

Home Restaurant Legislative Initiatives Resource Document

What follows are resources in preparation for a new legislative trend to allow In-Home Restaurants and Home Cooking Operations. These cook operations are a concept where foods, including Temperature Control for Safety (TCS) foods, are prepared, cooked, and served from private homes. These meals can be dine-in, take-out, delivery, sold through online marketplaces, or other methods. Most legislation is calling for permitting and inspection of these private homes by the food regulatory authority. Below are considerations if this legislation is proposed in your jurisdiction:

POTENTIAL CHALLENGES	CONSIDERATIONS
Safety concerns of inspection staff entering a home	Two inspectors for each inspection for safety reasons.
Licensing home business	Changes need to be made to already existing legislation to accommodate this business type.
Maintaining equity with restaurants and other food businesses	As a restaurant owner commented: "I'm concerned that I've spent thousands of dollars meeting commercial standards, and these home cooking businesses don't have to meet the same standards protecting food safety. Science isn't size-specific." Residential equipment is not meant for the frequent and types of utilization performed in food business.
Announced inspections	Changes to inspection protocols and practices. An unannounced inspection provides a more complete opportunity to review normal operations and level of compliance.
Frequency of inspections based upon risk	Changes to inspection program operations including risk categories, license types, inspection frequencies, etc.
Meat and poultry butchering and slaughter	Working with your state or Federal meat and poultry programs to ensure compliance.
Safe food sources	Prohibit the use of non-commercial food suppliers or home-processed ingredients (e.g. fresh unpasteurized milk or home-made cheese)
Third-party delivery (e.g. – DoorDash, UberEats, etc.)	Limit third party delivery as this limits the consumer inspection opportunity which is the primary protection method.
Other agencies with jurisdiction	Working with other agencies to ensure duplication of efforts and oversight is covered.
Development of special regulations for Home Cooking Operations	Creation of new laws or regulations for not only access to private homes, but food safety standards and handling concerns.
Impact zoning, parking, liability provisions, and others	Working with local municipalities or other agencies regarding business operations in residential settings to ensure compliance.
Limitations for family and pet activities near cooking	Separation for equipment sanitation and safe food handling practices.

Foods that provide less risk for Home Cooking Operations

A home cooking operation may be allowed to produce food items which do not require temperature control for safety have inherently less risk to cause a foodborne illness. The following list of foods are examples of products that may be produced by a home cooking operation. Although not all inclusive, it provides for most types of food products that can be prepared with very limited risk:

COULD INCLUDE			
Loaf breads, rolls, biscuits	Cakes including celebration cakes	Pastries and cookies	Candies and confections
Jams, jellies, and preserves	Dried fruits	Dry herbs, seasonings, and mixtures	Cereals, trail mixes and granola
Vinegar and flavored vinegars	Popcorn, popcorn balls, cotton candy	Fruit pies	Coated or uncoated nuts

A home cooking operation should not be allowed to produce food items which require temperature control for safety. Other food items which present a food safety risk such as acidified foods, low acid canned foods, garlic in oil, and fresh fruit or vegetable juices should not be allowed as well. The following list of foods are examples of products that should not be produced by a home cooking operation. Although not all inclusive, it provides examples for most types of unapproved home cooking food products:

SHOULD NOT INCLUDE			
Fresh or dried meat or meat products including jerky	Fresh or dried poultry or poultry products	Canned fruits, vegetables, vegetable butters, salsas etc.	Fish or shellfish products
Canned pickled products such as corn relish, pickles, sauerkraut	Canned pickled products such as corn relish, pickles, sauerkraut	Raw seed sprouts	Focaccia-style breads with vegetables and/or cheeses
Tempered and/or molded chocolate or chocolate type products	Milk and dairy products including hard, soft and cottage cheeses and yogurt	Cut fresh fruits and/or vegetables	Food products made from cut fresh fruits or vegetables
Food products made with cooked vegetable products	Garlic in oil mixtures	Juices made from fresh fruits or vegetables	Ice and/or ice products
Barbeque sauces, ketchups and/or mustards	Bakery goods which require any type of refrigeration such as cream, custard or meringue pies and cakes, or pastries with cream cheese icings or fillings		

Ways to Mitigate Risk for Home Cooking Operations

1. **Size limitations.** Limit a home cooking operation by total annual gross sales, by the number of seats available, or the number of customers per day. If gross sales exceed the maximum annual gross sales amount allowed, the home cooking operation must obtain a commercial license and move their operations to a commercial facility. The regulatory authority may request, in writing, documentation to verify the annual gross sales figure.

2. **Sales.** Home-based food businesses have been allowed under the principles of the buyer has the opportunity to verify the businesses practices by visiting the home or interacting directly with the operator and restricting products to those with minimal safety risks. Such limitations include:
 - (1) Products produced by a home cooking operation must be sold directly to the consumer. Sales to grocery stores and restaurants or at wholesale are prohibited.
 - (2) A home cooking operation may not operate as a retail food store or wholesale food manufacturer.
 - (3) Food shall be prepared, cooked, and served or picked up or delivered within a safe time period based on temperature control.
 - (4) Food from a home cooking operation may be delivered to consumers by the operator, by an employee or agent. Third party delivery services should not be allowed.
 - (5) A home cooking operation may sell food to consumers in-person at the operator's home or other location, such as a farmers' market, or remotely by telephone, or email. A home cooking operation should not sell using online marketplaces or other methods that do not provide for direct contact with the operator.
3. **Dangerous foods.** A home cooking operation should not produce:
 - (1) Food containing raw shellfish
 - (2) Food that requires a hazard analysis and critical control point plan (HACCP) under applicable federal, state or local law
 - (3) Raw milk or raw milk products
 - (4) Any low-acid canned food or acidified food that requires a scheduled process under applicable federal, state, or local law
 - (5) Food that are heated and cooled and then reheated
 - (6) Alcoholic beverages and CBD infused foods
4. **Ready-to-eat foods.** All food sold and otherwise provided to consumers by the home cooking operation shall be ready-to-eat food.

General Information on Home Cooking Operations

AFDO does not endorse or oppose the concept of home cooking operations but encourages jurisdictions considering such allowances to carefully craft limits that maintain consumer food safety. Below is more information about the current legislative initiatives being commonly proposed.

- There are currently pushes to adopt and legalize home preparation of meals for sale to consumers.
- This is referred to as cottage food, home cooking operation, home restaurants, etc.
- Counties in California are already approving this concept. Utah and Wyoming appear to be moving forward with some type of legislation to legalize this.
- [Cook Alliance \(CA\)](#) is a nonprofit organization who is a sponsor of at home restaurant bills which will allow a new level of cottage food – meals cooked in homes.
- Model Home Cooking legislation has been developed for regulatory agencies to use to develop legislation and regulations for home cooking businesses: <https://policy.cookalliance.org/model-legislation>
- A model code for home cooking operations: <https://policy.cookalliance.org/model-code>
- Home Cooking Operation as defined by the Cook Alliance is a home cooking operation that may sell or otherwise provide food directly to consumers only, and not to any food reseller. A home cooking operation may sell food to consumers in person at the operator's home or other location, such as a farmers' market, or remotely by telephone, email, or internet website, including through an online food marketplace or mobile application.
- This would also allow for third party delivery services in some states.
- No food regulatory officials were part of the development of this model code.
<https://policy.cookalliance.org/introduction#model-legislation--code-summary>

- FDA Model Food Code prohibits the preparation and sale of foods prepared in the home in most cases.
- The Cook Alliance model code provides an avenue for permitting and inspection of home cooking operations, though does not fully consider all appropriate restrictions and limitations
- Reference Documents:
 - Cook Alliance Website: <https://www.cookalliance.org/>
 - Cook Alliance Model Legislation: <https://policy.cookalliance.org/model-legislation/>
 - Cook Alliance Model Food Code: <https://policy.cookalliance.org/model-code/>
 - Institute for Justice - Food Freedom Website: <https://ij.org/initiatives/food-freedom/>

Business Concerns

- Concerns related to competing with other commercial restaurant and other food businesses.
- Creates competition for legal commercial entities that have higher overhead and labor costs.
- Home Cooking Operations model code allows for home cooking operations in leased spaces such as apartment buildings, creating more fire risk and collateral.
- Landlords and lease agreements may not address home cooking operations.
- Residential liability insurance often does not cover liability of a home cooking operation.

More Information

From restaurant operators and food safety consultants, below are video interviews from food professionals discussing the idea of Home Cooking Operations:

- [Nick Maestros](#) — Founder & Owner, Allegheny Sandwich Shoppe, 40+ years in restaurants
- [Joseph DiSalvo](#) — President, DiSalvo's Station Restaurant, 30+ years in restaurants
- [Steve Steingart](#) — 40+ years in Food Safety, Chief of Food Safety Program at Allegheny County

Have more questions? Reach out.

AFDO is an international leader and trusted resource for building consensus and promoting uniformity on public health and consumer protection issues related to the regulation of foods, drugs, devices, cosmetics, and consumer products. AFDO created this resource to aid state regulators by educating them on multiple facets of the issues surrounding home cooking trends and the impacts on public safety.

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