



# National Environmental Health Association

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The National Environmental Health Association (NEHA) represents more than 6,600 governmental and private sector environmental health professionals in the United States, its territories, and through its members in active uniform service, around the globe. NEHA is the profession's strongest advocate for excellence in the practice of environmental health as it delivers on its mission to build, sustain, and empower an effective environmental health workforce.

## Policy Statement on Food Freedom Operations

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Food Freedom refers to the reduction and/or the exemption of governmental regulations in the production and sale of food. Many state and local jurisdictions have legislation that permits certain types of foods to be processed and sold without regulatory oversight. While NEHA recognizes the popularity of these operations, we remain concerned over the potential foodborne illnesses and inherent food safety hazards that could arise. NEHA supports food safety regulatory oversight to ensure foods sold under Food Freedom laws, produced in Cottage Food Operations (CFOs), and Home-Based Restaurants (HBRs) meet food safety standards that keep the public safe from harm.

Some form of Food Freedom Laws, Home-based Restaurants, and/or Cottage Food Operations have been legalized in every state. Food Freedom Laws, which exempt almost every form of regulatory food safety oversight, have been enacted in Maine, New Mexico, North Dakota, Utah, and Wyoming. Home-based restaurants, in which an individual prepares and serves a restaurant-style meal in their home to paying customers, are permitted in California and Utah. Foods produced through Food Freedom Laws, HBRs, and CFOs pose a risk to health due to the lack of standardized regulatory oversight.

Home-based food preparation for sale to the public under Food Freedom Laws, Home-based Restaurants, and Cottage Food Operations will herein be collectively referred to as *Food Freedom Operations* (FFOs). Therefore, this policy statement addresses the food safety implications of foods produced through Food Freedom Operations in protecting public health.

### NEHA supports the following policies and actions:

- Require registration with the appropriate state, local, territorial, or tribal regulatory food safety or public health agencies for all foods prepared and conveyed to the public through Food Freedom Operations as required by their local authorities.
- If the Food Freedom Operation is not required to produce food in accordance with federal, state, or local public health oversight, the FFO must include a requirement for prominent labeling and

signage in English (and the predominant language of the local area, if applicable) that includes the name and address of the FFO production facility, the common or usual name of the product, if a food is made with a major food allergen that ingredient must be listed on the label, AND a disclosure to the consumer that the product has NOT been produced or prepared in accordance with federal, state, or local public health oversight.

- All ingredients used in the production of foods prepared through FFOs should be procured from licensed and inspected facilities. The use or sale of foods, including raw milk, home-canned foods, and meats from uninspected sources should be prohibited.
- Require that the water used in FFOs meets potable drinking water standards. If the water supply is from a municipal source, a potability certificate or report from a state or local health agency or other responsible organization is acceptable. If the water supply comes from a private water well, the establishment must have its water potability certificate renewed in accordance with the most current U.S. Environmental Protection Agency primary drinking water regulations and FDA sanitation regulations.
- Operators of FFOs should allow health department inspectors and/or regulators into their homes if their businesses are the suspected source of a foodborne illness outbreak.
- Food Freedom Operators should **be required to** maintain sufficient liability insurance.
- State legislation and regulations for FFOs should be easy to access, as well as easy to understand for individuals interested in starting a Food Freedom Operation in jurisdictions where these businesses are allowed (Condra, 2013).
- The FFOs should be required to provide training for food workers to ensure that they have the necessary knowledge and expertise in food hygiene, food protection, employee health, and personal hygiene to produce safe food products (this training is readily available in multiple languages). This training should be delivered in a manner that can be easily understood by the worker; and records of training should be retained.
- NEHA supports holding FFOs to the same science-based food safety standards as food establishments as defined by the most recent version of the FDA model Food Code (Food Code) regardless of size or annual income, including the exclusion of domestic animals in food preparation area.
- The operator of an HBR should be required to obtain and maintain a valid Certified Food Protection Manager (CFPM) certificate.
- Food produced by FFO must practice time/temperature controls for safety (TCS) foods or foods that are rendered non-TCS solely due to processing (e.g., acidification).

- In lieu of a Certified Food Protection Manager (CFPM) for FFOs, mandate the annual completion of basic food safety and/or food handler training.
- Prohibit food preparers with infectious diseases that can be transmitted through foods from preparing or handling foods for sale or donation.
- Prohibit all workers from having bare-hand contact with ready-to-eat foods.
- Require adherence to proper handwashing procedures and technique per local health regulations.
- A thorough review of food freedom laws by legislatures and regulatory personnel to identify the policies which may put consumers at higher risk (Farquhar, 2020).

## Analysis

The FDA model Food Code (hereinafter referred to as the “Food Code”) is a model for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer. It represents the best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in foodservice (U.S. Food and Drug Administration [FDA], 2017). Additionally, the Food Code explicitly states, “food prepared in a private home may not be used or offered for human consumption in a food establishment” (FDA, 2017, p. 58).

The shift towards a sharing economy in the food industry and the abundance of proposed Food Freedom Laws has opened new opportunities as well as the potential for new health risks to the U.S. public (Farquhar, 2020). It has been hypothesized that this shift is linked to a perceived number of benefits, including improved access to healthy food, enhanced community connections, and economic opportunity for women, especially in rural areas (Hamari et al., 2016; McDonald, 2017).

Although the Food Code models that food produced in a home kitchen is not allowed to be conveyed to the public, every state has passed legislation permitting certain categories of foods that are produced through Food Freedom Operations for direct consumer sale. States have dealt with this issue either by excluding home kitchens from the definition of a food establishment or creating separate laws and regulations for cottage foods (Condra, 2013). Retail food, including cottage food, allowances, regulations, and laws are implemented at the state and local level as opposed to not being allowed at the federal level, thus a varied patchwork across the United States on what is and is not permissible.

A review of state Cottage Food laws and regulations demonstrates the nonuniformity of this industry. In most states, Cottage Food laws restrict foods to those that do not require time/temperature control (TCS) for safety. These foods generally include breads, biscuits, cakes, fruit pies, and other baked goods that do not require refrigeration, candies, dry herbs and seasonings, popcorn, cereals, trail mixes, and granolas, dried produce, nuts, vinegar, and jams, jellies, and preserves (Association of Food and Drug Officials [AFDO], 2012).

Some state laws are more restrictive and only allow baked and confectionery goods. While some are less restrictive, allowing some TCS foods to be produced under specific circumstances.

For the most part, Cottage Food producers must sell directly to the consumer, typically at farmer’s markets, roadside stands, community events, and/or from their homes. With few exceptions, sales are restricted to intrastate sales and generally are not allowed over the Internet (FTCLDF, 2018). Additionally, half of the states that have Cottage Foods laws and regulations include an annual sales

limit either in dollars or units sold (FTCLDF, 2018). Five states, Maine, New Mexico, Utah, Wyoming, and North Dakota have passed Food Freedom Acts that greatly reduce government oversight of Cottage Foods. These Food Freedom Acts allow for the direct-to-consumer sale of any food other than meat (North Dakota and Wyoming will allow some poultry, Maine permits seafood and shellfish), do not limit sales, and do not have registration requirements (Rice, 2017). In North Dakota, labeling is required only if the food is considered TCS (Rice, 2017). Wyoming does not require labeling of certain uninspected foods, instead expects the consumer to realize the risk.

A smaller fraction of Food Freedom Operations is Home-based Restaurants (HBRs). HBR chefs purchase food, prepare, and either serve the meal in their homes or allow for takeout or delivery options. HBRs tend to operate using an internet-based third-party website to manage reservations and payments, although some operate independently through social media or garage sale advertising sites. HBRs differ from Cottage Food Operations as the industry almost exclusively includes the preparation and sales of restaurant-style TCS foods out of the home kitchen. Additionally, in some areas, CFO and HBR foods are being sold through third-party delivery services with no consumer notice that these foods are prepared in a residential home or unregulated setting.

### **Justification**

With increased popularity of CFOs and HBRs, the potential for negative health impacts exists. Data from the National Outbreak Reporting System (NORS) of the U.S. Centers for Disease Control and Prevention show that there were 1,225 reported foodborne illness outbreaks, 22,893 illnesses, 2,737 hospitalizations, and 89 deaths attributed to food prepared in private homes and residences from 2008–2018 (Centers for Disease Control and Prevention, 2020). These statistics demonstrate the need for state, local, territorial, and tribal public and environmental health officials to take a proactive approach to regulating these entities involved in home-based food preparation for sale to the public.

The risk categorization of food establishments from the FDA Food Code (FDA, 2017, Annex 5, Table 1) demonstrates the need for continued regulation of Food Freedom Operations. CFOs, excluding those states that allow TCS foods, could be categorized as Risk Category 1 depending on the extent of food production. This category includes “establishments that prepare, serve, or sell only prepackaged, non-TCS foods” (FDA, 2017, p. 593). HBRs would require higher risk categorization, such as Category 2 through 4 depending on the complexity of the menu and preparation methods (FDA, 2017). Categorization at this level requires two to four scheduled inspections annually.

Uninspected home kitchens do present a health risk to the public. Borrusso and Quinlan (2017) collected swab samples from 100 homes in Pennsylvania and found that 45 percent of home kitchens tested positive for a foodborne pathogen. Furthermore, 12 percent had more than one pathogen present. Surfaces contaminated with fecal coliforms and *Staphylococcus aureus* were associated with a lack of cleaning materials such as dish soap and towels in the kitchen and hand towels in the bathroom. These basic food safety principles are required and inspectable items for FDA-defined food establishments.

To combat this risk from home kitchens and protect public health, CFO employees should be required to annually complete food safety or food handler training that is administered by an accredited organization (AFDO, 2012). Individuals engaged in preparing TCS foods from a Food Freedom Operation, such as an HBR, should be required to obtain and maintain a CFPM certificate. Currently, less than one-

quarter of states require food safety or sanitation training to become a cottage foods proprietor (FTCLDF, 2018).

Hedberg et al. (2006) compared restaurants that had a foodborne illness outbreak with those that did not have an outbreak over a 1-year period. They found that having a CFPM on staff led to fewer norovirus outbreaks and no *Clostridium perfringens* outbreaks. This study suggested that the decrease in the number of outbreaks was due to increased knowledge and practices related to hand hygiene and food temperature control. Likewise, having a CFPM on staff decreased critical violations for personnel (hygienic practices, hand washing, etc.), food source/handling (cross-contamination protection, labeling, hazard analysis and critical control point plan, etc.), and facility/equipment requirements (ventilation, thermometer calibration, food contact surfaces, lighting, etc.) compared with kitchens without a CFPM (Cates et al., 2009).

In addition to having a CFPM on site, basic food safety training is also beneficial. Soon et al. (2012) conducted a meta-analysis of the impact of food safety training on hand hygiene knowledge and attitudes. They found that compared with controls, food handlers who received training improved their knowledge and attitudes of hand hygiene, as well as self-reported compliance with protocols. Similarly, 92.6% of food handlers who did not receive food safety training, “did not know that people with open skin injury, gastrointestinal disturbances, and eye/ear diseases should not be allowed to handle food to avoid contamination” (Adesokan et al., 2015).

The expansion of Food Freedom Operations highlights the importance of ensuring food safety practices and procedures are followed in order to keep the public safe from foodborne illness disease. NEHA supports regulations and requirements as appropriate for Food Freedom Operations to control foodborne illness disease and protect public health.

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