North Carolina State University's Department of Food, Bioprocessing and Nutrition Sciences Extension Program, designed the course so that other universities, such as the University of Hawai'i, could offer the in-person segment. In addition, University of California, Division of Agriculture and Natural Resources, offers an online Better Process Control School, which meets FDA requirements ([http://www.fruitandvegetable.ucdavis.edu/Cooperative\\_Extension\\_Short\\_Courses/Better\\_Process\\_Control\\_School\\_Online/](http://www.fruitandvegetable.ucdavis.edu/Cooperative_Extension_Short_Courses/Better_Process_Control_School_Online/)).

Hawai'i's Food Safety Code designates foods with the following pH and  $A_w$  values as non-potentially hazardous (PHF):

1. Heat treated foods:

$A_w$ values	pH values		
	4.6 or less	> 4.6 to 5.6	> 5.6
$\leq 0.92$	non-PHF	non-PHF	non-PHF
>0.92 to 0.95	non-PHF	non-PHF	Product Assessment Required
>0.95	non-PHF	Product Assessment Required	Product Assessment Required

2. Non-heat treated foods or heat-treated but not packaged foods

$A_w$ values	pH values			
	< 4.2	4.2 to 4.6	> 4.6 to 5.0	> 5.0
<0.88	non-PHF	non-PHF	non-PHF	non-PHF
0.88 to 0.90	non-PHF	non-PHF	non-PHF	Product Assessment Required
>0.90 to 0.92	non-PHF	non-PHF	Product Assessment Required	Product Assessment Required
>0.92	non-PHF	Product Assessment Required	Product Assessment Required	Product Assessment Required

HDOH currently considers the following foods to be non-potentially hazardous: cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices.

### Acidified Foods

Foods to which an additive, such as vinegar, is added as a method of preservation or reducing pH to render the food non-potentially hazardous are called "acidified foods" and are subject to specific state and federal rules. Under HDOH rules, a producer must apply to HDOH for a variance to produce an acidified food product. HDOH may grant a variance by modifying or waiving the requirements of the Hawai'i Food Safety Code if in the opinion of HDOH a health hazard or nuisance will not result from the variance. Other than jams and jellies, HDOH currently considers all acidified foods to be potentially hazardous and prohibits the sale of homemade acidified foods.

Registered home food processors in Pennsylvania, Maine, and North Carolina have been safely producing homemade acidified foods for decades. See **Appendix E** for a letter from Sheri L. Morris, Food Program Manager with the Pennsylvania Department of Agriculture, Bureau of Food Safety and Laboratory Sciences, indicating a lack of foodborne illness outbreaks associated with any registered home food processor in the state. During phone conversations, North Carolina's Department of Agriculture and Consumer Services (NCDA&CS) Food & Drug Protection Division and North Carolina State University's Department of Food, Bioprocessing and Nutrition Sciences Extension Program (which conducts product testing for NCDA&CS) have indicated a lack of awareness of foodborne illness outbreaks associated with registered home food processors making acidified foods in the state.

In Pennsylvania:

“Limited Food Establishment Producers may only “can” food products that reach a pH of 4.6 or less upon completion of the recipe (a combination of pH (acid level) and Available Water (Aw) may also be tested). Examples of [t]ypes of food products that might be approved include: salsa, chow-[c]how, pickled beets, pickled vegetables, hot sauces, and barbeque sauce. Producers of Acidified Foods must have written recipes/formulas and procedures. You will need to provide a Process Flow for your products and have it approved by your Sanitarian prior to registration and sale of your product. This does not apply to Acid or Fermented Foods. If you are unsure if your product is considered an Acidified Food, please discuss with your Sanitarian.”<sup>3</sup>

Similarly, NCDA&CS, Food & Drug Protection Division, allows sales of homemade acidified foods following:

1. Submission of an application for home processing inspection (<http://www.ncagr.gov/fooddrug/food/documents/homeprocessor8.pdf>);
2. A satisfactory home inspection;
3. Successful completion of the North Carolina State University Acidified Foods School for Entrepreneurs or an equivalent FDA certified course;
4. Product testing by a process authority, such as the Department of Food, Bioprocessing and Nutrition Sciences, North Carolina State University ([http://fbns.ncsu.edu/extension\\_program/food\\_product\\_testing.html](http://fbns.ncsu.edu/extension_program/food_product_testing.html)); and
5. Receipt of a process authority letter for submission to the FDA.

Maine and Mississippi also allow the sale of homemade acidified foods following product testing, and Kentucky allows sales of homemade acidified foods produced by farmers (called “home-based microprocessors”). In addition, Alaska considers acidified foods, fermented foods, and certain sauces and liquids to be non-potentially hazardous and permits sales of these homemade items following product testing. A complete list of allowed foods in Alaska can be found at: [http://dec.alaska.gov/eh/fss/Food/Docs/Cottage\\_Food\\_Exemptions.pdf](http://dec.alaska.gov/eh/fss/Food/Docs/Cottage_Food_Exemptions.pdf).

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<sup>3</sup> Pennsylvania Department of Agriculture, Bureau of Food Safety & Laboratory Sciences, Letter to Limited Food Establishment Applicants, available at [http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_2\\_24476\\_10297\\_0\\_43/agwebsite/Files/Forms/APPLICATION%20PACKET%20-%20LIMITED%20FOOD%20ESTABLISHMENT%2006-2014.pdf](http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_24476_10297_0_43/agwebsite/Files/Forms/APPLICATION%20PACKET%20-%20LIMITED%20FOOD%20ESTABLISHMENT%2006-2014.pdf)

The FDA does not prohibit the sale of acidified foods<sup>4</sup> produced in a home kitchen. Under FDA rules, commercial processors, including home processors, of acidified foods are required to:

- Register with the FDA on Form FDA 2541.
- File a scheduled process with the FDA on Form FDA 2541a demonstrating that the acidified food is made pursuant to a scheduled process established by “a qualified person who has expert knowledge acquired through appropriate training and experience in the acidification and processing of acidified foods” (21 CFR 114.83)
- Operate under the supervision “of a person who has attended a school approved by the Commissioner for giving instruction in food-handling techniques, food-protection principles, personal hygiene and plant sanitation practices, pH controls and critical factors in acidification, and who has been identified by that school as having satisfactorily completed the prescribed course of instruction (21 CFR 114.10).
- Test and examine containers often enough to ensure that the container suitably protects the food from leakage or contamination (21 CFR 114.80(a)).
- Mark each container or product with an identifying code permanently visible to the naked eye. The code shall specify the establishment where the product was packed, the product contained therein, and the year, day, and period during which it was packed (21 CFR 114.80(b)).

HDOH’s blanket prohibition on the sale of homemade acidified foods (except for jams and jellies) is unnecessary under FDA rules and does not consider that some acidified foods may be safely produced in a home kitchen by experienced and knowledgeable food producers that adhere to proven and consistent processes and comply with FDA rules.

The FDA does not consider fermented foods to be an acidified food, and has noted that it “could not find reports of cases of botulism caused by commercially processed fermented foods (44 FR 16204 at 16204; 44 FR 16230 at 16231).”<sup>5</sup>

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<sup>4</sup> Under federal law (21 CFR 114.3), the term “acidified foods” is defined as “low-acid foods to which acid(s) or acid food(s) are added; these foods include, but are not limited to, beans, cucumbers, cabbage, artichokes, cauliflower, puddings, peppers, tropical fruits, and fish, singly or in any combination. They have a water activity ( $a_w$ ) greater than 0.85 and have a finished equilibrium pH of 4.6 or below. These foods may be called, or may purport to be, “pickles” or “pickled \_\_\_\_.” Carbonated beverages, jams, jellies, preserves, acid foods (including such foods as standardized and non-standardized food dressings and condiment sauces) that contain small amounts of low-acid food(s) and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid or acid food, and foods that are stored, distributed, and retailed under refrigeration are excluded from the coverage of this part.”

The following foods are not subject to the FDA’s acidified food regulations:

1. Acid foods (natural or normal pH equal to 4.6 or below)
2. Acid foods (including such foods as standardized and non-standardized food dressings and condiment sauces) that contain small amounts of low-acid foods and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid food. If there is a question about whether a product is covered under the regulations, the FDA requires producers to describe the product, submit a quantitative formula, list pH ranges for each ingredient, and submit pH data on finished product from several production lots.
3. Alcoholic beverages
4. Carbonated beverages
5. Fermented foods
6. Foods with water activity ( $A_w$ ) of 0.85 or below
7. Jams, jellies, or preserves covered by 21 CFR 150

<sup>5</sup> FDA Draft Guidance for Industry: Acidified Foods, September 2010, available at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/AcidifiedLACF/ucm222618.htm#III-C>.

## E. PERMITS

### *Recommendation:*

Homemade food operations must apply for an annual “Homemade Food Operation Permit” from HDOH.

The Homemade Food Operation Permit shall be available in two classes:

- Class A, which allows direct-to-consumer sales of items 1-23 on the list of allowed foods, above.
- Class B, which allows direct-to-consumer sales and wholesaling of items 1-26 on the list of allowed foods, above. In order to receive a Class B permit, homemade food operations shall submit to and pass an inspection by HDOH and must successfully complete advanced food safety training, such as the ServSafe® Manager Course, available online for \$125 (online exams must be proctored) (<http://www.servsafe.com/manager/food-safety-training-and-certification>). Homemade food produced under a Class B permit shall be an approved source for food establishments in the state. Sales to distributors shall not be permitted.

Homemade Food Operation Permits will be issued to homemade food operations that:

1. are producing allowable foods;
2. operating in a designated home or farm kitchen that conforms to the building code of the county in which the kitchen is located;
3. have complied with product testing and process verification requirements for the production of items 24-26 on the list of allowed foods, above,
4. have passed inspection (for Class B permits only); and
5. for which the operator has completed all required training.

Homemade food operations seeking to sell food outside of the state must comply with federal regulations, including labeling, ingredients, preparation and handling requirements, as well as the state and local laws of the jurisdiction to which the food is sent.

HDOH shall charge a reasonable permit fee for Class B permits, which fee shall take into account HDOH staff time required to complete inspections and execute other administrative requirements.

### *Rationale:*

HDOH currently allows home-based production of non-potentially hazardous foods under a temporary food establishment (“TFE”) permit. TFE permits allow homemade food producers to sell their products at a specific location, such as a farmers’ market or bake sale, for a maximum of 20 days of sale in any 120-day window at that location. A producer may hold multiple TFE permits to sell at multiple locations, and permits may be renewed. The TFE permit allows direct sales to consumers only. The TFE permit does not allow homemade food producers to sell their products to food establishments that have received a permit from HDOH, such as a supermarket or a restaurant, since HDOH considers residential kitchens to be an unapproved food source for permitted food establishments within the state.

In August and September of 2014, HDOH received 1,027 TFE applications (approximately 513 per month). Of these applications, approximately 850 were for the production of potentially hazardous foods and required a certified kitchen (approximately 425 per month). Approximately 177 TFE applications were for the production of non-potentially hazardous foods (approximately 88 per month), and, of these, about 79 were to produce food at home (approximately 39 applications per month). Of the 79 homemade food TFE permits, 11 entities accounted for 46 of the applications. The other 33 applications were various entities with some overlap. The most prevalent homemade food items for sale were:

- kettle corn/popcorn;
- baked goods (cookies, cakes, cupcakes, and breads);
- shave ice;
- jams, jellies, chutneys;
- doughnuts, andagi, mochi (deep fried foods);
- cotton candy; and
- coffee products.

The proposed Homemade Food Operation Permit would differ from the TFE permit in the following ways:

	<b>Homemade Food Operation Permit, Class A</b>	<b>Homemade Food Operation Permit, Class B</b>	<b>TFE Permit</b>
<b>Period</b>	Annual	Annual	120 days
<b>Applicable Area</b>	Home or farm kitchen	Home or farm kitchen	Sales location ( <i>e.g.</i> , farmers' market)
<b>Sales Limit</b>	None	None	20 days of sale within a 120-day period per sales location
<b>Allowed Sales</b>	Direct-to-consumer only	Direct-to-consumer and wholesaling (no sales to distributors)	Direct-to-consumer only
<b>Food Safety Training</b>	Basic training required	Advanced training required, plus FDA-approved food processing course for sale of acidified foods	Not required
<b>Inspection</b>	None	Pre-permit inspection required	None

The Homemade Food Operation Permit would ensure that:

1. Homemade food operators have completed required training, are producing allowable foods in a safe manner, and are aware of safe food handling guidelines and labeling requirements; and
2. HDOH can provide guidance on allowable foods, refer products for testing when appropriate, and stay apprised of homemade food operations.

#### Wholesaling

Under a Homemade Food Operation Permit, Class B, producers would be allowed to wholesale their products; however, sales to distributors would not be permitted. This rule is consistent with the approach in 10 states, which allow wholesaling of homemade food products either explicitly or implicitly, including California, Louisiana, Maine, Massachusetts, New Hampshire, New York, North Carolina, Ohio, Pennsylvania and Utah.

HDOH's rationale for restricting homemade food operations to direct-to-consumer sales, even when products are non-potentially hazardous, is that the limitation lessens the risk of harm to the public by reducing the quantity of product that a homemade food producer may sell. However, the risk to public health from homemade food is substantially limited by restricting sales of homemade food products to low-risk foods made by producers that have completed advanced food safety training and in some cases



food preservation training. These education requirements exceed the requirements imposed on producers manufacturing food in a certified kitchen.

#### Internet Sales

Internet sales should be allowed under the Homemade Food Operation Permit consistent with the class of permit received. Thus, a Class A permit would allow direct-to-consumer internet sales, while a Class B permit would allow direct-to-consumer sales and wholesaling (other than sales to distributors) via the internet.

#### Inspections

HDOH currently has 50 staff positions for food establishment inspectors, of which 8 positions are vacant. HDOH expects to fill these vacancies in the coming months. There are currently 10,093 food establishments within the state, which HDOH divides into three risk categories depending on the technical complexity of the food operation and its associated risk. Although there is no legally mandated inspection frequency, HDOH is striving to meet the following inspection schedule for food establishments:

- Category 1 (highest risk) – 3 times per year
- Category 2 (medium risk) – 2 times per year
- Category 3 (low risk) – annually

Category 1 generally includes full-service restaurants (raw-prepare-cook-cool-reheat-serve operations), such as L&L Hawaiian Barbecue, 3660 on the Rise, and school kitchens. Category 2 generally includes fast foods restaurants (raw meats-cook-serve operations), such as McDonald's and Burger King. Category 3 generally includes ice cream shops, cookie shops, mom and pop package stores (minimal cook/prepare-serve operations). Almost all homemade food operations would be in Category 3 – a low risk facility in regards to food safety.

HDOH currently has the right to investigate reports of foodborne illness from foods produced in any kitchen, and may “order operators to cease and desist the sale of foods as the result of any food illness investigation or suspected adulteration that may have or has caused injuries as a result of consuming foods being offered for sale or distribution.”<sup>6</sup>

Risk can be further mitigated by requiring HDOH to inspect Class B homemade food operations prior to permitting. In California, a cottage food business may apply for a Class B permit that allows wholesaling and subjects the business to an initial inspection by the local enforcement agency. In North Carolina, home-based food businesses seeking to sell acidified foods must submit an “Application for Home Processor Inspection” and submit to and pass an inspection by NCDA&CS, Food and Drug Protection Division. Delaware, Georgia, New Hampshire, New Mexico, New York, Maine, Massachusetts, Oregon, Pennsylvania, Tennessee, Vermont, and Washington also conduct home inspections.

HDOH has expressed reservations about entering residences to conduct inspections due to fears that a disgruntled homemade food operator may physically harm an inspector or unjustly accuse an inspector of impropriety. HDOH is currently willing to enter residences to permit a kitchen, so long as the kitchen is in an area with a separate entrance, such as a garage. In addition, several governmental agencies in Hawai'i conduct home inspections, including the Hawai'i County Public Works Building Division, which

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<sup>6</sup> Testimony of Gary L. Gill, Deputy Director, Environmental Health Administration, Hawai'i Department of Health, to the Hawai'i State Senate Committee on Commerce and Consumer Protection, Committee on Ways and Means (February 26, 2014), available at [http://www.capitol.hawaii.gov/Session2014/Testimony/SB2561\\_SD1\\_TESTIMONY\\_CPN-WAM\\_02-26-14\\_LATE.PDF](http://www.capitol.hawaii.gov/Session2014/Testimony/SB2561_SD1_TESTIMONY_CPN-WAM_02-26-14_LATE.PDF)

conducts inspections in connection with building permits, and the Hawai‘i Department of Human Services, which conducts home inspections for family child care homes and foster homes.

Section 5-14 of the Hawai‘i County Building Code states:

“Upon presentation of proper credentials, the administrative authority or such person’s assistants may enter at reasonable times any building or premises in the County to perform any duty imposed by this code, provided that such entry shall be made in such a manner as to cause the least possible inconvenience to the persons in possession. An order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted.”

Chapter 17-891.1-3 of the Hawai‘i Administrative Rules states:

- (a) “In exercising its authority to register family child care homes or renew, suspend, or revoke the certificate of registration, the [Department of Human Services] shall analyze the qualifications of the providers of child care, review the home’s written policies and program provisions, and inspect the home. Authorized representatives of the department and parents and guardians of children in care may visit a family child care operation for purpose of observing, monitoring, and inspecting the facilities, activities, staffing, and other aspects of the child care home. The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies’ authorized fields.
- (b) The applicant or registrant shall cooperate with the department by providing access to its facilities, records, and staff. Failure to cooperate with reasonable requests may constitute grounds for denial, suspension, or revocation of the certificate of registration.”

HDOH’s safety and liability concerns could be ameliorated by any of the following: (1) implementing a buddy system for inspectors, (2) providing homemade food operators with a pre-inspection checklist so that expectations are clear, (3) reserving feedback and decisions for written communications to be shared with the operation following the inspection, and/or (4) allowing inspectors to wear body cameras to document an inspection.

To facilitate transparency with the public, HDOH shall maintain online a list of homemade food operations for which permits have been suspended and revoked.

## **F. ADDITIONAL CONSIDERATIONS**

### ***Zoning***

For the purposes of zoning, a homemade food operation shall be considered a residential use of property and shall be a permitted use in all residentially designated zones, including but not limited to zones for single-family dwellings. No conditional use permit, variance, or special exception shall be required for residences used as a homemade food operation.

### ***Nuisance Complaints***

HDOH has a duty to respond to complaints alleging food borne illness, but not to investigate complaints that are not related to food safety (*e.g.*, noise, odor, traffic).

### ***Potable Water***

Homemade food operations shall use potable water.

### *Grease*

Homemade food operations shall not discard cooking oil or grease into the kitchen sink or the toilet bowl, and shall not use hot water and soap to wash grease down the drain. Instead, homemade food operations shall place cooled cooking oil in sealed non-recyclable containers and discard such containers with the regular garbage, and shall use paper towels to wipe off residual grease or oil from dishes, pots and pans prior to washing.

## APPENDIX A

### MEMBERS OF THE COTTAGE FOOD BUSINESS WORKING GROUP

- Scott Enright, Chairperson, Hawai'i Department of Agriculture
- Senator Russell Ruderman, Hawai'i State Senator (Puna) and Owner, Island Naturals
- Peter Oshiro, Environmental Health Program Manager, Sanitation/Food and Drug/Vector Control, Hawai'i Department of Health
- Kyle Datta, General Partner, Ulupono Initiative (O'ahu)
- Mark Ferguson, Chief Organic Officer, Down to Earth (O'ahu)
- Terri Langley, MA'O Organic Farm (O'ahu)
- Brandon Lee, Investment Associate, Ulupono Initiative (O'ahu)
- Ken Love, Executive Director, Hawai'i Master Food Preservers, and Executive Director, Hawai'i Tropical Fruit Growers (Hawai'i Island)
- Janine Lynne, Owner, Black Dog Farms (Kaua'i)
- Nicole Milne, Associate Vice President for Programs, The Kohala Center (Hawai'i Island)
- Christina Oatfield, Policy Director, The Sustainable Economies Law Center (California)
- Anna-Lisa Okoye, The Kohala Center (Hawai'i Island)
- Jamie Ronzello, Owner, Barking Deer Farm (Moloka'i)
- Dr. Chris Speere, Maui Culinary Academy & 'Made on Maui' labeling (Maui)

## **APPENDIX B**

### **RECOMMENDATIONS ON HOMEMADE FOOD OPERATIONS IN HAWAI‘I**

**Report 5**  
**Recommendations on Homemade Food Operations in Hawai'i**

**October 24, 2014**

**Prepared by: The Kohala Center**  
**For Ulupono Initiative and the Cottage Food Industry Working Group**

## INTRODUCTION

The following recommendations on homemade food operations in Hawai‘i were developed by several members of the Hawai‘i cottage food industry group on October 15, 2014, in response to legislative mandate S.C.R. No. 97 (2014). These recommendations propose a new regulatory framework for homemade food operations. We invite the Hawai‘i Department of Health (“HDOH”) and the public to provide feedback on the pros and cons of the recommendations.

In developing the recommendations, the industry group was guided by the following principles:

- Food safety is essential
- Education and training are important means of achieving food safety
- Proper product labeling is necessary
- Permits can help promote regulatory compliance
- Local food production is integral to Hawai‘i’s economic development and food security
- HDOH requires sufficient resources to implement laws and regulations

The industry group also acknowledged state and federal mandates to increase local food production, including:

- Hawai‘i’s “Increased Food Security and Food Self-Sufficiency Strategy,” which notes that replacing just 10% of the food Hawai‘i currently imports would amount to approximately \$313 million dollars remaining in the State’s economy (Office of Planning, Department of Business Economic Development & Tourism); and
- The United States Department of Agriculture’s allocation of \$27 million in competitive grants to support local food efforts such as food hubs and local processors.

The industry group designed the following recommendations to minimize the risk of foodborne illness through the following efforts:

- Training
- Sanitary guidelines
- Proper product labeling
- Permits

## **CURRENT LEGAL FRAMEWORK**

Hawai‘i Revised Statutes Section 328-11 provides HDOH with the authority to prescribe regulations providing for the issuance of permits for the manufacturing, processing, and packing of foods that may pose a health risk to consumers by reason of contamination with microorganisms. Pursuant to this authority, the Hawai‘i Department of Health has adopted the “Food Safety Code” (Hawai‘i Administrative Rules, Chapter 11-50), which requires “food establishments” and “temporary food establishments” to undergo a permitting process for the sale of food to the public.

### **Food Establishments**

HDOH defines “food establishments” as any place used for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, or otherwise handling food at the retail or wholesale level, and any operation where food is provided to the public, with or without charge. Food establishments include restaurants, cafes, coffee shops, and grocery stores. All food establishments must operate with a valid permit from HDOH, with exceptions including establishments selling only whole uncut fruits and vegetables and establishments selling only prepackaged, shelf-stable foods.

The Food Safety Code requires food establishment kitchens and facilities to receive certification from HDOH. The requirements for certified kitchens include a number of specific equipment and building parameters.

The Food Safety Code prohibits food establishments from selling food made in a private kitchen.

### **Temporary Food Establishments (“TFE”)**

HDOH defines “temporary food establishments” as any food establishment which operates at a fixed location for a limited period of time and does not exceed 20 days in any 120-day period and does not sell products to other food establishments. Temporary food establishments include farmers markets and community events such as fairs, sporting events, and bake sales.

HDOH allows the sale of homemade, non-potentially hazardous foods at temporary food establishments, including cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices. However, such foods may only be sold directly to consumers and may not be sold to other food establishments. Potentially hazardous foods (foods that require temperature controls to limit bacterial growth) sold at temporary food establishments must be produced in a certified kitchen.

### **Limitations of Current Regulatory Framework**

The current regulatory framework creates several challenges for value-added food producers in Hawai‘i, including:

1. Restricting sales of homemade food to direct-to-consumer sales, even when products are non-potentially hazardous.
2. Restricting sales of homemade food to 20 days within any 120-day period (per temporary food establishment location), even when products are non-potentially hazardous.

In order to overcome these challenges, producers of non-potentially hazardous foods must produce food in a certified kitchen that adheres to HDOH’s requirements. Acquiring land and building a commercial kitchen is an expensive endeavor that is unaffordable for many new and small businesses. With respect to leasing certified kitchen space, there are very few certified kitchens available for rent in Hawai‘i, especially in rural areas. For example, Hawai‘i Island’s Puna and Kona Districts lack any certified community kitchens, and the entire island of Kaua‘i lacks any certified community kitchens, although one is currently under construction on the north shore.



For the few certified community kitchens that are available, use of these facilities is unfeasible for many producers. Hourly rental rates quickly become cost prohibitive for small food businesses, especially for those who make foods with long processing times, such as dried fruit. In addition, many community kitchens have limited equipment and storage and refrigeration space, which restricts the types and quantities of products that may be produced. And low population density in rural areas often means that certified community kitchens, if available, are many miles away. With average gas prices in Hawai'i averaging over \$4 per gallon, traveling long distances can be cost prohibitive for small businesses.

# RECOMMENDATIONS FOR HOMEMADE FOOD OPERATIONS IN HAWAI‘I

In order to mitigate the challenges facing value-added food producers in Hawai‘i, the industry group proposes the following recommendations for a new regulatory framework for homemade food operations in Hawai‘i, defined as an enterprise that produces – in a home or farm kitchen that conforms to the building code of the county in which the kitchen is located – allowable foods for sale to the public. Regulations applicable to homemade food operations would not apply to temporary food establishments.

The proposed regulatory framework draws upon cottage food laws adopted by forty-one states and includes the following elements:

- A. Food Safety Training
- B. Sanitary Guidelines
- C. Labeling
- D. Allowable Foods for Home Production
- E. Permits

## A. FOOD SAFETY TRAINING

### *Recommendation:*

Homemade food operations must demonstrate adequate food safety training by completing one of the following training courses and passing the accompanying food safety test:

1. eFoodHandlers™ Basic Food Safety Course, offered online at [www.hifoodhandlers.com](http://www.hifoodhandlers.com); or
2. ServSafe® Food Handler Program, offered online at [www.servsafe.com/ss/foodhandler](http://www.servsafe.com/ss/foodhandler); or
3. HDOH’s two-day Food Safety Certification Workshop, offered in person.

### *Rationale:*

It is well established that certain food-handling practices can prevent or reduce the risk of foodborne illness. Under current rules and regulations, Hawai‘i encourages but does not require food handler training. The industry group recommends that homemade food operations complete basic food handler training to ensure that these operations understand common foodborne illnesses and key food handling practices.

HDOH currently offers a voluntary two-day Food Safety Certification Workshop at no cost. However, requiring all homemade food operations to take this course would require HDOH to increase the availability of these workshops, at a significant cost to HDOH.

Instead, the industry group recommends that the State accept one or more online food safety courses as proof of adequate training for homemade food operations. Online food safety courses are easily accessible, affordable, and currently accepted as adequate food safety training by numerous jurisdictions across the country that mandate food safety training for food handlers.

For example, hifoodhandlers.com offers the eFoodHandlers™ Basic Food Safety Course, a 90-minute online course offering core training for food servers, handlers, and preparers, followed by a test. California, Texas, Illinois, Arizona, and Oregon accept the eFoodHandlers™ online Basic Food Safety Course as adequate food handler training. The eFoodHandlers™ course and test are free, while a food handler certificate indicating course completion costs \$10.

In addition, the National Restaurant Association offers the ServSafe® Food Handler Program, a 90-minute online course on basic food safety covering personal hygiene, cross-contamination and allergens,

time and temperature controls, and cleaning and sanitation, followed by a test. California, Alaska, Oregon, Illinois, and Florida, as well as numerous counties across the country, accept the ServSafe® online Food Handler Program as adequate food handler training. The ServSafe® Food Handler Program costs \$15.

## **B. SANITARY GUIDELINES**

### ***Recommendation:***

Homemade food operations must comply with standard industry sanitary guidelines for the production of allowable foods.

### ***Rationale:***

As indicated above, it is well established that certain food handling practices can prevent or reduce the risk of foodborne illness. To protect public health, homemade food operations should be required to comply with standard industry sanitary guidelines for the production of allowable foods.

## **C. LABELING**

### ***Recommendation:***

All homemade food products produced and sold pursuant to a homemade food operation permit must include a label indicating that the product was “Made in a home kitchen,” along with the name and address of the producer and an ingredient list.

### ***Rationale:***

Notifying consumers that the product was made in a home kitchen allows consumers to differentiate between products processed in a commercial kitchen that is routinely inspected by HDOH and products made in a home or farm kitchen. Requiring the name and address of the producer allows HDOH to contact homemade food operators in the event of a consumer complaint. Ingredient lists inform consumers and HDOH of the content of the product to ensure that the product is an allowable food for homemade production.

## **D. ALLOWABLE FOODS FOR HOME PRODUCTION**

### ***Recommendation:***

Any non-potentially hazardous food (based on pH) may be produced in a home kitchen. HDOH shall create and publish online a sample list of non-potentially hazardous foods to act as a guideline for home-based producers. The Department shall make it clear that the sample list is not exhaustive but only a reference point to make it easier for producers to understand some common non-potentially hazardous foods.

Foods for which the pH has been lowered by adding food additives or components such as vinegar to render the food so that it is non-potentially hazardous (“acidified foods”) may be produced in a home kitchen if the final product pH is 3.5 or below and if the producer completes advanced food preservation training. HDOH shall provide approved recipes and procedures for producing acidified foods. Commonly acidified foods include pickles, relishes, salsas, hot sauces, and salad dressings.

### ***Rationale:***

At present, HDOH considers the following foods to be non-potentially hazardous: cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices.

Under current HDOH rules, “potentially hazardous food” means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation. Potentially hazardous food does not include a food that because of its pH or water activity ( $A_w$ ) value, or interaction of  $A_w$  and pH values, is designated as a non-potentially hazardous food by the HDOH.

Current rules designate foods with the following pH and  $A_w$  values as non-potentially hazardous (PHF):

- Heat treated foods:

$A_w$ values	pH values		
	4.6 or less	> 4.6 to 5.6	> 5.6
$\leq 0.92$	non-PHF	non-PHF	non-PHF
>0.92 to 0.95	non-PHF	non-PHF	Product Assessment Required
>0.95	non-PHF	Product Assessment Required	Product Assessment Required

- Non-heat treated foods or heat-treated but not packaged foods

$A_w$ values	pH values			
	< 4.2	4.2 to 4.6	> 4.6 to 5.0	> 5.0
<0.88	non-PHF	non-PHF	non-PHF	non-PHF
0.88 to 0.90	non-PHF	non-PHF	non-PHF	Product Assessment Required
>0.90 to 0.92	non-PHF	non-PHF	Product Assessment Required	Product Assessment Required
>0.92	non-PHF	Product Assessment Required	Product Assessment Required	Product Assessment Required

If a food’s pH has been lowered by adding food additives or components such as vinegar to render the food so that it is non-potentially hazardous (“acidified foods”), current HDOH rules require processors to apply to HDOH for a variance in order to sell the acidified food. HDOH may grant a variance by modifying or waiving the requirements of the Hawai‘i Food Safety Code if in the opinion of HDOH a health hazard or nuisance will not result from the variance. Other than jams and jellies, HDOH currently considers all acidified foods to be potentially hazardous, prohibits the sale of homemade acidified foods, and refers acidified products for product testing, in accordance with US Food and Drug Administration (FDA) rules.

A blanket prohibition on the sale of homemade acidified foods does not consider that some acidified foods may be safely produced in a home kitchen by experienced and knowledgeable food producers that adhere to proven and consistent processes. In addition, some acidified foods are exempt from the FDA’s acidified food regulations, including:

- Acid foods (natural or normal pH equal to 4.6 or below)
- Acid foods (including such foods as standardized and non-standardized food dressings and condiment sauces) that contain small amounts of low-acid foods and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid food. If there

is a question about whether a product is covered under the regulations, the FDA requires producers to describe the product, submit a quantitative formula, list pH ranges for each ingredient, and submit pH data on finished product from several production lots.

- Alcoholic beverages
- Carbonated beverages
- Fermented foods
- Foods with water activity ( $A_w$ ) of 0.85 or below
- Jams, jellies, or preserves covered by 21 CFR 150.

## E. PERMITS

### *Recommendation:*

Homemade food operations must apply for an annual “homemade food operation permit” from HDOH (suggested fee: \$50). Permits will be issued to homemade food operators that have completed adequate food safety training and are producing allowable foods. The permit allows a homemade food operation to produce allowable foods in a designated home or farm kitchen that conforms to the building code of the county in which the kitchen is located, and allows HDOH the option to inspect homemade food operations, as long as HDOH provides the homemade food operator with at least 24 hours notice of the inspection. Refusing entry may constitute grounds for denial, suspension, or revocation of the permit.

### *Rationale:*

HDOH currently allows home-based production of non-potentially hazardous foods under a temporary food establishment (“TFE”) permit. TFE permits allow homemade food producers to sell their products at a specific location, such as a farmers market or bake sale, for a maximum of 20 days of sale in any 120-day window at that location. A producer may hold multiple TFE permits to sell at multiple locations, and permits may be renewed. The TFE permit allows direct sales to consumers only. The TFE permit does not allow homemade food producers to sell their products to food establishments that have received a permit from HDOH, such as a supermarket or a restaurant, since HDOH considers residential kitchens to be an unapproved food source for permitted food establishments within the state.

The proposed homemade food operation permit would differ from the TFE permit in the following ways:

	<b>Homemade Food Operation Permit</b>	<b>TFE Permit</b>
<b>Period</b>	Annual	120 days
<b>Applicable Area</b>	Home or farm kitchen	Sales location ( <i>e.g.</i> , farmers market)
<b>Sales Limit</b>	None	20 days of sale within a 120-day period per sales location
<b>Sales</b>	Direct and wholesale	Direct only
<b>Food Safety Training</b>	Required	Not required
<b>Inspection</b>	Allowed with 24 hours notice	None*

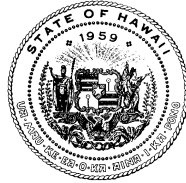
\*HDOH may order operators to cease and desist the sale of foods as the result of any food illness investigation or suspected adulteration that may have or has caused injuries as a result of consuming foods being offered for sale or distribution.

The homemade food operation permit would ensure that:

1. Homemade food operators have completed adequate food safety training, are producing allowable foods, and are aware of sanitary guidelines and labeling requirements; and
2. HDOH can provide guidance on allowable foods, stay apprised of homemade food operations, and inspect such operations at its discretion.

## APPENDIX C

### HAWAI‘I DEPARTMENT OF HEALTH COMMENTS ON “RECOMMENDATIONS ON HOMEMADE FOOD OPERATIONS IN HAWAI‘I”



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

In reply, please refer to:  
File:

November 28, 2014

Nicole Milne  
Homemade Food Operations Working Group

SUBJECT: DOH Comments to "***Recommendations for Homemade Food Operations in Hawaii***" Survey.

A. Food Safety Training

The DOH concurs that training and food safety knowledge is one of the key elements to prevent food illnesses or adulteration of food. The three examples given are all acceptable as basic food training for food industry personnel.

B. Sanitary Guidelines

This sounds good, but standard industry sanitary guidelines precludes the use of residential kitchens to manufacture or prepare food in any shape or manner. The FDA Model Food Code expressly prohibits the manufacture or preparation of food in home kitchens due to the fact that the great majority of home kitchens do not have the basic and necessary infrastructure to ensure food safety at the commercial level. Basic equipment and infrastructure such as restricted hand wash sinks, 3 compartment sinks or commercial grade dishwashers for proper sanitizing, lack of commercial exhaust hoods with air pollution and fire suppression devices, and restricted work areas, restricted food storage, commercial grade refrigerators to ensure temperature control, proper restricting of chemicals, access to licensed pest control operators, are just a few of the things that are required as standard industry sanitary guidelines and are lacking in most households. These are the basic reasons that food safety regulatory personnel do not allow phf's and other items out of home kitchens, and why we only allow direct to consumer sales of non-phf's.

C. Labeling

DOH would like the label changed to "Made In a Home Kitchen that has not inspected by the Department of Health". This is critical as the public must be informed that the home kitchens are not inspected.  
Other than that we concur with the intent of this section.

#### D. Allowable Foods for Home Production

I think there may be some semantic issues with this section. Acid foods that have a “natural” or “normal” pH and Aw according to the Time/Temperature Control for Safety (TCS) matrix shown MAY be considered (currently not allowed from home kitchens except jams/jellies) by DOH. DOH will need to look more closely at this, but will not provide a blanket exemption for these foods at this time.

Any bottled food has the potential to cause serious injury or death due to the modified atmosphere conditions created. Demonstration of controls to prevent C. botulinum is extremely difficult for expert commercial food processors much less home canners/bottlers.

If a food must be acidified by adding acid, because the natural or normal pH is above 4.6, then the FDA has complete jurisdiction over the product, and it will not be allowed to be produced in a home kitchen under any condition.

We will also not allow any dried meats/fish to be done in home kitchens regardless of the finished Aw. The drying process for these types of products must be closely monitored to ensure that the product does not stay in the 41°F to 135°F range for more than 4 hours throughout the drying process.

#### E. Permits

The DOH will not permit home kitchens, especially if prior notification is required. This is one of the most difficult arenas for enforcement. The home-made industry requests that they have the same ability to prepare foods at any scale, but is unable to meet the burden of having totally unannounced inspections, which is the cornerstone of our inspection program to insure the integrity of the inspection and to provide public confidence that a true snap shot of the food prep conditions were represented, and the operator did not have a chance to “clean-up” their operation prior to the inspection.

DOH is looking at the possibility of relaxing the 20/120 rule if the legislature/working group can address the following DOH concerns;

- 1) Community complaints regarding odors, noise, and traffic as a result of 24/7/365 food operations in residential areas MUST be addressed from the standpoint that DOH will not investigate into these complaints. Any rule change will require that these issues be exempt from DOH/Gov’t regulatory control and that the legislature alone will address these complaints. This would be similar to exemptions from smoke nuisances resulting from outdoor cooking of food for personal use. State Gov’t currently does not regulate backyard BBQ’s or residential chimney smoke for home heating in residential areas, but commercial cooking would need to be addressed.
- 2) City and County plumbing requirements (Grease Trap) concerns will need to be addressed for those homes hooked into sanitary sewers.



- 3) DOH Wastewater Branch (WWB) concerns (if any) regarding potential generation of commercial volumes of wastewater into Individual wastewater systems (IWS)'s.. These are homes with cesspools/septic tanks or multi-family units (townhome/condo) on small WW package plants condo. WWB stated that a check-off box on an application with an IWS would need to be signed off by WWB for any permit. WWB will evaluate potential volume of wastewater generated on a case-by-case basis.
- 4) Water supply must comply with DOH Safe Drinking Water Branch standards as provided for by Hawaii Administrative Rules (HAR) Chapter 11-20, Public Water Systems for all commercial ventures.
- 5) DOH will not agree with allowing wholesaling and "internet" sales of homemade food products. We will allow direct sales to consumers only. Current State and federal rules prohibit permitted or licensed food establishment from receiving ANY foods from unapproved sources. All homemade foods are considered to be an unapproved source by law.
- 6) At this time the DOH does not plan to create rules/guidelines to allow for inspections of private residential or farm home kitchens, unless we can address transparency of the inspection. I do not want to have regulatory personnel in what may result in potentially explosive or litigious situations resulting from disagreements with inspectional findings or direction given to food producers while in someone's private home.

The comments provided are meant to be preliminary only and the DOH position provided by myself are subject to change as we progress towards the start of the new legislative session and formal submittal of your report pursuant to SCR 97. As you know, the Director of Health will no longer serve as of this year, and Governor elect Ige has not yet appointed key administrative positions that may impact the direction and focus of my responses. Our Deputy AG will also need to review final drafts of DOH comments that may result in changes to HRS or HAR.

The DOH appreciates the opportunity to participate with your working group and we really appreciate the hard and diligent work done by yourself and your Group.

Mahalo For your Interest in Public Health,

Peter Oshiro  
Env. Health Program Manager  
Sanitation/Food and Drug/Vector Control Branch

## APPENDIX D

### PUBLIC COMMENT ON “RECOMMENDATIONS ON HOMEMADE FOOD OPERATIONS IN HAWAI‘I”

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During November 2014, The Kohala Center solicited public comment on the “Recommendations on Homemade Food Operations in Hawai‘i,” and included the following survey questions:

1. Do you process food for sale to the public in your home?
2. Are you processing any food that you grow?
3. What gross sales (*i.e.*, sales before expenses) do you generate on an annual basis from selling homemade food?
4. In what city or town do you produce homemade food?
5. On which island do you produce homemade food?
6. What is your occupation?
7. Where do you sell your homemade food products?
8. How many days per week do you sell homemade food products?
9. Currently, the Hawai‘i Department of Health restricts homemade food sales to direct sales to consumers and prohibits wholesale sales. In order to receive a permit to make wholesale sales of homemade food, would you be willing to:
  - a. Pay a higher permit fee than required for direct sales only;
  - b. Consent to random home inspections with 24 hours’ notice; and/or
  - c. Complete advanced food safety and/or food preservation training?
10. What is the biggest limiting factor on your sales of homemade food products?
11. Do you aspire to build a full-time food production business and generate all of your income from such business?

Forty-seven people responded to the solicitation. Of the 47, a total of 18 respondents indicated that they process food in their home for sale to the public. Of these 18 homemade food producers:

- All process food that they grow.
- 2 live on O‘ahu, 9 live on Hawai‘i Island, 2 live on Maui, 1 lives on Kaua‘i, and 3 live on Moloka‘i.
- 11 are farmers, along with a beekeeper, a poi processor, a janitor, a substance abuse counselor, a homemaker, a contractor/consultant, a retiree, a chef, and a social worker.
- 10 sell at farmers markets, 8 at special events, 3 to friends and family, 3 to restaurants/cafes, 3 to other retail outlets, 2 to grocers, 2 to community supported agriculture programs, 1 online, 1 at church, 1 at a road side stand, and 1 on a food truck.
- 7 sell homemade food 1 day a week, 6 sell 2 days a week, 1 sells 7 days a week, and 1 sells a half day per week.
- Annual gross sales ranged from \$500 - \$30,000, with an average of \$9,800.
- In response to the question, “What is the biggest limiting factor on your sales of homemade food products?”
  - 12 indicated being limited to direct sales only;

- 10 indicated being limited to 20 sales days per 120 days (per location) under the temporary food establishment permit;
- 7 indicated costs of production (e.g., food, energy, labor costs, etc.); and
- 4 indicated the size of their home kitchen
- In order to receive a permit to wholesale homemade food:
  - 18 would be willing to complete advanced food safety and/or food preservation training;
  - 12 would be willing to consent to random home inspections with 24 hours' notice; and
  - 7 would be willing to pay a higher permit fee than required for direct sales only;
- 11 aspire to build a full-time food production business and generate all of their income from such business.

Twenty-five respondents provided the following comments on the recommendations:

#### *Recommendation:*

Homemade food operations must demonstrate adequate food safety training by completing one of the following training courses and passing the accompanying food safety test:

1. eFoodHandlers™ Basic Food Safety Course, offered online at [www.hifoodhandlers.com](http://www.hifoodhandlers.com); or
2. ServSafe® Food Handler Program, offered online at [www.servsafe.com/ss/foodhandler](http://www.servsafe.com/ss/foodhandler); or
3. HDOH's two-day Food Safety Certification Workshop, offered in person.

#### *Comments:*

- I agree with the proposal that online classes/training be accepted as proof of adequate training for homemade food operations.
- I totally support this recommendation. It provides a win-win solution to addressing food safety issues for both home producers and the general public. It removes one of the barriers (food safety concerns) for home production, and minimizes the additional expense anticipated by an online option. I appreciate the research done to come up with this recommendation that encourages home businesses without jeopardizing food safety for the consumer.
- What about 'Hawai'i County Hawai'i: Training Course for Food Safety Certification' and the multitude of other online options available? Why not give more options? People love choices.
- Anyone selling food to the public should be required by law to complete one of the above courses and show evidence of completion whenever and wherever they are selling food to the public. Food should be clearly labeled in accordance with HDOH food safety guidelines. This should include any/all food sales at garage sales, farmers markets, concert venues, roadside food stands, benefit or fundraising events, etc.
- Agree.
- Already have done the HDOH's two-day Food Safety Certification Workshop, offered in person. We'd love to be able to process our chili peppers on the farm and then ship direct to the kitchen for bottling.
- Food safety classes should be attended in person not online. One of the values of these classes is to get to know your inspectors to establish a working relationship and to answer pertinent questions that always arise. There is potential for abuse of online tests. Let's not compromise the safety of our food supply for convenience!
- Online courses are not proctored, therefore one could easily cheat. Especially if English is not their first language.
- I support the industry group recommendations.

- I think the online food safety course options would be sufficient for most food operations.
- That sounds totally reasonable.
- I think these allowances are a long time overdue. If implemented, they will increase our economy and allow small food businesses the opportunity to start small and grow into larger enterprises.
- I feel the value of a live class is worth the expense for strengthening understanding and value of good handling practices. The two day could be shortened to a 6 hour class, with better understanding and fuller application discussed. Worth the expense.
- Sound like excellent ideas.
- Agree. Food safety takes common sense and basic training that can be handled online. California allows an online self-certification checklist for their cottage food industry.
- These courses are a must if someone intends on selling homemade foods, but they won't keep anyone safe if food handling practices are not followed by the food handlers. Consumer beware.
- This seems to be reasonable.
- HDOH should include in its budget funds for food safety certification workshop so they could increase availability of the workshop. This is very important because not everyone is computer literate or has a computer. If the government is serious in implementing its mandate of increased food sustainability and food security strategy, it has to provide the necessary funding to do so. You do not want to develop an industry that creates discrimination.
- Training is always a good idea and if it can be done cheaply as well as effectively (*i.e.*, e-training) than by all means, that should be supported.
- An online course seems fine. If there is concern about cheating, there could be an in-person proctored exam of some sort that would not take as much HDOH resources as the full workshop.
- Funds could be found to cover any increased costs by HDOH in offering more classes.
- Yes.

## B. SANITARY GUIDELINES

### *Recommendation:*

Homemade food operations must comply with standard industry sanitary guidelines for the production of allowable foods.

### *Comments:*

- I agree with the above proposal.
- Another logical recommendation that encourages home businesses without jeopardizing public health and food safety.
- Anyone selling food to the public, no matter where the food is produced, should be required by law to complete one of the above courses and show evidence of completion whenever and wherever they are selling food to the public. Food should also be clearly labeled in accordance with HDOH food safety guidelines. This should include any/all food sales at garage sales, farmers markets, concert venues, roadside food stands, benefit or fundraising events, etc.
- Agree.
- Waste water is a key issue. Food processing kitchens need to comply with the federal Clean Water Act that the state is tasked with enforcing.
- In reality yes, but not sure how realistic it would be. Would a 3 compartment sink be required? A separate hand-washing facility (or will a restroom on the premises suffice?). If renovations are required, this would hinder the cottage industry.  
Sanitary standards must be maintained at current / legal acceptable standards.

- Yes, this makes sense for low risk food items.
- Sounds fine as long as I know what “standard industry sanitary guidelines” are.
- Definitely important.
- Good. Clear understanding of HI requirements is important.
- Agree.
- Only makes sense if you educate producers and consumers.
- I don’t see that this recommendation is effective if the very root of the problem is not addressed. By reading all the bulleted issues presented, the issue of adequate number of “certified” food preparation facility is not being addressed. Only certified kitchen is mentioned and the current challenges to access such facility. Unless you have adequate certified food preparation facility this project will not take off. HDOH should establish separate guidelines to allow for “certified home kitchens” for food that are not potentially hazardous.
- I agree. Standard sanitary guidelines should be followed.
- Restaurants are now being inspected and required to post a sign that says whether they passed. Is something similar possible for homemade food operations? Could you start with a voluntary inspection that allows you to post it on the label or website?
- Yes.
- Absolutely!
- I would have to read the guidelines. Do you have the guidelines? It should be on this survey. Mahalo.
- Since HDOH has limited staff capability, to take on inspections of Cottage Food kitchens seems impossible. Cottage Food kitchens would require a thorough initial inspection before being permitted and frequent inspections to affirm compliance with food safety regulations. All the requirements mentioned such as taking a course, permitting, labeling etc. are simple compared to making sure that the cottage food producer is compliant in their kitchen. I read through the CA Homemade Food Act and the regulations cover all issues. Example, no home food preparation or entertainment while making the product. No children or pets in the kitchen areas. No pests. I like the idea of promoting the cottage food industry, but doubt whether HDOH is capable to making sure home kitchens and operators are compliant.

## C. LABELING

### *Recommendation:*

All homemade food products produced and sold pursuant to a homemade food operation permit must include a label indicating that the product was “Made in a home kitchen,” along with the name and address of the producer and an ingredient list.

### *Comments:*

- I agree with the above recommendation.
- I support this recommendation as well. It informs the public with information to identify the home product from a commercially processed product before purchase is made.
- I'm in favor of leading the trend for transparency when it comes to labeling of ingredients; therefore including whether or not there are genetically modified organisms in the ingredients. It is also important to state whether there are peanuts (or other common allergens) being processed in the home (or any other) kitchen.
- The label must also state the date and time the food was made "in the home" and be restricted to non-perishable items such as baked goods, cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices.
- Agree.

- This would be helpful to the buyer. Buyer will probably expect a "better price" since the seller does not have the usual overhead like "regular" manufacturers. Will the seller need to purchase liability insurance? Wouldn't the seller need to register with the Hawai'i Department of Commerce and Consumer Affairs? Catchment water okay?
- I support the industry recommendation.
- I agree with the labeling rationale.
- Agree.
- Good. We should all be able to make personal decisions based on knowledge.
- I think the labeling requirement could be waived for certain direct-to-consumer, face-to-face sales. For all other sales, I think the label as described is essential, and should also include a contact phone number and a permit number.
- Agree.
- Well there should be some way to contact the producer, but really, do I need to have my home address on every label? And of course all the ingredients again for safety for the consumer.
- In addition to "made in a home kitchen" and the name and address of the producer and an ingredient list, I would hope that either a "prepared on date" or an "expiration date" would be required. (e.g. I oftentimes want to buy salsa made here on the island but if there is no date, I do not.) Some products may not have a definitive expiration date (e.g. coffee, jams, jellies) so a "prepared on or roasted on date" may be the only guideline.
- Reasonable requirement.
- You have to be careful that this requirement will not raise negative perception to consumers, *i.e.*, caution to the consumers that this product is potentially hazardous to your health.
- Keep it simple please.
- Acceptable, reasonable.
- This is a great idea, but will producers of homemade food products feel it is an invasion of privacy? What if they move and the labels become out of date? Could there be a sort of online registry that records the home address and issues an identifying number? That way the home address could be updated online but the number would be the same on the label. A trade association of homemade food producers could maintain the online registry.
- Listing a home address on a product might raise flags, rather maybe a PO Box or just having addresses on file for inspection in case of a problem.
- Yes.
- Sounds reasonable.
- If this becomes a law, only the address should be required. "Made in a home kitchen" should be optional.
- Does HDOH have the manpower to check on compliance? Are the funds available to support HDOH if these regulations are passed?

#### **D. ALLOWABLE FOODS FOR HOME PRODUCTION**

##### ***Recommendation:***

Any non-potentially hazardous food (based on pH) may be produced in a home kitchen. HDOH shall create and publish online a sample list of non-potentially hazardous foods to act as a guideline for home-based producers. The Department shall make it clear that the sample list is not exhaustive but only a reference point to make it easier for producers to understand some common non-potentially hazardous foods.

Foods for which the pH has been lowered by adding food additives or components such as vinegar to render the food so that it is non-potentially hazardous ("acidified foods") may be produced in a home

kitchen if the final product pH is 3.5 or below and if the producer completes advanced food preservation training. HDOH shall provide approved recipes and procedures for producing acidified foods. Commonly acidified foods include pickles, relishes, salsas, hot sauces, and salad dressings.

*Comments:*

- Definitely support this recommendation as it safely allows for the expansion of potential home-based products. Hawai'i government needs to support expanding entrepreneurship opportunities and this is a way to do so while ensuring safe production.
- Who is going to police and check on the pH content of added-value foods being produced either in home or in a certified kitchen? Pickled fruits & vegetables? Kim Chee? Dried meats?
- We produce hot sauce with a PH below 4 and as low as 2.8. We wholeheartedly hope these new laws pass. It would allow us to do small batch value added specialty sauces.
- Must consider proper refrigeration per HDOH regulations for ingredients that are used to make non-potentially hazardous foods. Refrigeration should be used only for the product produced and not mixed with home use foods.
- I have seen jams and jellies that do not meet 21 CFR 150. Not only from a soluble solids level but also from a standard of identity standpoint. And this should be "easy" compared to many other products.
- I am uncertain which particular foods meet the above restrictions.
- I disagree with a blanket prohibition and feel that many acidified foods can be safely produce in a home kitchen.
- Agree.
- Pretty limiting, and somewhat unnecessarily so. However, the above list and requirements are a good start. I hope not the last word.
- Agree that fermented foods such as kimchi, sauerkraut, and tempeh should remain allowed in home kitchen operations. Even the FDA states that there have been no documented cases of illness for non-canned fermented foods:  
<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryinformation/AcidifiedLACF/ucm222618.htm#III-C>
- Proper education and maybe master food preserve certification classes available statewide for those who want to sell acidified foods.
- Since some beverages are banned, then beverages must be included somewhere. I am 99.9% certain coffee is considered a non-hazardous food item but I don't see it listed. I sell roasted coffee. I have a certified coffee kitchen but have received a note from the health department that they will not be issuing further certifications since coffee is considered non-hazardous. Or something like that. So where do coffee roasters fall these days - there are a whole lot of us so please don't forget about us. Also, if I have visitors to the farm I sometimes provide samples of brewed coffee. What are the regulations on that?
- Ask for the revision of the list to include those that you see fit to be included.
- Again, keep it simple and cheap. \$50 is not cheap.
- My eyes glazed over on this part. What do you want the state to do? Instead of having its own definition, follow FDA rules?
- Please add to the food list: kalo (taro), taro leaf, ulu (breadfruit) to food lists.
- Sounds great!
- Let's make it easier for Hawai'i residents to make a living at home. Cost to live in Hawai'i is outrageous! I don't know how my child will be able to live in Hawai'i if we don't be creative.



## E. PERMITS

### *Recommendation:*

Homemade food operations must apply for an annual “homemade food operation permit” from HDOH (suggested fee: \$50). Permits will be issued to homemade food operators that have completed adequate food safety training and are producing allowable foods. The permit allows a homemade food operation to produce allowable foods in a designated home or farm kitchen that conforms to the building code of the county in which the kitchen is located, and allows HDOH the option to inspect homemade food operations, as long as HDOH provides the homemade food operator with at least 24 hours’ notice of the inspection. Refusing entry may constitute grounds for denial, suspension, or revocation of the permit.

### *Comments:*

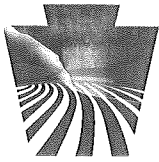
- I agree with the permit for reason #1 above. However, I do not agree with the need to inspect the facility. If that is the case then you are back at using a certified kitchen. What would be the parameters of a qualified home or farm kitchen? An oven? two sinks? Spic and span Mr. Clean kitchen? The approved courses along with labeling of the product with its ingredients, when it was made AND a notation MADE IN A HOME OR FARM KITCHEN should be enough for the consumer to decide for themselves whether to purchase it or not.
- Current rules are o.k. for fundraising efforts of non-profits but way too restrictive for home businesses. Our government needs to make these changes to encourage home businesses while assuring the safety and health of the consumers. It is also clear to me that the general public is very much desiring home-made products as evidenced by the success of farmers markets and food and craft fairs.
- Applying for permits annually can be too costly for small-time producers whose profit margins are already, often, extremely minimal. I suggest the renewal time be every 2 years and not to exceed \$25, annually.
- The food safety requirements for the TFE permit should be exactly the same as the Homemade Food Operation permit if direct sales are allowed under both. And inspections should be allowed to both with the same 24 hours’ notice.
- Agreed.
- The 24 hour notice defeats the purpose of allowing HDOH access to the facility to see what is really going on. This is a good thing! Food processors must be held accountable for their operations. If they have nothing to hide then they won't mind spot inspections. Food inspections should be as much about prevention as cleaning up after an incident. People die from foodborne illnesses, let's not dumb down our food safety laws because people are too lazy or cannot afford the proper facilities and equipment. Our standards should be kept high. The current requirements of HDOH are all doable and are good common sense, we should not lower our standards. These proposed changes will require a big increase in funding to HDOH which already cannot keep up with required inspections. Food processing facilities at a home location are already allowed under current law and are permitted as a commercial use of all zoning (with permits and certain restrictions). Allowing unlimited sales in areas not zoned for commercial use can set up potential problems with roads, parking and other issues. Food processing facilities established at a home location should be used only for the commercial use stated in the permit and should not be mixed with home use. Most homes have pets that have free run of the house and this poses a threat to food safety. Also, homes have a lot of people going in and out that aren't part of the processing that will be occurring and pose a threat of contamination. Mixing foods that are for home use and eating and cooking utensils in an area that is to be used for commercial production of foods poses a threat of contamination. Keeping the requirement for direct sales only will help in the tracking in case there is contamination of foods produced in the proposed home kitchens. I must confess, I think your proposed changes are not a good idea. I am a farmer and a food processor and nothing in the current regulations has prevented us from being successful at both for two decades.



- Recommend direct sales only since unfair competition for "legal" businesses. Will wholesaler require liability insurance? Couldn't the wholesaler in turn sell it to a retailer, restaurant, etc.?
- I support the HDOH require food handling safety training. I believe the permitting process should include mandatory site inspection prior to the issue of the permit, as well as inspections at the discretion of the HDOH after the permit is issued.
- How about the fee for a permit is \$25.00? More folks would be willing to work within the guidelines if the permit fee were more reasonable.
- These proposals make sense.
- The homemade food operations permit is safer for the consumer and better for the homemade food producers. Love it!
- Good.
- I'm not sure why a TFE permit holder should be exempt from food safety training.
- Great!
- Looks clear, simple and enforceable.
- To protect the homemade food operations and "buy local" and our struggling ag industry, it seems to me that people should have to prove they have insurance before they receive their permit. If a tourist or anyone should get sick from any of our locally produced/home cooked food items it would wreck it for everyone. At least if it happens then both parties are protected.
- I provide non potentially hazardous food from my home kitchen under the TFE permit. I am not charged a fee. I believe that the proposed rule change would change this and increase my costs. Perhaps you could have a waiver under the permit for non-potentially hazardous foods prepared in a home kitchen.
- Keep it simple and cheap please. Look where you live, and if you don't, you'll pay for it. More will be on EBT.
- Sounds good. Might also emphasize that the purpose of the permits vary, but both promote food independence in Hawai'i, local entrepreneurship, and the public health.
- Yes
- Sounds reasonable.
- In other states, it is very flexible to do cooking at home and selling items. Laws should be flexible. The state of Hawai'i has to learn to be business friendly so we can encourage more farmers to farm and really make Hawai'i island become the hub of agriculture. With the many different climates we have, we can grow almost everything.
- All allowable foods must be permitted. New products cannot be sold without a permit. Inspections do not require notice. Limit \$ sales of product for the year.

## **APPENDIX E**

### **PENNSYLVANIA REGULATOR LETTER**



# pennsylvania

DEPARTMENT OF AGRICULTURE

BUREAU OF FOOD SAFETY & LABORATORY SERVICES

June 25, 2012

Mr. Stambler:

In response to your inquiry regarding the Commonwealth of Pennsylvania's food safety program with respect to "Home Food Processors," I offer the following:

Pennsylvania registers home food processors under our Food Safety Act – the same statute that applies to all other food processors / manufacturers in the state.

Pennsylvania has been registering 'home food processors' since the 1970's.

Home Food Processors are required to meet certain criteria to register with the Department. Guidelines can be found on our website at [www.EatSafePA.com](http://www.EatSafePA.com). Key criteria include: 1) no pets in the home, 2) only preparation of non-potentially hazardous foods, 3) water testing on non-public water sources, 4) appropriate labeling of foods, 5) separation of ingredients for business use and personal use, and 6) compliance with routine inspections by the Department of Agriculture.

Currently there are approximately 1500 registered home food processors in the Commonwealth of PA.

In my 15 years working with the Department, I am not aware of any foodborne illness outbreaks associated with any Commonwealth registered "home food processors."

The Commonwealth has had outbreaks associated with unregistered home food processors, typically related to illegal processing of low-acid canned foods or other potentially hazardous foods just as catering meals.

If you have further questions, or I can be of other assistance, please feel free to contact me.

Sincerely,

Sheri L. Morris  
Food Program Manager

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HTHTestimony](#)  
**Cc:** [rkester1@gmail.com](mailto:rkester1@gmail.com)  
**Subject:** Submitted testimony for SB379 on Feb 12, 2015 15:40PM  
**Date:** Wednesday, February 11, 2015 7:57:01 AM

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**SB379**

Submitted on: 2/11/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Renee Kester	Individual	Support	No

Comments: I support this legislation and feel it will be very beneficial to providing local products as well as supporting those who are fundraising for various charities and events. Please consider keeping any fees to a minimum for the producer. Mahalo

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

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**To:** [HTHTestimony](#)  
**Cc:** [hikehi@yahoo.com](mailto:hikehi@yahoo.com)  
**Subject:** \*Submitted testimony for SB379 on Feb 12, 2015 15:40PM\*  
**Date:** Wednesday, February 11, 2015 7:30:41 AM

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**SB379**

Submitted on: 2/11/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Raylene	Individual	Support	No

Comments:

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Education, research, advice, and advocacy for just and resilient local economies.  
2323 Broadway, Oakland, CA 94612 | [www.theSELC.org](http://www.theSELC.org)

**RE: Support for SB 379**

February 11, 2015

Dear Legislators,

I am writing to urge you to support the Hawaii Homemade Food Act, SB 379, the "cottage food bill."

My organization has been carefully researching similar laws in other states, and in 2012 we successfully advocated for the California Homemade Food Act. **In just its first year in effect**, the California Homemade Food Act enabled the creation of well over 2,000 small, local food businesses in our state, and this number continues to grow.

Here are the reasons you should pass this legislation in Hawaii right away:

- They key components of this bill are **nearly identical to laws that have been enacted in over 40 U.S. states.**
- Similar laws in other states have not been linked to any food-borne illness outbreaks or caused significant burdens to regulatory agencies.
- Countless middle class and low-income individuals, including many women, take advantage of these laws to supplement their family's income while working from home.
- This is a critical opportunity to increase the economic viability of sustainable agriculture. Countless small-scale farmers who do not live near commercial kitchens (and often couldn't afford to rent them anyway) are anxiously awaiting the enactment of this legislation so they can provide local consumers with higher margin, value-added products.
- This legislation was written under the direction of the Cottage Food Industry Working Group, which convened last year and met with the Hawaii Department of Health to discuss the features of cottage food laws from around the nation to distill the specific policy features that best meet the needs and concerns of the people of Hawaii.

Thank you for considering my perspective on the success of cottage food legislation nationally. I hope you will seize this opportunity to promote local food economies in Hawaii by voting in support of SB 379.

Sincerely,

Christina Oatfield, Policy Director

[christina@theselc.org](mailto:christina@theselc.org)

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HTHTestimony](#)  
**Cc:** [sustainableolutions.hi@gmail.com](mailto:sustainableolutions.hi@gmail.com)  
**Subject:** \*Submitted testimony for SB379 on Feb 12, 2015 15:40PM\*  
**Date:** Tuesday, February 10, 2015 9:00:23 PM

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**SB379**

Submitted on: 2/10/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
keri	Farmer's Marketeers	Support	No

Comments:

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**To:** [HTHTestimony](#)  
**Cc:** [mailani22@gmail.com](mailto:mailani22@gmail.com)  
**Subject:** Submitted testimony for SB379 on Feb 12, 2015 15:40PM  
**Date:** Tuesday, February 10, 2015 7:04:18 PM

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**SB379**

Submitted on: 2/10/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Rene Souza	Individual	Support	No

Comments: As a board member of Hawaii Farmers Union United and an agricultural educator, I support this bill.

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
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**Cc:** [wao-hsl@WeAreOne.cc](mailto:wao-hsl@WeAreOne.cc)  
**Subject:** Submitted testimony for SB379 on Feb 12, 2015 15:40PM  
**Date:** Tuesday, February 10, 2015 3:16:27 PM

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**SB379**

Submitted on: 2/10/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	Individual	Support	No

Comments: [www.WeAreOne.cc](http://www.WeAreOne.cc)

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**Subject:** Submitted testimony for SB379 on Feb 12, 2015 15:40PM  
**Date:** Tuesday, February 10, 2015 1:29:01 PM

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**SB379**

Submitted on: 2/10/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Fay I Pacheco	Individual	Support	No

Comments: Please vote yes for HB379 to expand and create new categories for homemade food processing for sale to the public. Mahalo

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**Cc:** [likowallace@ymail.com](mailto:likowallace@ymail.com)  
**Subject:** Submitted testimony for SB379 on Feb 12, 2015 15:40PM  
**Date:** Tuesday, February 10, 2015 1:19:04 PM

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**SB379**

Submitted on: 2/10/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Faye L Wallace	Individual	Support	No

Comments: I would like to urge this committee to vote in favor of SB379 which is to expand and create new categories for homemade food processing for sale to the public.

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**Cc:** [k8iefish@hotmail.com](mailto:k8iefish@hotmail.com)  
**Subject:** Submitted testimony for SB379 on Feb 12, 2015 15:40PM  
**Date:** Tuesday, February 10, 2015 10:35:58 AM

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**SB379**

Submitted on: 2/10/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
katie ranke	Individual	Support	No

Comments: We absolutely need this law to pass in Hawaii. I have considered moving myself and my small business tax revenue out of state because there is no cottage law here. It is needed for small food businesses to get their start. Especially if those business have high costs due to sourcing local ingredients. The only way a small food business in Kauai can afford paying the rent of a commercial kitchen is if they are importing food. In order to support the local economy and local farms, this cottage food law is imperative. I also support a law that would lower the amount that landlords can charge for commercial space. There is no lack of commercial space available, but it is too expensive for regular local folks to rent. And it looks awful just sitting vacant; it does not support the tourist economy. I don't understand why these landlords would rather have these spaces sit empty and ugly for years rather than lowering the cost of rent. For a small space rent is 3k a month and for a small food business to afford that they have to sell a minimum of 12k a month, which is unrealistic for small businesses just starting out. A cottage food law would help bridge the gap between new small businesses and those who can afford the currently outrageous cost of commercial rents.

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**Cc:** [blisshealthyfoods@hawaii.rr.com](mailto:blisshealthyfoods@hawaii.rr.com)  
**Subject:** Submitted testimony for SB379 on Feb 12, 2015 15:40PM  
**Date:** Wednesday, February 11, 2015 2:19:35 PM

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**SB379**

Submitted on: 2/11/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Terri Langley	Individual	Support	No

Comments: I strongly support SB379. This measure would help home producers be able to fairly compete within the industry, and provides the food safety measures expected by the public. I am certified as a Hawaii Master Food Preserver, and believe I have the knowledge to safely produce food at home for sale to the public. The measures introduced will help my home business grow to the next level of production, and allow me to continue to support local farmers by purchasing more produce.

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**Hawai'i Cottage Food Business Working Group Report, 2014**

**January 13, 2015**

**Prepared by: The Kohala Center**

**For Ulupono Initiative and the Cottage Food Business Working Group**

## INTRODUCTION

Pursuant to legislative mandate S.C.R. No. 97 (2014), Ulupono Initiative convened a Cottage Food Business Working Group comprised of representatives from the Hawai‘i Department of Health (HDOH) and the cottage food industry. A list of the members of the Working Group is included in **Appendix A**.

On October 15, 2014, representatives from the cottage food industry gathered in Honolulu to discuss the current regulatory framework governing the sale of homemade food in Hawai‘i, and to develop draft recommendations for a new legal framework to promote growth in Hawai‘i’s cottage food industry while protecting public health.

In developing the recommendations, the industry group was guided by the following principles:

- Local food production is integral to Hawai‘i’s economic development and food security
- Food safety is essential
- Education and training are important means of achieving food safety
- Proper product labeling is necessary
- Permits can help promote regulatory compliance
- HDOH requires sufficient resources to implement laws and regulations

The industry group also acknowledged state and federal mandates to increase local food production, including:

- Hawai‘i’s “Increased Food Security and Food Self-Sufficiency Strategy,” which notes that “replacing just 10% of the food Hawai‘i currently imports would amount to approximately \$313 million dollars” remaining in the State’s economy (Office of Planning, Department of Business Economic Development & Tourism; [http://files.hawaii.gov/dbedt/op/spb/INCREASED\\_FOOD\\_SECURITY\\_AND\\_FOOD\\_SELF\\_SUFFICIENCY\\_STRATEGY.pdf](http://files.hawaii.gov/dbedt/op/spb/INCREASED_FOOD_SECURITY_AND_FOOD_SELF_SUFFICIENCY_STRATEGY.pdf)); and
- The United States Department of Agriculture’s allocation of \$27 million in competitive grants to support local food efforts such as food hubs and local processors.

On October 16, 2014, members of the industry group met with HDOH to discuss the current rules regulating sales of homemade food and potential changes to the legal framework. HDOH noted that it has rulemaking authority to adopt a revised framework for homemade food operations, and requested that the industry group give HDOH an opportunity to review and respond to proposed recommendations before seeking new legislation. HDOH recognized that new legislation would be required to implement changes that HDOH is unwilling to implement through rule changes.

During November 2014, The Kohala Center solicited feedback on the draft recommendations from HDOH and the public. The original draft recommendations can be found in **Appendix B**, with HDOH’s response in **Appendix C**, and comments from the public in **Appendix D**.

After reviewing the feedback from HDOH and the public, the industry group developed revised recommendations, outlined below.



## CURRENT LEGAL FRAMEWORK

Hawai‘i Revised Statutes Section 328-11 provides HDOH with the authority to prescribe regulations providing for the issuance of permits for the manufacturing, processing, and packing of foods that may pose a health risk to consumers by reason of contamination with microorganisms. Pursuant to this authority, the Hawai‘i Department of Health has adopted the “Food Safety Code” (Hawai‘i Administrative Rules, Chapter 11-50), which requires “food establishments” and “temporary food establishments” to undergo a permitting process for the sale of food to the public.

### Food Establishments

HDOH defines “food establishments” as any place used for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, or otherwise handling food at the retail or wholesale level, and any operation where food is provided to the public, with or without charge. Food establishments include restaurants, cafes, coffee shops, and grocery stores. All food establishments must operate with a valid permit from HDOH, with exceptions including establishments selling only whole uncut fruits and vegetables and establishments selling only prepackaged, shelf-stable foods.

The Food Safety Code requires food establishment kitchens and facilities to receive certification from HDOH. The requirements for certified kitchens include a number of specific equipment and building parameters.

The Food Safety Code prohibits food establishments from selling food made in a private kitchen.

### Temporary Food Establishments (“TFE”)

HDOH defines “temporary food establishments” as any food establishment that operates at a fixed location for a limited period of time and does not exceed 20 days in any 120-day period and does not sell products to other food establishments. Temporary food establishments include farmers markets and community events such as fairs, sporting events, and bake sales.

HDOH allows the sale of homemade non-potentially hazardous foods at temporary food establishments, including cookies, breads, jams, jellies, candies, chocolates, whole produce, cut fruit (except for cantaloupes, melons, and tomatoes), cotton candy, dry herbs, nuts, rubs, and spices. However, such foods may only be sold directly to consumers and may not be sold to other food establishments. Potentially hazardous foods (foods that require temperature controls to limit bacterial growth) sold at temporary food establishments must be produced in a certified kitchen.

### Limitations of Current Regulatory Framework

The current regulatory framework creates several challenges for value-added food producers in Hawai‘i, including:

1. Restricting sales of homemade food to direct-to-consumer sales, even when products are non-potentially hazardous.
2. Restricting sales of homemade food to 20 days within any 120-day period (per temporary food establishment location), even when products are non-potentially hazardous.

In order to overcome these challenges, producers of non-potentially hazardous foods must produce food in a certified kitchen that adheres to HDOH’s requirements. Acquiring land and building a commercial kitchen is an expensive endeavor that is unaffordable for many new and small businesses. With respect to leasing certified kitchen space, there are very few certified kitchens available for rent in Hawai‘i, especially in rural areas. For example, Hawai‘i Island’s Puna and Kona Districts lack any certified

community kitchens, and the entire island of Kaua‘i lacks any certified community kitchens, although one is currently under construction on the north shore.

For the few certified community kitchens that are available, use of these facilities is unfeasible for many producers. Hourly rental rates quickly become cost prohibitive for small food businesses, especially for those who make foods with long processing times, such as dried fruit. In addition, many community kitchens have limited equipment and insufficient space for storage and refrigeration, which restricts the types and quantities of products that may be produced. Low population density in rural areas often means that certified community kitchens, if available, are many miles away. With gas prices in Hawai‘i being the highest in the nation, traveling long distances can be cost prohibitive for small businesses.

## **RECOMMENDATIONS FOR HOMEMADE FOOD OPERATIONS IN HAWAI‘I**

In order to mitigate the challenges facing value-added food producers in Hawai‘i while protecting public health, the industry group proposes the following recommendations for a new legal framework for homemade food operations in Hawai‘i, defined as an enterprise that produces – in a home or farm kitchen that conforms to the building code of the county in which the kitchen is located – allowable foods for sale to the public. Laws applicable to homemade food operations would not apply to temporary food establishments.

The proposed regulatory framework draws upon cottage food laws adopted by forty-one states and includes the following elements to minimize the risk of foodborne illness:

- A. Food Safety Training;
- B. Safe Food Handling Guidelines;
- C. Product Labeling;
- D. Limiting the Types of Allowable Foods for Home Production; and
- E. Permits.

### **A. FOOD SAFETY TRAINING**

#### ***Recommendation:***

Homemade food operations must demonstrate adequate food safety training by completing one of the following training courses and passing the accompanying food safety test:

1. eFoodHandlers™ Basic Food Safety Course, offered online at [www.hifoodhandlers.com](http://www.hifoodhandlers.com); or
2. ServSafe® Food Handler Program, offered online at [www.servsafe.com/ss/foodhandler](http://www.servsafe.com/ss/foodhandler); or
3. HDOH’s two-day Food Safety Certification Workshop, offered in person.

#### ***Rationale:***

It is well established that certain food-handling practices can prevent or reduce the risk of foodborne illness. Under current rules and regulations, Hawai‘i encourages but does not require food handler training. The industry group recommends that homemade food operations complete basic food handler training to ensure that these operations understand common foodborne illnesses and key food handling practices.

HDOH currently offers a voluntary two-day Food Safety Certification Workshop at no cost. However, requiring all homemade food operations to take this course would require HDOH to increase the availability of these workshops, at a significant cost to HDOH.

Instead, the industry group recommends that in addition to offering a free Food Safety Certification Workshop, the State should accept one or more online food safety courses as proof of adequate training for homemade food operations. Online food safety courses are easily accessible, affordable, and currently accepted as adequate food safety training by numerous jurisdictions across the country that mandate food safety training for food handlers.

For example, [hifoodhandlers.com](http://hifoodhandlers.com) offers the eFoodHandlers™ Basic Food Safety Course, a 90-minute online course offering core training for food servers, handlers, and preparers, followed by a test. California, Texas, Illinois, Arizona, and Oregon accept the eFoodHandlers™ online Basic Food Safety Course as adequate food handler training. The eFoodHandlers™ course and test are free, while proof of course completion costs \$10.

In addition, the National Restaurant Association offers the ServSafe® Food Handler Program, a 90-minute online course on basic food safety covering personal hygiene, cross-contamination and allergens, time and temperature controls, and cleaning and sanitation, followed by a test. California, Alaska, Oregon, Illinois, and Florida, as well as numerous counties across the country, accept the ServSafe® online Food Handler Program as adequate food handler training. The ServSafe® Food Handler Program costs \$15.

## **B. SAFE FOOD HANDLING GUIDELINES**

### ***Recommendation:***

Homemade food operations must comply with the safe food handling guidelines taught in an approved food safety training course, as well as the following requirements:

1. No [homemade] food preparation, packaging, or handling may occur in the home kitchen concurrent with any other domestic activities, such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.
2. No infants or pets may be in the home kitchen during the preparation, packaging, or handling of any [homemade] food products.
3. Kitchen equipment and utensils used to produce [homemade] food products shall be clean and maintained in a good state of repair.
4. All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any [homemade] food products shall be washed, rinsed, and sanitized before each use.
5. All food preparation, and food and equipment storage areas shall be maintained free of rodents and insects.
6. Smoking shall be prohibited in the portion of a private home used for the preparation, packaging, storage, or handling of [homemade] food products and related ingredients or equipment, or both, while [homemade] food products are being prepared, packaged, stored, or handled.<sup>1</sup>

### ***Rationale:***

As indicated above, it is well established that certain food handling practices can prevent or reduce the risk of foodborne illness. To protect public health, homemade food operations should be required to comply with safe food handling guidelines.

---

<sup>1</sup> California Homemade Food Act (California Health and Safety Code, Section 114365(a)(1)(A)), available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_1601-1650/ab\\_1616\\_bill\\_20120921\\_chaptered.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1601-1650/ab_1616_bill_20120921_chaptered.html).

The above-listed requirements are consistent with the requirements of the California Homemade Food Act.

### **C. LABELING**

#### ***Recommendation:***

All homemade food products produced and sold pursuant to a homemade food operation permit must include a label indicating that the product was “Made in a home kitchen that has not been inspected by the Hawai‘i Department of Health,” along with the name and address of the producer and an ingredient list by weight.

Homemade food operations selling acidified foods must also comply with United States Food & Drug Administration (FDA) labeling requirements.

#### ***Rationale:***

Notifying consumers that the product was made in a home kitchen allows consumers to differentiate between products processed in a commercial kitchen that is routinely inspected by HDOH and products made in a home or farm kitchen. Requiring the name and address of the producer allows HDOH to contact homemade food operators in the event of a consumer complaint. Ingredient lists inform consumers and HDOH of the content of the product to ensure that the product is an allowable food for homemade production.

### **D. ALLOWABLE FOODS FOR HOME PRODUCTION**

#### ***Recommendation:***

Homemade food operators may produce and sell non-potentially hazardous foods, based on water activity ( $A_w$ ) and pH, as defined in the Food Safety Code (see below).

Non-potentially hazardous foods include, but are not limited to:

1. Baked goods, such as breads, biscuits, churros, cookies, pastries, and tortillas
2. Candy, such as brittle and toffee
3. Chocolate-covered nonperishable foods, such as nuts and dried fruit
4. Jams, jellies, preserves, chutneys, and fruit butters
5. Whole produce
6. Cut fruit (except for cantaloupe, melon, and tomatoes)
7. Cotton candy
8. Shave ice
9. Doughnuts, andagi, mochi
10. Dried fruit
11. Dried pasta
12. Dry baking mixes
13. Dry herbs, herb blends, and seasoning blends and rubs
14. Fruit pies
15. Nuts
16. Granola, dry cereal, and trail mixes
17. Nut mixes and nut butters
18. Popcorn
19. Roasted coffee and dried tea
20. Vinegar and mustard
21. Waffle cones and pizelles
22. Fresh fruit juice made from fruits other than cantaloupe, melon, and tomatoes

23. Hand-pounded poi
24. Some sauces and liquids/beverages
25. Pickles and acidified foods
26. Fermented foods

With respect to items 24-26, HDOH shall require homemade food operators to submit these items to a process authority – a qualified person recognized by HDOH as having expert knowledge acquired through appropriate training and experience in the processing of such foods – for product testing and production process review and recommendations.

In addition, homemade food operators must comply with FDA acidified food regulations (21 CFR 114), including the completion of an approved food processing course.<sup>2</sup> Producers of acidified foods shall acidify foods to the Hawai'i Master Food Preservers accepted pH range of 3.5-4.0 for acidified foods produced in the tropics.

Homemade potentially hazardous foods may not be sold to the public. Such foods include, but are not limited to:

1. Low-acid canned foods
2. Refrigerated foods
3. Frozen foods
4. Dairy products
5. Seafood products
6. Dried meats and fish

***Rationale:***

Under current HDOH rules, “potentially hazardous food” means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation. Potentially hazardous food does not include a food that, because of its pH or  $A_w$  value, or interaction of  $A_w$  and pH values, is designated as a non-potentially hazardous food by the HDOH.

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<sup>2</sup> Dr. Aurora A. Saulo, Extension Specialist in Food Technology, College of Tropical Agriculture & Human Resources (CTAHR) University of Hawai'i at Mānoa Cooperative Extension Service Food Technology Program offers a “Better Process Control School For Managers and Supervisors of Food Processing Operations” (<http://manoa.hawaii.edu/ctahr/pacific-afsp/wp-content/uploads/2012/06/Brochure-Aug6-9-20132.pdf>), which meets FDA training requirements for the production of acidified foods. North Carolina State University has developed an “Acidified Foods Manufacturing School” program, comprised of an online segment and an in-person segment (<http://foodsafety.ncsu.edu/acidified-foods-manufacturing-school-ncsu/>), which meets the FDA training requirement for the production of acidified foods. Fletcher Arritt, Ph.D., the developer of the North Carolina State University course and the director of the Entrepreneurial Initiative for Food Program within North Carolina State University's Department of Food, Bioprocessing and Nutrition Sciences Extension Program, designed the course so that other universities, such as the University of Hawai'i, could offer the in-person segment. In addition, University of California, Division of Agriculture and Natural Resources, offers an online Better Process Control School, which meets FDA requirements ([http://www.fruitandvegetable.ucdavis.edu/Cooperative\\_Extension\\_Short\\_Courses/Better\\_Process\\_Control\\_School\\_Online/](http://www.fruitandvegetable.ucdavis.edu/Cooperative_Extension_Short_Courses/Better_Process_Control_School_Online/)).

Hawai'i's Food Safety Code designates foods with the following pH and  $A_w$  values as non-potentially hazardous (PHF):

1. Heat treated foods:

$A_w$ values	pH values		
	4.6 or less	> 4.6 to 5.6	> 5.6
$\leq 0.92$	non-PHF	non-PHF	non-PHF
>0.92 to 0.95	non-PHF	non-PHF	Product Assessment Required
>0.95	non-PHF	Product Assessment Required	Product Assessment Required

2. Non-heat treated foods or heat-treated but not packaged foods

$A_w$ values	pH values			
	< 4.2	4.2 to 4.6	> 4.6 to 5.0	> 5.0
<0.88	non-PHF	non-PHF	non-PHF	non-PHF
0.88 to 0.90	non-PHF	non-PHF	non-PHF	Product Assessment Required
>0.90 to 0.92	non-PHF	non-PHF	Product Assessment Required	Product Assessment Required
>0.92	non-PHF	Product Assessment Required	Product Assessment Required	Product Assessment Required

HDOH currently considers the following foods to be non-potentially hazardous: cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices.

### Acidified Foods

Foods to which an additive, such as vinegar, is added as a method of preservation or reducing pH to render the food non-potentially hazardous are called "acidified foods" and are subject to specific state and federal rules. Under HDOH rules, a producer must apply to HDOH for a variance to produce an acidified food product. HDOH may grant a variance by modifying or waiving the requirements of the Hawai'i Food Safety Code if in the opinion of HDOH a health hazard or nuisance will not result from the variance. Other than jams and jellies, HDOH currently considers all acidified foods to be potentially hazardous and prohibits the sale of homemade acidified foods.

Registered home food processors in Pennsylvania, Maine, and North Carolina have been safely producing homemade acidified foods for decades. See **Appendix E** for a letter from Sheri L. Morris, Food Program Manager with the Pennsylvania Department of Agriculture, Bureau of Food Safety and Laboratory Sciences, indicating a lack of foodborne illness outbreaks associated with any registered home food processor in the state. During phone conversations, North Carolina's Department of Agriculture and Consumer Services (NCDA&CS) Food & Drug Protection Division and North Carolina State University's Department of Food, Bioprocessing and Nutrition Sciences Extension Program (which conducts product testing for NCDA&CS) have indicated a lack of awareness of foodborne illness outbreaks associated with registered home food processors making acidified foods in the state.

In Pennsylvania:

“Limited Food Establishment Producers may only “can” food products that reach a pH of 4.6 or less upon completion of the recipe (a combination of pH (acid level) and Available Water (Aw) may also be tested). Examples of [t]ypes of food products that might be approved include: salsa, chow-[c]how, pickled beets, pickled vegetables, hot sauces, and barbeque sauce. Producers of Acidified Foods must have written recipes/formulas and procedures. You will need to provide a Process Flow for your products and have it approved by your Sanitarian prior to registration and sale of your product. This does not apply to Acid or Fermented Foods. If you are unsure if your product is considered an Acidified Food, please discuss with your Sanitarian.”<sup>3</sup>

Similarly, NCDA&CS, Food & Drug Protection Division, allows sales of homemade acidified foods following:

1. Submission of an application for home processing inspection (<http://www.ncagr.gov/fooddrug/food/documents/homeprocessor8.pdf>);
2. A satisfactory home inspection;
3. Successful completion of the North Carolina State University Acidified Foods School for Entrepreneurs or an equivalent FDA certified course;
4. Product testing by a process authority, such as the Department of Food, Bioprocessing and Nutrition Sciences, North Carolina State University ([http://fbns.ncsu.edu/extension\\_program/food\\_product\\_testing.html](http://fbns.ncsu.edu/extension_program/food_product_testing.html)); and
5. Receipt of a process authority letter for submission to the FDA.

Maine and Mississippi also allow the sale of homemade acidified foods following product testing, and Kentucky allows sales of homemade acidified foods produced by farmers (called “home-based microprocessors”). In addition, Alaska considers acidified foods, fermented foods, and certain sauces and liquids to be non-potentially hazardous and permits sales of these homemade items following product testing. A complete list of allowed foods in Alaska can be found at: [http://dec.alaska.gov/eh/fss/Food/Docs/Cottage\\_Food\\_Exemptions.pdf](http://dec.alaska.gov/eh/fss/Food/Docs/Cottage_Food_Exemptions.pdf).

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<sup>3</sup> Pennsylvania Department of Agriculture, Bureau of Food Safety & Laboratory Sciences, Letter to Limited Food Establishment Applicants, available at [http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_2\\_24476\\_10297\\_0\\_43/agwebsite/Files/Forms/APPLICATION%20PACKET%20-%20LIMITED%20FOOD%20ESTABLISHMENT%2006-2014.pdf](http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_24476_10297_0_43/agwebsite/Files/Forms/APPLICATION%20PACKET%20-%20LIMITED%20FOOD%20ESTABLISHMENT%2006-2014.pdf)

The FDA does not prohibit the sale of acidified foods<sup>4</sup> produced in a home kitchen. Under FDA rules, commercial processors, including home processors, of acidified foods are required to:

- Register with the FDA on Form FDA 2541.
- File a scheduled process with the FDA on Form FDA 2541a demonstrating that the acidified food is made pursuant to a scheduled process established by “a qualified person who has expert knowledge acquired through appropriate training and experience in the acidification and processing of acidified foods” (21 CFR 114.83)
- Operate under the supervision “of a person who has attended a school approved by the Commissioner for giving instruction in food-handling techniques, food-protection principles, personal hygiene and plant sanitation practices, pH controls and critical factors in acidification, and who has been identified by that school as having satisfactorily completed the prescribed course of instruction (21 CFR 114.10).
- Test and examine containers often enough to ensure that the container suitably protects the food from leakage or contamination (21 CFR 114.80(a)).
- Mark each container or product with an identifying code permanently visible to the naked eye. The code shall specify the establishment where the product was packed, the product contained therein, and the year, day, and period during which it was packed (21 CFR 114.80(b)).

HDOH’s blanket prohibition on the sale of homemade acidified foods (except for jams and jellies) is unnecessary under FDA rules and does not consider that some acidified foods may be safely produced in a home kitchen by experienced and knowledgeable food producers that adhere to proven and consistent processes and comply with FDA rules.

The FDA does not consider fermented foods to be an acidified food, and has noted that it “could not find reports of cases of botulism caused by commercially processed fermented foods (44 FR 16204 at 16204; 44 FR 16230 at 16231).”<sup>5</sup>

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<sup>4</sup> Under federal law (21 CFR 114.3), the term “acidified foods” is defined as “low-acid foods to which acid(s) or acid food(s) are added; these foods include, but are not limited to, beans, cucumbers, cabbage, artichokes, cauliflower, puddings, peppers, tropical fruits, and fish, singly or in any combination. They have a water activity ( $a_w$ ) greater than 0.85 and have a finished equilibrium pH of 4.6 or below. These foods may be called, or may purport to be, “pickles” or “pickled \_\_\_\_.” Carbonated beverages, jams, jellies, preserves, acid foods (including such foods as standardized and non-standardized food dressings and condiment sauces) that contain small amounts of low-acid food(s) and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid or acid food, and foods that are stored, distributed, and retailed under refrigeration are excluded from the coverage of this part.”

The following foods are not subject to the FDA’s acidified food regulations:

1. Acid foods (natural or normal pH equal to 4.6 or below)
2. Acid foods (including such foods as standardized and non-standardized food dressings and condiment sauces) that contain small amounts of low-acid foods and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid food. If there is a question about whether a product is covered under the regulations, the FDA requires producers to describe the product, submit a quantitative formula, list pH ranges for each ingredient, and submit pH data on finished product from several production lots.
3. Alcoholic beverages
4. Carbonated beverages
5. Fermented foods
6. Foods with water activity ( $A_w$ ) of 0.85 or below
7. Jams, jellies, or preserves covered by 21 CFR 150

<sup>5</sup> FDA Draft Guidance for Industry: Acidified Foods, September 2010, available at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/AcidifiedLACF/ucm222618.htm#III-C>.



## E. PERMITS

### *Recommendation:*

Homemade food operations must apply for an annual “Homemade Food Operation Permit” from HDOH.

The Homemade Food Operation Permit shall be available in two classes:

- Class A, which allows direct-to-consumer sales of items 1-23 on the list of allowed foods, above.
- Class B, which allows direct-to-consumer sales and wholesaling of items 1-26 on the list of allowed foods, above. In order to receive a Class B permit, homemade food operations shall submit to and pass an inspection by HDOH and must successfully complete advanced food safety training, such as the ServSafe® Manager Course, available online for \$125 (online exams must be proctored) (<http://www.servsafe.com/manager/food-safety-training-and-certification>). Homemade food produced under a Class B permit shall be an approved source for food establishments in the state. Sales to distributors shall not be permitted.

Homemade Food Operation Permits will be issued to homemade food operations that:

1. are producing allowable foods;
2. operating in a designated home or farm kitchen that conforms to the building code of the county in which the kitchen is located;
3. have complied with product testing and process verification requirements for the production of items 24-26 on the list of allowed foods, above,
4. have passed inspection (for Class B permits only); and
5. for which the operator has completed all required training.

Homemade food operations seeking to sell food outside of the state must comply with federal regulations, including labeling, ingredients, preparation and handling requirements, as well as the state and local laws of the jurisdiction to which the food is sent.

HDOH shall charge a reasonable permit fee for Class B permits, which fee shall take into account HDOH staff time required to complete inspections and execute other administrative requirements.

### *Rationale:*

HDOH currently allows home-based production of non-potentially hazardous foods under a temporary food establishment (“TFE”) permit. TFE permits allow homemade food producers to sell their products at a specific location, such as a farmers’ market or bake sale, for a maximum of 20 days of sale in any 120-day window at that location. A producer may hold multiple TFE permits to sell at multiple locations, and permits may be renewed. The TFE permit allows direct sales to consumers only. The TFE permit does not allow homemade food producers to sell their products to food establishments that have received a permit from HDOH, such as a supermarket or a restaurant, since HDOH considers residential kitchens to be an unapproved food source for permitted food establishments within the state.

In August and September of 2014, HDOH received 1,027 TFE applications (approximately 513 per month). Of these applications, approximately 850 were for the production of potentially hazardous foods and required a certified kitchen (approximately 425 per month). Approximately 177 TFE applications were for the production of non-potentially hazardous foods (approximately 88 per month), and, of these, about 79 were to produce food at home (approximately 39 applications per month). Of the 79 homemade food TFE permits, 11 entities accounted for 46 of the applications. The other 33 applications were various entities with some overlap. The most prevalent homemade food items for sale were:

- kettle corn/popcorn;
- baked goods (cookies, cakes, cupcakes, and breads);
- shave ice;
- jams, jellies, chutneys;
- doughnuts, andagi, mochi (deep fried foods);
- cotton candy; and
- coffee products.

The proposed Homemade Food Operation Permit would differ from the TFE permit in the following ways:

	<b>Homemade Food Operation Permit, Class A</b>	<b>Homemade Food Operation Permit, Class B</b>	<b>TFE Permit</b>
<b>Period</b>	Annual	Annual	120 days
<b>Applicable Area</b>	Home or farm kitchen	Home or farm kitchen	Sales location ( <i>e.g.</i> , farmers' market)
<b>Sales Limit</b>	None	None	20 days of sale within a 120-day period per sales location
<b>Allowed Sales</b>	Direct-to-consumer only	Direct-to-consumer and wholesaling (no sales to distributors)	Direct-to-consumer only
<b>Food Safety Training</b>	Basic training required	Advanced training required, plus FDA-approved food processing course for sale of acidified foods	Not required
<b>Inspection</b>	None	Pre-permit inspection required	None

The Homemade Food Operation Permit would ensure that:

1. Homemade food operators have completed required training, are producing allowable foods in a safe manner, and are aware of safe food handling guidelines and labeling requirements; and
2. HDOH can provide guidance on allowable foods, refer products for testing when appropriate, and stay apprised of homemade food operations.

#### Wholesaling

Under a Homemade Food Operation Permit, Class B, producers would be allowed to wholesale their products; however, sales to distributors would not be permitted. This rule is consistent with the approach in 10 states, which allow wholesaling of homemade food products either explicitly or implicitly, including California, Louisiana, Maine, Massachusetts, New Hampshire, New York, North Carolina, Ohio, Pennsylvania and Utah.

HDOH's rationale for restricting homemade food operations to direct-to-consumer sales, even when products are non-potentially hazardous, is that the limitation lessens the risk of harm to the public by reducing the quantity of product that a homemade food producer may sell. However, the risk to public health from homemade food is substantially limited by restricting sales of homemade food products to low-risk foods made by producers that have completed advanced food safety training and in some cases

food preservation training. These education requirements exceed the requirements imposed on producers manufacturing food in a certified kitchen.

#### Internet Sales

Internet sales should be allowed under the Homemade Food Operation Permit consistent with the class of permit received. Thus, a Class A permit would allow direct-to-consumer internet sales, while a Class B permit would allow direct-to-consumer sales and wholesaling (other than sales to distributors) via the internet.

#### Inspections

HDOH currently has 50 staff positions for food establishment inspectors, of which 8 positions are vacant. HDOH expects to fill these vacancies in the coming months. There are currently 10,093 food establishments within the state, which HDOH divides into three risk categories depending on the technical complexity of the food operation and its associated risk. Although there is no legally mandated inspection frequency, HDOH is striving to meet the following inspection schedule for food establishments:

- Category 1 (highest risk) – 3 times per year
- Category 2 (medium risk) – 2 times per year
- Category 3 (low risk) – annually

Category 1 generally includes full-service restaurants (raw-prep-cook-cool-reheat-serve operations), such as L&L Hawaiian Barbeque, 3660 on the Rise, and school kitchens. Category 2 generally includes fast foods restaurants (raw meats-cook-serve operations), such as McDonald's and Burger King. Category 3 generally includes ice cream shops, cookie shops, mom and pop package stores (minimal cook/prep-serve operations). Almost all homemade food operations would be in Category 3 – a low risk facility in regards to food safety.

HDOH currently has the right to investigate reports of foodborne illness from foods produced in any kitchen, and may “order operators to cease and desist the sale of foods as the result of any food illness investigation or suspected adulteration that may have or has caused injuries as a result of consuming foods being offered for sale or distribution.”<sup>6</sup>

Risk can be further mitigated by requiring HDOH to inspect Class B homemade food operations prior to permitting. In California, a cottage food business may apply for a Class B permit that allows wholesaling and subjects the business to an initial inspection by the local enforcement agency. In North Carolina, home-based food businesses seeking to sell acidified foods must submit an “Application for Home Processor Inspection” and submit to and pass an inspection by NCDA&CS, Food and Drug Protection Division. Delaware, Georgia, New Hampshire, New Mexico, New York, Maine, Massachusetts, Oregon, Pennsylvania, Tennessee, Vermont, and Washington also conduct home inspections.

HDOH has expressed reservations about entering residences to conduct inspections due to fears that a disgruntled homemade food operator may physically harm an inspector or unjustly accuse an inspector of impropriety. HDOH is currently willing to enter residences to permit a kitchen, so long as the kitchen is in an area with a separate entrance, such as a garage. In addition, several governmental agencies in Hawai'i conduct home inspections, including the Hawai'i County Public Works Building Division, which

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<sup>6</sup> Testimony of Gary L. Gill, Deputy Director, Environmental Health Administration, Hawai'i Department of Health, to the Hawai'i State Senate Committee on Commerce and Consumer Protection, Committee on Ways and Means (February 26, 2014), available at [http://www.capitol.hawaii.gov/Session2014/Testimony/SB2561\\_SD1\\_TESTIMONY\\_CPN-WAM\\_02-26-14\\_LATE.PDF](http://www.capitol.hawaii.gov/Session2014/Testimony/SB2561_SD1_TESTIMONY_CPN-WAM_02-26-14_LATE.PDF)

conducts inspections in connection with building permits, and the Hawai‘i Department of Human Services, which conducts home inspections for family child care homes and foster homes.

Section 5-14 of the Hawai‘i County Building Code states:

“Upon presentation of proper credentials, the administrative authority or such person’s assistants may enter at reasonable times any building or premises in the County to perform any duty imposed by this code, provided that such entry shall be made in such a manner as to cause the least possible inconvenience to the persons in possession. An order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted.”

Chapter 17-891.1-3 of the Hawai‘i Administrative Rules states:

- (a) “In exercising its authority to register family child care homes or renew, suspend, or revoke the certificate of registration, the [Department of Human Services] shall analyze the qualifications of the providers of child care, review the home’s written policies and program provisions, and inspect the home. Authorized representatives of the department and parents and guardians of children in care may visit a family child care operation for purpose of observing, monitoring, and inspecting the facilities, activities, staffing, and other aspects of the child care home. The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies’ authorized fields.
- (b) The applicant or registrant shall cooperate with the department by providing access to its facilities, records, and staff. Failure to cooperate with reasonable requests may constitute grounds for denial, suspension, or revocation of the certificate of registration.”

HDOH’s safety and liability concerns could be ameliorated by any of the following: (1) implementing a buddy system for inspectors, (2) providing homemade food operators with a pre-inspection checklist so that expectations are clear, (3) reserving feedback and decisions for written communications to be shared with the operation following the inspection, and/or (4) allowing inspectors to wear body cameras to document an inspection.

To facilitate transparency with the public, HDOH shall maintain online a list of homemade food operations for which permits have been suspended and revoked.

## **F. ADDITIONAL CONSIDERATIONS**

### ***Zoning***

For the purposes of zoning, a homemade food operation shall be considered a residential use of property and shall be a permitted use in all residentially designated zones, including but not limited to zones for single-family dwellings. No conditional use permit, variance, or special exception shall be required for residences used as a homemade food operation.

### ***Nuisance Complaints***

HDOH has a duty to respond to complaints alleging food borne illness, but not to investigate complaints that are not related to food safety (*e.g.*, noise, odor, traffic).

### ***Potable Water***

Homemade food operations shall use potable water.

### *Grease*

Homemade food operations shall not discard cooking oil or grease into the kitchen sink or the toilet bowl, and shall not use hot water and soap to wash grease down the drain. Instead, homemade food operations shall place cooled cooking oil in sealed non-recyclable containers and discard such containers with the regular garbage, and shall use paper towels to wipe off residual grease or oil from dishes, pots and pans prior to washing.

## APPENDIX A

### MEMBERS OF THE COTTAGE FOOD BUSINESS WORKING GROUP

- Scott Enright, Chairperson, Hawai'i Department of Agriculture
- Senator Russell Ruderman, Hawai'i State Senator (Puna) and Owner, Island Naturals
- Peter Oshiro, Environmental Health Program Manager, Sanitation/Food and Drug/Vector Control, Hawai'i Department of Health
- Kyle Datta, General Partner, Ulupono Initiative (O'ahu)
- Mark Ferguson, Chief Organic Officer, Down to Earth (O'ahu)
- Terri Langley, MA'O Organic Farm (O'ahu)
- Brandon Lee, Investment Associate, Ulupono Initiative (O'ahu)
- Ken Love, Executive Director, Hawai'i Master Food Preservers, and Executive Director, Hawai'i Tropical Fruit Growers (Hawai'i Island)
- Janine Lynne, Owner, Black Dog Farms (Kaua'i)
- Nicole Milne, Associate Vice President for Programs, The Kohala Center (Hawai'i Island)
- Christina Oatfield, Policy Director, The Sustainable Economies Law Center (California)
- Anna-Lisa Okoye, The Kohala Center (Hawai'i Island)
- Jamie Ronzello, Owner, Barking Deer Farm (Moloka'i)
- Dr. Chris Speere, Maui Culinary Academy & 'Made on Maui' labeling (Maui)

## **APPENDIX B**

### **RECOMMENDATIONS ON HOMEMADE FOOD OPERATIONS IN HAWAI‘I**

**Report 5**  
**Recommendations on Homemade Food Operations in Hawai'i**

**October 24, 2014**

**Prepared by: The Kohala Center**  
**For Ulupono Initiative and the Cottage Food Industry Working Group**



## INTRODUCTION

The following recommendations on homemade food operations in Hawai‘i were developed by several members of the Hawai‘i cottage food industry group on October 15, 2014, in response to legislative mandate S.C.R. No. 97 (2014). These recommendations propose a new regulatory framework for homemade food operations. We invite the Hawai‘i Department of Health (“HDOH”) and the public to provide feedback on the pros and cons of the recommendations.

In developing the recommendations, the industry group was guided by the following principles:

- Food safety is essential
- Education and training are important means of achieving food safety
- Proper product labeling is necessary
- Permits can help promote regulatory compliance
- Local food production is integral to Hawai‘i’s economic development and food security
- HDOH requires sufficient resources to implement laws and regulations

The industry group also acknowledged state and federal mandates to increase local food production, including:

- Hawai‘i’s “Increased Food Security and Food Self-Sufficiency Strategy,” which notes that replacing just 10% of the food Hawai‘i currently imports would amount to approximately \$313 million dollars remaining in the State’s economy (Office of Planning, Department of Business Economic Development & Tourism); and
- The United States Department of Agriculture’s allocation of \$27 million in competitive grants to support local food efforts such as food hubs and local processors.

The industry group designed the following recommendations to minimize the risk of foodborne illness through the following efforts:

- Training
- Sanitary guidelines
- Proper product labeling
- Permits

## **CURRENT LEGAL FRAMEWORK**

Hawai‘i Revised Statutes Section 328-11 provides HDOH with the authority to prescribe regulations providing for the issuance of permits for the manufacturing, processing, and packing of foods that may pose a health risk to consumers by reason of contamination with microorganisms. Pursuant to this authority, the Hawai‘i Department of Health has adopted the “Food Safety Code” (Hawai‘i Administrative Rules, Chapter 11-50), which requires “food establishments” and “temporary food establishments” to undergo a permitting process for the sale of food to the public.

### **Food Establishments**

HDOH defines “food establishments” as any place used for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, or otherwise handling food at the retail or wholesale level, and any operation where food is provided to the public, with or without charge. Food establishments include restaurants, cafes, coffee shops, and grocery stores. All food establishments must operate with a valid permit from HDOH, with exceptions including establishments selling only whole uncut fruits and vegetables and establishments selling only prepackaged, shelf-stable foods.

The Food Safety Code requires food establishment kitchens and facilities to receive certification from HDOH. The requirements for certified kitchens include a number of specific equipment and building parameters.

The Food Safety Code prohibits food establishments from selling food made in a private kitchen.

### **Temporary Food Establishments (“TFE”)**

HDOH defines “temporary food establishments” as any food establishment which operates at a fixed location for a limited period of time and does not exceed 20 days in any 120-day period and does not sell products to other food establishments. Temporary food establishments include farmers markets and community events such as fairs, sporting events, and bake sales.

HDOH allows the sale of homemade, non-potentially hazardous foods at temporary food establishments, including cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices. However, such foods may only be sold directly to consumers and may not be sold to other food establishments. Potentially hazardous foods (foods that require temperature controls to limit bacterial growth) sold at temporary food establishments must be produced in a certified kitchen.

### **Limitations of Current Regulatory Framework**

The current regulatory framework creates several challenges for value-added food producers in Hawai‘i, including:

1. Restricting sales of homemade food to direct-to-consumer sales, even when products are non-potentially hazardous.
2. Restricting sales of homemade food to 20 days within any 120-day period (per temporary food establishment location), even when products are non-potentially hazardous.

In order to overcome these challenges, producers of non-potentially hazardous foods must produce food in a certified kitchen that adheres to HDOH’s requirements. Acquiring land and building a commercial kitchen is an expensive endeavor that is unaffordable for many new and small businesses. With respect to leasing certified kitchen space, there are very few certified kitchens available for rent in Hawai‘i, especially in rural areas. For example, Hawai‘i Island’s Puna and Kona Districts lack any certified community kitchens, and the entire island of Kaua‘i lacks any certified community kitchens, although one is currently under construction on the north shore.

For the few certified community kitchens that are available, use of these facilities is unfeasible for many producers. Hourly rental rates quickly become cost prohibitive for small food businesses, especially for those who make foods with long processing times, such as dried fruit. In addition, many community kitchens have limited equipment and storage and refrigeration space, which restricts the types and quantities of products that may be produced. And low population density in rural areas often means that certified community kitchens, if available, are many miles away. With average gas prices in Hawai'i averaging over \$4 per gallon, traveling long distances can be cost prohibitive for small businesses.

# RECOMMENDATIONS FOR HOMEMADE FOOD OPERATIONS IN HAWAI‘I

In order to mitigate the challenges facing value-added food producers in Hawai‘i, the industry group proposes the following recommendations for a new regulatory framework for homemade food operations in Hawai‘i, defined as an enterprise that produces – in a home or farm kitchen that conforms to the building code of the county in which the kitchen is located – allowable foods for sale to the public. Regulations applicable to homemade food operations would not apply to temporary food establishments.

The proposed regulatory framework draws upon cottage food laws adopted by forty-one states and includes the following elements:

- A. Food Safety Training
- B. Sanitary Guidelines
- C. Labeling
- D. Allowable Foods for Home Production
- E. Permits

## A. FOOD SAFETY TRAINING

### *Recommendation:*

Homemade food operations must demonstrate adequate food safety training by completing one of the following training courses and passing the accompanying food safety test:

1. eFoodHandlers™ Basic Food Safety Course, offered online at [www.hifoodhandlers.com](http://www.hifoodhandlers.com); or
2. ServSafe® Food Handler Program, offered online at [www.servsafe.com/ss/foodhandler](http://www.servsafe.com/ss/foodhandler); or
3. HDOH’s two-day Food Safety Certification Workshop, offered in person.

### *Rationale:*

It is well established that certain food-handling practices can prevent or reduce the risk of foodborne illness. Under current rules and regulations, Hawai‘i encourages but does not require food handler training. The industry group recommends that homemade food operations complete basic food handler training to ensure that these operations understand common foodborne illnesses and key food handling practices.

HDOH currently offers a voluntary two-day Food Safety Certification Workshop at no cost. However, requiring all homemade food operations to take this course would require HDOH to increase the availability of these workshops, at a significant cost to HDOH.

Instead, the industry group recommends that the State accept one or more online food safety courses as proof of adequate training for homemade food operations. Online food safety courses are easily accessible, affordable, and currently accepted as adequate food safety training by numerous jurisdictions across the country that mandate food safety training for food handlers.

For example, hifoodhandlers.com offers the eFoodHandlers™ Basic Food Safety Course, a 90-minute online course offering core training for food servers, handlers, and preparers, followed by a test. California, Texas, Illinois, Arizona, and Oregon accept the eFoodHandlers™ online Basic Food Safety Course as adequate food handler training. The eFoodHandlers™ course and test are free, while a food handler certificate indicating course completion costs \$10.

In addition, the National Restaurant Association offers the ServSafe® Food Handler Program, a 90-minute online course on basic food safety covering personal hygiene, cross-contamination and allergens,

time and temperature controls, and cleaning and sanitation, followed by a test. California, Alaska, Oregon, Illinois, and Florida, as well as numerous counties across the country, accept the ServSafe® online Food Handler Program as adequate food handler training. The ServSafe® Food Handler Program costs \$15.

## **B. SANITARY GUIDELINES**

### ***Recommendation:***

Homemade food operations must comply with standard industry sanitary guidelines for the production of allowable foods.

### ***Rationale:***

As indicated above, it is well established that certain food handling practices can prevent or reduce the risk of foodborne illness. To protect public health, homemade food operations should be required to comply with standard industry sanitary guidelines for the production of allowable foods.

## **C. LABELING**

### ***Recommendation:***

All homemade food products produced and sold pursuant to a homemade food operation permit must include a label indicating that the product was “Made in a home kitchen,” along with the name and address of the producer and an ingredient list.

### ***Rationale:***

Notifying consumers that the product was made in a home kitchen allows consumers to differentiate between products processed in a commercial kitchen that is routinely inspected by HDOH and products made in a home or farm kitchen. Requiring the name and address of the producer allows HDOH to contact homemade food operators in the event of a consumer complaint. Ingredient lists inform consumers and HDOH of the content of the product to ensure that the product is an allowable food for homemade production.

## **D. ALLOWABLE FOODS FOR HOME PRODUCTION**

### ***Recommendation:***

Any non-potentially hazardous food (based on pH) may be produced in a home kitchen. HDOH shall create and publish online a sample list of non-potentially hazardous foods to act as a guideline for home-based producers. The Department shall make it clear that the sample list is not exhaustive but only a reference point to make it easier for producers to understand some common non-potentially hazardous foods.

Foods for which the pH has been lowered by adding food additives or components such as vinegar to render the food so that it is non-potentially hazardous (“acidified foods”) may be produced in a home kitchen if the final product pH is 3.5 or below and if the producer completes advanced food preservation training. HDOH shall provide approved recipes and procedures for producing acidified foods. Commonly acidified foods include pickles, relishes, salsas, hot sauces, and salad dressings.

### ***Rationale:***

At present, HDOH considers the following foods to be non-potentially hazardous: cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices.

Under current HDOH rules, “potentially hazardous food” means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation. Potentially hazardous food does not include a food that because of its pH or water activity ( $A_w$ ) value, or interaction of  $A_w$  and pH values, is designated as a non-potentially hazardous food by the HDOH.

Current rules designate foods with the following pH and  $A_w$  values as non-potentially hazardous (PHF):

- Heat treated foods:

$A_w$ values	pH values		
	4.6 or less	> 4.6 to 5.6	> 5.6
$\leq 0.92$	non-PHF	non-PHF	non-PHF
>0.92 to 0.95	non-PHF	non-PHF	Product Assessment Required
>0.95	non-PHF	Product Assessment Required	Product Assessment Required

- Non-heat treated foods or heat-treated but not packaged foods

$A_w$ values	pH values			
	< 4.2	4.2 to 4.6	> 4.6 to 5.0	> 5.0
<0.88	non-PHF	non-PHF	non-PHF	non-PHF
0.88 to 0.90	non-PHF	non-PHF	non-PHF	Product Assessment Required
>0.90 to 0.92	non-PHF	non-PHF	Product Assessment Required	Product Assessment Required
>0.92	non-PHF	Product Assessment Required	Product Assessment Required	Product Assessment Required

If a food’s pH has been lowered by adding food additives or components such as vinegar to render the food so that it is non-potentially hazardous (“acidified foods”), current HDOH rules require processors to apply to HDOH for a variance in order to sell the acidified food. HDOH may grant a variance by modifying or waiving the requirements of the Hawai‘i Food Safety Code if in the opinion of HDOH a health hazard or nuisance will not result from the variance. Other than jams and jellies, HDOH currently considers all acidified foods to be potentially hazardous, prohibits the sale of homemade acidified foods, and refers acidified products for product testing, in accordance with US Food and Drug Administration (FDA) rules.

A blanket prohibition on the sale of homemade acidified foods does not consider that some acidified foods may be safely produced in a home kitchen by experienced and knowledgeable food producers that adhere to proven and consistent processes. In addition, some acidified foods are exempt from the FDA’s acidified food regulations, including:

- Acid foods (natural or normal pH equal to 4.6 or below)
- Acid foods (including such foods as standardized and non-standardized food dressings and condiment sauces) that contain small amounts of low-acid foods and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid food. If there

is a question about whether a product is covered under the regulations, the FDA requires producers to describe the product, submit a quantitative formula, list pH ranges for each ingredient, and submit pH data on finished product from several production lots.

- Alcoholic beverages
- Carbonated beverages
- Fermented foods
- Foods with water activity ( $A_w$ ) of 0.85 or below
- Jams, jellies, or preserves covered by 21 CFR 150.

## E. PERMITS

### *Recommendation:*

Homemade food operations must apply for an annual “homemade food operation permit” from HDOH (suggested fee: \$50). Permits will be issued to homemade food operators that have completed adequate food safety training and are producing allowable foods. The permit allows a homemade food operation to produce allowable foods in a designated home or farm kitchen that conforms to the building code of the county in which the kitchen is located, and allows HDOH the option to inspect homemade food operations, as long as HDOH provides the homemade food operator with at least 24 hours notice of the inspection. Refusing entry may constitute grounds for denial, suspension, or revocation of the permit.

### *Rationale:*

HDOH currently allows home-based production of non-potentially hazardous foods under a temporary food establishment (“TFE”) permit. TFE permits allow homemade food producers to sell their products at a specific location, such as a farmers market or bake sale, for a maximum of 20 days of sale in any 120-day window at that location. A producer may hold multiple TFE permits to sell at multiple locations, and permits may be renewed. The TFE permit allows direct sales to consumers only. The TFE permit does not allow homemade food producers to sell their products to food establishments that have received a permit from HDOH, such as a supermarket or a restaurant, since HDOH considers residential kitchens to be an unapproved food source for permitted food establishments within the state.

The proposed homemade food operation permit would differ from the TFE permit in the following ways:

	<b>Homemade Food Operation Permit</b>	<b>TFE Permit</b>
<b>Period</b>	Annual	120 days
<b>Applicable Area</b>	Home or farm kitchen	Sales location ( <i>e.g.</i> , farmers market)
<b>Sales Limit</b>	None	20 days of sale within a 120-day period per sales location
<b>Sales</b>	Direct and wholesale	Direct only
<b>Food Safety Training</b>	Required	Not required
<b>Inspection</b>	Allowed with 24 hours notice	None*

\*HDOH may order operators to cease and desist the sale of foods as the result of any food illness investigation or suspected adulteration that may have or has caused injuries as a result of consuming foods being offered for sale or distribution.

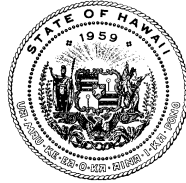
The homemade food operation permit would ensure that:

1. Homemade food operators have completed adequate food safety training, are producing allowable foods, and are aware of sanitary guidelines and labeling requirements; and
2. HDOH can provide guidance on allowable foods, stay apprised of homemade food operations, and inspect such operations at its discretion.

## APPENDIX C

### HAWAI‘I DEPARTMENT OF HEALTH COMMENTS ON “RECOMMENDATIONS ON HOMEMADE FOOD OPERATIONS IN HAWAI‘I”





STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

In reply, please refer to:  
File:

November 28, 2014

Nicole Milne  
Homemade Food Operations Working Group

SUBJECT: DOH Comments to "***Recommendations for Homemade Food Operations in Hawaii***" Survey.

A. Food Safety Training

The DOH concurs that training and food safety knowledge is one of the key elements to prevent food illnesses or adulteration of food. The three examples given are all acceptable as basic food training for food industry personnel.

B. Sanitary Guidelines

This sounds good, but standard industry sanitary guidelines precludes the use of residential kitchens to manufacture or prepare food in any shape or manner. The FDA Model Food Code expressly prohibits the manufacture or preparation of food in home kitchens due to the fact that the great majority of home kitchens do not have the basic and necessary infrastructure to ensure food safety at the commercial level. Basic equipment and infrastructure such as restricted hand wash sinks, 3 compartment sinks or commercial grade dishwashers for proper sanitizing, lack of commercial exhaust hoods with air pollution and fire suppression devices, and restricted work areas, restricted food storage, commercial grade refrigerators to ensure temperature control, proper restricting of chemicals, access to licensed pest control operators, are just a few of the things that are required as standard industry sanitary guidelines and are lacking in most households. These are the basic reasons that food safety regulatory personnel do not allow phf's and other items out of home kitchens, and why we only allow direct to consumer sales of non-phf's.

C. Labeling

DOH would like the label changed to "Made In a Home Kitchen that has not inspected by the Department of Health". This is critical as the public must be informed that the home kitchens are not inspected.  
Other than that we concur with the intent of this section.

#### D. Allowable Foods for Home Production

I think there may be some semantic issues with this section. Acid foods that have a “natural” or “normal” pH and Aw according to the Time/Temperature Control for Safety (TCS) matrix shown MAY be considered (currently not allowed from home kitchens except jams/jellies) by DOH. DOH will need to look more closely at this, but will not provide a blanket exemption for these foods at this time.

Any bottled food has the potential to cause serious injury or death due to the modified atmosphere conditions created. Demonstration of controls to prevent C. botulinum is extremely difficult for expert commercial food processors much less home canners/bottlers.

If a food must be acidified by adding acid, because the natural or normal pH is above 4.6, then the FDA has complete jurisdiction over the product, and it will not be allowed to be produced in a home kitchen under any condition.

We will also not allow any dried meats/fish to be done in home kitchens regardless of the finished Aw. The drying process for these types of products must be closely monitored to ensure that the product does not stay in the 41°F to 135°F range for more than 4 hours throughout the drying process.

#### E. Permits

The DOH will not permit home kitchens, especially if prior notification is required. This is one of the most difficult arenas for enforcement. The home-made industry requests that they have the same ability to prepare foods at any scale, but is unable to meet the burden of having totally unannounced inspections, which is the cornerstone of our inspection program to insure the integrity of the inspection and to provide public confidence that a true snap shot of the food prep conditions were represented, and the operator did not have a chance to “clean-up” their operation prior to the inspection.

DOH is looking at the possibility of relaxing the 20/120 rule if the legislature/working group can address the following DOH concerns;

- 1) Community complaints regarding odors, noise, and traffic as a result of 24/7/365 food operations in residential areas MUST be addressed from the standpoint that DOH will not investigate into these complaints. Any rule change will require that these issues be exempt from DOH/Gov’t regulatory control and that the legislature alone will address these complaints. This would be similar to exemptions from smoke nuisances resulting from outdoor cooking of food for personal use. State Gov’t currently does not regulate backyard BBQ’s or residential chimney smoke for home heating in residential areas, but commercial cooking would need to be addressed.
- 2) City and County plumbing requirements (Grease Trap) concerns will need to be addressed for those homes hooked into sanitary sewers.

- 3) DOH Wastewater Branch (WWB) concerns (if any) regarding potential generation of commercial volumes of wastewater into Individual wastewater systems (IWS)'s.. These are homes with cesspools/septic tanks or multi-family units (townhome/condo) on small WW package plants condo. WWB stated that a check-off box on an application with an IWS would need to be signed off by WWB for any permit. WWB will evaluate potential volume of wastewater generated on a case-by-case basis.
- 4) Water supply must comply with DOH Safe Drinking Water Branch standards as provided for by Hawaii Administrative Rules (HAR) Chapter 11-20, Public Water Systems for all commercial ventures.
- 5) DOH will not agree with allowing wholesaling and "internet" sales of homemade food products. We will allow direct sales to consumers only. Current State and federal rules prohibit permitted or licensed food establishment from receiving ANY foods from unapproved sources. All homemade foods are considered to be an unapproved source by law.
- 6) At this time the DOH does not plan to create rules/guidelines to allow for inspections of private residential or farm home kitchens, unless we can address transparency of the inspection. I do not want to have regulatory personnel in what may result in potentially explosive or litigious situations resulting from disagreements with inspectional findings or direction given to food producers while in someone's private home.

The comments provided are meant to be preliminary only and the DOH position provided by myself are subject to change as we progress towards the start of the new legislative session and formal submittal of your report pursuant to SCR 97. As you know, the Director of Health will no longer serve as of this year, and Governor elect Ige has not yet appointed key administrative positions that may impact the direction and focus of my responses. Our Deputy AG will also need to review final drafts of DOH comments that may result in changes to HRS or HAR.

The DOH appreciates the opportunity to participate with your working group and we really appreciate the hard and diligent work done by yourself and your Group.

Mahalo For your Interest in Public Health,

Peter Oshiro  
Env. Health Program Manager  
Sanitation/Food and Drug/Vector Control Branch

## APPENDIX D

### PUBLIC COMMENT ON “RECOMMENDATIONS ON HOMEMADE FOOD OPERATIONS IN HAWAI‘I”

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During November 2014, The Kohala Center solicited public comment on the “Recommendations on Homemade Food Operations in Hawai‘i,” and included the following survey questions:

1. Do you process food for sale to the public in your home?
2. Are you processing any food that you grow?
3. What gross sales (*i.e.*, sales before expenses) do you generate on an annual basis from selling homemade food?
4. In what city or town do you produce homemade food?
5. On which island do you produce homemade food?
6. What is your occupation?
7. Where do you sell your homemade food products?
8. How many days per week do you sell homemade food products?
9. Currently, the Hawai‘i Department of Health restricts homemade food sales to direct sales to consumers and prohibits wholesale sales. In order to receive a permit to make wholesale sales of homemade food, would you be willing to:
  - a. Pay a higher permit fee than required for direct sales only;
  - b. Consent to random home inspections with 24 hours’ notice; and/or
  - c. Complete advanced food safety and/or food preservation training?
10. What is the biggest limiting factor on your sales of homemade food products?
11. Do you aspire to build a full-time food production business and generate all of your income from such business?

Forty-seven people responded to the solicitation. Of the 47, a total of 18 respondents indicated that they process food in their home for sale to the public. Of these 18 homemade food producers:

- All process food that they grow.
- 2 live on O‘ahu, 9 live on Hawai‘i Island, 2 live on Maui, 1 lives on Kaua‘i, and 3 live on Moloka‘i.
- 11 are farmers, along with a beekeeper, a poi processor, a janitor, a substance abuse counselor, a homemaker, a contractor/consultant, a retiree, a chef, and a social worker.
- 10 sell at farmers markets, 8 at special events, 3 to friends and family, 3 to restaurants/cafes, 3 to other retail outlets, 2 to grocers, 2 to community supported agriculture programs, 1 online, 1 at church, 1 at a road side stand, and 1 on a food truck.
- 7 sell homemade food 1 day a week, 6 sell 2 days a week, 1 sells 7 days a week, and 1 sells a half day per week.
- Annual gross sales ranged from \$500 - \$30,000, with an average of \$9,800.
- In response to the question, “What is the biggest limiting factor on your sales of homemade food products?”
  - 12 indicated being limited to direct sales only;

- 10 indicated being limited to 20 sales days per 120 days (per location) under the temporary food establishment permit;
- 7 indicated costs of production (e.g., food, energy, labor costs, etc.); and
- 4 indicated the size of their home kitchen
- In order to receive a permit to wholesale homemade food:
  - 18 would be willing to complete advanced food safety and/or food preservation training;
  - 12 would be willing to consent to random home inspections with 24 hours' notice; and
  - 7 would be willing to pay a higher permit fee than required for direct sales only;
- 11 aspire to build a full-time food production business and generate all of their income from such business.

Twenty-five respondents provided the following comments on the recommendations:

***Recommendation:***

Homemade food operations must demonstrate adequate food safety training by completing one of the following training courses and passing the accompanying food safety test:

1. eFoodHandlers™ Basic Food Safety Course, offered online at [www.hifoodhandlers.com](http://www.hifoodhandlers.com); or
2. ServSafe® Food Handler Program, offered online at [www.servsafe.com/ss/foodhandler](http://www.servsafe.com/ss/foodhandler); or
3. HDOH's two-day Food Safety Certification Workshop, offered in person.

***Comments:***

- I agree with the proposal that online classes/training be accepted as proof of adequate training for homemade food operations.
- I totally support this recommendation. It provides a win-win solution to addressing food safety issues for both home producers and the general public. It removes one of the barriers (food safety concerns) for home production, and minimizes the additional expense anticipated by an online option. I appreciate the research done to come up with this recommendation that encourages home businesses without jeopardizing food safety for the consumer.
- What about 'Hawai'i County Hawai'i: Training Course for Food Safety Certification' and the multitude of other online options available? Why not give more options? People love choices.
- Anyone selling food to the public should be required by law to complete one of the above courses and show evidence of completion whenever and wherever they are selling food to the public. Food should be clearly labeled in accordance with HDOH food safety guidelines. This should include any/all food sales at garage sales, farmers markets, concert venues, roadside food stands, benefit or fundraising events, etc.
- Agree.
- Already have done the HDOH's two-day Food Safety Certification Workshop, offered in person. We'd love to be able to process our chili peppers on the farm and then ship direct to the kitchen for bottling.
- Food safety classes should be attended in person not online. One of the values of these classes is to get to know your inspectors to establish a working relationship and to answer pertinent questions that always arise. There is potential for abuse of online tests. Let's not compromise the safety of our food supply for convenience!
- Online courses are not proctored, therefore one could easily cheat. Especially if English is not their first language.
- I support the industry group recommendations.

- I think the online food safety course options would be sufficient for most food operations.
- That sounds totally reasonable.
- I think these allowances are a long time overdue. If implemented, they will increase our economy and allow small food businesses the opportunity to start small and grow into larger enterprises.
- I feel the value of a live class is worth the expense for strengthening understanding and value of good handling practices. The two day could be shortened to a 6 hour class, with better understanding and fuller application discussed. Worth the expense.
- Sound like excellent ideas.
- Agree. Food safety takes common sense and basic training that can be handled online. California allows an online self-certification checklist for their cottage food industry.
- These courses are a must if someone intends on selling homemade foods, but they won't keep anyone safe if food handling practices are not followed by the food handlers. Consumer beware.
- This seems to be reasonable.
- HDOH should include in its budget funds for food safety certification workshop so they could increase availability of the workshop. This is very important because not everyone is computer literate or has a computer. If the government is serious in implementing its mandate of increased food sustainability and food security strategy, it has to provide the necessary funding to do so. You do not want to develop an industry that creates discrimination.
- Training is always a good idea and if it can be done cheaply as well as effectively (*i.e.*, e-training) than by all means, that should be supported.
- An online course seems fine. If there is concern about cheating, there could be an in-person proctored exam of some sort that would not take as much HDOH resources as the full workshop.
- Funds could be found to cover any increased costs by HDOH in offering more classes.
- Yes.

## B. SANITARY GUIDELINES

### *Recommendation:*

Homemade food operations must comply with standard industry sanitary guidelines for the production of allowable foods.

### *Comments:*

- I agree with the above proposal.
- Another logical recommendation that encourages home businesses without jeopardizing public health and food safety.
- Anyone selling food to the public, no matter where the food is produced, should be required by law to complete one of the above courses and show evidence of completion whenever and wherever they are selling food to the public. Food should also be clearly labeled in accordance with HDOH food safety guidelines. This should include any/all food sales at garage sales, farmers markets, concert venues, roadside food stands, benefit or fundraising events, etc.
- Agree.
- Waste water is a key issue. Food processing kitchens need to comply with the federal Clean Water Act that the state is tasked with enforcing.
- In reality yes, but not sure how realistic it would be. Would a 3 compartment sink be required? A separate hand-washing facility (or will a restroom on the premises suffice?). If renovations are required, this would hinder the cottage industry.  
Sanitary standards must be maintained at current / legal acceptable standards.

- Yes, this makes sense for low risk food items.
- Sounds fine as long as I know what “standard industry sanitary guidelines” are.
- Definitely important.
- Good. Clear understanding of HI requirements is important.
- Agree.
- Only makes sense if you educate producers and consumers.
- I don’t see that this recommendation is effective if the very root of the problem is not addressed. By reading all the bulleted issues presented, the issue of adequate number of “certified” food preparation facility is not being addressed. Only certified kitchen is mentioned and the current challenges to access such facility. Unless you have adequate certified food preparation facility this project will not take off. HDOH should establish separate guidelines to allow for “certified home kitchens” for food that are not potentially hazardous.
- I agree. Standard sanitary guidelines should be followed.
- Restaurants are now being inspected and required to post a sign that says whether they passed. Is something similar possible for homemade food operations? Could you start with a voluntary inspection that allows you to post it on the label or website?
- Yes.
- Absolutely!
- I would have to read the guidelines. Do you have the guidelines? It should be on this survey. Mahalo.
- Since HDOH has limited staff capability, to take on inspections of Cottage Food kitchens seems impossible. Cottage Food kitchens would require a thorough initial inspection before being permitted and frequent inspections to affirm compliance with food safety regulations. All the requirements mentioned such as taking a course, permitting, labeling etc. are simple compared to making sure that the cottage food producer is compliant in their kitchen. I read through the CA Homemade Food Act and the regulations cover all issues. Example, no home food preparation or entertainment while making the product. No children or pets in the kitchen areas. No pests. I like the idea of promoting the cottage food industry, but doubt whether HDOH is capable to making sure home kitchens and operators are compliant.

## C. LABELING

### *Recommendation:*

All homemade food products produced and sold pursuant to a homemade food operation permit must include a label indicating that the product was “Made in a home kitchen,” along with the name and address of the producer and an ingredient list.

### *Comments:*

- I agree with the above recommendation.
- I support this recommendation as well. It informs the public with information to identify the home product from a commercially processed product before purchase is made.
- I'm in favor of leading the trend for transparency when it comes to labeling of ingredients; therefore including whether or not there are genetically modified organisms in the ingredients. It is also important to state whether there are peanuts (or other common allergens) being processed in the home (or any other) kitchen.
- The label must also state the date and time the food was made "in the home" and be restricted to non-perishable items such as baked goods, cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices.
- Agree.

- This would be helpful to the buyer. Buyer will probably expect a "better price" since the seller does not have the usual overhead like "regular" manufacturers. Will the seller need to purchase liability insurance? Wouldn't the seller need to register with the Hawai'i Department of Commerce and Consumer Affairs? Catchment water okay?
- I support the industry recommendation.
- I agree with the labeling rationale.
- Agree.
- Good. We should all be able to make personal decisions based on knowledge.
- I think the labeling requirement could be waived for certain direct-to-consumer, face-to-face sales. For all other sales, I think the label as described is essential, and should also include a contact phone number and a permit number.
- Agree.
- Well there should be some way to contact the producer, but really, do I need to have my home address on every label? And of course all the ingredients again for safety for the consumer.
- In addition to "made in a home kitchen" and the name and address of the producer and an ingredient list, I would hope that either a "prepared on date" or an "expiration date" would be required. (e.g. I oftentimes want to buy salsa made here on the island but if there is no date, I do not.) Some products may not have a definitive expiration date (e.g. coffee, jams, jellies) so a "prepared on or roasted on date" may be the only guideline.
- Reasonable requirement.
- You have to be careful that this requirement will not raise negative perception to consumers, *i.e.*, caution to the consumers that this product is potentially hazardous to your health.
- Keep it simple please.
- Acceptable, reasonable.
- This is a great idea, but will producers of homemade food products feel it is an invasion of privacy? What if they move and the labels become out of date? Could there be a sort of online registry that records the home address and issues an identifying number? That way the home address could be updated online but the number would be the same on the label. A trade association of homemade food producers could maintain the online registry.
- Listing a home address on a product might raise flags, rather maybe a PO Box or just having addresses on file for inspection in case of a problem.
- Yes.
- Sounds reasonable.
- If this becomes a law, only the address should be required. "Made in a home kitchen" should be optional.
- Does HDOH have the manpower to check on compliance? Are the funds available to support HDOH if these regulations are passed?

#### **D. ALLOWABLE FOODS FOR HOME PRODUCTION**

##### ***Recommendation:***

Any non-potentially hazardous food (based on pH) may be produced in a home kitchen. HDOH shall create and publish online a sample list of non-potentially hazardous foods to act as a guideline for home-based producers. The Department shall make it clear that the sample list is not exhaustive but only a reference point to make it easier for producers to understand some common non-potentially hazardous foods.

Foods for which the pH has been lowered by adding food additives or components such as vinegar to render the food so that it is non-potentially hazardous ("acidified foods") may be produced in a home



kitchen if the final product pH is 3.5 or below and if the producer completes advanced food preservation training. HDOH shall provide approved recipes and procedures for producing acidified foods. Commonly acidified foods include pickles, relishes, salsas, hot sauces, and salad dressings.

*Comments:*

- Definitely support this recommendation as it safely allows for the expansion of potential home-based products. Hawai'i government needs to support expanding entrepreneurship opportunities and this is a way to do so while ensuring safe production.
- Who is going to police and check on the pH content of added-value foods being produced either in home or in a certified kitchen? Pickled fruits & vegetables? Kim Chee? Dried meats?
- We produce hot sauce with a PH below 4 and as low as 2.8. We wholeheartedly hope these new laws pass. It would allow us to do small batch value added specialty sauces.
- Must consider proper refrigeration per HDOH regulations for ingredients that are used to make non-potentially hazardous foods. Refrigeration should be used only for the product produced and not mixed with home use foods.
- I have seen jams and jellies that do not meet 21 CFR 150. Not only from a soluble solids level but also from a standard of identity standpoint. And this should be "easy" compared to many other products.
- I am uncertain which particular foods meet the above restrictions.
- I disagree with a blanket prohibition and feel that many acidified foods can be safely produce in a home kitchen.
- Agree.
- Pretty limiting, and somewhat unnecessarily so. However, the above list and requirements are a good start. I hope not the last word.
- Agree that fermented foods such as kimchi, sauerkraut, and tempeh should remain allowed in home kitchen operations. Even the FDA states that there have been no documented cases of illness for non-canned fermented foods:  
<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryinformation/AcidifiedLACF/ucm222618.htm#III-C>
- Proper education and maybe master food preserve certification classes available statewide for those who want to sell acidified foods.
- Since some beverages are banned, then beverages must be included somewhere. I am 99.9% certain coffee is considered a non-hazardous food item but I don't see it listed. I sell roasted coffee. I have a certified coffee kitchen but have received a note from the health department that they will not be issuing further certifications since coffee is considered non-hazardous. Or something like that. So where do coffee roasters fall these days - there are a whole lot of us so please don't forget about us. Also, if I have visitors to the farm I sometimes provide samples of brewed coffee. What are the regulations on that?
- Ask for the revision of the list to include those that you see fit to be included.
- Again, keep it simple and cheap. \$50 is not cheap.
- My eyes glazed over on this part. What do you want the state to do? Instead of having its own definition, follow FDA rules?
- Please add to the food list: kalo (taro), taro leaf, ulu (breadfruit) to food lists.
- Sounds great!
- Let's make it easier for Hawai'i residents to make a living at home. Cost to live in Hawai'i is outrageous! I don't know how my child will be able to live in Hawai'i if we don't be creative.

## E. PERMITS

### *Recommendation:*

Homemade food operations must apply for an annual “homemade food operation permit” from HDOH (suggested fee: \$50). Permits will be issued to homemade food operators that have completed adequate food safety training and are producing allowable foods. The permit allows a homemade food operation to produce allowable foods in a designated home or farm kitchen that conforms to the building code of the county in which the kitchen is located, and allows HDOH the option to inspect homemade food operations, as long as HDOH provides the homemade food operator with at least 24 hours’ notice of the inspection. Refusing entry may constitute grounds for denial, suspension, or revocation of the permit.

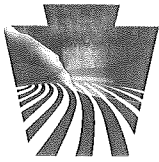
### *Comments:*

- I agree with the permit for reason #1 above. However, I do not agree with the need to inspect the facility. If that is the case then you are back at using a certified kitchen. What would be the parameters of a qualified home or farm kitchen? An oven? two sinks? Spic and span Mr. Clean kitchen? The approved courses along with labeling of the product with its ingredients, when it was made AND a notation MADE IN A HOME OR FARM KITCHEN should be enough for the consumer to decide for themselves whether to purchase it or not.
- Current rules are o.k. for fundraising efforts of non-profits but way too restrictive for home businesses. Our government needs to make these changes to encourage home businesses while assuring the safety and health of the consumers. It is also clear to me that the general public is very much desiring home-made products as evidenced by the success of farmers markets and food and craft fairs.
- Applying for permits annually can be too costly for small-time produces whose profit margins are already, often, extremely minimal. I suggest the renewal time be every 2 years and not to exceed \$25, annually.
- The food safety requirements for the TFE permit should be exactly the same as the Homemade Food Operation permit if direct sales are allowed under both. And inspections should be allowed to both with the same 24 hours’ notice.
- Agreed.
- The 24 hour notice defeats the purpose of allowing HDOH access to the facility to see what is really going on. This is a good thing! Food processors must be held accountable for their operations. If they have nothing to hide then they won't mind spot inspections. Food inspections should be as much about prevention as cleaning up after an incident. People die from foodborne illnesses, let's not dumb down our food safety laws because people are too lazy or cannot afford the proper facilities and equipment. Our standards should be kept high. The current requirements of HDOH are all doable and are good common sense, we should not lower our standards. These proposed changes will require a big increase in funding to HDOH which already cannot keep up with required inspections. Food processing facilities at a home location are already allowed under current law and are permitted as a commercial use of all zoning (with permits and certain restrictions). Allowing unlimited sales in areas not zoned for commercial use can set up potential problems with roads, parking and other issues. Food processing facilities established at a home location should be used only for the commercial use stated in the permit and should not be mixed with home use. Most homes have pets that have free run of the house and this poses a threat to food safety. Also, homes have a lot of people going in and out that aren't part of the processing that will be occurring and pose a threat of contamination. Mixing foods that are for home use and eating and cooking utensils in an area that is to be used for commercial production of foods poses a threat of contamination. Keeping the requirement for direct sales only will help in the tracking in case there is contamination of foods produced in the proposed home kitchens. I must confess, I think your proposed changes are not a good idea. I am a farmer and a food processor and nothing in the current regulations has prevented us from being successful at both for two decades.

- Recommend direct sales only since unfair competition for "legal" businesses. Will wholesaler require liability insurance? Couldn't the wholesaler in turn sell it to a retailer, restaurant, etc.?
- I support the HDOH require food handling safety training. I believe the permitting process should include mandatory site inspection prior to the issue of the permit, as well as inspections at the discretion of the HDOH after the permit is issued.
- How about the fee for a permit is \$25.00? More folks would be willing to work within the guidelines if the permit fee were more reasonable.
- These proposals make sense.
- The homemade food operations permit is safer for the consumer and better for the homemade food producers. Love it!
- Good.
- I'm not sure why a TFE permit holder should be exempt from food safety training.
- Great!
- Looks clear, simple and enforceable.
- To protect the homemade food operations and "buy local" and our struggling ag industry, it seems to me that people should have to prove they have insurance before they receive their permit. If a tourist or anyone should get sick from any of our locally produced/home cooked food items it would wreck it for everyone. At least if it happens then both parties are protected.
- I provide non potentially hazardous food from my home kitchen under the TFE permit. I am not charged a fee. I believe that the proposed rule change would change this and increase my costs. Perhaps you could have a waiver under the permit for non-potentially hazardous foods prepared in a home kitchen.
- Keep it simple and cheap please. Look where you live, and if you don't, you'll pay for it. More will be on EBT.
- Sounds good. Might also emphasize that the purpose of the permits vary, but both promote food independence in Hawai'i, local entrepreneurship, and the public health.
- Yes
- Sounds reasonable.
- In other states, it is very flexible to do cooking at home and selling items. Laws should be flexible. The state of Hawai'i has to learn to be business friendly so we can encourage more farmers to farm and really make Hawai'i island become the hub of agriculture. With the many different climates we have, we can grow almost everything.
- All allowable foods must be permitted. New products cannot be sold without a permit. Inspections do not require notice. Limit \$ sales of product for the year.

## **APPENDIX E**

### **PENNSYLVANIA REGULATOR LETTER**



# pennsylvania

DEPARTMENT OF AGRICULTURE

BUREAU OF FOOD SAFETY & LABORATORY SERVICES

June 25, 2012

Mr. Stambler:

In response to your inquiry regarding the Commonwealth of Pennsylvania's food safety program with respect to "Home Food Processors," I offer the following:

Pennsylvania registers home food processors under our Food Safety Act – the same statute that applies to all other food processors / manufacturers in the state.

Pennsylvania has been registering 'home food processors' since the 1970's.

Home Food Processors are required to meet certain criteria to register with the Department. Guidelines can be found on our website at [www.EatSafePA.com](http://www.EatSafePA.com). Key criteria include: 1) no pets in the home, 2) only preparation of non-potentially hazardous foods, 3) water testing on non-public water sources, 4) appropriate labeling of foods, 5) separation of ingredients for business use and personal use, and 6) compliance with routine inspections by the Department of Agriculture.

Currently there are approximately 1500 registered home food processors in the Commonwealth of PA.

In my 15 years working with the Department, I am not aware of any foodborne illness outbreaks associated with any Commonwealth registered "home food processors."

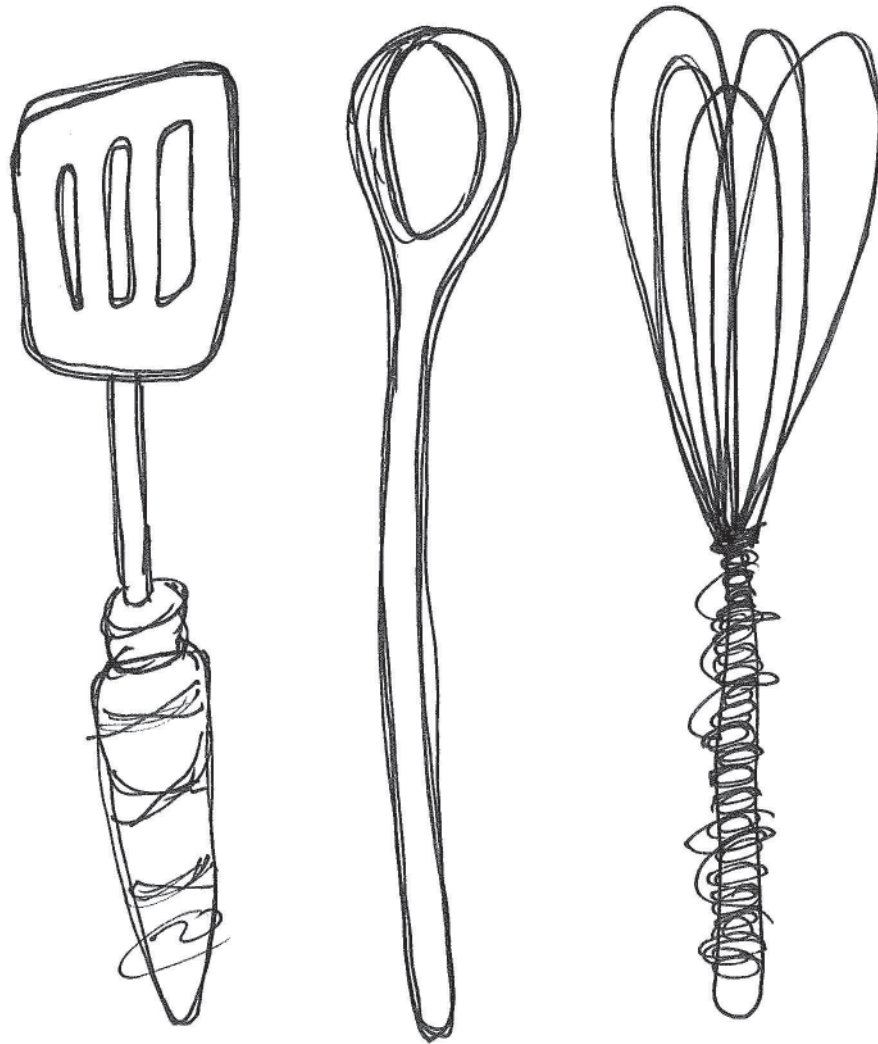
The Commonwealth has had outbreaks associated with unregistered home food processors, typically related to illegal processing of low-acid canned foods or other potentially hazardous foods just as catering meals.

If you have further questions, or I can be of other assistance, please feel free to contact me.

Sincerely,

Sheri L. Morris  
Food Program Manager

# 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

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## 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.<sup>1</sup> 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.”

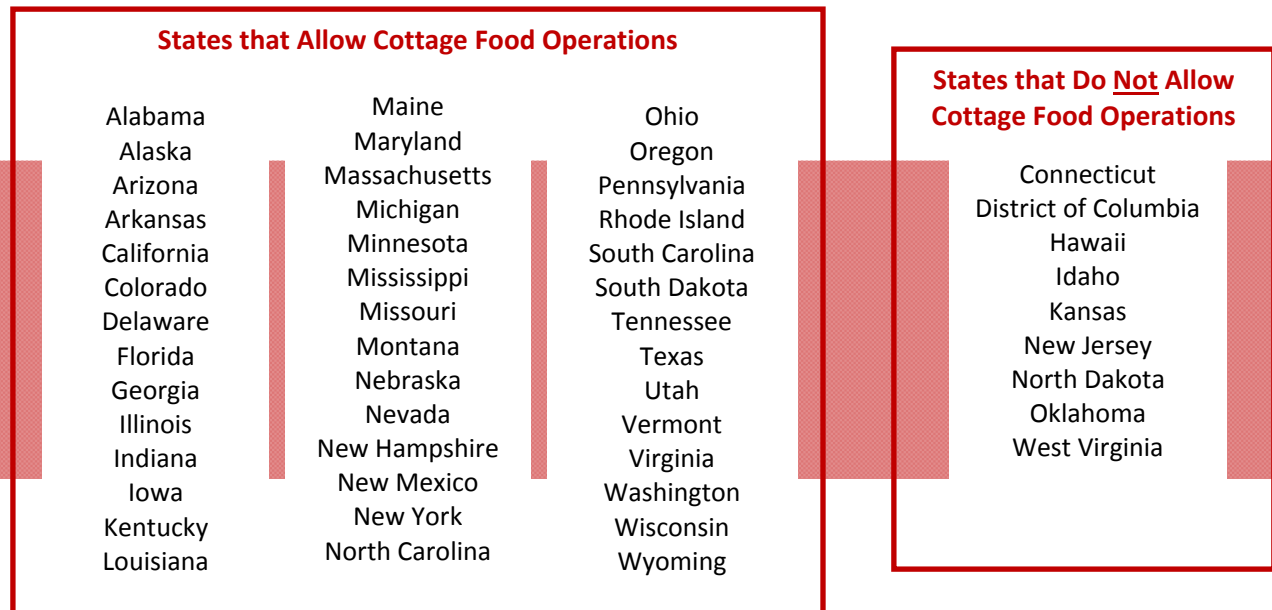
Daniel Lai, *Granholm Signs Cottage Food Operations Bill Into Law*,  
HERITAGE NEWSPAPERS.COM, July 12, 2010,  
<http://www.heritage.com/articles/2010/07/12/heritagewest/news/doc4c3b698fa1b80714001632.txt>.

<sup>1</sup> *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.<sup>2</sup> 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).<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>2</sup> 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>.

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

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

### 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.<sup>9</sup> 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).

<sup>5</sup> MD. CODE ANN., HEALTH-GEN. § 21-330.1 (2012).

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

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

By contrast, California’s cottage food law has its own subchapter of the state’s Retail Food Code entitled “Cottage Food Operations”<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.”<sup>15</sup> 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.

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

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

<sup>12</sup> CAL. HEALTH & SAFETY CODE §§ 114365–114365.6 (West 2012).

<sup>13</sup> CAL. HEALTH & SAFETY CODE §§ 113758 (West 2012).

<sup>14</sup> 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).

<sup>15</sup> 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.<sup>1</sup> 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.<sup>2</sup> This also means that none of the versions of the FDA Food Code allow for commercial sales of foods produced in a home kitchen.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

<sup>1</sup> 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).

<sup>2</sup> 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.

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

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

<sup>5</sup> 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.”<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.

<sup>16</sup> ARK. CODE ANN. § 20-57-201(1) (2012).

<sup>17</sup> 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>.

<sup>18</sup> CAL. HEALTH & SAFETY CODE § 114365.5 (West 2012).

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

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).<sup>21</sup> 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.<sup>22</sup> 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.”<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

**Figure 2. Types of Cottage Food Products Allowed**

<b>Broad List of Allowed Foods</b>	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
<b>Limited List of Allowed Foods</b>	e.g., “non-potentially hazardous foods, limited to...”	Arkansas, Colorado, Illinois, Montana, Nevada, New Hampshire, Ohio
<b>Other (More Restrictive)</b>	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

<sup>19</sup> 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).

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

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

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

<sup>23</sup> 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).

<sup>24</sup> WIS. STAT. ANN. § 97.29(2)(b)(2) (West 2012).

<sup>25</sup> VT. STAT. ANN. tit. 18, § 4451 (2012).

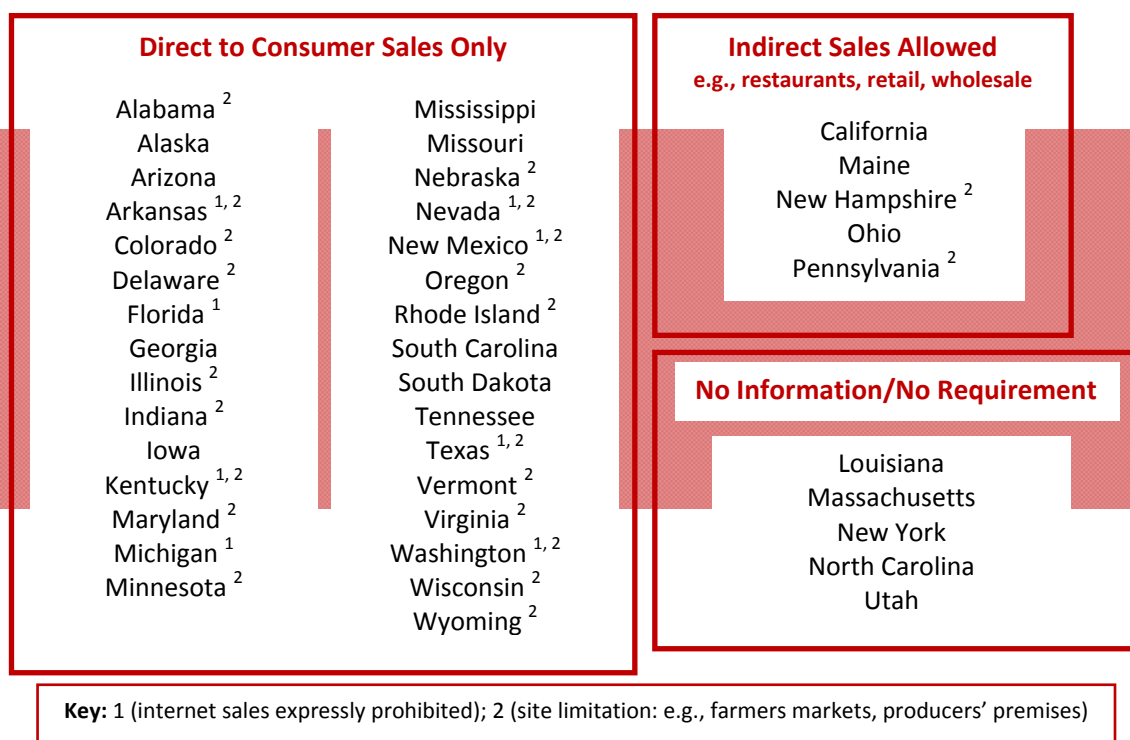


### Limits on Where Food Can Be Sold

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."<sup>26</sup> 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.<sup>27</sup>

**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.<sup>28</sup> 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

<sup>26</sup> TENN. CODE ANN. § 53-8-117(b) (West 2012).

<sup>27</sup> CAL. HEALTH & SAFETY CODE § 113758(a) (West 2012).

<sup>28</sup> 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.”<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

#### 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.<sup>32</sup> Other states, such as Texas, make no mention of a license requirement, which suggests that no license is required.<sup>33</sup>

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

<b>States that Have Some Sort of Registration, Permit, or License Requirement</b>		<b>States that Have No Registration, Permit, or License Requirement</b>	
Alaska	Massachusetts	Alabama	Nebraska
Arizona	Nevada	Arkansas	New Hampshire
California	New Mexico	Florida	New York
Colorado	Oregon	Indiana	North Carolina
Delaware	Pennsylvania	Iowa	Ohio
Georgia	Rhode Island	Louisiana	South Carolina
Illinois	Tennessee	Maryland	South Dakota
Kentucky	Utah	Michigan	Texas
Maine	Washington	Minnesota	Vermont
		Mississippi	Virginia
		Missouri	Wisconsin
		Montana	Wyoming

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

<sup>29</sup> MICH. COMP. LAWS § 289.4201(4) (2012).

<sup>30</sup> 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](http://agr.georgia.gov/Data/Sites/1/media/ag_consumerprotection/cottage_food/files/cottagefoodsfaq.pdf) (last visited Jan. 17, 2013).

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

<sup>32</sup> 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).

<sup>33</sup> 25 TEX. ADMIN. CODE § 229.661 (2012).

<sup>34</sup> ALASKA ADMIN. CODE tit. 18, § 31.012(a)(4) (2012).

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

<sup>36</sup> WASH. REV. CODE § 69.22.030(2) (2012).

<sup>37</sup> 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.<sup>38</sup> There are often fees associated with licensing and permitting: some states have low fees (\$20 fee in Maine),<sup>39</sup> 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.<sup>40</sup>

### 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.<sup>41</sup> Louisiana, Minnesota, and Wisconsin, however, cap annual sales for cottage food operations at only \$5,000/year.<sup>42</sup> 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.<sup>43</sup> In California, cottage food operations are limited to \$35,000 in 2013; \$45,000 in 2014; and \$50,000 in 2015 and beyond.<sup>44</sup>

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).<sup>45</sup> Florida, on the other hand, limits cottage food operations in the state to \$15,000 for *all products in all locations*.<sup>46</sup>

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.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup> 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).<sup>50</sup>

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<sup>38</sup> *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&](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).

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

<sup>40</sup> WASH. REV. CODE § 69.22.030(1) (2012).

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

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

<sup>43</sup> MICH. COMP. LAWS § 289.4102(5) (2012).

<sup>44</sup> CAL. HEALTH & SAFETY CODE § 113758(a) (West 2012).

<sup>45</sup> 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).

<sup>46</sup> FLA. STAT. § 500.80(1) (2012).

<sup>47</sup> TENN. COMP. R. & REGS. 0080-04-11-.03 (2012).

<sup>48</sup> TENN. COMP. R. & REGS. 0080-04-11-.02 (2012).

<sup>49</sup> S.C. CODE ANN. § 44-1-143(G)–(H) (2012).

<sup>50</sup> 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			

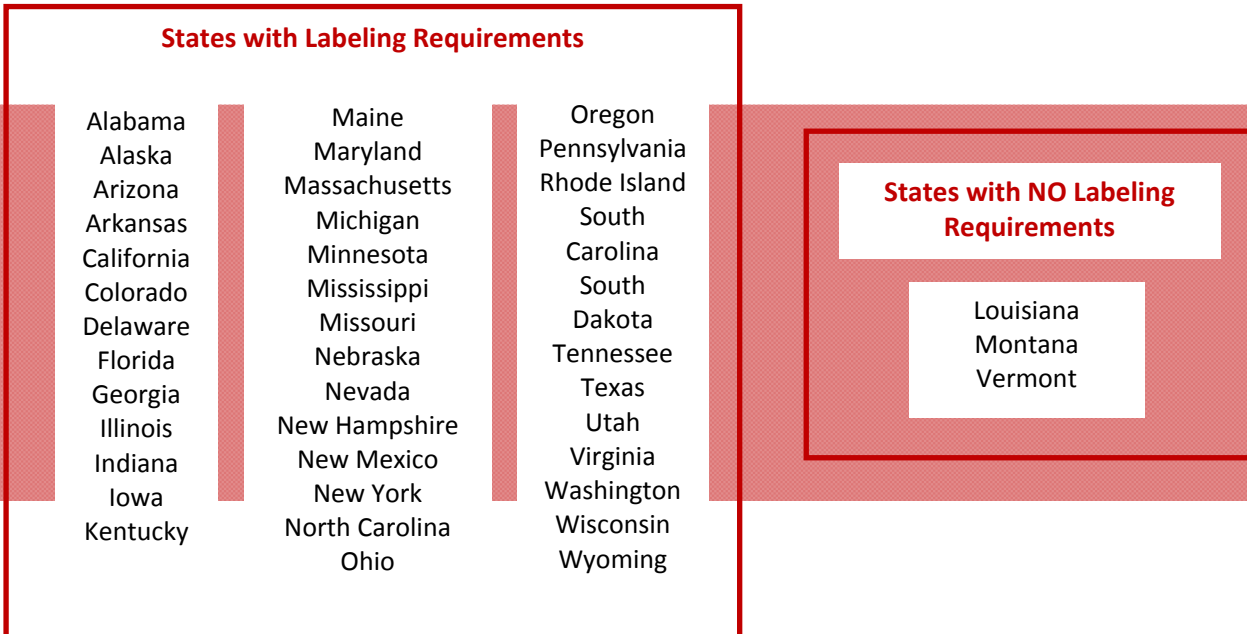
## Required Labeling

Almost all states with cottage food laws have labeling requirements.<sup>51</sup> 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.”<sup>52</sup> On the other hand, Virginia only requires the cottage food label to read: “NOT FOR RESALE—PROCESSED AND PREPARED WITHOUT STATE INSPECTION”<sup>53</sup> and Louisiana has no labeling requirement at all.<sup>54</sup>

**Figure 6. Required Labeling**



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

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

<sup>53</sup> VA. CODE ANN. § 3.2-5130(A)(3) (2012).

<sup>54</sup> 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;<sup>55</sup> Nevada's cottage food bill passed, while New Jersey's did not.<sup>56</sup> 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

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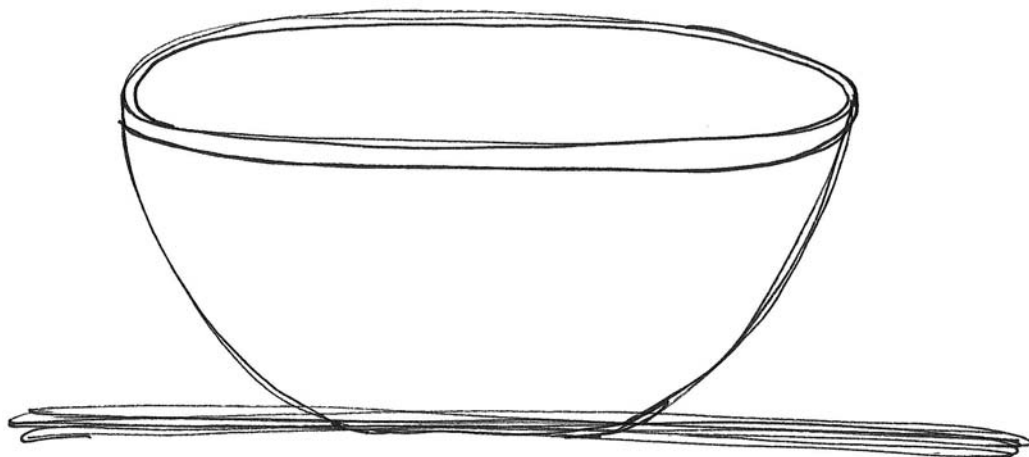
<sup>55</sup> S.B. 206, 77th Leg., Reg. Sess. (Nev. 2013) ("This bill adds to the list of entities that are excluded from the definition of 'food establishment' a cottage food operation that: (1) manufactures or prepares certain food items for sale; (2) meets certain requirements relating to the preparation, 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).

<sup>56</sup> 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.<sup>57</sup>

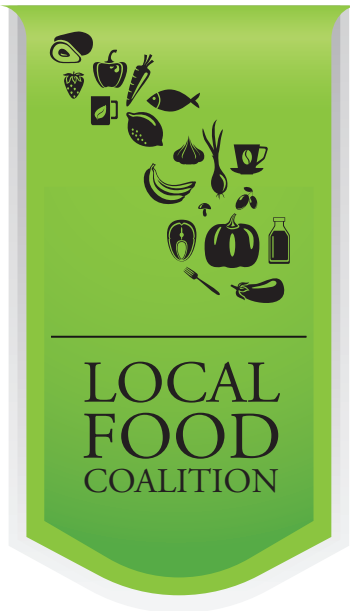
States such as Rhode Island should ensure that the regulations they place on cottage food operations reflect the small size and low-risk nature of these operations and that the requirements are not overly burdensome.

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.



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<sup>57</sup> R.I. GEN. LAWS § 21-27-6.1(1) (2013).



4 Ag Hawai'i

Hawai'i Aquaculture &  
Aquaponics Association

Hawai'i Association of  
Independent Schools

Hawai'i Cattlemen's Council

Hawai'i Farm Bureau  
Federation

Hawai'i Farmers' Union  
United

Hawai'i Food Industry  
Association

Hawai'i Food  
Manufacturers Association

Kohala Center

Malama Kaua'i

Maui School Garden  
Network

Ulupono Initiative

SENATE COMMITTEES ON HEALTH AND AGRICULTURE  
Thursday, February 12, 2015 — 3:40 p.m. — Room 414

**The Local Food Coalition Strongly Supports SB 379 with an Amendment, Relating to Food**

Dear Chair Green, Vice Chair Wakai, Chair Ruderman, Vice Chair Riviere, and Members of the Committees:

**The Local Food Coalition strongly supports SB 379 with an Amendment**, which is comprised of the recommendations of the Cottage Food Working Group organized from SCR 97 from the 2014 Legislative session. Last session, the Legislature passed S.C.R 97, requesting that the Local Food Coalition convene a task force including the Department of Health, Department of Agriculture, national experts on cottage food regulation, and local agricultural stakeholders. This bill is based on the recommendations of the task force.

Legislative action is necessary because the critical task force recommendation is for a new more efficient regulatory framework that creates three permit classes that are appropriate to the scale of scope of the cottage food endeavor. This cannot be achieved by the departmental rulemaking and represents an opportunity to both significantly improve the efficiency of government operations and allow the cottage food industry to grow. This legislative approach is modeled from the California Cottage Food law.

We believe we have DOH concurrence on the food safety training, sanitary guidelines, labeling and list of approved cottage food products (Sections B, F, G, and H).

This permit approach (Sections C, D, E and I) updates the existing regulatory framework to meet the needs of a growing industry that can provide residents with increased local foods and local economic development, especially in rural areas of the state. The working group kept public safety in mind and attempted to find a balance between supporting local food consumption and public health. The framework has been design to streamline the onerous burden that the current Temporary Food Establishment approach places on the small cottage food operator. *There has been no single instance of illness associated with legally permitted homemade food sales both within Hawai'i and other states.*



This bill adds three different classes for cottage food operations and defines their regulatory requirements. These include Class A: direct sales only, Class B: direct and indirect sales not including acidified and fermented foods, and Class C: direct and indirect sales including acidified and fermented foods. The Class A permit approach would be streamlined to self-certification and training requirements.

While cottage food operators are currently allowed to sell directly to consumers under the temporary food establishment permit, we believe indirect sales should be allowed. In a world where transactions are conducted remotely through shipping, this would allow for increased opportunities for consumers in Hawai'i, but not conveniently located near the producer to obtain delicious local homemade products. Ironically, residents of Hawai'i can and do purchase cottage food products from California. Furthermore, allowing sales to restaurants, distributors, and retail shops will also allow these home businesses to be able to grow into economically viable businesses and provide consumers with increased local food options.

We recognize that indirect sales require greater scrutiny, and therefore the bill calls for more stringent certification and training requirements, as well as an annual inspection requirement. We believe inspection could be accomplished either directly by department personnel or through the department's certification of third party inspectors. We note that certified third party inspectors are already in use for food safety inspections for agricultural producers and processors, and this trend is likely to continue with under the expected approach of the Food Safety Modernization Act.

#### Economic Benefits of Cottage Food Industry

We support this bill because it will increase consumption of local foods and increase Hawai'i's food self-sufficiency. It is anticipated that the ability to work in home kitchens will increase the use of local foods in small-scale value-added production and allow for start-up operations that could grow.

The cottage food industry, which sells non-hazardous food products prepared in a home kitchen, is a growing movement across the nation as consumers are looking for unique high-quality food products. More than 30 states have laws or regulations permitting direct-to-consumer sales of cottage foods. The Department of Health noted that they issue about ~1,300 non-potentially hazardous temporary food establishment permits a year. Based upon the survey conducted during the working group process from the Kohala Center, the annual revenue for a cottage food operator is between \$1,000 to \$35,000. With less restrictions, the majority of respondents indicated they could increase their revenue by ~\$5,000, although some believe they can increase sales by 30% to 50%. We roughly estimate the current size of the cottage food market to be \$20 million.

Through the working group meetings and discussions with Department of Health, we were able to identify training classes for cottage food operators, requirements for permitting, labeling criteria, and a process for identifying approved cottage food products. We believe these increased processes will help grow the cottage food industry in a safe and transparent manner.

## Proposed Amendment to Address County Concerns

One amendment we would like to propose is to delete the paragraph in Section 1 regarding zoning.

The Local Food Coalition members came together with one common goal: to promote the local production of food in a sustainable and economically sound manner to benefit Hawai'i's people through the revitalization and expansion of our state's agricultural sector.

We believe that by collaborating we can help produce more local food, support an economically strong homegrown agriculture industry, which strengthens our community with fresh, healthy food. Thank you for this opportunity to testify.

Respectfully,

Kyle Datta  
On Behalf of the Local Food Coalition

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HTHTestimony](#)  
**Cc:** [micah@hfbf.org](mailto:micah@hfbf.org)  
**Subject:** \*Submitted testimony for SB379 on Feb 12, 2015 15:40PM\*  
**Date:** Wednesday, February 11, 2015 3:30:25 PM

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**SB379**

Submitted on: 2/11/2015

Testimony for HTH/AGL on Feb 12, 2015 15:40PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Manfredi	Hawaii Farm Bureau	Support	No

**Comments:**

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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