Research Protocol for Cottage Food Laws

Prepared by the Policy Surveillance Program Staff

September 2017
Cottage Food Laws

I. Date of Protocol: September 2017

II. Scope: Compile, code, and analyze state laws that permit the in-home production and sale of non-potentially hazardous foods (also called cottage foods). “Cottage food laws” allow persons using home kitchens to make and sell non-potentially hazardous foods. Additionally, “food freedom laws” were included in this dataset (e.g. North Dakota and Wyoming) because they also allow for the in-home production and sale of foods that are typically required to be produced in a commercial food establishment. Unlike cottage food laws, however, food freedom laws expand permissible cottage food offerings to some potentially hazardous foods, such as poultry products under certain conditions.

III. Primary Data Collection

a. Project timeline: January 2016 – September 2017

b. Dates covered in the dataset: September 29, 2000 – September 1, 2017. This is a cross-sectional dataset analyzing state cottage food and food freedom laws as they are in effect at one point in time, September 1, 2017. The effective date listed for each state is the date of the most recent version of the law or regulation within that state. If more than one law or regulation is included in the legal text for a state, the effective date reflects the date of the most recently amended or enacted law or regulation within the legal text.

c. Data Collection Methods: The Policy Surveillance Program Staff (“Team”) building this dataset consisted of two legal researchers (“Researchers”) and one supervisor (“Supervisor”). Westlaw Next and Google searches were used to identify which states had state cottage food and food freedom laws in effect as of September 1, 2017. Secondary sources, including Harvard Food Law and Policy Clinic: Cottage Food Laws in the United States, and Forrager.com were consulted to assist with defining the scope of the laws included in this dataset and to assist with data collection method decisions.

d. Search terms: keyword searches included:
   i. “Cottage”
   ii. “Cottage Foods”
   iii. “Hazardous”
   v. “Home based kitchen”
vi. “Food establishment”

vii. “Food Freedom”

e. **Databases used:** Research was conducted using Westlaw Next and state-specific legislature websites.

f. **Inclusion and exclusion criteria:**

i. The following variables were included:
   1. The year cottage food sales were first authorized
   2. Who is allowed to sell cottage foods
   3. What types of cottage food sales are allowed
   4. What methods of sales are prohibited
   5. The requirements to establish a cottage food operation
   6. Inspection
   7. Disclosure that product was made in a home kitchen
   8. Limits on cottage food sales

ii. The following variables were excluded:
   1. The specific foods each state allows for sale as cottage foods
   2. Requirements that individuals attain food handler’s cards

IV. Coding

a. **Development of coding scheme:** The Team conceptualized coding questions by conducting background research in Westlaw Next to write background memoranda, followed by consulting secondary sources such as Harvard Food Law and Policy Clinic: Cottage Food Laws in the United States, and Forrager.com. When the questions were finalized, the Team entered the questions into MonQcle, a web-based software-coding platform.

b. **Dataset terminology:** Dataset terminology is a set of relevant terms recorded and defined by the team specifically for purposes of coding within this dataset. As the team developed the coding scheme, they recorded the dataset terminology below:
   1. “Cottage foods” means a food that is non-potentially hazardous, meaning it does not require time and temperature control for safety.
   2. “Cottage food operation” means private, in-home kitchens where non-potentially hazardous foods are prepared.
   3. “Food freedom” refers to states which allow the sale of almost any food without licensing and inspection

c. **Coding methods:** The legal text coded is limited to cottage foods and food freedom statutes and regulations, as well as state agency documents that impose cottage food requirements where there is no law on the books.

**Below is a coding rule that applies generally to all coding questions throughout the dataset:**

- Many states have agency guidance documents, FAQs, or application forms that include details not provided by the law. In instances where these agency documents include details necessary to answering
coding questions, the agency documents were added to the dataset and used for coding.

Below are coding rules that apply specifically to the coding questions throughout the dataset:

**Question: Does the state allow the sale of cottage foods?**
- This question was coded “yes” where the state allowed the sale of cottage foods.

**Question: In what year was the sale of cottage foods authorized?**
- This question was coded with the year in which cottage food sales were first authorized by the state, via state agency guidelines or law.

**Question: Who is allowed to sell cottage foods?**
- “Any individuals” was coded where the law did not restrict who could sell cottage foods.
- “Farmers” was coded where the state only allowed farmers to produce and sell cottage foods.

**Question: What types of cottage food sales are allowed?**
- “Sales to in-state consumers” was coded where the law allowed cottage foods to be sold to individuals.
- Where the law required that sales be made directly to the consumer with no further clarification, only “Sales to in-state consumers” was coded.
- “Sales to in-state retailers” was coded where the law allowed cottage foods to be sold to third party vendors such as restaurants.
- “Out-of-state sales” was coded where the law explicitly allowed cottage foods to be sold across state lines.

**Question: What methods of sale are prohibited?**
- When the law states that food sales must be made directly to the end consumer, all prohibitions were coded.
- When the law states that food sales may only be made at farmers’ markets, all prohibitions were coded.
- “Wholesale” was coded where the law explicitly prohibited cottage foods for resale or sales to in-state retailers.

**Question: What are the requirements to establish a cottage food operation?**
- “Registration with state or local agency” was coded only where “registration” was explicitly required by the law.
- “Fees” was only coded when they were explicitly mentioned.
- Where the law required that a list of ingredients be provided to the state agency, “Recipe must be provided to state agency” was coded.

**Question: Are cottage food operations subject to state inspection?**
• This question was coded “Yes” whenever the law subjected cottage food operators to state inspection.
• Where the law indicated that the state reserved the right to investigate a cottage food operation, “Yes” was coded.
• Food sampling requirements were not considered inspection for purposes of this question.

Question: When are cottage food operations subject to state inspection?
• “Prior to operation” was coded when the cottage food operation was required to submit to inspection prior to operating.
• “Annually” was coded when cottage food operations were subject to annual inspection.
• “At discretion of state or local agency” was coded when the state reserved the right to inspect the cottage food operation at reasonable times to assess compliance.
• “Upon consumer complaint” was coded where a complaint triggered inspection.
• “Upon foodborne illness outbreak” was coded when the law explicitly allowed for inspection upon foodborne illness outbreak.
• “When a product is misbranded or adulterated” was coded when the law explicitly allowed for inspection when a product was misbranded or adulterated.

Question: Are cottage food operations required to disclose that the product was made in a home kitchen?
• This question was coded “yes” when the law required the establishment to display placard or list on the food item’s label that the product was made in a home kitchen or other unregulated establishment.

Question: Is there a sales limit on cottage food operations?
• This question was coded “yes” where the law put a limit on the quantity or dollar amount of cottage food sales.

Question: What are the limitations on sales of cottage food operations?
• This question was coded with the corresponding sales limit either in gross annual sales, dollar amount of an item per week, or units per week.

V. Quality Control

a. 2016 Research and Coding: Batches 1-4 (41 jurisdictions) were researched coded between January and April 2016, at which time the project was put on hold due to resource constraints. Below are the quality control details with respect to coding for batches 1-4 completed in early 2016.
i. **Quality Control – Research:** The first 41 jurisdictions were 100% redundantly researched to confirm that all relevant laws were collected by the Researchers. The Researchers also consulted secondary sources to verify whether states had cottage food laws within the scope of the dataset.

ii. **Quality Control – Coding**

1. **Original coding:** Quality control of the original coding consisted of the Supervisor exporting the data into a Microsoft Excel document each day the Researchers completed coding to examine the data for any missing entries, citations, and caution notes.

2. **Redundant coding:** The redundant coding process is 100% independent, redundant coding by two Researchers of each jurisdiction. Redundant coding means that each jurisdiction (a record) is assigned and coded independently by the two Researchers. Divergences, or differences between the original coding and redundant coding, are resolved through discussion with the Team.

   Quality control of the redundant coding consisted of the Supervisor exporting the data into a Microsoft Excel document each day the Researchers completed redundant coding to calculate divergence rates.

   Redundant coding was completed on 100% of the records of the first 10 jurisdictions (Batch 1) in February 2016. After review, the rate of divergence was 9.6%. A coding review meeting was held and all divergences were resolved. Questions that were causing confusion were edited for clarity and then checked across the dataset to make sure coding was consistent.

   Redundant coding was completed on 100% of the records of the next 10 jurisdictions (Batch 2) in March 2016, at which time the divergence rate was 3.11%. A coding review meeting was held thereafter and all divergences were resolved.

   Redundant research was completed on 20% of the records of the next 10 jurisdictions (Batch 3) in April 2016, at which time the divergence rate was 6%. A coding review meeting was held thereafter and all divergences were resolved.

   Redundant research was completed on 18% of the records of the next 11 jurisdictions (Batch 4) in April 2016, at which time the divergence rate was 8%. A coding review meeting was held thereafter and all divergences were resolved. After Batch 4 was completed, the project was put on hold in April 2016.
b. 2017 Updated Research and Coding: The project resumed in October 2017. As a result of the 15 month delay, the effective date for the dataset was moved forward to September 1, 2017. Thus, the Researchers checked for amendments to the law between April 2016 and September 2017. Additionally, 100% redundant research was performed for batches 1-4, and secondary sources were consulted.

Any jurisdictions that had updated their law in a way that did not necessitate coding changes (non-substantive updates to the legal text) were updated in MonQcle with the amended legal text.

Five states made substantive updates to their law between April 2016 and September 2017 that changed the previous responses to coding questions: Arkansas; Florida; Idaho; Iowa; and North Dakota. These five states were included in batch 5 research and coding. Thus, the final batch of jurisdictions included 15 states (5 states with updated laws from batches 1-4 and 10 states that were never researched).

Additionally, the team consulted a subject matter expert, Emily M. Broad Leib, Assistant Clinical Professor of Law at Harvard Law School, for guidance on handling states with food freedom laws. Based on these discussions and for purposes of clarity and consistency, the team decided to include the food freedom states (North Dakota and Wyoming) within the scope of the cottage foods project.

i. Quality Control – Research: Batch 5 was 100% redundantly researched to confirm that all relevant laws were collected by the Researchers.

ii. Quality Control – Coding

1. Original coding: Quality control of the original coding consisted of the Supervisor exporting the data into a Microsoft Excel document each day the Researchers completed coding to examine the data for any missing entries, citations, and caution notes.

2. Redundant coding: Redundant coding was completed on 100% of the records of Batch 5 in October 2017. The divergence rate was 25.24%. The high divergence rate was partly due to the delay in coding and new staff working on the project. A coding review meeting was held thereafter and all divergences were resolved.

c. Post-production statistical quality control: To ensure reliability of the data, a statistical quality control procedure (SQC) is run at the completion of the dataset. To conduct SQC, the Supervisor takes a random sample of variables from the dataset for the Researchers to code blindly. SQC is run until divergences are below 5%. If not below 5%, divergences are reviewed and resolved and another round of SQC is run. The Supervisor ran SQC after the dataset was completed on September 6, 2017. At that time, the divergence rate was 5.4%. Each divergence was then reviewed as a team and resolved. A second round of statistical quality control was run on December 4, 2017, at which time the divergence rate was 2.5%. These divergences were also reviewed and resolved.
d. **Final data check:** Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted and all necessary caution notes were edited for publication.