

FLOUR POWER

How Cottage Food Entrepreneurs
Are Using Their Home Kitchens to
Become Their Own Bosses

by Jennifer McDonald



December 2017

 INSTITUTE
for JUSTICE

FLOUR POWER

How Cottage Food Entrepreneurs
Are Using Their Home Kitchens to
Become Their Own Bosses

by Jennifer McDonald

December 2017

TABLE OF CONTENTS


Executive Summary	2
Introduction	4
The Legal Landscape of the Cottage Food Industry	7
Why Restrict Cottage Foods?	10
Methods	16
Results	19
Recommendations	29
Conclusion	30
Appendix A: Additional Notes on State Cottage Food Laws	33
Appendix B: Study Methods	34
Appendix C: Regression Results	43
Appendix D: Descriptive Statistics	46
Endnotes	48

EXECUTIVE SUMMARY

All across the country, thousands of Americans are making food at home to sell in their communities. Together, they form a small but growing industry—the homemade food, or “cottage food,” industry. Cottage foods fit within a larger trend, as consumers take greater interest in where their food comes from and who makes it.

In response to the growing interest in cottage foods, most states have adopted laws—“cottage food laws”—that allow the sale of homemade foods, subject to regulation. Some state cottage food laws are more restrictive than others, and it seems likely that at least some of these laws are hindering entrepreneurship. For example, some states dictate the types and quantities of foods that may be sold, where they may be sold, or even who may sell them. At the same time, there appears to be no rational link between many restrictions on cottage food sales and any legitimate government concern for public health and safety.





Despite the attention cottage foods have garnered from policymakers and the public, startlingly little is known about the people who make cottage foods or their businesses.

This study aims to change that. It surveyed 775 registered cottage food producers across 22 states, asking them who they are, what their businesses mean to them, and how they view their states' cottage food laws. Key findings include:

- **Cottage foods provide an attractive avenue to entrepreneurship for women, particularly in rural areas.**
Producers are overwhelmingly female, are likely to reside in rural areas, and have below-average incomes.
- **Cottage food businesses are important to their owners.**
Producers report that they value the flexibility and financial support offered by their businesses. They also report enjoying the opportunity their businesses afford them to be creative while being their own bosses.
- **Some states' cottage food laws may be hindering entrepreneurship.**
Producers are less likely to plan to expand their businesses if the government prohibits them from selling certain types of foods that they would otherwise like to sell.

Cottage food businesses enhance the financial and personal well-being of their owners while also providing in-demand products to willing customers. Given these benefits, as well as the lack of evidence that cottage foods pose a threat to the public in states where they are lightly regulated, many state cottage food laws are senselessly restrictive. States can and should take steps to encourage entrepreneurship by easing restrictions on cottage food producers.

INTRODUCTION

Kriss Marion owns a small farm and bed-and-breakfast in Blanchardville, Wisconsin. She makes bread and muffins to serve to her guests and to sell alongside her farm-grown vegetables at the local farmers' market, which she co-founded. But until recently, it was against the law in Wisconsin for Kriss to sell even one homemade muffin—even though it was perfectly legal for her to serve those very same muffins to her bed-and-breakfast guests. When Kriss had muffins left over, she had to give them away or feed them to her pigs and chickens. That changed after Kriss joined with two other Wisconsin home bakers—Lisa Kivirist and Dela Ends—and the Institute for Justice (IJ) to challenge the home-baked good ban in court. They won when the trial court judge ruled the ban unconstitutional in May 2017.¹

Kriss is just one of thousands of people across the country who make food at home to sell in their communities. Together, they form a small but growing industry—the “cottage food” industry.

Most states regulate this industry by way of “cottage food laws.” These are laws that make it legal for people to make food at home to sell at certain venues. State cottage food laws typically limit the types of foods that may be sold to those they deem “non-potentially hazardous,” which generally means foods that do not require refrigeration. Such items may include baked goods, “high-acid” canned goods (such as jams and pickles),² popcorn, chocolates, syrups, honeys, dried herbs and a variety of other foods.

However, state cottage food laws are not all created equal: Some grant more freedom to cottage food producers than others. Some states allow the sale of all foods considered non-potentially hazardous, while other states allow the sale of only some such foods. For example, before Wisconsin's home-baked

good ban was overturned, people in the state could sell homemade jams, pickles, popcorn, maple syrup and raw apple cider, but not cookies or cakes.³ Yet home-baked goods are as safe as, or even safer than, these other items⁴ and can be sold legally in all but one other state.⁵ State cottage food laws may also place limits on where or how much (in dollars or in units) people can sell. These laws may also impose other restrictions, such as barring non-farmers from selling cottage foods. And New Jersey, which has the most restrictive state cottage food laws in the nation, completely bans the sale of any homemade food (see the sidebar on page 9 to read about how New Jersey's home-baked good ban harms real people).⁶

Legal restrictions on cottage food sales likely hinder entrepreneurship in the industry, particularly when they impinge on the types of foods people can sell. However, to date it has been impossible to say with any certainty how such restrictions may be shaping this industry because very little is known about producers or their businesses.

This study aims to change that. It is the first comprehensive look at cottage food producers in the United States. Up to now, little systematic research has focused on the cottage food industry. This dearth of research likely stems from a lack of data, though the government collects information on home-based businesses more generally.⁷

The absence of data about the cottage food industry is not for lack of interest on the part of policymakers or the public. Several states have recently legalized cottage foods or liberalized their cottage food laws.⁸ And two states, North Dakota and Wyoming, have gone even further, adopting “food freedom laws,” which allow the virtually unrestricted sale of nearly all types of homemade foods directly to the consumer.⁹



IJ client Kriss Marion in her kitchen.

At the same time, anecdotal evidence suggests the cottage food industry is growing. After Texas legalized cottage foods in 2011, producers formed at least 1,400 new businesses in one year alone. Similarly, California's 2013 law legalizing cottage foods led to the creation of over 1,200 new businesses in just its first year. And since Minnesota eased its restrictive cottage food laws in 2015, more than 3,000 cottage food businesses have registered with the state.¹⁰

One possible reason for the cottage food industry's apparent growth is that producers are responding to



IJ client Lisa Kivirist in the kitchen.

increasing consumer interest in where our food comes from and who makes it. As Wisconsin baker and pickler, and co-plaintiff in IJ's challenge to Wisconsin's ban on home-baked goods, Lisa Kivirist put it, "Making something and selling it to your neighbors is the oldest newest thing. ... In our increasingly industrialized food world, when we don't know where our food comes from, [purchasing cottage foods is] the ultimate opportunity to meet the producer."¹¹

And as states liberalize their cottage food laws, more of these home-based businesses are able to flourish. But—without a systematic look at the industry—policymakers are making laws governing this growing industry armed with little to no knowledge about the people and businesses that make it up.

Reported here are the results of a first-of-its-kind survey that asked cottage food producers a series of questions about who they are, what their businesses mean to them, and how they view their state's cottage food laws. Key findings include:

- Cottage food producers are overwhelmingly female, are likely to reside in rural areas, and have below-average incomes.
- Cottage food producers value the flexibility and financial support offered by their businesses. They also enjoy the opportunity to be creative while being their own bosses.
- Cottage food producers are less likely to plan to expand their businesses if the government prohibits them from selling certain types of foods that they would otherwise like to sell.

These findings suggest that cottage food businesses provide their owners with independence, as well as supplemental income. They also indicate that some restrictions on cottage foods may be stifling entrepreneurship.

THE LEGAL LANDSCAPE OF THE COTTAGE FOOD INDUSTRY

Nearly every state allows cottage food businesses to operate by exempting certain homemade food operations from state laws that regulate commercial food establishments more generally. However, laws governing the cottage food industry vary widely. Cottage food regulations include, but are not limited to, caps on the dollar amount of cottage foods that may be sold, restrictions on the types of cottage foods that may be sold, restrictions on where cottage foods may be sold, and restrictions on who may sell cottage foods or on what ingredients producers may use to make them.

See Tables 1 and 2 on pages 12–15 for an analysis of the cottage food laws of all 50 states and the District of Columbia. This analysis was informed by Forrager.com—an online community of cottage food enthusiasts dedicated to helping people start their own cottage food businesses. (Unless stated otherwise, all sources for the legal analysis are Forrager.com.)¹²

Sales Caps

Twenty-seven states cap how much cottage food producers can sell. These caps range from as little as \$5,000 for some producers in South Dakota and Wisconsin to \$50,000 in several other states (see Table 1). Some states' sales caps apply only in certain circumstances. For example, South Dakota's \$5,000 sales cap applies only to producers who sell baked goods directly from home.¹³ Those who instead sell from venues such as farmers' markets or events face no sales cap but must submit each of their products for safety testing.¹⁴

Food Restrictions

Most states allow the sale of only “non-potentially hazardous” cottage foods like cookies, cakes, high-acid canned goods (e.g., jams and pickles), and other items that do not require refrigeration (see Table 1). However, some states also allow the sale of cottage foods that do require refrigeration, such as cheesecakes and cream-filled desserts, under certain conditions.

For instance, Iowa, Ohio, Oregon and Virginia have multi-tiered regulatory schemes that allow

home-based producers to sell some perishable goods provided they follow more stringent regulations. In Iowa, producers can sell as much non-potentially hazardous cottage food as they would like out of their homes and at farmers' markets with few restrictions. But if they want to sell perishable baked goods, they must obtain a “home food establishment” license from the government, undergo annual inspections and limit their sales to \$20,000 per year.¹⁵ Ohio, Oregon and Virginia allow producers to sell some perishable products with no sales cap and at any venue if they submit to licensing and inspections; Virginia also requires food safety training in some cases.¹⁶

Such multi-tiered schemes give cottage food producers the option of jumping through additional regulatory hoops in exchange for more freedom in the kinds of foods they can sell. At the same time, they provide less onerous regulatory options for those who just want to sell certain cottage foods that do not need refrigeration.

North Dakota and Wyoming—the states with the freest homemade food laws—have legalized the home production and sale of nearly all foods (except for some meat products) without any sort of government license or inspection.¹⁷ North Dakota's food freedom law is more restrictive than Wyoming's in that it, among other things, prohibits online and phone sales.

Farmers Only

A few states place restrictions on who may sell cottage foods or on what ingredients they may use to make them. Kentucky, for example, allows people to sell cottage foods only if they are a farmer or else personally grew the main ingredients in the food.¹⁸ Rhode Island also limits the sale of cottage foods to farmers and requires that the main ingredients for jams, preserves, fruit pies and syrup be locally grown or harvested.¹⁹ In Ohio, if a person wants to sell homemade syrup or honey, 75 percent of the syrup or honey must have come from their own trees or hives.²⁰

Venue Restrictions

Nearly every state allows people to sell cottage foods at farmers' markets, and the majority of states also allow sales at roadside stands, community events and right from producers' homes (see Table 2). And some states allow producers who submit to stricter requirements to sell from more venues, such as at retail stores or over the internet. However, Illinois, Maryland and Nebraska allow producers to sell their goods only at farmers' markets, limiting opportunities to interact with customers.²¹ In places with particularly cold winters or where farmers' markets otherwise operate only seasonally, such restrictions may mean that producers are effectively allowed to sell their goods only a few months out of the year. And bans on sales from the home effectively prohibit producers from taking custom orders for things like wedding or birthday cakes.

Other Regulations

Many states require cottage food producers to pay a fee and obtain a license or permit from the government or, barring that, register with the state, county or local department that regulates food production. A number of states also require producers to complete food handlers' training.

Some states also require periodic health inspections of the home similar to those that restaurants must undergo or testing of the products themselves. Individual product testing, as South Dakota requires, could become costly for producers who make a wide variety of goods.²²

Hawaii has no cottage food laws, which means that the sale of homemade food is not statutorily allowed in the Aloha State. However, it appears that the health department is currently allowing the limited sale of cottage foods through a temporary permitting scheme.²³

In August 2017, Maine adopted a first-of-its-kind "food sovereignty law" that allows municipalities to regulate local food distribution as they see fit.²⁴ Generally, food regulation is a top-down affair, with state governments setting standards by statute or regulation.



WHEN IT COMES TO HOLDING BACK HOME BAKERS, NEW JERSEY TAKES THE CAKE

New Jersey is the only state in the nation with an outright ban on cottage foods. Every other state allows the sale of at least some cottage foods under some circumstances.

New Jersey's ban has real, harmful effects on would-be cottage food producers across the state, including home baker Heather Russinko. Heather works full time and is a single mom to a 14-year-old son. She has a plan to turn her talent for baking into a home-based small business. She began baking for her son's school activities nearly 10 years ago and quickly found that baking was a great way to stay involved as a parent while holding a full-time job.

Cake pops—essentially cake and frosting on a stick—are Heather's specialty. When friends and neighbors started offering to pay for her cake pops, Heather realized that her baking hobby could be the key to building a better life for her and her son. It might even allow her to save enough money to send

her son to college—something she likely could not afford to do otherwise.

Heather's dreams were dashed when she learned that she could be fined up to \$1,000 for selling even one cake pop. Thanks to New Jersey's ban, Heather is missing out on real business opportunities. She recently baked for her cousin's wedding and was asked by the wedding venue if she would join their list of vendors. Heather had to refuse this excellent business opportunity because she bakes from her home kitchen.

Now Heather and a group of other New Jersey home bakers have teamed up with the Institute for Justice to sue the state over its unconstitutional ban on selling home-baked goods.¹ The bakers will not rest until New Jersey's ban on the sale of home-baked goods—the last of its kind in the nation—is a thing of the past.

¹ See <http://ij.org/case/new-jersey-cottage-foods>



IJ client Heather Russinko in the kitchen.

WHY RESTRICT COTTAGE FOODS?

Most food that is sold to the public is subject to extensive commercial licensing laws like those faced by restaurants and food wholesalers. Among other things, these laws require that food be prepared in a commercial-grade kitchen. Cottage food laws essentially create an exception for foods made in residential kitchens. Restrictions on homemade food sales may be driven by fear that homemade food could cause outbreaks of foodborne illness.²⁵

However, there appears to be little—if any—evidence to suggest that the types of cottage foods commonly deemed “non-potentially hazardous” pose health and safety risks to the public. Furthermore, the high degree of variation observed across states suggests that many cottage food regulations lack a rational link to public health and calls into question the need for regulating the industry so strictly.

There may be another motivation for some restrictions on cottage food sales: protectionism. In New Jersey and Wisconsin, for example, powerful lawmakers have fought to maintain barriers to cottage food entrepreneurship in order to shield brick-and-mortar bakeries and others from competition.

In New Jersey, the chair of the Senate Health, Human Services and Senior Citizens Committee has for years refused to bring legislation legalizing home baking up for a vote, even though the legislation enjoys bipartisan support and passed the Assembly unanimously.²⁶ He argues that home baking sales would come “out of the bottom line of a small baker.”²⁷

And before Wisconsin’s home-baked good ban was overturned, the state Assembly speaker repeatedly blocked legislation legalizing home baking, even though it was popular in the state and passed the Senate three times unanimously.²⁸ The speaker told *CBS Sunday Morning* that he feared legalizing home baking would create an “unequal playing field and undermine” other small businesses.²⁹ The speaker, who owns a

commercial food business,³⁰ has received the “Friend of Grocers” Award from the Wisconsin Grocers Association,³¹ which opposed the legislation.³²

Also opposing the legislation was the Wisconsin Bakers Association (WBA). Even though the WBA sells over 400,000 homemade cream puffs—a food requiring refrigeration—at the state fair every year without a license under a non-profit exemption to the state’s food licensing laws, it argued that the home-baked good ban was necessary to protect the public.³³

In IJ’s case on behalf of Wisconsin home bakers Kriss Marion, Lisa Kivirist and Dela Ends, the judge remarked on the unseemliness of the WBA’s behavior, observing that the Association can “use a carved out exemption to profit, and then use those profits to support efforts not to change [the state’s Food] Code.” This, he said, “speaks loudly to the level of special interests at play here. It gives great credence to the claims by the Plaintiffs of the force of economic protectionism at play here.”³⁴

The judge went on to hold the baked-good ban unconstitutional. Of the judgment, IJ client Lisa said, “This is more than a win for us home-based bakers, it’s recognition for all small businesses that we have the right to earn an honest living and will not be stymied because of industry influence.”³⁵ (See the sidebar on page 11 to read more about IJ’s fight to overturn Wisconsin’s home-baked good ban.)

It is not surprising that protectionism is at play in the cottage food industry given that a body of research into regulation more generally has found that economic regulation is often motivated by anticompetitive impulses. For example, legislatures often restrict entry into various professions by way of occupational licensing laws, which are frequently enacted at the request of industry insiders and their respective trade associations.³⁶ With reduced competition, these insiders are able to charge more for their services.³⁷

WISCONSIN HOME BAKERS ARE FINALLY FREE TO BAKE THEIR CAKES AND SELL THEM, TOO

In May 2017, a Wisconsin trial court judge ruled that the state's home-baked good ban was unconstitutional in a lawsuit brought by the Institute for Justice. Unfortunately, the state claimed the ruling applied only to the plaintiffs in the case, rather than to all Wisconsinites, and continued to enforce the ban on everyone except for IJ clients Kriss Marion, Lisa Kivirist and Dela Ends. Other home bakers across the state were left in limbo, hesitant to risk fines or jail time by selling their goods to willing customers.

Hannah Shaw, a stay-at-home mother from Black River Falls, Wisconsin, was one such home baker. Hannah turned to home baking as a way to supplement her husband's income while caring for her three young children, including twins with special needs. Initially, she sold cakes to family and friends to earn money for school supplies. Word soon spread about her delicious and beautiful cakes and Hannah's business grew.

But soon the state threatened Hannah with a \$10,000 fine and a year in jail if she sold even one more homemade cake. To stay in business, Hannah would have had to get a commercial food license. Among other things, this would have required Hannah to spend tens of thousands of dollars to rent or build a commercial grade kitchen, something she could ill afford to do. Moreover, she had no interest in turning her home-based business into a full-fledged professional bakery.

Thankfully, the judge clarified in September 2017 that the ruling applied to all residents of the state and that all Wisconsinites have the constitutional right to sell home-baked goods directly to consumers.¹ Hannah immediately started advertising her services online, and orders for her custom cakes quickly came pouring in. Hannah feels much more secure knowing she can finally use her talents to help financially support her young family.

¹ Final Order and Judgment, *Kivirist v. Wis. Dep't. of Agriculture*, No. 16-CV-06 (Lafayette Cty. Cir. Ct. Sept. 29, 2017).



Hannah Shaw in her kitchen.

Table 1: Sales caps, allowed foods and farming requirements, by state

State	Sales Cap ^a	Non-Refrigerated		Refrigerated Goods	Farmers Only
		Baked Goods	Other Goods		
Alabama	\$20,000	Yes	Yes	No	No
Alaska	\$25,000	Yes	Yes	No	No
Arizona*	None	Yes	Yes	No	No
Arkansas	None	Yes	Yes	No	No
California - Type A*	\$50,000	Yes	Yes	No	No
California - Type B*	\$50,000	Yes	Yes	No	No
Colorado	\$10,000 per product	Yes	Yes	No	No
Connecticut	\$25,000	Yes	Yes	No	No
Delaware*	\$25,000	Yes	Yes	No	No
District of Columbia	\$25,000	Yes	Yes	No	No
Florida	\$50,000	Yes	Yes	No	No
Georgia*	None	Yes	Yes	No	No
Hawaii	No cottage food laws, although some sales appear to be permitted temporarily				
Idaho	None	Yes	Yes	No	No
Illinois*	\$36,000	Yes	Yes	No	No
Indiana	None	Yes	Yes	No	No
Iowa	None	Yes	Yes	No	No
Iowa - Home Food Establishment*	\$20,000	Yes	Yes	Yes	No
Kansas	None	Yes	Yes	No	No
Kentucky*	None	Yes	Yes	No	Yes
Kentucky - Microprocessors	\$35,000	No	Yes	No	Yes
Louisiana	\$20,000	Yes	Yes	No	No
Maine*	None	Yes	Yes	No	No
Maryland	\$25,000	Yes	Yes	No	No
Massachusetts*	None	Yes	Yes	No	No
Michigan	\$20,000	Yes	Yes	No	No
Minnesota*	\$18,000	Yes	Yes	No	No
Mississippi	\$20,000	Yes	Yes	No	No
Missouri	\$50,000	Yes	Yes	No	No
Montana*	None	Yes	Yes	No	No
Nebraska	None	Yes	Yes	No	No
Nevada*	\$35,000	Yes	Yes	No	No
New Hampshire	\$20,000	Yes	Yes	No	No
New Hampshire - Homestead License*	None	Yes	Yes	No	No
New Jersey	Total ban on the sale of cottage foods				

Table 1 continued on next page

Table 1 continued from previous page

State	Sales Cap ^a	Non-Refrigerated		Refrigerated Goods	Farmers Only
		Baked Goods	Other Goods		
New Mexico	None	Yes	Yes	No	No
New York*	None	Yes	Yes	No	No
North Carolina*	None	Yes	Yes	No	No
North Dakota	None	Yes	Yes	Yes	No
Ohio	None	Yes	Yes	No	No
Ohio - Home Bakery License*	None	Yes	Yes	Yes	No
Oklahoma	\$20,000	Yes	No	No	No
Oregon	\$20,000	Yes	No	No	No
Oregon - Domestic Kitchen Bakeries*	None	Yes	No	Yes	No
Oregon - Domestic Kitchen Processors*	None	Yes	Yes	Yes	No
Pennsylvania*	None	Yes	Yes	No	No
Rhode Island*	None	Yes	Yes	No	Yes
South Carolina	\$15,000	Yes	Yes	No	No
South Dakota	None	Yes	Yes	No	No
South Dakota - Home Sales	\$5,000	Yes	No	No	No
Tennessee	None	Yes	Yes	No	No
Tennessee - Domestic Kitchen*	100 units of sale per week	Yes	Yes	No	No
Texas	\$50,000	Yes	Yes	No	No
Utah*	None	Yes	Yes	No	No
Vermont - Home Bakeries*	None	Yes	No	No	No
Virginia	None	Yes	Yes	No	No
Virginia - Home Food Processing Operations*	None	Yes	Yes	Yes	No
Washington*	\$25,000	Yes	Yes	No	No
West Virginia*	None	Yes	Yes	No	No
Wisconsin - Baked Goods	None	Yes	No	No	No
Wisconsin - Canned Goods	\$5,000	No	Yes	No	No
Wyoming	None	Yes	Yes	No	No
Wyoming - Food Freedom	None	Yes	Yes	Yes	No

* Indicates that producers from this state and under this regulatory regime were included in the survey.

^a Annual dollar amount, except where otherwise noted.

Note: Except where otherwise noted, this analysis was current as of October 2017. For additional information about the intricacies of states' cottage food laws, see Appendix A.

Table 2: Venues where cottage foods may be sold, by state

State	Farmers' Markets	Roadside Stands	Community Events	Home	Online	Restaurants	Retail Stores
Alabama	Yes	Yes	Yes	Yes	No	No	No
Alaska	Yes	Yes	Yes	Yes	No	No	No
Arizona*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	No	Yes	Yes	No	No	No
California - Type A*	Yes	Yes	Yes	Yes	Yes	No	No
California - Type B*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Colorado	Yes	Yes	Yes	Yes	Yes	No	No
Connecticut	Yes	Yes	Yes	Yes	No	No	No
Delaware*	Yes	Yes	Yes	Yes	No	No	No
District of Columbia	Yes	No	Yes	No	No	No	No
Florida	Yes	Yes	Yes	Yes	Yes	No	No
Georgia*	Yes	Yes	Yes	Yes	Yes	No	No
Hawaii	No cottage food laws, although some sales appear to be permitted temporarily						
Idaho	Yes	Yes	Yes	Yes	Yes	No	No
Illinois*	Yes	No	No	No	No	No	No
Indiana	Yes	Yes	No	No	Yes	No	No
Iowa	Yes	No	No	Yes	No	No	No
Iowa - Home Food Establishment*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	No	No	No	No
Kentucky*	Yes	Yes	No	Yes	No	No	No
Kentucky - Microprocessors	Yes	Yes	No	Yes	No	No	No
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Maine*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Maryland	Yes	No	No	No	No	No	No
Massachusetts*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Michigan	Yes	Yes	Yes	Yes	No	No	No
Minnesota*	Yes	No	Yes	Yes	Yes	No	No
Mississippi	Yes	Yes	Yes	Yes	No	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	No	No
Montana*	Yes	Yes	Yes	Yes	No	No	No
Nebraska	Yes	No	No	No	No	No	No
Nevada*	Yes	Yes	Yes	Yes	No	No	No
New Hampshire	Yes	Yes	No	Yes	No	No	No
New Hampshire - Homestead License*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Total ban on the sale of cottage foods						

Table 2 continued on next page

Table 2 continued from previous page

State	Farmers' Markets	Roadside Stands	Community Events	Home	Online	Restaurants	Retail Stores
New Mexico	Yes	Yes	Yes	No	No	No	No
New York*	Yes	Yes	Yes	No	No	No	No
North Carolina*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	No	No	No
Ohio	Yes	No	Yes	Yes	Yes	Yes	Yes
Ohio - Home Bakery License*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Oklahoma	No	No	No	Yes	No	No	No
Oregon	Yes	Yes	Yes	Yes	No	No	No
Oregon - Domestic Kitchen Bakeries*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Oregon - Domestic Kitchen Processors*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island*	Yes	Yes	Yes	Yes	No	No	Yes
South Carolina	Yes	Yes	Yes	Yes	No	No	No
South Dakota	Yes	Yes	Yes	No	Yes	No	No
South Dakota - Home Sales	No	No	No	Yes	Yes	No	No
Tennessee	Yes	No	Yes	Yes	No	No	No
Tennessee - Domestic Kitchen*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes	No	No	No
Utah*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vermont - Home Bakeries*	Yes	Yes	Yes	Yes	Yes	No	No
Virginia	Yes	No	No	Yes	No	No	No
Virginia - Home Food Processing Operations*	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Washington*	Yes	Yes	Yes	Yes	No	No	No
West Virginia*	Yes	No	Yes	No	No	No	No
Wisconsin - Baked Goods	Yes	Yes	Yes	Yes	No	No	No
Wisconsin - Canned Goods	Yes	No	Yes	No	No	No	No
Wyoming	Yes	Yes	Yes	Yes	No	No	No
Wyoming - Food Freedom	Yes	Yes	Yes	Yes	Yes	No	No

* Indicates that producers from this state and under this regulatory regime were included in the survey.

Note: Except where otherwise noted, this analysis was current as of October 2017. For additional information about the intricacies of states' cottage food laws, see Appendix A.

METHODS

Survey

To better understand cottage food producers and the legal and regulatory hurdles they face across the country, I conducted an original survey of cottage food producers. I looked at cottage food producers across 25 states that require some form of registration with state, local or county government, because that registration enabled me to obtain the producer contact information required to conduct the survey (see Figure 1).³⁸

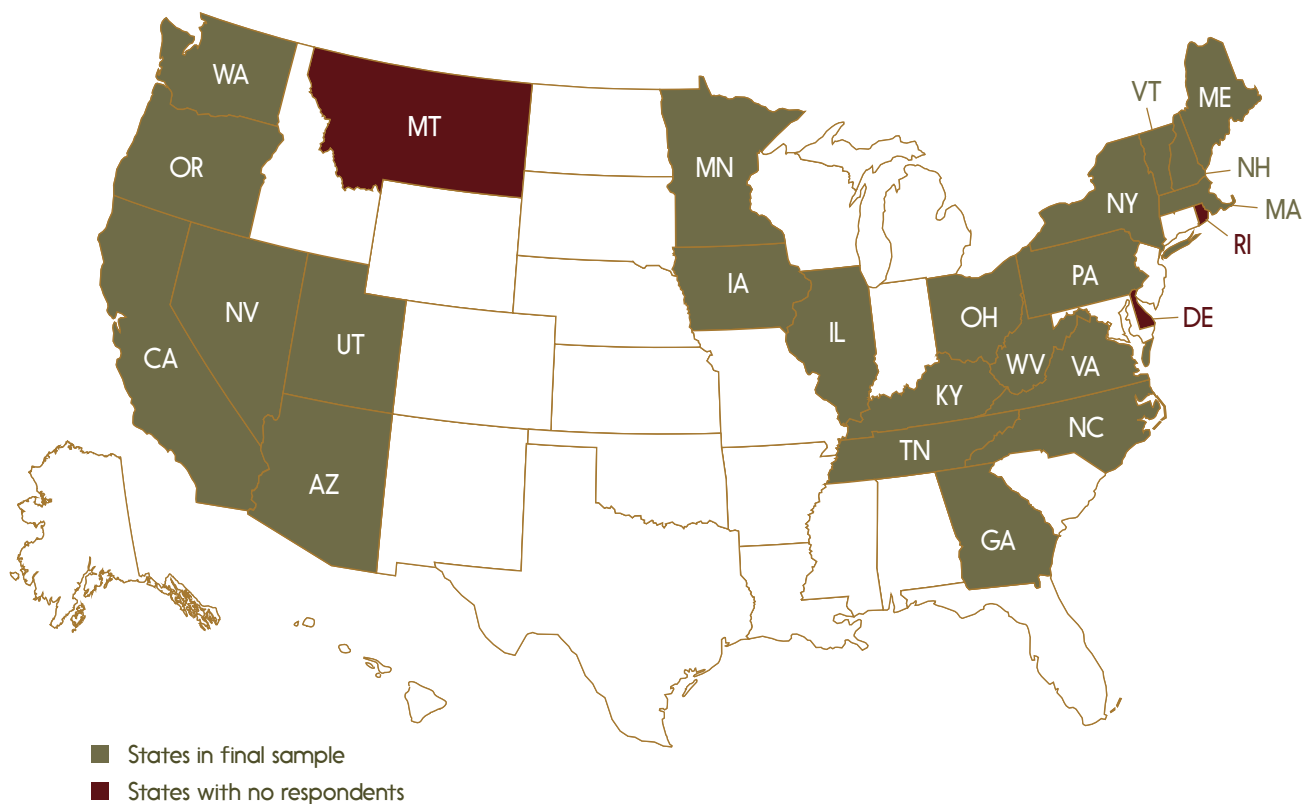
Some of the states in the sample have multi-tiered regulatory schemes that do not require registration of producers who sell limited types or quantities of cottage foods or who sell at limited venues. In such cases, I examined only those producers who elected to operate in a tier requiring registration.

The results of this survey are therefore applicable only to cottage food producers residing in states

with some form of registration requirement and, in states with multi-tiered schemes, only to producers operating in a registration-required tier (regimes under which producers in this study were registered are marked with an asterisk in Tables 1 and 2). Put differently, results do not apply to cottage food producers who are not required to register. They may have different demographic characteristics or business practices than indicated by this survey's results.

WPA Intelligence was contracted to survey registered cottage food producers using a population of over 25,000 producers across 25 states. The result was a final sample of 775 producers in 22 states. The survey questioned producers about their background, what their cottage food business means to them and their finances, and how their states' cottage food laws impact their businesses.

Figure 1: States Surveyed



Note: WPA was unable to collect completed responses from people in Delaware, Montana and Rhode Island, bringing the sample of states down from 25 to 22.

Legal Analysis

I also analyzed state cottage food laws to determine what kinds of regulatory burdens cottage food producers face and what effect those burdens might have on their businesses. To do this, I compiled and categorized states' cottage food regulations, as displayed in Tables 1 and 2 on pages 12–15.

The legal analysis of state cottage food laws included the following categories:³⁹

- Caps on sales by cottage food businesses.
- Foods allowed for sale, disaggregated across eight categories used by Forrager.com:
 - Baked goods that do not require refrigeration.
 - Confectionary goods, such as candies and chocolates.
 - Condiments, such as salsas, sauces, honey, syrups, pickles and relishes.
 - Dry goods, such as spices, herbs and teas.
 - Pastries that do not require refrigeration.
 - Preserves, jams and jellies.
 - Snacks, such as trail mix, granola and popcorn.
 - Foods that require refrigeration.
- Venues where cottage foods may be sold, disaggregated across seven categories used by Forrager.com:
 - Farmers' markets.
 - Roadside or produce stands.
 - Community events.
 - Directly from home.
 - Restaurants.
 - Retail stores.
 - Online or by phone.
- Limitations on who may produce and sell cottage foods (e.g., farmers only).

To supplement the Forrager.com analysis, and to account for regulatory variation within states across counties or municipalities, producers were also surveyed on whether they encountered the following regulatory requirements:

- Required food handlers' training or other specialized training.
- Home kitchen inspections.
- Fees required to operate.

Statistical Analyses

I conducted statistical analyses to examine 1) the potential effect of various regulations on cottage food businesses' annual sales and their owners' annual incomes and 2) what effect those regulations might have on entrepreneurship, as measured by whether or not a producer reported plans to expand their business in the near future. To isolate the effects

of regulations from other confounding factors, I controlled for numerous producer, business and legal characteristics, such as the types of food made and where food is sold, all of the previously mentioned legal and regulatory components, and personal details such as age, race, gender and education. For a full list of these variables, full details of the analyses, and complete results, see the Appendixes.



RESULTS

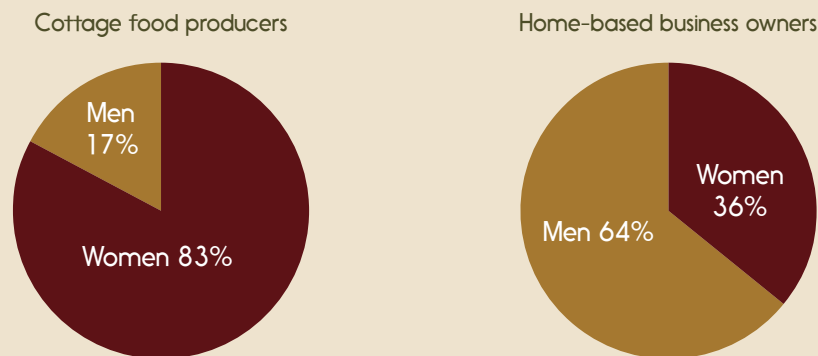
This first-of-its-kind survey presents a clearer picture of who registered cottage food entrepreneurs are and what their businesses mean to them. The results also provide insight into how cottage food laws in the states surveyed can help these entrepreneurs achieve their business goals—or hinder them from realizing their potential.

Who are cottage food producers?

Cottage food producers are primarily women who live in rural areas, have below-average incomes, and operate their businesses as a supplemental occupation or hobby. These findings are consistent with prior research suggesting that home-based businesses in the rural Midwest are predominantly female-owned sole proprietorships.⁴⁰

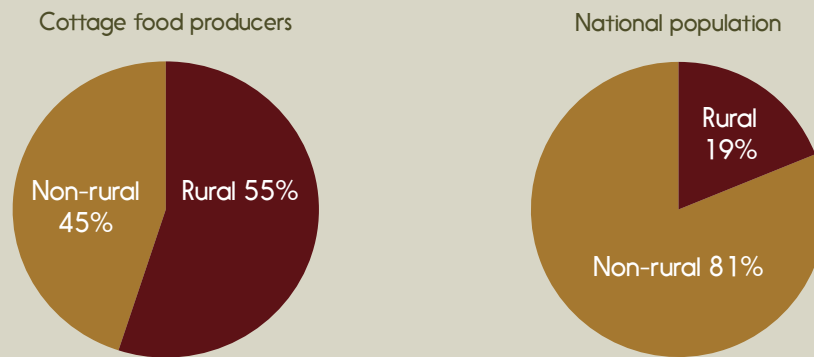
The cottage food industry provides an attractive avenue to entrepreneurship for women. While business ownership overall—and even home-based business ownership specifically—remains a male-dominated activity,⁴¹ cottage food producers are overwhelmingly female (see Figure 2).

Figure 2: Women represent a greater share of cottage food producers compared to home-based business owners more generally.



Cottage food producers are more likely to live in rural communities, while the vast majority of Americans today live in urban or suburban neighborhoods (see Figure 3).⁴² One possible explanation for why cottage food producers are concentrated in rural areas is that farmers find cottage foods to be a natural complement to running a family farm. Alternatively, perhaps there is a greater need for locally produced foods in rural communities where there are fewer accessible brick-and-mortar bakeries and other food stores. Whatever the reason, this disproportionate rate is notable, as rural communities tend to fare worse than the rest of the nation on indicators of socioeconomic well-being.⁴³

Figure 3: Cottage food producers disproportionately live in rural communities compared to the general population.



Cottage food producers report household incomes that are considerably lower than the national median.⁴⁴ Likewise, producers who are retired report incomes lower than the median for people aged 65 and older.⁴⁵ (See Figures 4 and 5.) Even a small amount of extra income from a cottage food business can be helpful to a lower-income household. At the very least, these businesses can serve as a self-sustaining hobby or creative outlet for people who would not otherwise have the disposable income to expend on such a pursuit.

Figure 4: Cottage food producers report lower household income than the national average.

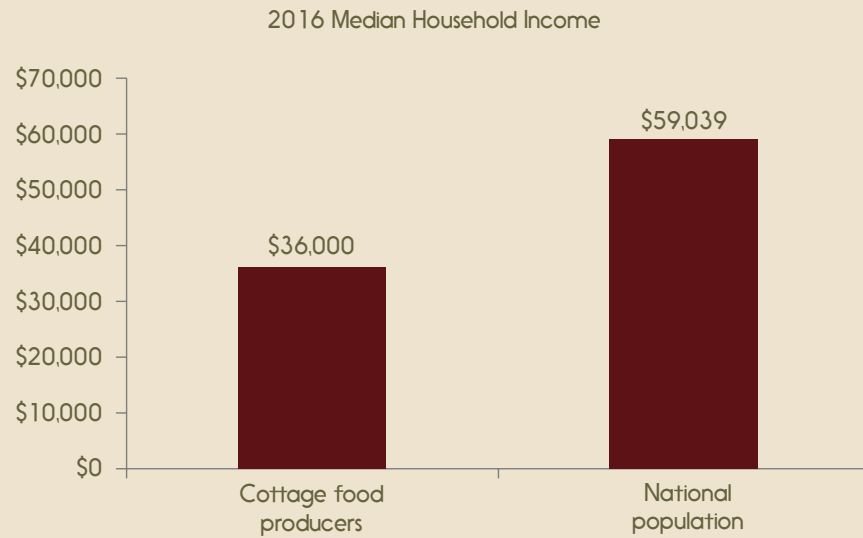


Figure 5: Retired cottage food producers report lower household income than the national average for people aged 65 and older.



Indeed, most cottage food producers do not run their businesses full time, but rather treat cottage foods as a supplementary occupation or hobby (see Figure 6). Producers tend to work full or part time at other jobs, be retired, or identify as homemakers (see Figure 7).

Figure 6: Most cottage food producers view their businesses as a supplementary occupation or hobby.

How would you describe your cottage food business?

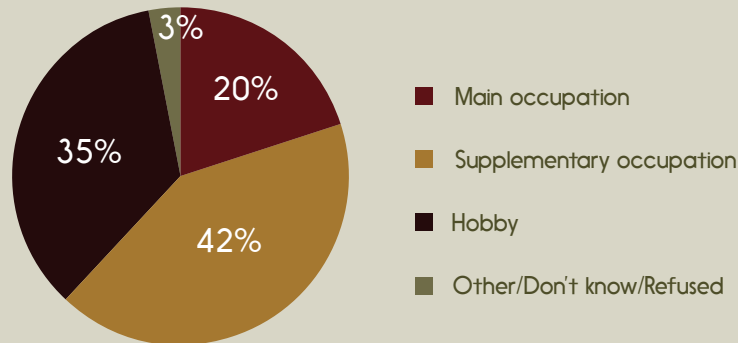
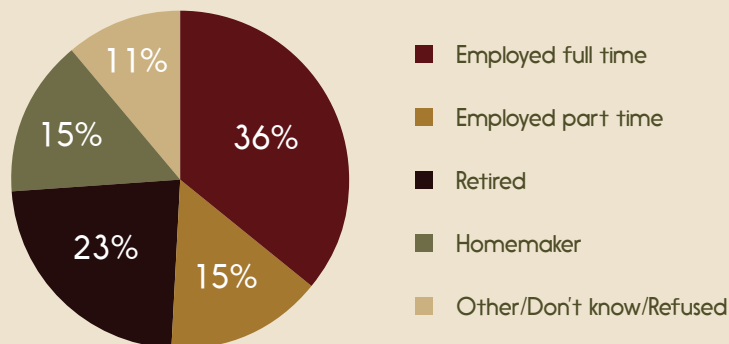


Figure 7: Of producers for whom their cottage food business is not a full-time job, most work full or part time at other jobs.

When not working on your cottage food business, are you ... ?



What do cottage food businesses look like?

Most cottage food businesses can be considered micro-enterprises. Producers do not employ anyone else, even part time, and they run their cottage food businesses when they are not working their main jobs or caring for their families. On average, producers spend 15 hours per week working on their businesses.

Typical earnings are quite small: median sales of \$2,000 and median profits of just \$500 in 2016. And these businesses require very little startup capital—a median of just \$500—which more than 70 percent finance through personal savings.

But while the typical cottage food business is understandably quite modest, some cottage food businesses do develop into fairly sizable operations. As seen in Table 3, some producers do tens of thousands of dollars in annual sales. For these producers, caps on allowed annual sales may be real barriers to success. And in a few cases, producers may be unaware of or choose not to heed their states' sales caps, risking fines or other penalties.

Table 3: Minimum and Maximum Dollar Amount Sold in 2016

State	Minimum Sales	Maximum Sales ^a	Sales Cap ^b
Arizona	\$0	\$36,000	None
California	\$0	\$49,000	\$50,000
Georgia	\$0	\$15,000	None
Iowa	\$0	\$40,000	\$20,000
Illinois	\$0	\$15,000	\$36,000
Kentucky	\$0	\$25,000	None
Massachusetts	\$0	\$40,000	None
Maine	\$0	\$60,000	None
Minnesota	\$0	\$60,000	\$18,000
North Carolina	\$0	\$55,000	None
New Hampshire	\$8,000	\$30,000	None
Nevada	\$200	\$4,000	\$35,000
New York	\$0	\$50,000	None
Ohio	\$200	\$65,000	None
Oregon	\$0	\$65,000	None
Pennsylvania	\$0	\$43,000	None
Tennessee	\$0	\$12,000	None ^c
Utah	\$0	\$16,000	None
Virginia	\$0	\$30,000	None
Vermont	\$0	\$45,000	None
Washington	\$300	\$16,000	\$25,000

^a This column does not display outliers who report having sold over one-half standard deviation more than the mean annual sales in the sample.

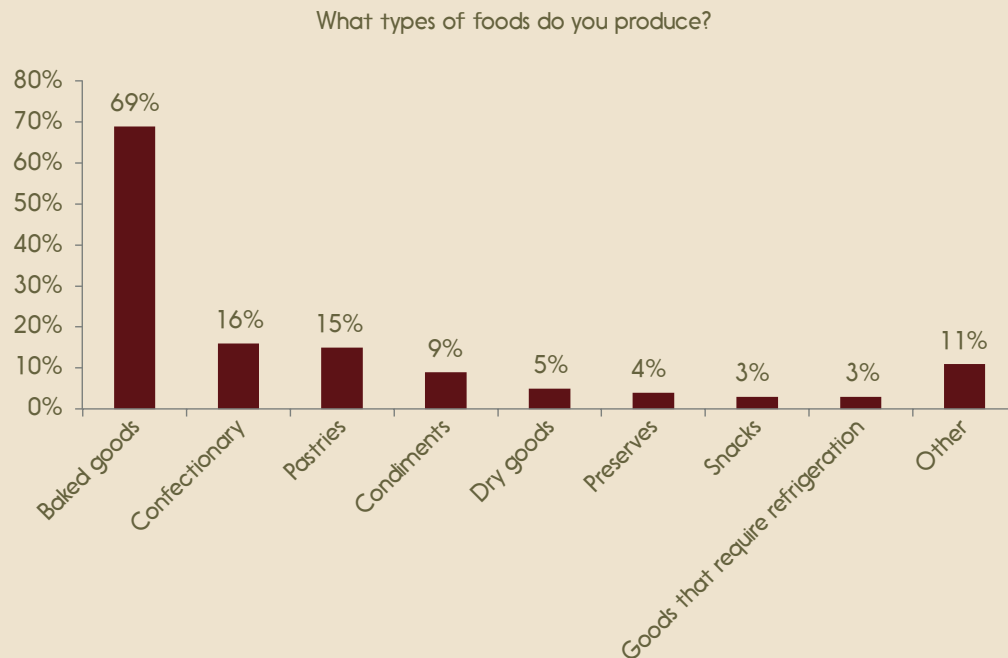
^b In the case of states that have multi-tiered regulatory systems, the sales cap listed here applies to those producers who are required to register with the government and who are therefore captured in this survey.

^c Tennessee does have a sales cap, but it is a limit on the number of units that may be sold each week—not on the dollar amount that may be sold. For this reason, no cap is reflected in this table.

Note: The sole respondent from West Virginia declined to answer the survey question regarding annual sales, so that state is not included in this table.

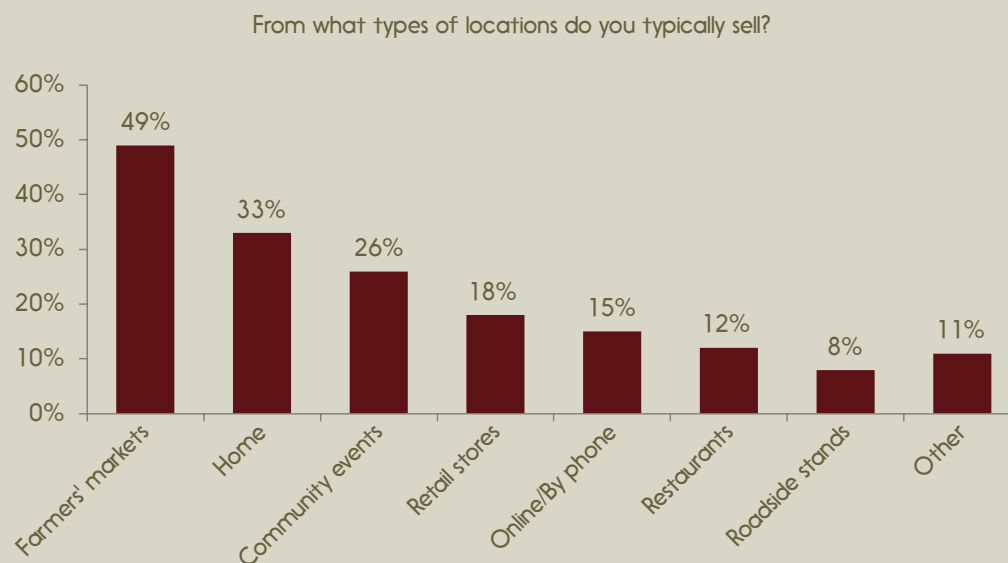
Most cottage food producers make baked goods and sell them at farmers' markets (see Figures 8 and 9). This may be because every state in the sample allows home-baked goods that do not require refrigeration to be sold at farmers' markets, even if they place other restrictions on cottage food sales.

Figure 8: Most cottage food producers make baked goods that do not require refrigeration.



Note: Percentages do not add up to 100 because producers could select more than one response.

Figure 9: Most cottage food producers sell their goods at farmers' markets.

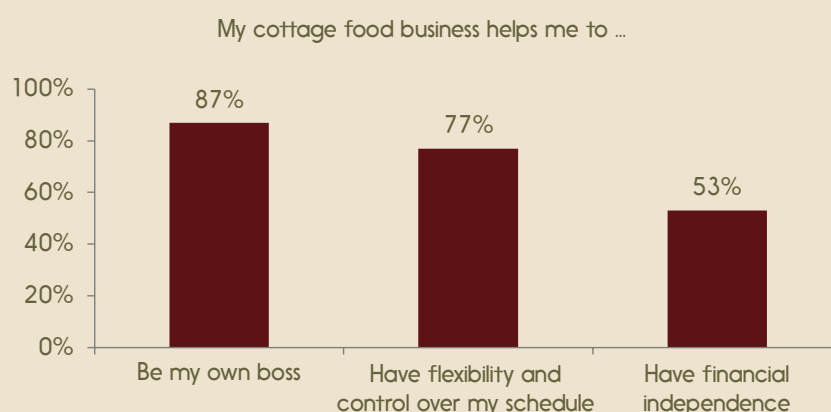


Note: Percentages do not add up to 100 because producers could select more than one response.

What do cottage food businesses mean to their owners?

Despite the modest size of most cottage food businesses, these enterprises are nonetheless important to their owners. Cottage food production gives people the chance to be their own boss, as shown in Figure 10. It also provides them with flexibility and control over their schedules and, in many cases, financial independence.

Figure 10: Cottage food businesses are important to their owners.

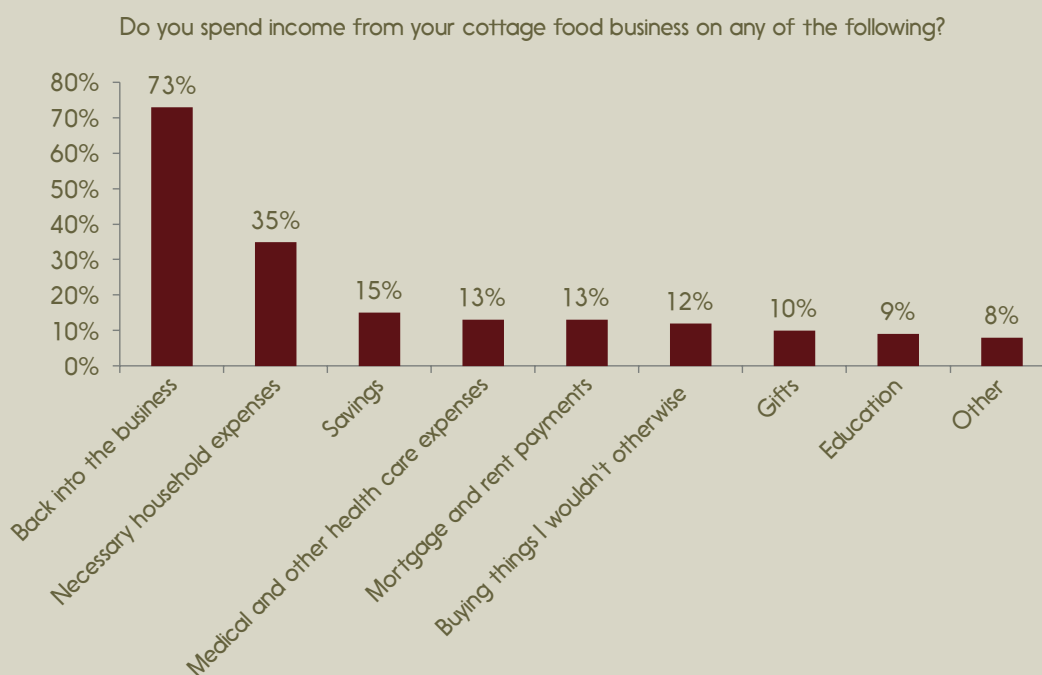


These results fit with the research on home-based businesses more generally. For example, one study found that female home-based business operators' primary motivation for going into business for themselves was to be their own boss. That same study also found that female home-based business operators' primary reasons for running their business out of their home were the lower operational costs and the ability to "balance work and family."⁴⁶ The same is likely true for many cottage food producers given the value they place on flexibility.

And for some cottage food producers, running a business from home may be their only option. For example, Jane Astramecki, a home baker whom IJ represented in a successful challenge to Minnesota's restrictions on the sale of cottage foods, started her home-based Jane Dough Bakery after sustaining a serious injury that made work outside the home impractical. Selling her homemade scones, cookies, cakes and jams became a way for her to earn money for her family while staying home with her kids.⁴⁷

Indeed, although the earnings of most cottage food businesses are small, they are nevertheless important to the financial well-being of their owners' households. The statistical analysis suggests that as annual cottage food sales increase, household income also increases.⁴⁸ Many producers use their earnings to cover necessary household expenses, such as bills, food and clothing, and other essential spending, such as health care or housing (see Figure 11).

Figure 11: Most cottage food producers put their earnings back into their businesses.



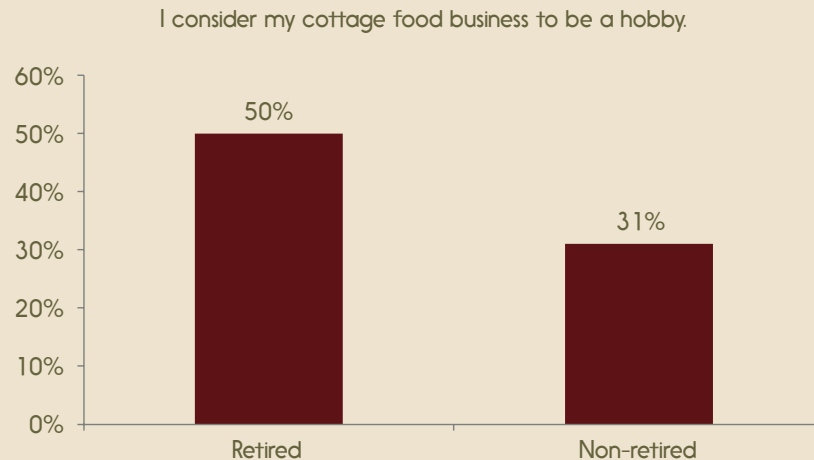
Note: Percentages do not add up to 100 because producers could select more than one response.

And the same appears to be true for home-based businesses more broadly, especially in the rural communities where most cottage food producers live. Research suggests that in lean economic times, home-based businesses can become an important way to supplement income.⁴⁹ In recent years, rural communities have struggled to attract and retain well-paying jobs,⁵⁰ despite the recent uptick in the national economy.⁵¹ *The Wall Street Journal* has gone so far as to declare America's rural communities the new "inner city," as poverty and crime rates continue to increase in these areas.⁵² In such an environment, the ability to use one's own home to generate income by starting a business can be particularly valuable.

Beyond the flexibility and financial benefits they offer their owners, cottage food businesses can also offer other less tangible, but no less important, benefits. Cottage food producers also report being motivated to start their businesses by a desire to do something enjoyable with their spare time, to do something creative, to be their own bosses and to fulfill personal dreams.

Interestingly, given that many retirees are on fixed incomes and might be expected to particularly value the extra income, retirees appear to be less interested than non-retirees in the financial benefits of a cottage food business. Instead, retirees value filling their spare time with something enjoyable and creative and pursuing a cottage food business as a hobby. (See Figure 12.) By contrast, far fewer non-retirees see cottage food production as a hobby. For most non-retirees, cottage foods are a real business enterprise, whether a main occupation or a supplementary one.

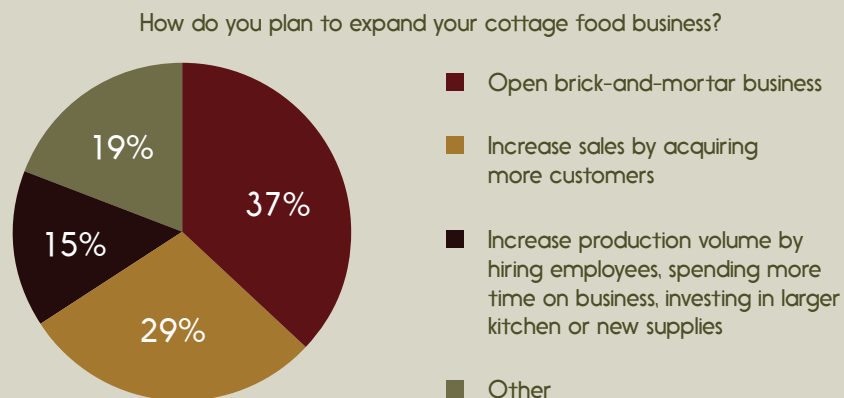
Figure 12: Retirees are more likely than non-retirees to consider their cottage food businesses a hobby.



What are cottage food producers' plans for their businesses, and what factors might influence those plans?

More than a third of cottage food producers plan to expand their businesses in the near future. Some plan to open a brick-and-mortar business, but others plan to grow their businesses while continuing to operate them from the home (see Figure 13).

Figure 13: Respondents plan to open brick-and-mortar stores in the future.



Several factors may influence whether cottage food producers plan to expand their businesses in the near future. For example, perhaps somewhat counterintuitively, hobbyists are more interested in expansion than those who consider cottage foods a supplemental occupation.⁵³ Hobbyists also experience lower annual sales.⁵⁴ These findings suggest that some producers who start out as hobbyists come to recognize the financial potential of their businesses and hope that expansion will make cottage foods a greater source of income for their households.

Other factors that may make a producer more likely to expand their business include:

- Using a greater amount of startup capital.⁵⁵
- Planning to sell cottage foods further into the future.⁵⁶
- Considering the cottage food business important to the household's financial well-being.⁵⁷
- Having a higher level of education.⁵⁸
- Having children living at home.⁵⁹
- Living in an urban or suburban area.⁶⁰

How do cottage food laws affect entrepreneurship?

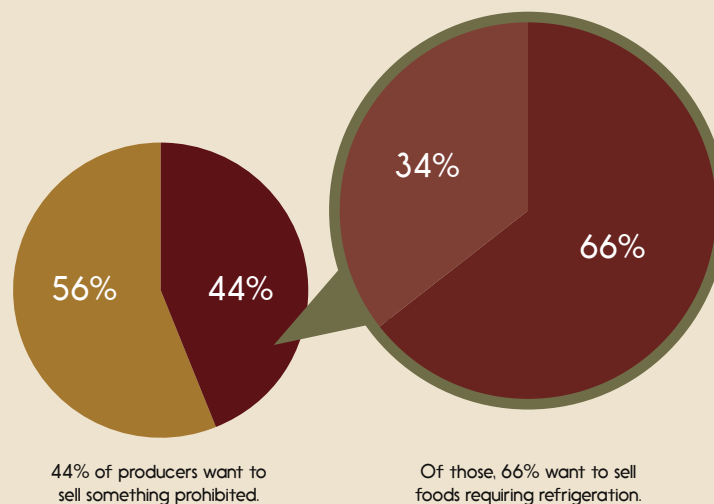
Some cottage food regulations impose real restrictions on producers, while others appear to be less burdensome. Nearly half of cottage food producers want to sell some types of foods that their states prohibit, and of those people, most want to sell items that require refrigeration (see Figure 14). Most states prohibit the sale of such items, with the few exceptions being states like Iowa, Ohio, Oregon and Virginia, which have multi-tiered regulatory schemes, and North Dakota and Wyoming, which have broader food freedom laws.⁶¹

Laws restricting the types of foods producers may sell could be stifling entrepreneurship. Producers who want to sell prohibited foods are less likely to plan to expand their businesses,⁶² while producers who already sell foods that require refrigeration are more likely to plan to expand theirs.⁶³

One possible explanation for this trend is that the ability to diversify product range is an important factor for the growth of a cottage food business. Another is that home-based businesses serve as an effective laboratory in which to test a business idea before investing in the commercial space and equipment necessary to run a brick-and-mortar business. Perhaps cottage food producers who are unable to pilot foods requiring refrigeration are unable to engage in the type of experimentation that encourages entrepreneurship.

Other cottage food regulations appear less burdensome in that they have little effect on plans to expand. Simple food safety training requirements do not appear to have a significant impact on cottage food businesses. The same is true of home inspections. Where required, they do not appear to affect a producer's income or a business's annual sales, nor do they appear to be a barrier to planning to expand a cottage food business. However, it is possible that restrictions on cottage foods have other effects that I was not able to measure, such as discouraging would-be entrepreneurs from starting a cottage food business in the first place.

Figure 14: Cottage food producers want to sell a wider variety of products.



RECOMMENDATIONS

The stark disparities in cottage food laws and the lack of evidence of threats to public safety in lightly regulated states suggest many of these regulations are unnecessary. At the same time, cottage food businesses promote greater financial well-being and independence for their owners. Legislatures could spur greater entrepreneurial activity if they would simply get out of the way. They can do so without sacrificing public safety in the following ways.

Expand the types of foods that producers can sell

Results presented here suggest a link between entrepreneurial activity and the freedom to produce different types of foods. To expand this freedom—and promote entrepreneurship—states should allow the virtually unrestricted sale of all non-potentially hazardous cottage foods, including baked goods, high-acid canned goods like jams and pickles, popcorn, chocolates, syrups, and honeys.

States should also consider allowing the sale of homemade foods requiring refrigeration. One approach is to adopt a multi-tiered regulatory scheme. Under such a scheme, producers could sell a wider variety of foods provided they complete food safety training or agree to home sanitation inspections—two regulations this study has found are not particularly burdensome for cottage food producers. A multi-tiered scheme can help assuage any concerns over food safety without overly burdening producers whose products pose less of a risk. Such schemes are already in use in Iowa, Ohio, Oregon and Virginia,⁶⁴ and so far there appear to be no reports of foodborne illness outbreaks.

Another approach to expanding the types of homemade foods that people can sell is to adopt food freedom laws, which allow virtually all kinds of homemade foods to be sold directly to consumers, with relatively few restrictions. In recent years, both North Dakota and Wyoming have done just that, and so far there is no indication that these laws have had an ill effect on public health.⁶⁵

Expand the types of venues where cottage foods can be sold

Some states limit cottage food producers to selling from farmers' markets or prevent them from selling

out of their homes. Not only is it unclear what legitimate government interest is served by such venue restrictions, but venue restrictions can be very burdensome for producers. Farmers' markets require set days and hours of sale, cutting into the flexibility and convenience that inspire so many cottage food producers to go into business in the first place. In addition, fees to rent space at farmers' markets and other community events can quickly add up, making it difficult for some producers to turn a profit. Not allowing producers to sell from home also effectively prevents producers from taking custom orders for things like wedding or birthday cakes. Allowing cottage foods to be sold directly out of the home can open up entrepreneurial opportunities to those of modest means while also providing the flexibility that home-based business owners value.⁶⁶ States should allow producers to sell their products directly to consumers at any location they choose.

Remove restrictions that limit cottage food production to farmers or others able to grow the main ingredients in their products

Some states require cottage food producers to be farmers or to have grown the main ingredients in the foods they sell. Such restrictions serve no discernable purpose while leaving aspiring entrepreneurs unable to make a living. Take home baker Jennifer Lopez, for example. While living in Missouri, she sold homemade cakes to make ends meet. Just like many of the cottage food producers in this survey, she used the money to take care of her children and cover necessary household expenses. But when she moved across the border to Kentucky, her business became illegal because she is not a farmer. Lopez now risks landing herself in jail for selling cakes that are perfectly legal in Missouri, and that would be legal in Kentucky if she were a farmer.⁶⁷

Lift or eliminate sales caps

While the majority of cottage food businesses are micro-enterprises, some do grow into sizable businesses generating tens of thousands of dollars in annual sales. States with sales caps should lift or eliminate them to allow these businesses more freedom to grow.



CONCLUSION

As consumers continue to take greater interest in where their food comes from and how it was made, and as more states begin to open up their cottage food laws, the cottage food industry continues to grow. The cottage food producers in this survey are part of that growth. Many of them said they plan to expand their businesses by adding new foods to their repertoire or by selling at new points of sale. Several even have plans to open brick-and-mortar stores. These businesses are important to the financial and personal well-being of their owners. They also bring value to their customers who want to buy tasty treats from their neighbors. States can, and should, take steps to encourage entrepreneurship by easing restrictions on cottage food producers.





APPENDIX A: ADDITIONAL NOTES ON STATE COTTAGE FOOD LAWS

State cottage food laws are full of idiosyncrasies that cannot be captured by the broad categories displayed in Tables 1 and 2 on pages 12–15. See below for additional information about the legal factors analyzed in those tables. Note that there may be additional intricacies to a state’s cottage food laws that are not captured in the report and were not considered in the analysis:

Connecticut: Connecticut passed a new cottage food law in 2015, which is reflected in Tables 1 and 2. However, as this report went to print, the state had not yet brought the new law into force, so producers were not able to sell their cottage foods under the new regime. Also as this report went to print, the new law was not yet reflected on Forrager.com, so this analysis relies on the text of the law⁶⁸ rather than on Forrager.

Delaware: Farmers in Delaware can get a separate “on-farm home processing” license that allows annual sales of up to \$40,000.⁶⁹

District of Columbia: The District of Columbia passed a new cottage food law in 2013, which is reflected in Tables 1 and 2.⁷⁰ However, as this report went to print, the Department of Health had not yet created the cottage food registry necessary to allow producers to begin selling their cottage foods legally.

Illinois: Illinois also has a “home kitchen operations” law, which is for bakers and does not require registration. However, it is not available everywhere in the state because counties must specifically adopt it and most have not yet done so.⁷¹ For this reason, the home kitchen operations law is not analyzed in Tables 1 and 2.

Indiana: Producers in Indiana can take orders over the internet, but they must deliver those orders to a farmers’ market or roadside stand for payment.⁷²

Kentucky: Kentucky’s microprocessors scheme allows the sale of pickles, as well as higher-risk canned goods, such as tomatoes, beans and corn. Because the scheme has such a narrow scope, microprocessors were not included in the survey.⁷³

Louisiana: Louisiana allows custard or cream-filled bakery products to be sold, provided pasteurized milk products are used to make them, but it does not permit the sale of other refrigerated goods.⁷⁴

Maine: Maine’s “food sovereignty law,” adopted in August 2017, is not reflected in this analysis.⁷⁵

Maryland: In Maryland, cottage foods may be sold at farmers’ markets or events resembling farmers’ markets: “[a] location in a farmer’s market or at a public festival or event where raw agricultural products ... are sold.”⁷⁶ Cottage foods may not be sold at other events.⁷⁷ For this reason, Maryland is treated as a state that limits cottage food sales to farmers’ markets only.

North Dakota: North Dakota’s food freedom law, passed in January 2017, was not yet reflected on Forrager.com as this report went to print. For this reason, the analysis relies on the text of the new law⁷⁸ rather than on Forrager.

Ohio: Ohio requires that at least 75 percent of a producer’s honeys and syrups come from the person’s own hives or trees, respectively.⁷⁹

Oklahoma: Small-scale honey producers (producing less than 500 gallons per year) in Oklahoma can sell their honey directly to consumers under a law separate from the state’s cottage food law.⁸⁰

Oregon: Farmers in Oregon can sell their products under a separate “farm direct” law, as long as they grew the primary ingredients used in the products and limit sales of acidified foods to \$20,000 per year.⁸¹

Rhode Island: To be allowed to sell cottage foods, Rhode Island farmers must sell more than \$2,500 of agricultural products per year.⁸²

Vermont: Vermont has several different laws for the sale of homemade foods, so this study focuses on the home baker license. Licensure is required for bakers who sell more than \$125 worth of product per week, but the foods and sales venues permitted do not change with licensure. The Vermont home bakers included in this survey were licensed, indicating that they sell (or intend to sell) more than \$125 worth of product per week.⁸³

Virginia: While Virginia does not have a cap on cottage food sales overall, it does have a \$3,000 annual sales cap on pickles and other acidified vegetables.⁸⁴

APPENDIX B: STUDY METHODS

Survey

Sample

The final survey sample included 775 cottage food producers across 22 states. The sample was constructed by securing a list of all registered cottage food producers from state, county and local governments in the 25 states whose registration schemes allowed me to identify these producers, listed in Table B1. This facilitated the creation of a population of 25,418 registered cottage food producers. This population does not include people in those states who produce cottage foods illegally. It also does not include people who produce cottage foods legally but who were impossible to identify because they limit their business activity such that they are not required to register. States with multi-tiered regulatory schemes that require some producers to register but not others are marked with an asterisk in Table B1.

The sample was constructed as a stratified random sample. The number of participants from each state was proportional to the percentage of registered cottage food producers from that state in the 25-state registered cottage food producer population. After proportional quota frequencies were set for each state, cottage food producers from the respective state lists were called at random until quotas were filled as close to the target as possible.

Data Collection

To draft the survey instrument, I relied largely on questions from other similar surveys and adapted them for the purpose of this survey. A benefit of this approach was that most of the questions in the survey had already been field tested. Prior to data collection, the survey was pre-tested on a small sample of cottage food producers. Results from the pre-test were used to refine questions for the sake of clarity and precision.

WPA Intelligence, a research company based in the District of Columbia, collected survey data between March 13 and April 6, 2017. In 24 of the 25 states, surveys were completed by telephone. In Arizona, however, surveys were completed online. The state would only release email addresses, not phone numbers or home addresses. The different survey mode in Arizona was controlled for in regression analysis. The full dataset can be found online at www.ij.org/report/cottage-foods-survey.

Survey Weights

To ensure geographic representativeness of the cottage food producer population and appropriately account for different response rates by producers in different states, a post-survey weighting adjustment was used. The population targets were based on producer counts that were compiled from the 25-state population. Weights were calculated using iterative proportional fitting, which uses a maximum-likelihood algorithm to find the minimum adjustment necessary to make the individual responses match the population distribution of the states.

Table B1: Producers by State

State	Producers in Population	Percent of Population	Producers in Survey Sample	Weighted Completes
Arizona	5,671	22.3%	103	130
California	2,811	11.1%	90	91
Delaware	6	0.0%	0	0
Georgia	250	1.0%	7	7
Illinois*	362	1.4%	10	11
Iowa*	316	1.2%	25	19
Kentucky	759	3.0%	38	27
Maine	1,285	5.1%	67	54
Massachusetts	661	2.6%	21	20
Minnesota	423	1.7%	32	23
Montana	73	0.3%	0	0
Nevada	161	0.6%	4	4
New Hampshire*	122	0.5%	5	4
New York	3,147	12.4%	92	96
North Carolina	4,186	16.5%	68	101
Ohio*	835	3.3%	33	29
Oregon*	781	3.1%	37	32
Pennsylvania	1,731	6.8%	75	62
Rhode Island	16	0.1%	0	0
Tennessee*	135	0.5%	4	4
Utah	288	1.1%	16	15
Vermont*	167	0.7%	8	7
Virginia*	1,109	4.4%	33	34
Washington	95	0.4%	6	4
West Virginia	28	0.1%	1	1
Total	25,418	100.0%	775	775

* Indicates states with multi-tiered regulatory schemes that require some producers to register but not others.

Variable Transformation and Recoding

Several questions were recorded by the surveyors as verbatim text values and had to be recoded into numeric values. Recoding details are contained in Table B2.

Variables marked with an asterisk in Table B2 had high rates of missing values, which posed a problem for the regression analyses. To overcome this problem, I used multiple imputation to impute missing values for use in regression analysis. Descriptive statistics are reported in their original, non-imputed form.

Table B2: Recoding of Numeric Variables

Variable	Question	Standardized Response	Example of Recoding
Q05	How long have you worked selling foods you made in your home?	Number of months selling cottage foods	E.g., “seven years and 3 months” became 87.
Q12	How long did it take you to get all the necessary approvals from the government before you could begin selling your homemade foods?	Number of days it took to obtain necessary approvals to operate business	Days obtained by multiplying weeks by 7, months by 30, years by 365. E.g., “6 months” became 180.
Q17	Since beginning your homemade food business, how many times has your home been inspected by the government?	Number of times home inspected	E.g., “four times” became 4. In cases where respondents indicated monthly, annual, etc. inspections, Q05 was used to determine how long they had been in business. The number of inspections was deduced from there.
Q28*	During an average work week, how much time do you spend on your homemade food business?	Number of hours spent on the business during an average week	“Days” were treated as 8 hours. “Seasonal” was generally treated as 3 months, so hours indicated were divided by 4. In cases where a range was provided, such as “12–15 hours,” the average was taken.
Q29*	How much of that time is spent interacting with customers?	Number of hours spent interacting with customers during an average week	
Q30*	How much of that time is spent organizing your homemade food business?	Number of hours spent organizing the business during an average week	
Q31*	How many people do you employ full time, not including yourself?	Number of people employ full time	Strictly transferring string values to numeric values. E.g., “two” became 2.
Q32*	How many people do you employ part time?	Number of people employ part time	

Table B2 continued on next page

Table B2 continued from previous page

Variable	Question	Standardized Response	Example of Recoding
Q33*	In 2016: How many dollars did your homemade food business generate in profit, after expenses?	Number of dollars generated in profit last year	Strictly transferring string values to numeric values. E.g., “one thousand dollars” became 1000.
Q34*	How many dollars did your homemade food business generate in annual sales, before you deduct expenses?	Number of dollars generated in annual sales last year	
Q35*	How much did you pay in sales tax to the city, county or other governments?	Number of dollars paid in sales tax last year	
Q36*	How much did you pay for permits, inspections or other fees specifically required to be a homemade food business?	Number of dollars paid for permits, inspections or other fees last year	
Q38*	What was the total amount of capital used to start your business?	Number of dollars capital used to start business	
Q39	How long do you plan to continue selling homemade food?	Number of years plan to continue selling	Transferring string values into numeric values. E.g., “ten years” became 10. In cases where respondents said something like “until I retire,” the time between the respondent’s current age and age 65 (average retirement age) was calculated; in cases where the respondent indicated an indefinite time period, the time between the respondent’s current age and age 87 (average life expectancy) was calculated.
Q42*	How much was your personal income in 2016?	Number of dollars of personal income last year	Strictly transferring string values to numeric values. E.g., “one thousand dollars” became 1000.
Q43*	How much was your household income in 2016?	Number of dollars of household income last year	

Some variables had skewed distribution. To normalize the distribution for use in regression analysis, I transformed the variables as described in Table B3.

Table B3: Variable Transformations

Variable	Variable Meaning	Transformation
Q12	Number of days it took to obtain necessary approvals to operate business	Large outliers dropped, square root
Q29	Hours spent with customers each week	Natural log+0.0001, to avoid transforming zero values into missing
Q30	Hours spent organizing the business each week	Large outliers dropped
Q31	Number of full-time employees	Natural log+0.0001, to avoid transforming zero values into missing
Q32	Number of part-time employees	Natural log+0.0001, to avoid transforming zero values into missing
Q33	2016 profits	Natural log+1, to avoid transforming zero values into missing
Q34	2016 sales	Natural log+1, to avoid transforming zero values into missing
Q35	2016 sales tax	Natural log+1, to avoid transforming zero values into missing
Q36	Amount paid for permits, inspections and other fees in 2016	Natural log+1, to avoid transforming zero values into missing
Q38	Amount of startup capital used	Natural log+1, to avoid transforming zero values into missing
Q42	2016 personal income	Square root
Q43	2016 household income	Square root

Some additional variables required deductive coding, inductive coding or a combination of the two. For example, in some cases where the surveyors recorded a response as “other,” it was clear from their verbatim description of the response that the response fit within another response option contained in the survey instrument. In such cases, I used deductive coding to place a response within the variable’s coding scheme. However, some of the “other” responses did not fit within the coding scheme. In those cases, I used inductive coding to group like responses together and used those groupings to formulate additional response options. Finally, some questions did not provide response options and were instead simply recorded verbatim. For these variables, I exclusively used inductive coding to group like responses together and to formulate a coding scheme for use in regression analysis. Explanations of these coding decisions are contained in table B4.

Table B4: Deductive and Inductive Coding

Variable	Question	Coding
Q09	What motivated you to start your cottage food business?	<p>Deductively coded “other” responses into existing response options.</p> <p>Inductively coded those responses that did not fit within the scheme to create the following additional response options:</p> <ul style="list-style-type: none"> • I identified a gap in the market and wanted to fill it. • I identified a good business opportunity. • Friends and family encouraged me to start selling my foods. • I wanted to generate additional income during retirement. • I wanted to use the produce that I was already growing. • I have a talent for making good food.
Q14	Please tell me what foods you would like to sell, but are prohibited by the government from doing so.	<p>Deductively coded “other” responses into existing response options. Responses that did not fit within the existing coding remained coded as “other.”</p>
Q23	What types of food do you produce?	
Q24	From what venues or locations do you typically sell?	
Q41	In what ways do you plan to expand your business?	<p>Inductively coded by grouping like responses together until a coding scheme emerged. The codes were:</p> <ul style="list-style-type: none"> • Open brick-and-mortar business. • Increase sales by acquiring more customers. • Increase production volume by hiring employees, spending more time on business, investing in larger kitchen or new supplies. • Other.

Legal Analysis

Table B5 shows how I coded the cottage food laws of each state in the sample. Some of the states have multi-tiered systems in which some cottage food producers are required to register with the government and some are not. Since I was able to survey only those producers required to register with the government, the analysis below captures the state laws that correspond with required registration. To complement this understanding of a state's legal environment, producers were also asked, among other questions, how many times their home or point of sale had been inspected, how much they paid in fees to the government in order to operate, and whether they had completed required food handlers' training.

Table B5: Legal Analysis by State

State	Sales Cap	Are these producers permitted to sell refrigerated foods?	Are cottage food sales limited to farmers only?	Number of venues where cottage foods may be sold ^a
Arizona	None	No	No	7
California	\$50,000	No	No	Permit A: 5 venues Permit B: 7 venues
Georgia	None	No	No	5
Illinois	\$36,000	No	No	1
Iowa	\$20,000	Yes	No	7
Kentucky	None	No	Yes	3
Maine ^b	None	No	No	7
Massachusetts	None	No	No	7
Minnesota	\$18,000	No	No	4
Nevada	\$35,000	No	No	4
New Hampshire	None	No	No	7
New York	None	No	No	3
North Carolina	None	No	No	7
Ohio	None	Yes	No	7
Oregon	None	Yes	No	7
Pennsylvania	None	No	No	7
Tennessee	None	No	No	7
Utah	None	No	No	7
Vermont	None	No	No	5
Virginia	None	Yes	No	7
Washington	\$25,000	No	No	4
West Virginia	None	No	No	2

^aI categorized venues based on Forrager.com's categorization: farmers' markets, roadside stands, community events, home, online, restaurants and retail stores.

^bAfter the analysis for this report was complete, Maine adopted a new law to allow municipalities to regulate local food distribution, free from state regulatory control. That new law is not reflected in this analysis.

Regression Analysis

The purpose of the analysis was threefold: to determine what effect—if any—legal factors have on 1) cottage food businesses' annual sales, 2) cottage food producers' household incomes, and 3) producers' plans to expand their businesses.

To isolate the effect (β) of legal factors on annual sales and household income, I used ordinary least squares (OLS) regression controlling for a wide array of personal and business characteristics. To isolate the effect (β) of legal factors on the likelihood of producers' planning to expand their businesses, I employed logistic regression while also controlling for a wide array of personal and business characteristics. For a complete list of control variables used in each analysis, see Table B6.

The primary independent variable in these three analyses was a measure of a state's sales cap. The measures of a state's sales cap took three different forms: 1) the dollar amount of the cap, 2) a binary variable that equals 1 if a state has a cap and 0 otherwise, and 3) the sales cap disaggregated into three categories based on the distribution of the sales cap dollar value. Since these three measures did not make a significant difference to the regression results, final results are based only on the dollar amount of the cap as the independent variable.

Regression equations included state probability weights, and standard errors were clustered by state.

The general model for all three analyses was:

$$Y = \beta_0 + \beta_1(\text{sales_cap}) + \beta_2(\text{refrigerated}) + \beta_3(\text{venues}) + \beta_4(\text{training}) + \beta_5(\text{approval}) + \beta_6(\text{prohibited_foods}) + \beta_7(\text{prohibited_venues}) + \beta_8(\text{inspections}) + \beta_9(\text{fees}) + \Theta + \Omega + \varepsilon$$

Where:

Model 1: Y = the natural log of a business's 2016 annual sales (OLS regression)

Model 2: Y = the square root of a producer's 2016 household income (OLS regression)

Model 3: Y = 1 if a producer plans to expand their business in the near future, 0 otherwise (logistic regression)

In all three models:

sales_cap = the dollar amount of sales cap in state where business operates

refrigerated = 1 if state allows sale of homemade foods requiring refrigeration, 0 otherwise

venues = number of venues (out of seven categories) where state allows cottage foods to be sold

training = 1 if producer was required to undergo training to operate business, 0 otherwise

approval = number of days it took to get government approvals before business could begin

prohibited foods = 1 if there are foods producer wants to sell but is prohibited by government from doing so, 0 otherwise

prohibited venues = 1 if there are venues where producer wants to sell, but is prohibited by government from doing so, 0 otherwise

inspections = number of times home has been inspected by government

fees = natural log of dollar amount paid for permits, inspections or other fees specifically required to sell cottage foods

Θ = business characteristics (see Table B6)

Ω = personal characteristics (see Table B6)

ε = error term

Table B6: Control Variables included in regression models

Control Variable	Definition	Model 1	Model 2	Model 3
Business characteristics				
main_occupation	=1 if business is a main occupation, compared to a supplemental occupation, 0 otherwise	x	x	x
hobby	=1 if business is a hobby, compared to a supplemental occupation, 0 otherwise	x	x	x
hours	Number of hours spent on business per week	x	x	x
full_employees	Natural log of number of full-time employees	x	x	x
part_employees	Natural log of number of part-time employees	x	x	x
annual_sales	Natural log of dollar amount of 2016 annual sales		x	x
capital	Natural log of dollar amount of capital used to start the business			x
continue_selling	Number of years respondent plans to continue selling cottage foods			x
importance	Producer's ranking of how important the business is to the financial well-being of their household, 1–6, 6 being most important	x	x	x
baked	=1 if respondent sells baked goods, 0 otherwise	x	x	x
confectionary	=1 if respondent sells confectionary, 0 otherwise	x	x	x
condiments	=1 if respondent sells condiments, 0 otherwise	x	x	x
dry_goods	=1 if respondent sells dry goods, 0 otherwise	x	x	x
pastries	=1 if respondent sells pastries, 0 otherwise	x	x	x
preserves	=1 if respondent sells preserves, 0 otherwise	x	x	x
snacks	=1 if respondent sells snacks, 0 otherwise	x	x	x
sell_refrigerated	=1 if respondent sells refrigerated goods, 0 otherwise	x	x	x
farmers_markets	=1 if respondent sells at farmers' markets, 0 otherwise	x	x	x
roadside_stands	=1 if respondent sells at roadside stands, 0 otherwise	x	x	x
community_events	=1 if respondent sells at community events, 0 otherwise	x	x	x
home	=1 if respondent sells from home, 0 otherwise	x	x	x
restaurants	=1 if respondent sells at restaurants, 0 otherwise	x	x	x
retail_stores	=1 if respondent sells at retail stores, 0 otherwise	x	x	x
online_phone	=1 if respondent sells online or by phone, 0 otherwise	x	x	x
Personal characteristics				
personal_income	Square root of dollar amount of 2016 personal income	x		x
household_income	Square root of dollar amount of 2016 household income			x
race	=1 if respondent is white, 0 otherwise	x	x	x
married	=1 if respondent is married, 0 otherwise	x	x	x
education	Respondent's level of education, ranked 1–5, 5 being highest	x	x	x
children	=1 if there are children under the age of 18 in the respondent's household, 0 otherwise	x	x	x
suburban	=1 if the respondent lives in a suburban area, compared to rural, 0 otherwise	x	x	x
urban	=1 if the respondent lives in an urban area, compared to rural, 0 otherwise	x	x	x
gender	=1 if male, 2 if female	x	x	x
arizona	=1 if respondent lives in Arizona, 0 otherwise (this controls for the different survey mode employed in Arizona)	x	x	x

APPENDIX C: REGRESSION RESULTS

Table C1: Model 1

	Coefficient	Clustered S.E.	ρ
sales_cap	-0.000	0.000	0.871
refrigerated	0.287	0.391	0.478
venues	-0.032	0.088	0.725
training	0.158	0.448	0.731
approval	0.004	0.040	0.914
prohibited_foods	0.303	0.303	0.334
prohibited_venues	-0.068	0.337	0.843
inspections	0.016	0.022	0.496
fees	0.146	0.074	0.070
main_occupation	0.999	0.545	0.086
hobby	-0.782	0.352	0.042
hours	0.004	0.011	0.723
f_employees	-0.028	0.061	0.658
p_employees	0.022	0.045	0.628
importance	0.071	0.114	0.544
baked	0.085	0.355	0.814
confectionary	-0.182	0.470	0.703
condiments	0.613	0.508	0.247
dry_goods	-0.136	0.643	0.835
pastries	0.607	0.602	0.332
preserves	-0.918	1.013	0.381
snacks	0.227	1.023	0.828
sell_refrigerated	0.505	1.027	0.632
farmers_markets	0.111	0.346	0.757
roadside_stands	0.317	0.620	0.617
community_events	-0.117	0.427	0.788
home	0.201	0.337	0.562
restaurants	-0.038	0.481	0.938
retail_stores	0.585	0.403	0.184
online_phone	0.315	0.482	0.525
personal_income	0.006	0.002	0.002
race	0.042	0.499	0.934
married	0.434	0.361	0.252
education	-0.001	0.133	0.993
children	0.047	0.298	0.876
suburban	-0.147	0.386	0.709
urban	-0.293	0.573	0.619
gender	0.228	0.471	0.636
arizona	-1.061	0.389	0.016
intercept	3.937	2.071	0.074

Table C2: Model 2

	Coefficient	Clustered S.E.	ρ
sales_cap	0.000	0.000	0.910
refrigerated	28.496	18.744	0.167
venues	1.759	4.222	0.686
training	-8.340	13.353	0.543
approval	-1.606	1.662	0.357
prohibited_foods	0.017	9.115	0.999
prohibited_venues	-13.910	16.239	0.411
inspections	-0.440	0.895	0.635
fees	5.242	3.233	0.130
main_occupation	11.393	19.601	0.571
hobby	-10.823	15.028	0.483
hours	-0.597	0.390	0.153
f_employees	-1.128	2.394	0.650
p_employees	0.792	1.993	0.697
annual_sales	8.159	2.259	0.005
importance	-17.685	4.413	0.003
baked	23.092	14.180	0.129
confectionary	-15.040	21.052	0.490
condiments	27.750	18.213	0.160
dry_goods	5.696	21.986	0.800
pastries	-15.045	25.051	0.559
preserves	11.638	35.046	0.747
snacks	-17.079	33.564	0.618
sell_refrigerated	-15.786	36.725	0.680
farmers_markets	-7.546	14.975	0.623
roadside_stands	14.937	23.114	0.533
community_events	16.227	14.870	0.293
home	9.424	12.364	0.462
restaurants	11.793	20.159	0.567
retail_stores	-1.460	17.534	0.936
online_phone	10.393	20.397	0.621
race	-0.179	17.526	0.992
married	27.647	13.085	0.060
education	20.714	4.897	0.002
children	11.289	12.872	0.400
suburban	-16.112	16.485	0.359
urban	-8.514	20.506	0.686
gender	-1.910	19.008	0.921
arizona	21.071	21.587	0.371
intercept	104.835	72.918	0.172

Table C3: Model 3

	Coefficient	Clustered S.E.	ρ
sales_cap	-0.000	0.000	0.585
refrigerated	-0.207	0.360	0.566
venues	0.047	0.064	0.462
training	-0.126	0.416	0.762
approval	0.014	0.030	0.650
prohibited_foods	-0.682	0.254	0.007
prohibited_venues	-0.529	0.294	0.072
inspections	-0.028	0.019	0.158
fees	0.027	0.048	0.572
main_occupation	0.080	0.388	0.837
hobby	0.755	0.246	0.002
hours	0.008	0.009	0.400
f_employees	0.075	0.042	0.072
p_employees	0.008	0.031	0.784
annual_sales	-0.070	0.045	0.122
capital	0.135	0.060	0.024
continue_selling	0.035	0.008	0.000
importance	0.259	0.097	0.008
baked	-0.179	0.363	0.623
confectionary	-0.394	0.339	0.246
condiments	0.603	0.356	0.090
dry_goods	0.072	0.538	0.894
pastries	-0.814	0.374	0.030
preserves	1.633	0.890	0.067
snacks	0.073	0.671	0.913
sell_refrigerated	1.601	0.652	0.014
farmers_markets	0.070	0.233	0.765
roadside_stands	0.779	0.514	0.129
community_events	-0.024	0.232	0.919
home	-0.140	0.275	0.610
restaurants	0.188	0.408	0.645
retail_stores	0.623	0.304	0.040
online_phone	0.553	0.454	0.224
personal_income	-0.001	0.002	0.590
household_income	0.000	0.001	0.852
race	-1.319	0.315	0.000
married	0.174	0.354	0.623
education	0.235	0.077	0.002
children	0.638	0.210	0.002
suburban	0.622	0.291	0.033
urban	1.410	0.533	0.008
gender	-0.763	0.408	0.061
arizona	0.520	0.475	0.274
intercept	0.927	1.038	0.372

APPENDIX D: DESCRIPTIVE STATISTICS

The following tables provide descriptive statistics for the sample that were not otherwise presented in the main text of the report.

Race/Ethnicity	
White	83.8%
Hispanic, Mexican, Latino, Spanish	3.1%
African-American	6.4%
Asian	1.6%
Other	2.6%
Refused	2.5%

Highest Level of Education	
Less than high school graduate	3.8%
High school graduate	16.9%
Some college/associate's degree	37.1%
Bachelor's degree	25.7%
Post-graduate	15.7%
Don't know/Refused	0.8%

Marital Status	
Single, never married	13.0%
Married	71.4%
Separated	0.9%
Divorced	8.5%
Widowed	4.7%
Don't know/Refused	1.4%

Children in Household Under Age of 18	
Yes	34.8%
No	54.5%
Don't know/Refused	10.8%

Recognized Disability	
Yes	8.8%
No	89.2%
Don't know/Refused	2.0%

Provide Care for Disabled, Sick, Elderly or Otherwise Incapacitated Person	
Yes	11.0%
No	87.9%
Don't know/Refused	1.1%

Respondent/Spouse Currently Serving in the Military	
Yes	0.6%
No	98.4%
Don't know/Refused	0.9%

Age of Respondents	
18–24	1.2%
25–34	11.4%
35–44	17.1%
45–54	23.6%
55–64	25.3%
65–74	13.4%
75+	4.0%
Refused	3.9%

ENDNOTES

- 1 See Transcript of Proceedings at 30, *Kwirist v. Wis. Dep't. of Agric.*, No. 16-CV-06 (Lafayette Cty. Cir. Ct. May 31, 2017); Final Order and Judgment, *Kwirist*, No. 16-CV-06 (Sept. 29, 2017); <http://ij.org/case/wisconsin-baked-good-ban/>
- 2 High-acid canned goods are those with a pH of 4.6 or below. Cornell Food Venture Center. (n.d.) *Acid and acidified foods*. <https://cfvc.foodscience.cals.cornell.edu/acid-and-acidified-foods>; 21 C.F.R. 114.3(a) (2017).
- 3 See <http://ij.org/case/wisconsin-baked-good-ban/>
- 4 Expert Report of Thomas J. Montville at 2, *Kwirist*, No. 16-CV-06, (Sept. 30, 2016).
- 5 See <http://ij.org/case/wisconsin-baked-good-ban/>
- 6 See <http://ij.org/case/new-jersey-cottage-foods>
- 7 For example, according to the U.S. Census Bureau's 2012 Survey of Business Owners, over half of all U.S. businesses operate primarily out of the home. However, none of the available data disaggregate the various types of home-based businesses with sufficient detail to shed light on the cottage food industry. U.S. Census Bureau. (2012). *Statistics for all U.S. firms that were home-based by industry, gender, ethnicity, race, and veteran stats for the U.S.: 2012 Survey of Business Owners*. <https://factfinder.census.gov/bkmk/table/1.0/en/SBO/2012/00CSCB19>
- 8 For example, Texas and California legalized cottage foods in 2011 and 2013, respectively, while Florida, Colorado and Minnesota recently eased their restrictions on cottage food businesses. Sibilla, N. (2014b, September 22). Texans created over a thousand local businesses after Texas eased restrictions on selling food made at home. *Forbes*. <https://www.forbes.com/sites/instituteofjustice/2014/09/22/texans-created-over-a-thousand-local-businesses-after-texas-eased-restrictions-on-selling-food-made-at-home/#4c8a2c7c6406>; 2012 Cal. Legis. Serv. Ch. 415 (A.B. 1616) (West), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1616; 2012 Fla. Sess. Law Serv. Ch. 2011-205 (C.S.H.B. 7209) (West), <http://www.flsenate.gov/Session/Bill/2017/01136>; Laxen, J. (2017, August 19). Homemade food vendors take advantage of relaxed Colorado laws. *Coloradoan*. <http://www.coloradoan.com/story/life/food/2017/08/19/cottage-food-act-colorado-food-vendors-take-advantage-relaxed-laws/559088001/>; Institute for Justice. (2015, June 16). Case closed: Minnesotans win right to sell homemade goods; agree to dismiss lawsuit [Press release]. <http://ij.org/press-release/case-closed-minnesotans-win-right-to-sell-homemade-goods-agree-to-dismiss-lawsuit/>
- 9 2017 North Dakota Laws Ch. 191 (H.B. 1433), <http://www.legis.nd.gov/assembly/65-2017/documents/17-0559-05000.pdf>; Farm-to-Consumer Legal Defense Fund. (2017, March 28). Wyoming expands Food Freedom Act. <https://www.farmtoconsumer.org/blog/2017/03/28/wyoming-expands-food-freedom-act/>; Wyoming Food Freedom Act, 2015 Wyo. Laws Ch. 121 (H.B. 56), <http://legisweb.state.wy.us/2015/bills/HB0056.pdf>
- 10 Sibilla, 2014b; Sibilla, N. (2014a, January 29). California legalized selling food made at home and created over a thousand local businesses. *Forbes*. <http://www.forbes.com/sites/instituteofjustice/2014/01/29/california-legalized-selling-food-made-at-home-and-created-over-a-thousand-local-businesses/#5ceb514830a1>; Sibilla, N. (2017, February 16). Over 3,000 bakers are now in business after Minnesota eased restrictions on selling homemade food. Arlington, VA: Institute for Justice. <http://ij.org/minnesota-eased-restrictions-selling-homemade-food-3000-bakers-now-business/>
- 11 Burger, K. (2017, July 22). From their kitchen to yours: Minnesota cottage food producers cook for cash. *StarTribune*. <http://www.startribune.com/from-their-kitchen-to-yours-minnesota-cottage-food-producers-cook-for-cash/435707683/>
- 12 See <http://forrager.com/laws> and Appendix A. While Forrager's interpretation of cottage food laws for the states in the sample was confirmed by independent research, this analysis does not capture all of the intricacies of these states' food laws.
- 13 <http://forrager.com/law/south-dakota-home-sales/>
- 14 <http://forrager.com/law/south-dakota>
- 15 <http://forrager.com/law/iowa>; <http://forrager.com/law/iowa-home-food-establishment/>. The home food establishment license also allows producers to sell at any venue.
- 16 <http://forrager.com/law/ohio-home-bakery/>; <http://forrager.com/law/oregon-domestic-kitchen/>; <http://forrager.com/law/virginia-home-food-processing-operation/>
- 17 2017 North Dakota Laws Ch. 191 (H.B. 1433), <http://www.legis.nd.gov/assembly/65-2017/documents/17-0559-05000.pdf>; Farm-to-Consumer Legal Defense Fund, 2017; Wyoming Food Freedom Act, 2015 Wyo. Laws Ch. 121 (H.B. 56), <http://legisweb.state.wy.us/2015/bills/HB0056.pdf>
- 18 <http://forrager.com/law/kentucky/>
- 19 <http://forrager.com/law/rhode-island/>
- 20 <http://forrager.com/law/ohio/>
- 21 Md. Code Health-Gen. § 21-301(b)(2); Neb. Rev. St. § 81-2,245.01(6); 410 Il. Comp. Stat. 625/4 (b)(2). However, in Illinois, if the main ingredient in a cottage food is locally grown, that food may also be sold on the farm where the ingredient was grown or delivered directly to the consumer.
- 22 <http://forrager.com/law/south-dakota/>
- 23 <http://forrager.com/law/hawaii/>

- 24 Bayly, J. (2017, June 20). LePage signs food sovereignty law, the first of its kind in the nation. *BDN Maine*. <http://bangordailynews.com/2017/06/20/homestead/lepage-signs-food-sovereignty-law-the-first-of-its-kind-in-the-nation/>
- 25 According to the Centers for Disease Control and Prevention, a foodborne illness outbreak is “[a]n incident in which two or more persons experience a similar illness after ingestion of a common food, and epidemiologic analysis implicates the food as the source of the illness.” Centers for Disease Control and Prevention. (2011). *Foodborne disease outbreak: 2011 case definition*. <https://wwwn.cdc.gov/nndss/conditions/foodborne-disease-outbreak/case-definition/2011/>
- 26 Assemb. 1244, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A1500/1244_11.PDF; Assemb. 1761, 215th Leg., Reg. Sess. (N.J. 2012), http://www.njleg.state.nj.us/2012/Bills/A2000/1761_11.PDF
- 27 Cornfield, J. (2016, March 20). Effort to legalize home-baked goods stuck on cutting board. *AP News*. <https://apnews.com/1f4b7654e1ba478ab52ff08f0ffca829/effort-legalize-home-baked-goods-stuck-cutting-board>
- 28 SB 435, 2013-2014 Leg., Reg. Sess. (Wis. 2013), <https://docs.legis.wisconsin.gov/2013/related/proposals/sb435.pdf>; SB 330, 2015-2016 Leg., Reg. Sess. (Wis. 2015), <https://docs.legis.wisconsin.gov/2015/related/proposals/sb330.pdf>; SB 271, 2017-2018 Leg., Reg. Sess. (Wis. 2017), <https://docs.legis.wisconsin.gov/2017/related/proposals/sb271.pdf>
- 29 CBS Sunday Morning. (2017, May 31). In Wisconsin, selling cookies can land you in jail. <http://www.cbsnews.com/news/in-wisconsin-selling-cookies-can-land-you-in-jail/>
- 30 State Representative Robin J. Vos Speaker of the Wisconsin State Assembly. (n.d., a). *Biography*. <http://legis.wisconsin.gov/assembly/63/vos/about-robin/biography>
- 31 State Representative Robin J. Vos Speaker of the Wisconsin State Assembly (n.d., b). *Legislative awards and honors*. <http://legis.wisconsin.gov/assembly/63/vos/about-robin/legislative-awards-honors/>; Wisconsin Grocers Association. (n.d.) *Legislative report card: 2015–2016 legislative session*. <https://irp-cdn.multiscreensite.com/ed76a624/files/uploaded/Legislative%20report%20card%202016.pdf>. In 2015, the speaker also participated in and won a legislative grocery bagging contest (a “bag-off”) hosted by the Wisconsin Grocers Association at the state Capitol. Wisconsin Assembly Republicans. (2015, March 27). Speaker Robin Vos wins legislative bag-off [Video file]. <https://www.youtube.com/watch?v=53dxRRkRIbE>
- 32 CBS Sunday Morning, 2017; Shah, P. (2016, January 13). Farmers sue state over ban on selling homemade baked goods. *Wisconsin Public Radio*. <https://www.wpr.org/farmers-sue-state-over-ban-selling-homemade-baked-goods>
- 33 See Transcript of Proceedings at 12–13, *Kwirist v. Wis. Dep’t. of Agric.*, No. 16-CV-06 (Lafayette Cty. Cir. Ct. May 31, 2017); <http://ij.org/case/wisconsin-baked-good-ban/>
- 34 Transcript of Proceedings at 13, *Kwirist*, No. 16-CV-06 (Lafayette Cty. Cir. Ct. May 31, 2017).
- 35 Institute for Justice. (2017, June 1). Victory for Wisconsin home bakers: Judge strikes down ban on selling home-baked goods as unconstitutional [Press release]. <http://ij.org/press-release/victory-wisconsin-home-bakers/>
- 36 See Mellor, W., & Carpenter, D. M. (2016) *Bottlenecks: Gaming the government for power and private profit*. New York, NY: Encounter Books.
- 37 Chevalier, J. A., & Morton, F. M. S. (2008). State casket sales restrictions: A pointless undertaking? *Journal of Law and Economics*, 51(1), 1–23; Kleiner, M. M. (2006). A license for protection. *Regulation*, 29(3), 17–21. <https://object.cato.org/sites/cato.org/files/serials/files/regulation/2006/10/v29n3-2.pdf>; Pfeffer, J. (1974). Some evidence on occupation licensing and occupational incomes. *Social Forces*, 53(1), 102–111; Friedman, M., & Kuznets, S. (1954). *Income from independent professional practice*. New York, NY: National Bureau of Economic Research; Smith, A. (1937). *The wealth of nations*. New York, NY: Modern Library. (Original work published 1776).
- 38 A state is considered to require “registration” if it requires any form of government approval specific to cottage foods. In practice, some of these registrations are cottage food licenses or permits. Others are requirements that producers simply register with the government.
- 39 See Table B5 in Appendix B for a description of how states’ legal environments were taken into account in the statistical analysis.
- 40 Carter, R. B., Van Auken, H. E., & Harms, M. B. (1992). Home-based businesses in the rural United States economy: Differences in gender and financing. *Entrepreneurship & Regional Development*, 4(3), 245–257. <http://rsa.tandfonline.com/doi/abs/10.1080/08985629200000014#.WcPm59VSyCg>
- 41 U.S. Small Business Administration. (2017). *Women’s business ownership: Data from the 2012 Survey of Business Owners* (Issue Brief Number 13). <https://www.sba.gov/sites/default/files/advocacy/Womens-Business-Ownership-in-the-US.pdf>; U.S. Census Bureau, 2012.
- 42 U.S. Census Bureau. (2016, December 8). New Census data show differences between urban and rural populations [Press release]. <https://www.census.gov/newsroom/press-releases/2016/cb16-210.html>
- 43 Adamy, J., & Overberg, P. (2017a, May 26). Rural America is the new ‘inner city’. *The Wall Street Journal*. <https://www.wsj.com/articles/rural-america-is-the-new-inner-city-1495817008>
- 44 U.S. Census Bureau. (2017). *Income and poverty in the United States: 2016*. <https://www.census.gov/data/tables/2017/demo/income-poverty/p60-259.html>
- 45 U.S. Census Bureau, 2017.
- 46 Loscocco, K., & Smith-Hunter, A. (2004). Women home-based business owners: Insights from comparative analyses. *Women in Management Review*, 19(3), 164–173.

- 47 See <http://ij.org/case/mnccottagefoods/>
- 48 $\rho=0.005$
- 49 Rowe, B. R., Haynes, G. W., & Stafford, K. (1999). The contribution of home-based business income to rural and urban economies. *Economic Development Quarterly*, 13(1), 66–77. <http://journals.sagepub.com/doi/pdf/10.1177/089124249901300109>
- 50 Adamy, J., & Overberg, P. (2017b, August 2). Struggling Americans once sought greener pastures—now they're stuck. *The Wall Street Journal*. <https://www.wsj.com/articles/struggling-americans-once-sought-greener-pasturesnow-theyre-stuck-1501686801>
- 51 Long, H. (2017, September 12). U.S. middle-class incomes reached highest-ever level in 2016, Census Bureau says. *The Washington Post*. https://www.washingtonpost.com/business/economy/us-middle-class-incomes-reached-highest-ever-level-in-2016-census-bureau-says/2017/09/12/7226905e-97de-11e7-b569-3360011663b4_story.html
- 52 Adamy and Overberg, 2017a.
- 53 $\rho=0.002$
- 54 $\rho=0.042$
- 55 $\rho=0.024$
- 56 $\rho=0.000$
- 57 $\rho=0.008$
- 58 $\rho=0.002$
- 59 $\rho=0.002$
- 60 $\rho=0.008$; $\rho=0.033$
- 61 Although at least a portion of cottage food producers want to sell meat products, even Wyoming and North Dakota, which have very permissive food freedom laws, prohibit the sale of many meat products in an effort to comply with restrictions imposed by the U.S. Department of Agriculture.
- 62 $\rho=0.007$
- 63 $\rho=0.014$
- 64 <http://forrager.com/law/iowa-home-food-establishment/>; <http://forrager.com/law/ohio-home-bakery/>; <http://forrager.com/law/oregon-domestic-kitchen/>; <http://forrager.com/law/virginia-home-food-processing-operation/>
- 65 Powers, M. (2017, May 3). North Dakota is now open for homemade food businesses. Arlington, VA: Institute for Justice. <http://ij.org/north-dakota-now-open-homemade-food-businesses/>; Linnekin, B. (2015, March 14). Tremendous victory for Wyoming's bipartisan Food Freedom Act. *Reason*. <http://reason.com/archives/2015/03/14/tremendous-victory-for-wyomings-bi-parti>
- 66 Institute for the Future for Intuit. (2008). *Intuit future of small business report: Third installment: The new artisan economy*. http://http-download.intuit.com/http-intuit/CMO/intuit/futureofsmallbusiness/SR-1037C_intuit_future_sm_bus.pdf; Price, M. (2014, August 12). Stay at home mom explains how she makes a living on Etsy. *The Huffington Post*. http://www.huffingtonpost.com/michaelprice/stay-at-home-mom-explains_1_b_5671715.html
- 67 Clark, B. (2017, August 23). Selling homemade cake in Kentucky could put you in jail. *WPSD Local 6*. <http://www.wpsdlocal6.com/2017/08/23/selling-homemade-cake-kentucky-put-jail/pic/63166/>; Ky. Rev. Stat. Ann. § 217.992(4).
- 68 2015 Conn. Pub. Acts 76 (H.B. No. 5027), <https://www.cga.ct.gov/2015/ACT/PA/2015PA-00076-R00HB-05027-PA.htm>
- 69 <http://forrager.com/law/delaware-farm-home-processing/>
- 70 D.C. Code § 7-742.02 (2017), <https://beta.code.dccouncil.us/dc/council/code/sections/7-742.02.html>
- 71 <http://forrager.com/law/illinois-home-kitchen-operation/>
- 72 <http://forrager.com/law/indiana>
- 73 <http://forrager.com/law/kentucky>
- 74 <http://forrager.com/law/louisiana>
- 75 Bayly, 2017.
- 76 2012 Md. Laws Ch. 255 (S.B. 550), <http://mlis.state.md.us/2012rs/bills/sb/sb0550t.pdf>
- 77 Md. Code Health–Gen. § 21-301(b)(2).
- 78 2017 North Dakota Laws Ch. 191 (H.B. 1433), <http://www.legis.nd.gov/assembly/65-2017/documents/17-0559-05000.pdf>
- 79 <http://forrager.com/law/ohio>
- 80 <http://forrager.com/law/oklahoma-honey/>
- 81 <http://forrager.com/law/oregon-farm-direct/>
- 82 <http://forrager.com/law/rhode-island>
- 83 <http://forrager.com/law/vermont>
- 84 <http://forrager.com/law/virginia>



JENNIFER MCDONALD

Jennifer McDonald is a research analyst at the Institute for Justice, where she conducts original social science research as part of the strategic research team. Her research is featured in *License to Work: A National Study of Burdens from Occupational Licensing* (2nd ed.), *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2nd ed.), and *Forfeiture Transparency and Accountability: State-by-State and Federal Report Cards*. Prior to joining IJ, McDonald worked in California politics. She holds a Master of Public Administration, with emphases on management and economic policy, from the London School of Economics and Political Science and a bachelor's degree in history with a political science minor from California State University San Marcos.

ABOUT IJ

The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, educational choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government. The Institute's strategic research program produces social science and policy research to inform public policy debates on issues central to IJ's mission.



Institute for Justice
901 N. Glebe Road
Suite 900
Arlington, VA 22203

www.ij.org
p 703.682.9320
f 703.682.9321