

Cottage Food Processing – Is the consumer at risk?

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Thank you. This area of cottage food processing has certainly stirred plenty of debate over the last 10 years and I appreciate the chance to share some of my thoughts and offer some things to consider regarding this niche food processing area.

Revive local economies and
create jobs!
Rebuild local food systems!
Make magic in your home
kitchen!

Image credit:
janesvillefarmersmarket.com



Each visit to a local farmers' market will undoubtedly turn up an array of processed foods for sale. Many vendors will passionately describe their business and their role in the local food economy.

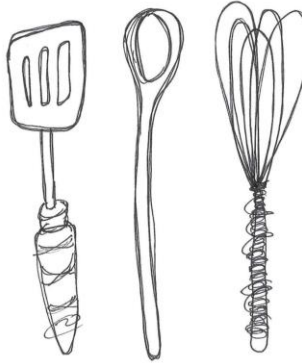


Fresh Milk *from* Tested Cows in Sanitary Surroundings.
Your children need it.

Image credit: culturecheesemag.com

And the passion isn't just directed at local food systems. Vendors are often passionate about their products and they want to share their road to health with you and your children.

Cottage Food Laws in the United States

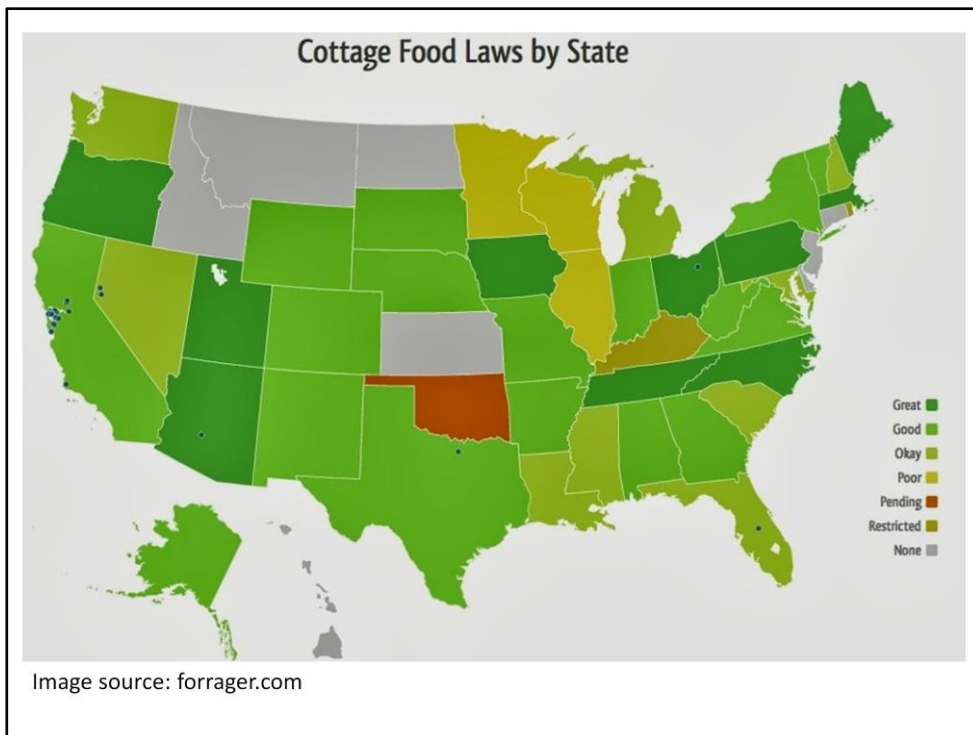


August 2013



According to a study published by the Harvard Food Law and Policy Clinic in 2013, the past few years have seen a marked increase in the amount of local and small-scale food production in the United States. The Harvard study cites the increase in the number of farmers' markets throughout the U.S. as an example of the rise of local food production. According to the USDA's Agricultural Marketing Service, the number of farmers' markets rose to 8,284 in 2014, up from 3,706 in 2004, an increase of ~150% increase in 10 years time.

Along with this rise in farmers' markets and the 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 without requiring a permit or a license.



These home-based businesses are most often allowed in states under cottage food laws.

What is a cottage food law? According to the source, forrager.com, the short answer is: A cottage food law is a law that allows you to make certain types of food from your home kitchen, and then legally sell these foods at certain venues.

A more involved answer to the question: What is a cottage food law, begins by reminding us that during the 20th century, most states created a law which **prevented** homemade food from being sold for personal profit. Then, in the late 1990's and early 2000's, a select few states adopted laws allowing certain kinds of homemade food products to be sold — these laws were often known as “baker laws” or “pickle bills”.

Starting in 2007 and throughout the Great Recession, many more states adopted laws with the focus of giving their citizens an easier way to make some income, with the side-benefit of helping local economies. The term “cottage food” became popular as a way to describe these laws and the local home-based food businesses that were cropping up throughout the country.

As the local food movement has become more popular, more and more states have added “cottage food laws” to allow these home food businesses to exist legally. Cottage food laws are different in every state, but each law allows home food sales in some way.

According to forrager.com which rates cottage food laws by state, Wisconsin's cottage food law is "poor" due to its low sales cap, the ability to sell only at farmers' markets and community events, and because it is the only state out of 47 with a cottage food law that allows canned goods but no low-moisture baked goods (muffins, breads, cookies, etc.). Wisconsin's 'pickle bill' was patterned after a similar law in Minnesota. Minnesota also has a 'poor' ranking.

As the cap on earnings allowed rises and the type of goods increases, states receive a more favorable rating from forrager.com: Michigan is OK, Illinois is GOOD and Iowa is GREAT.

Sounds like a slogan for a tourism campaign.

Common Elements in Cottage Food Laws

- Foods that are not potentially hazardous: bakery, candy, jams and jellies, and the like.
- Limits on where food can be sold: directly to consumers in state; no selling wholesale.
- No registration, permit or license requirement.
- Limits on total sales: \$5,000-\$50,000 - ????
- Required labeling.



There are several common elements found in cottage food laws:

Generally cottage food laws allow for the manufacture of non-potentially hazardous foods only. Foods such as bakery items, candy, jams, jellies and the like.

Food sales are generally allowed only directly to the public at farmers' markets, with no sales to restaurants or other retail establishments or out of state.

Generally there is no registration for these businesses and no permitting or licensing required.

The amount of total sales allowed varies widely from a stated limit of \$5,000-\$50,000; or with no limit established in 20 states.

Labeling requires information such as

- Name and address of processor
- Common or usual name of product
- Ingredients in descending order of predominance by weight
- Any food allergens
- Date of manufacture
- Some sort of statement or declaration alerting the consumer to the fact that the product was made in a home kitchen.

Reported Benefits



- Direct and indirect economic benefit
 - More local products available for sale
 - More money in the local economy
- Community benefit
 - Greater access to local foods for community members
 - Growers know they can create value-added products so they grow more food

By allowing these small businesses to flourish, supporters of cottage food laws report certain benefits that emerge:

Direct and indirect economic benefits

-more local products available for sale

-more money in the local economy

And community benefits

-greater access to local foods for community members

-and growers know they can create value-added products from excess harvest so they grow more food. This benefit generally discounts the fact that the excess production often occurs at the time when a grower doesn't have time to process the harvest, but that is beside the point.

Those advocating for cottage food laws state that the laws must be broad enough for cottage food businesses to be viable; these advocates encourage high sales limits and removing restrictions on the type of products which may be sold.

Win-Win



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.”

Pam Byrnes, Michigan state representative (2010)

Our neighbors in the state of Michigan have a cottage food law and this was described as a win-win situation by Michigan state representative, Pam Byrnes, at the time that the Michigan law was passed.



Author Lisa Kivirist and her son, Liam, selling pickles at a farmers' market.

In 2010, Wisconsin signed a "Pickle Bill" into law. An article in the Milwaukee Journal Sentinel describing Wisconsin's new pickle law indicated that the goal was to allow the launching of small food businesses by entrepreneurs with a culinary dream or desire to earn extra income.

In order to support entrepreneurs like themselves, Lisa Kivirist and her husband John Ivanko of Monroe, WI wrote "Homemade for Sale."

In her book, Lisa states that: "The key benefit of cottage food laws is you can start quickly and economically from your home kitchen."

In addition to allowing only high-acid foods, Wisconsin's law restricts total annual sales to \$5,000 or less, and all sales must be direct from producer to consumer at an event like a farmers market or bazaar. A sign must be posted that says "These canned goods are homemade and not subject to state inspection," and there are labeling stipulations.

Wyoming Food Freedom Act (2015)

- Processed produce
- Poultry
- Eggs
- Unpasteurized milk

Internet sales w/in WY

No labeling required

No income limit, but producers are liable for state sales tax



An example of a state where cottage food laws might be seen as having been taken to the extreme is in Wyoming. In researching this, I understand that Wyoming passed a Food Freedom Act in 2015.

According to publicity surrounding the passage of this act, the right to buy and sell local foods has been restored in Wyoming. The stated goal of the Wyoming Food Freedom Act is to promote, encourage and assist in developing relationships between conscientious producers of clean, wholesome local foods and the **educated** consumers who seek them.

The Food Freedom Act supposedly allows consumers to buy processed produce, poultry, eggs and unpasteurized milk and raw milk products direct from the cook or farmer. No red meat or processed red meats allowed.

Internet sales are allowed, but only with shipping within Wyoming.

There is no requirement for informing the consumer through labeling....perhaps just a conversation with farmer will do.

And there is no income limit, although producers are liable for state sales tax. (I'd be interested to know that is going.)

And perhaps most interesting, it is my understanding that regulators can not ask at a farm market stand or in any way inquire about product being sold. Regulators can only interact with this producer-consumer relationship if they are invited/asked to do so.

Why?



So why have cottage food laws? According to the Harvard University review, the impetus behind these cottage food laws is simple.

The Harvard University review suggests that it is because many of the food safety laws regulating food production in the United States were designed as one-size fits all regulations.

And the review suggests that the most cumbersome part of state regulations are those which describe the food production environment, the facility.



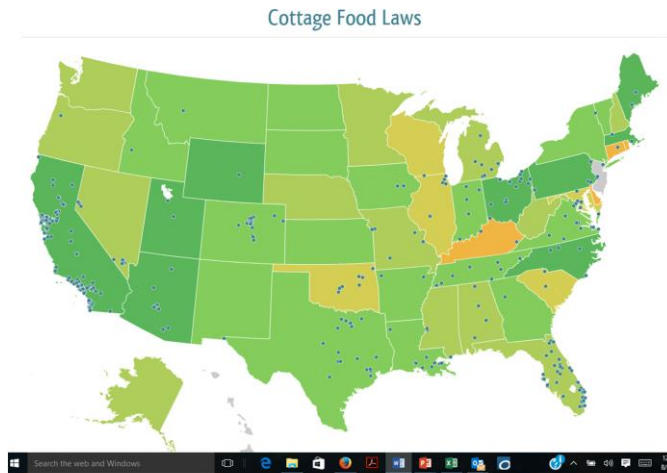
Again, according to the Harvard review, the facilities requirement is based on the idea that facilities that have met certain requirements (cleanable surfaces, 3-compartment sinks and a separate hand-washing sink, adequate lighting, and so forth) will allow for manufacture of food that is safer than producing food in an unlicensed, uninspected kitchen.

My own experience would confirm this.... small entrepreneurs view the facility requirement as the biggest hurdle to getting their business going. Cottage food laws, therefore, do away with the facility requirement in the hopes of supporting small, local food businesses.

Let's turn our attention to one segment of the cottage food industry, the manufacture of acidified canned foods such as pickles and for context see what pickle processing looks like in a small regional canning operation.

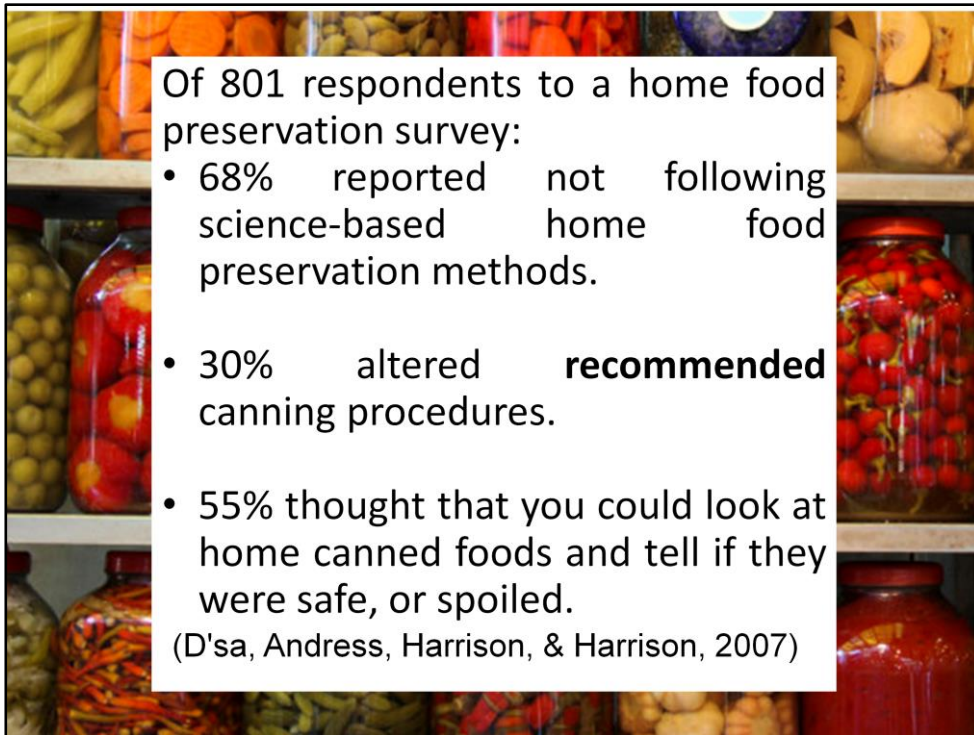
VIDEO

States which Allow Pickle Processing under Cottage Food Laws



Some states do allow for the manufacture of pickled items under cottage food laws. And the cottage food laws in Wisconsin and Minnesota focus on canned items such as pickles in these 2 states' Pickle Bills.

How much do these home-based processors know about the factors in canning which protect public health?



We don't have a lot of data available to us to gauge the knowledge base of those involved in selling home canned goods. But the National Center for Home Food Preservation has reported some consumer survey data which should give us some insight.

In 2007 the National Center for Home Food Preservation published results of a survey completed by 801 home canners.

The majority of respondents, 68% reported not following science-based home food preservation methods.

30% of home preservers altered canning recipes and methods without an awareness of the potential public health implications of making those changes.

And more than half thought that you could tell if home-canned foods were safe, or spoiled, simply by looking at the food.

So we can presume that there is a knowledge gap that needs to be addressed.

The Training Paradox



"Dog obedience school insults my intelligence. What I'd like to do is go to a university and get a degree."

Image: ozdoggy.com.au

So we can assume that processors operating in home-based canning businesses lack at least some knowledge of food safety or food sanitation that would help to ensure that public health is protected.

A few states require some sort of certification or training as part of the establishment of a cottage food business, but this is not always the case.

For instance under the Wisconsin Pickle Bill, individuals are encouraged to attend and complete training, and to have their recipes and processes reviewed, but there are no formal requirements.

Even if some sort of training certificate were required, how do we ensure that training will be attended, that training transfers the required knowledge, and that training is put to use?

Not everyone who sits through a training session is ready for action at the end.

Regulation of Cottage Foods

- Cottage food processors exempt from Food Code requirements
- Sales are state-based and not subject to federal regulations ???



According to the Harvard Food Law and Policy study mentioned earlier, states have primary authority over the health and well-being of their residents and therefore states have the ability to decide whether to allow for in-home production of foods.

Many states did not initially allow cottage food production because these states had adopted the FDA Food Code's provisions defining and regulating food establishments. So exemptions were created to allow for home-based food production.

Putting a restriction on sales across state lines purportedly ensures that foods are not subject to federal regulations.

BUT is this the case? What about an area where a federal law specifically regulates a type of food manufacture?

Federal Regulations

21 CFR 114
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Federal laws exist which specifically regulate the manufacture of canned foods, 21 CFR 113 governs manufacture of low-acid canned foods and 21 CFR 114 governs manufacture of acidified low-acid canned foods.

The foods that are covered under 21 CFR 114 are outlined in the definition that occurs in the regulations....An **acidified food means....**

So, in this definition, there is language that the FDA has jurisdiction over pickled products.

Animation....'huh?'

If you actually call the LACF-FDA office in Washington, DC and ask about registration of a scheduled process for a pickled product, you are likely to hear that **all processors are in interstate commerce, not just those who sell their product out of state.** The FDA views all processors as being in interstate commerce based on the fact that ingredients such as sugar and salt, and containers like glass jars are all crossing state lines in order to end up in a canned pickled product.



I'm not making acidified foods, I'm canning pickles.

Or how about this quote from a processor, “I’m not making acidified foods, I’m canning pickles.”

In my experience, explaining that pickles are an acidified food, subject to particular regulations, is one of the easiest parts in helping processors to comply with state and federal licensing requirements, or to explain a cottage food exemption.



When we consider acidified canned low-acid foods our thinking also has to encompass not only the traditional jarred pickles, but also non-carbonated water-based fruit-flavored beverages and salsas in plastic containers with plastic closures.

Each of these products is an acidified low-acid food, with an equilibrium pH of 4.6 or below and water activity of greater than 0.85, and is a canned product. Not all of these products would be allowed under a cottage food law which allows canning of pickles. But it is a good illustration, I think, of the complexity of the regulatory framework under which cottage food laws are placed.

Cottage food laws are exemptions from regulations, but incomplete exemptions. Leaving not only processors, but sometimes regulators too, to cross their eyes in confusion. **[confused baby]**

Risk from home-based businesses?



- Watermelon jelly sold at a bazaar in British Columbia may contain bot toxin (8 March 2011)



- Bacon jam linked to 200 illnesses from *Staphylococcus aureus* (2013) pH 5.8, a_w 0.97 and suspected cases of *C. botulinum*. (3 August 2014)

- Cases of botulism linked to home-canned pesto sold at a farm stand in California. (July 2014) pH 5.3, a_w 0.965



- Mustard relish recalled due to botulism risk.



(4 April 2016)

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Do home-based businesses present a real risk? Let's look at some headlines.

From March 8, 2011, watermelon jelly sold at charity booths in British Columbia (Canada) had a pH and water activity to support the production of botulinum toxin in the product.

In two separate instances, bacon jam has been linked to 200 illness from *Staphylococcus aureus* and suspected cases of *Clostridium botulinum*.

And in 2014, an unlicensed facility in Napa valley, California produced a product linked to a foodborne illness outbreak. The facility was at VR Green Farms in California. Pesto was sold at the farm stand "on and off" for several years. In this case, a father bought 7 jars on a trip to Napa valley and gave the product to friends in Colorado and to his daughter in Ohio. 2 cases of botulism were traced to the product consumed in Ohio (daughter and friend in their 20s) who had used the pesto to make chicken pasta salad with pesto sauce. Both individuals in Ohio were hospitalized and placed on ventilators.

California public health officials noted that the pesto carried an inadequate product label (incomplete ingredient statement, no lot code, no best buy date, and no "Perishable Keep Refrigerated" statement). During the outbreak investigation, CA officials described the manufacturing process to be conducted under "insanitary conditions at a home residence".

Larry and Margaret Hardy recalled the mustard relish in April 2016. The mustard was made in their home kitchen. The product was recalled because they didn't add enough vinegar. Said Larry Hardy, "It was a shock, an absolute shock. Because we've had nothing of this nature before....It's definitely human error, but my biggest guess is that I was busy and I was working away and I probably put in not enough vinegar into the product." The affected batch included 21 jars; of which **all but 10** were accounted for in the recall.

Botulism risk from farm market soups

- **One Gun Ranch** soups recalled due to botulism risk. The soups were sold at 2 farmers' markets in California.
- **Organic Soup Kitchen** soups recalled due to botulism risk. Soups sold from 2011-2012 at farmers' markets in California.



The soups from One Gun Ranch sold at 2 farmers markets in California have been recalled. Soups that are subject to the warning include: Campfire Kitchen Cauliflower Soup, Heirloom Tomato Fennel Gaspacho Soup, Sequoia's Skinny Spiced Coconut, Parsnip, and Tumeric Soup, Oassian's Pumpkin Stew and Freddy's Firegrilled Meatballs. The soups, sold in 16 oz. glass jars with screw-on metal lids, were sold on 2 dates in May/June of 2012.

Organic Soup Kitchen soups have also been recalled. Organic Soup Kitchen soups were also sold at two farmers markets in California. The soups were sold between one-quart jars with screw-on metal lids. The affected soups include the following flavors: Fire Roasted Yam, Curried Potato Leek, Curry Lentil Bisque, Tomato Bean, and Wild Herb and Mediterranean Chipotle Chili. The soups were sold for a 1-year period between 2011 and 2012.

Botulism risk from homemade soup

4/20/2016 **Mary's Home Canning** of Lancaster, PA is recalling 516 jars of Mary's Homemade Vegetable Soup (Net Wt. 16 OZ) and 1,128 jars of Mary's Homemade Vegetable Soup (Net Wt. 32 OZ), because it has the potential to be contaminated with *Clostridium botulinum*, a bacterium which can cause life-threatening illness or death.



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More recently, botulism risk from canned soup.

Mary's Homemade Vegetable Soup was distributed in PA, MD and DE in farmer's markets but also in retail stores. Based on the volume of production and the multi-state distribution, this processor was likely not operating under a cottage food law. FDA testing found that the pH of the product was high and it did not receive an adequate process time or temperature.

All of these products that I have just mentioned, – soup, nonstandard jams and jellies, pickle relish, and pesto are similar to those manufactured by home-based businesses. And the pesto and relish were cottage industry products.

Thankfully these are somewhat isolated incidents. Will the expansion of cottage industry laws in some states mean that public health is increasingly at risk? At this time I don't think that we have enough information to know. I personally am concerned with the trend to even less regulation such exemplified by Wyoming's Food Freedom Act.

Regulatory Void

- Home recipes
 - Lack of understanding of science supporting food safety
 - Certainty that prior performance accurately predicts the future
- ➔ The sanitarian can be Key to safety.



I would say that we are in a regulatory void with these Cottage Food Law businesses. Processors are using home recipes, manufacturing product without an understanding as to the science supporting food safety, and a certainty that prior performance accurately predicts the future....

Raise your hand if you have ever heard the phrase: 'I have been doing it this way for 10 years and no body has ever gotten sick?'

In this situation the regulator, the sanitarian is really key to protecting public health.

Let me conclude with some data that foreshadows the challenges that might be ahead.

How would you rate your relationship with your local EHS?

Answer Options	Very Weak	Weak	Working	Strong	N/A
	0	1	13	16	0

It's a **game of cat and mouse**. We hide stuff, they try to find what we try to hide.

Wish the relationship **was based on exchange of knowledge**, helping each other understand the processes more in depth.

Felt shafted by sharing during one inspection then getting dinged on the next. Have trouble sharing in the future.

I was fortunate enough to have a colleague share some data of a survey of 30 top chefs from across the U.S. These chefs were all graduates of, or affiliated with, Johnson and Wales which has the reputation of a top culinary school. These 30 chefs, in retail establishments, were asked questions pertinent to their relationship with the local environmental health sanitarian.

How likely are you to ask your inspector for help?

Answer Options	Very Unlikely	Somewhat Likely	Likely	Very Likely	N/A
	3	2	13	11	1

We have a good relationship

They don't know the science any better than we do and just say no as a precursor to anything new or different

Inspectors know science but lack understanding of the kitchen process

These comments provide food for thoughts.

Managing Risk to Protect Public Health

- Education
- Informing the legislative process (?)
- Knowing what is happening (?)



I would like to conclude by considering how to manage risk to protect public health.

We begin with Education: of the processor, of the sanitarian, and of the legislator.

I think we would all agree that education is key. But how can we train or educate processors in an unregulated environment? What will motivate processes to seek the knowledge, the science, that they need to know? How do we train regulators in the science and art to some of these processes?

In the development of Cottage Food Laws, I have heard it said that 'just one legislator is all it takes.' The legislative process often fails to consult with those in the field or those who know the science, so regulators are handed a cottage food bill that they have to live with. Is there a way to inform that process? What is the role of the regulator in policy development or the legislative process?

We don't have a good database to know what is happening. In a cottage food industry where processors don't have to register, it can be difficult to know who is processing food and how much. There may even be seen as a disincentive to disclose that is happening in a business.

This leaves us with more questions than answers. I do think that by sharing information, we can't help but develop a better framework in which to manage risk.

Acknowledgements

- National Association of County & City Health Officials Sharing Session – Cottage Foods, April 13, 2016
- Dr. Ben Chapman – North Carolina State University presentation at the International Association for Food Protection, August 3, 2016



I would like to conclude by acknowledging the NACCHO for their sharing session on cottage foods on April 13th of this year. I listened with great interest to that session and it provided me with some avenues to pursue for this presentation.

I also wish to acknowledge Dr. Ben Chapman at NCSU who shared the slides presented at the end of this talk from the national survey of chefs and their relationship with local environmental health sanitarians.

And if I have time I would be happy to answer a few questions.

Thank you.