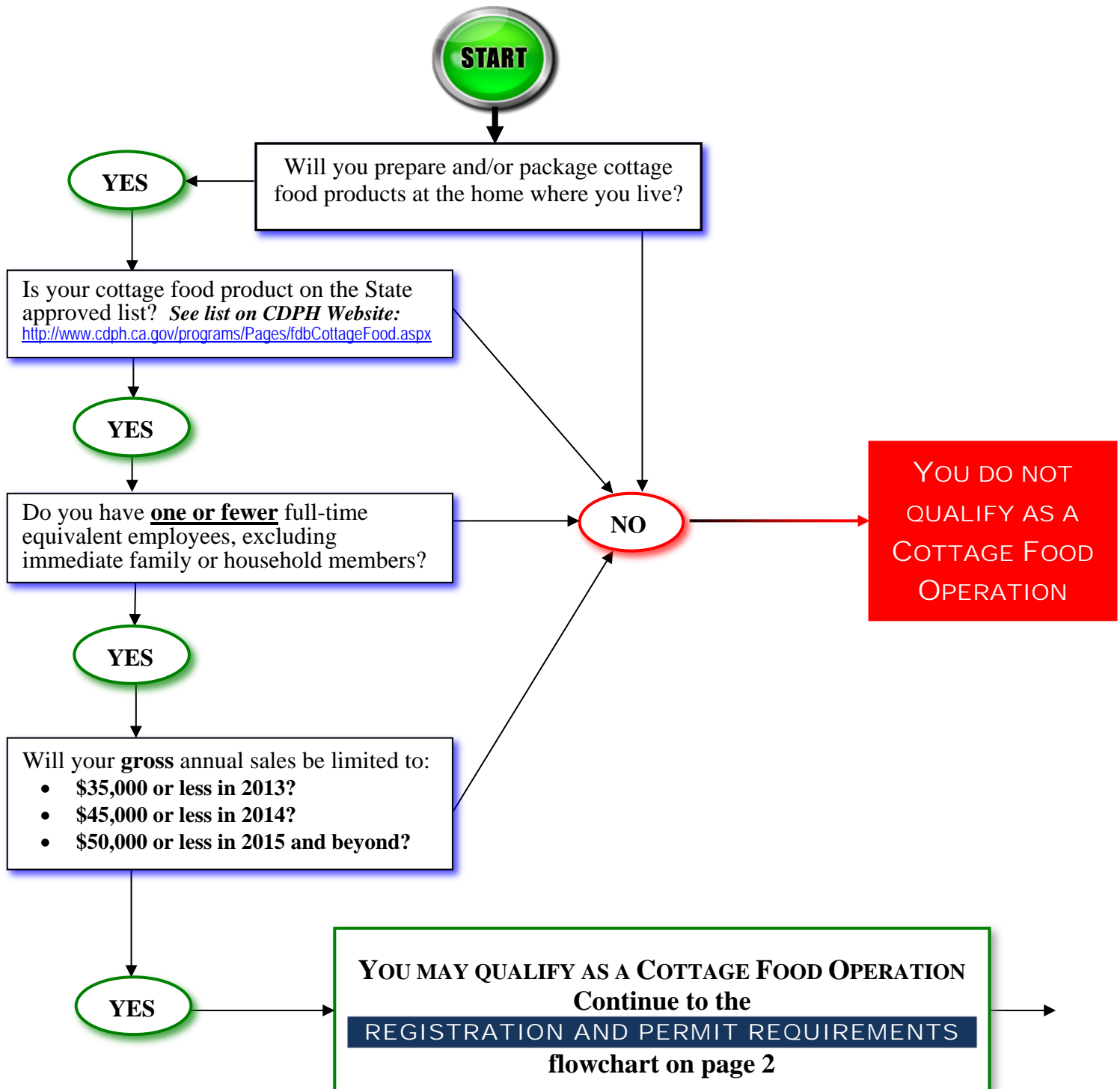
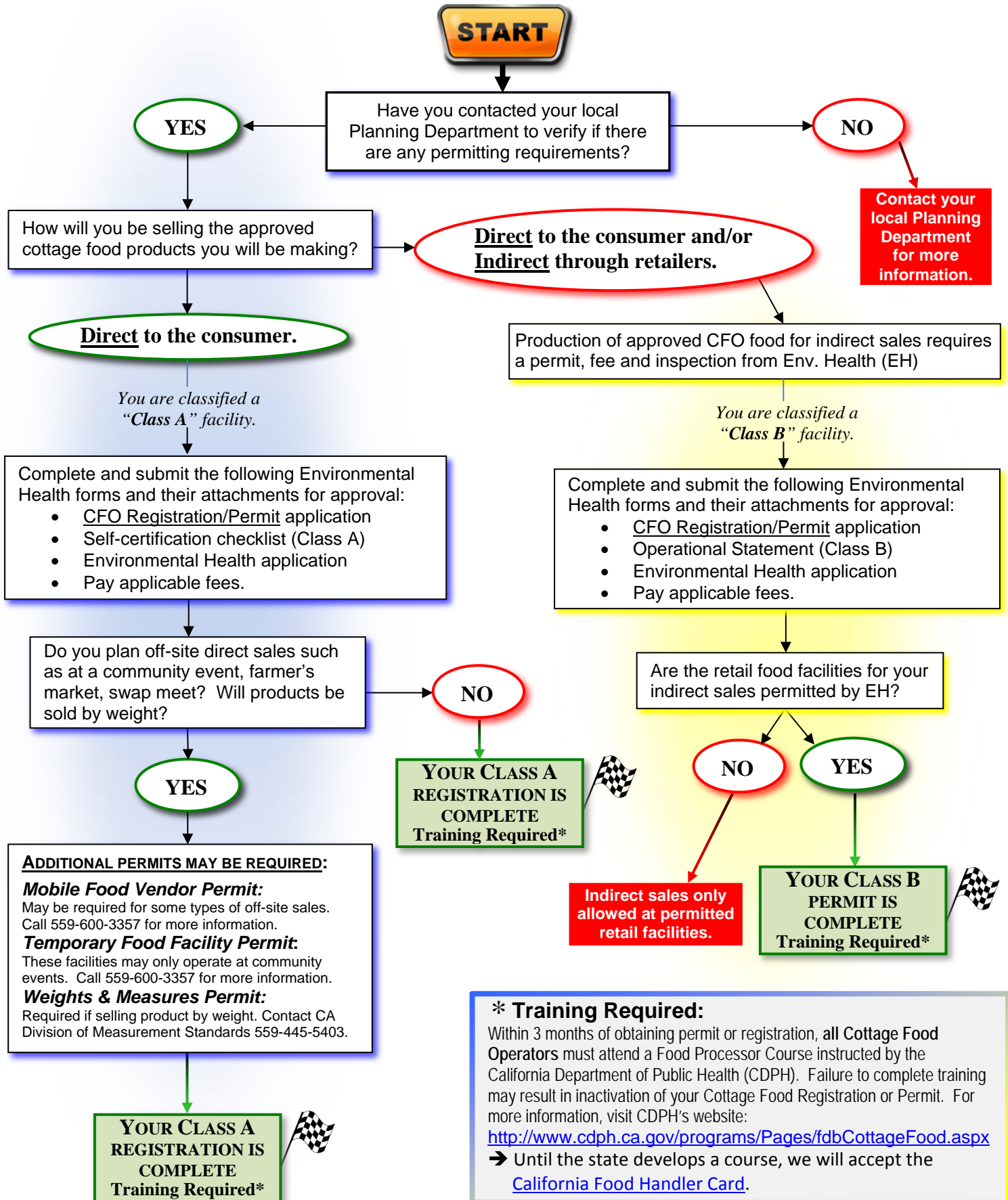


DO YOU QUALIFY AS A COTTAGE FOOD OPERATION?



REGISTRATION AND PERMIT REQUIREMENTS





California Homemade Food Act

Frequently Asked Questions

AB 1616 (Gatto) - Cottage Food Operations and AB 1252 Amendments

When does the new Cottage Food Law go into effect? The new law became effective January 1, 2013. The law requires the California Department of Public Health (CDPH) to carry out certain tasks associated with implementation, and imposes certain responsibilities on local planning and environmental health jurisdictions. Further information regarding the status of implementation can be obtained from your local environmental health agency.

- 1. What is a cottage food operation (CFO)?** A CFO is an enterprise at a private home where specific low-risk food products that do not require refrigeration are made or repackaged for sale to consumers.
- 2. What is meant by a private home?** "Private home" means a dwelling, including an apartment or other rented space, where the CFO operator resides.
- 3. Are there limitations on the size of CFO sales?**
 - \$35,000 or less in gross sales annually in 2013
 - \$45,000 or less in gross sales annually in 2014
 - \$50,000 or less in gross sales annually in 2015 and beyond
- 4. Can a CFO have employees?** A CFO can have one full-time equivalent employee (not counting family members or household members).
- 5. What cottage foods are CFOs permitted to produce?** Only specific foods that are defined as "non-potentially hazardous" are approved for preparation by CFOs. These are foods that do not require refrigeration to keep them safe from bacterial growth that could make people sick.

CDPH will establish and maintain a list of approved cottage food categories on their website. The list included in the new law includes:

- Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas
- Candy, such as brittle and toffee
- Chocolate-covered nonperishable foods, such as nuts and dried fruit
- Dried fruit
- Dried pasta
- Dry baking mixes
- Fruit pies, fruit empanadas, and fruit tamales
- Granola, cereals, and trail mixes
- Herb blends and dried mole paste
- Honey and sweet sorghum syrup
- Jams, jellies, preserves, and fruit butter that comply with the standard described in **Part 150 of Title 21 of the Code of Federal Regulations**.
- Nut mixes and nut butters
- Popcorn
- Vinegar and mustard
- Roasted coffee and dried tea
- Waffle cones and pizzelles
- Cotton candy
- Candied apples
- Confections such as salted caramel, fudge, marshmallow bars, chocolate covered marshmallow, nuts, and hard candy, or any combination thereof.
- Buttercream frosting, buttercream icing, buttercream fondant, and gum paste that do not contain eggs, cream, or cream cheese
- Dried or dehydrated vegetables
- Dried vegetarian-based soup mixes
- Vegetable and potato chips
- Ground chocolate
- Seasoning salt
- Flat icing
- Marshmallows that do not contain eggs
- Popcorn balls
- Dried grain mixes
- Fried or baked donuts and waffles

6. What are the two classifications of CFO's?

"Class A" CFOs are only allowed to engage in **"direct sales"** of cottage food.

"Class B" CFO's may engage in both **"direct sales"** and **"indirect sales"** of cottage food.

7. **What is meant by “direct sale” of cottage food?** “Direct sale” means a transaction **within the state of California** between a CFO operator and a consumer, where the consumer purchases the cottage food product directly from the CFO. Direct sales include, but are not limited to, transactions at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified farmers’ markets, or through community-supported agriculture subscriptions, and transactions occurring in person at the cottage food operation.
8. **What is meant by “indirect sale” of cottage food?** “Indirect sale” means an interaction within the state of California between a CFO, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the CFO from a third-party retailer that holds a valid permit issued by the local environmental health agency in their jurisdiction. Indirect sales include, but are not limited to, sales made to retail food facilities including markets, restaurants, bakeries, and delis, where food may be immediately consumed on the premises.
9. **What are limitations on Internet sales and delivery of cottage food products?** A cottage food operator may advertise as well as accept orders and payments via Internet or phone. However, a CFO must deliver (in person) to the customer. A CFO may not deliver any CFO products via US Mail, UPS, FedEx or using any other third-party delivery service. A cottage food operator may not introduce a CFO product into interstate commerce. Additionally, CFO’s can only sell cottage foods outside their county of residence only when the local environmental health agency of the outside county allows it.
10. **What are limitations on advertising of CFO products?** It is unlawful for any person to disseminate any false advertising of any food. An advertisement is false if it is false or misleading in any particular. A cottage food product that is found to be falsely advertised would be subject to enforcement action.
11. **Do I need any special training or certification to make cottage foods?** A person who prepares or packages cottage food products must complete a food processor course approved by CDPH within three months of being registered or permitted and every three years during operation.

12. Does a CFO need a permit to operate?

Planning and zoning: All CFO’s need to obtain approval from their local city or

county planning department. The Homemade Food Act gives planning departments several options to consider, so planning department requirements may vary between jurisdictions.

Environmental Health: For “**Class A**” CFO’s (direct sale only), must complete an annual **registration** with the local enforcement agency and submit a fully completed “self-certification checklist” approved by the local environmental health agency. For “**Class B**” CFO’s (either direct and indirect or indirect only), must obtain an annual **permit** from the local environmental health agency.

Other requirements: Check on other state or local requirements that may be applicable, such as Sellers Permits through the Board of Equalization, or Business Licenses through your city or county.

Registrations and permits are nontransferable between:

- 1) Persons
- 2) Locations
- 3) Type of food sales [i.e., direct sales (“Class A”) vs. indirect sales (“Class B”)]
- 4) Type of distribution

13. How much will the permit or registration cost the CFO? Each local jurisdiction will establish fees that are not to exceed the cost of providing the service. Additional fees may be charged for inspection and/or enforcement activities if the cottage food operation is found to be in violation of California food safety laws on cottage food operations.

14. Will my CFO registration/permit allow me to sell at other retail venues? There may be health permits required to sell at other locations, such as Certified Farmers’ Markets, Swap Meets or community events. Please check with your local environmental health department for additional permit requirements.

15. How often will a CFO be inspected?

“**Class A**” CFO kitchens and food storage areas (referenced in the law as the “registered or permitted area”) are not subject to initial or routine inspections.

“**Class B**” CFO kitchens and food storage areas are inspected initially prior to permit issuance and not more than once per year.

“**Class A or B**” (**complaint inspections**) - The local environmental health agency may access, for inspection purposes, the registered or permitted area where a cottage food operation is located if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or

otherwise unsafe food has been produced by the cottage food operation or that the cottage food operation has violated California food safety laws.

16. What are CFO operational requirements? All CFOs must comply with the following:

- No domestic activity in kitchen during cottage food preparation
- No infants, small children, or pets in kitchen during cottage food preparation
- Kitchen equipment and utensils kept clean and in good repair
- All food contact surfaces and utensils washed, rinsed, and sanitized before each use
- All food preparation and storage areas free of rodents and insects
- No smoking in kitchen area during preparation or processing of cottage food A person with a contagious illness shall refrain from preparing or packaging cottage food products
- Proper hand-washing shall be completed prior to any food preparation or packaging
- Water used in the preparation of cottage food products must be potable
- Cottage food preparation activities include:
 - Washing, rinsing, and sanitizing of any equipment used in food preparation
 - Washing and sanitizing hands and arms
 - Water used as an ingredient of cottage food.

17. What has to be on my cottage food label?

All cottage food products must be properly labeled in compliance with the Federal, Food, Drug, and Cosmetic Act (**21 U.S.C. Sec. 343 et seq.**).

The label must include:

- The words “Made in a Home Kitchen” or “Repackaged in a Home Kitchen” in 12-point type.
- The name commonly used to describe the food product.
- The name city, state and zip code of the cottage food operation which produced the cottage food product. If the CFO is not listed in a current telephone directory then a street address must also be declared. (A contact phone number or email address is optional but may be helpful for consumers to contact your business.
- The registration or permit number of the CFO which produced the cottage food product and, in the case of “Class B” CFOs, the name of the county where the permit was issued.
- The ingredients of the food product, in descending order of predominance by weight, if the product contains two or more

ingredients.

- The net quantity (count, weight, or volume) of the food product, it must be stated in both English (pound) units and metric units (grams).
- A declaration on the label in plain language if the food contains any of the eight major food allergens such as milk, eggs, fish, shellfish, tree nuts, wheat, peanuts, and soybeans. There are two approved methods prescribed by federal law for declaring the food sources of allergens in packaged foods: 1) in a separate summary statement immediately following or adjacent to the ingredient list, or 2) within the ingredient list.
- The use of the following eleven terms are considered nutrient content claims (nutritional value of a food): free, low, reduced, fewer, high, less, more, lean, extra lean, good source, and light. Specific requirements have been established for the use of these terms. Please refer to the **Cottage Food Labeling Guideline** for more details.
- A health claim is a statement or message on the label that describes the relationship between a food component and a disease or health-related condition (e.g., sodium and hypertension, calcium and osteoporosis). Please refer to the Cottage Food Labeling Guideline for more details.
- If the label makes approved nutrient content claims or health claims, the label must contain a "Nutrition Facts" statement on the information panel.
- Labels must be legible and in English (accurately translated information in another language may also be included on the label). Labels, wrappers, inks, adhesives, paper, and packaging materials that come into contact with the cottage food product by touching the product or penetrating the packaging must be food-grade (safe for food contact) and not contaminate the food.

In a permitted retail food facility (such as a restaurant, market, or deli), cottage food products served without packaging or labeling shall be identified to the customer as homemade on the menu, menu board or in another easily accessible location that would reasonably inform the consumer that the food or an ingredient in the food has been made in a private home.

18. What is my legal responsibility as a cottage food operator in ensuring that my food product is safe? Cottage food operators and/or their employees shall not commit any act that may cause contamination or adulteration of food.

This would include making foods that are not on the approved food list and or making foods under unsanitary conditions or with spoiled or rancid ingredients.

A cottage food operation that is not in compliance with the requirements of AB



1616 and AB 1252 would be subject to enforcement action taken by the local environmental health agency and/or the California Department of Public Health.

- 19. What if I find out an ingredient I used has been recalled because it can make people sick or has been identified as the cause of food borne illness?** You should notify your local environmental health agency or CDPH immediately and do not distribute anymore product. You may need to notify your customers and request that they return or dispose of the products. For specific food recall information, you can contact CDPH at: (916) 650-6500 or email: FDBinfo@cdph.ca.gov.
- 20. What is my liability as a cottage food business operating out of my home?** You should check with your homeowner insurance company or your landlord if you are operating out of a rental property. Many homeowner insurance policies will not extend liability coverage to liabilities arising out of home-based businesses.
- 21. What other educational resources and guidelines are available to assist me in ensuring I am making a safe food product?** Please see the CDPH website or contact your local environmental health agency for guidance and resource documents or web links.
- 22. What can I do to ensure I am still meeting legal requirements if my cottage food operation grows to exceed the gross annual sales limit and/or I decide want to make another type of food product that is not on the approved food list?** Please contact CDPH for registration and facility requirements for food processors.
- 23. Where can I file a complaint about a cottage food operation or cottage food product?** You can file a complaint at the CDPH toll-free complaint line – **1-800-495-3232**.



County of Fresno

DEPARTMENT OF PUBLIC HEALTH
DAVID POMAVILLE, DIRECTOR

CALIFORNIA HOMEMADE FOOD ACT AB 1616 (GATTO) REGISTRATION / PERMITTING FORM

CFO Business Name:			Date:
CFO Address:		CFO City:	CFO ZIP:
Owner Name:	Owner Phone:	Owner Cell:	FA
Mailing Address (if different):	Mailing City:	Mailing ZIP:	PR
Email Address: <i>(check this email address for response to this paperwork from this office)</i>			PE
Website:			CT

Office Use Only

1. Categories:

- *Class A: CFO business selling directly to the people consuming the CFO food product.*
- *Class B: CFO business that sells to other retailers who will sell to the people consuming the CFO food product. Class B facilities may also sell directly to the consumer.*

☐ Class **A** (Direct Sales Only)

☐ Class **B** (Direct & Indirect Sales)

2. Prohibited Items:

Initial if you agree to abide by the following: _____

Foods containing cream, custard, or meat fillings are potentially hazardous and are not allowed. Only foods that are defined as "non-potentially hazardous" are approved for preparation by a Cottage Food Operation (CFO). These are food items that do not require refrigeration to keep them safe from bacterial growth that could be a cause of food-borne illness.

Promotion, preservation and protection of the community's health

1221 Fulton Mall / P.O. Box 11867 / Fresno, California 93775 / Phone (559) 600-3357 / FAX (559) 600-7629

Email: EnvironmentalHealth@co.fresno.ca.us ❖ www.co.fresno.ca.us ❖ www.fcdph.org

Equal Employment Opportunity ❖ Affirmative Action ❖ Disabled Employer

3. Self-Certification Checklist / Operational Statement:☐ Self-Certification Checklist completed and attached ("Class A" CFOs)☐ Operational Statement completed and attached ("Class B" CFOs)**4. Products:***Please check the items you will be preparing and/or selling (each product must be approved):*

<input type="checkbox"/> Baked Goods	<input type="checkbox"/> Dry Baking Mixes	<input type="checkbox"/> Granola/Cereals	<input type="checkbox"/> Dried Mole Paste
<input type="checkbox"/> Candy	<input type="checkbox"/> Fudge/Caramel/Chocolates/Bars	<input type="checkbox"/> Mustard	<input type="checkbox"/> Vinegar
<input type="checkbox"/> Churros	<input type="checkbox"/> Frostings/Icing/Fondant/Fillings*	<input type="checkbox"/> Tortillas	<input type="checkbox"/> Fruit Butter**
<input type="checkbox"/> Popcorn	<input type="checkbox"/> Waffle Cones	<input type="checkbox"/> Pizzelles	<input type="checkbox"/> Jams/Jellies**
<input type="checkbox"/> Dried Vegetables	<input type="checkbox"/> Dried Veggie-based Soup Mixes	<input type="checkbox"/> Nuts/Nut Mixes	<input type="checkbox"/> Nut Butters**
<input type="checkbox"/> Dried Fruit	<input type="checkbox"/> Fruit Empanadas	<input type="checkbox"/> Fruit Tamales/Pies	<input type="checkbox"/> Roasted Coffee
<input type="checkbox"/> Dried Pasta	<input type="checkbox"/> Sweet Sorghum Syrup	<input type="checkbox"/> Potato/Vegetable Chips	<input type="checkbox"/> Herb/Spice Blends
<input type="checkbox"/> Dried Tea	<input type="checkbox"/> Ground Chocolate	<input type="checkbox"/> Trail Mix	<input type="checkbox"/> Honey
<input type="checkbox"/> Cotton Candy	<input type="checkbox"/> Candied Apples	<input type="checkbox"/> Chocolate Covered Marshmallow, Nuts, Hard Candy, Dried Fruit, or Combos	

*These foods are not allowed to contain meat, eggs, cream, or cream cheese. Examples of what are not allowed for CFO production: bacon, ganache, cream cheese frosting, meringue, meringue powder, Dream Whip.

**These items must comply with standards described in Part 150 of Title 21 of the Code of Federal Regulations
<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfCFR/CFRSearch.cfm?CFRPart=150>



Food descriptions: On a separate sheet of paper, provide a complete list all products that you propose to make. For each product, provide a complete ingredients list. Do not combine ingredients for all products in one list. Provide frosting, icing, filling, etc. ingredients separately from any cake or cookie ingredients. You may decide to provide this list in the form of your sample labels; one label per product or in a product list typed out.

5. Product Labeling:

Initial if you agree to abide by the following: _____



Attach at least one printed sample label that you will use for your CFO products in actual size. See example on next page for an idea of how to arrange the required information on your label.

For a detailed description, see the CDPH document "[Labeling Requirements for Cottage Food Products](#)." All cottage food products must be properly labeled in compliance with the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 et seq.) The label must include:

- The words **“Made in a Home Kitchen”** or **“Repackaged in a Home Kitchen”**, as applicable, in 12-point type or larger.
- The **product name**. If the product name does not describe what the product is, then provide a descriptive phrase or common name of the food product on the label as well.
- The **business name, city, state and zip code** of the cottage food operation which produced the cottage food product. If the firm is not listed in the current telephone directory then a **street address** must also be declared. (A contact phone number or email address is optional but may be helpful for consumers to contact your business.)
- The **registration or permit number** of the cottage food operation which produced the cottage food product and the name of the county where the permit was issued: **“Issued in Fresno County”**.
- The **ingredients** of the food product, in descending order of predominance by weight, if the product contains two or more ingredients.
- The **net quantity** (count, weight, or volume) of the food product. It must be stated in both English (pound) units and metric units (grams).
- A declaration on the label in plain language if the food contains any of the eight major **food allergens** such as milk, eggs, fish, shellfish, tree nuts, wheat, peanuts, and soybeans. There are two approved methods prescribed by federal law for declaring the food sources of allergens in packaged foods: 1) in a separate summary statement immediately following or adjacent to the ingredient list, or 2) within the ingredient list.
- **CLASS B facilities:** If the label makes approved nutrient content claims or health claims, the label must contain a “Nutrition Facts” statement on the information panel.
 - The use of the following eleven terms are considered nutrient content claims (nutritional value of a food): free, low, reduced, fewer, high, less, more, lean, extra lean, good source, and light. Specific requirements have been established for the use of these terms. Please refer to the [Cottage Food Labeling Guideline](#) for more details.
 - A health claim is a statement or message on the label that describes the relationship between a food component and a disease or health-related condition (e.g., sodium and hypertension, calcium and osteoporosis). Please refer to the [Cottage Food Labeling Guideline](#) for more details.
- Labels must be **legible and in English** (accurately translated information in another language may accompany it).
- **Labels, wrappers, inks, adhesives, paper, and packaging materials** that come into contact with the cottage food product by touching the product or penetrating the packaging must be food-grade (safe for food contact) and not contaminate the food.

Example:

The image shows a sample label for 'Chocolate Chip Cookies with Walnuts'. The label is rectangular with rounded corners and a light beige background. At the top, it says 'MADE IN A HOME KITCHEN' in bold, followed by 'Permit # FA0001234' and 'Issued in Fresno County'. The product name 'Chocolate Chip Cookies with Walnuts' is prominently displayed in the center. Below it, the address 'ABC Cookie Company, 123 Main St., Sunny CA, 12345' is listed. The 'Ingredients' section lists: 'Enriched flour (Wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin), walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda.' At the bottom right, it states 'Contains: Wheat, eggs, milk, soy, walnuts' and '1 Dozen, Net Wt. 11 oz. (312.98g)'.

MADE IN A HOME KITCHEN
Permit # FA0001234
Issued in Fresno County


Chocolate Chip Cookies with Walnuts

ABC Cookie Company, 123 Main St., Sunny CA, 12345

Ingredients: Enriched flour (Wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin), walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda.

Contains: Wheat, eggs, milk, soy, walnuts
1 Dozen, Net Wt. 11 oz. (312.98g)

Note: For the “Issued in County” – Identify the county where you are obtaining approval.

6. Water Source:*Please check what type of water source will be used in Cottage Food Facility*☐ Name of Public Water System or Community Services District:☐ If you use a Private Water Supply^{*}, identify the source (well, spring, surface, etc.):


*** Private Water Supply: Initial Water Quality Results.** Check boxes below if initial water testing has been completed. All testing must be done at a State Certified Laboratory. **Attach lab results documentation.** (*Testing Frequencies for Transient Non-Community Water Systems after initial testing*)

1. Bacteriological Test (*quarterly*), 2. Nitrate Test (*yearly*), 3. Nitrite (*every 3 years*)


^{*} Additional forms and water quality testing may be required if food is prepared from a home with a private well. You will need to contact a local laboratory and have a certified water sampler secure a water sample from your residence.

7. Disposal of Waste:*Please check what type of treatment is used to dispose of waste*☐ Public Sewer Service☐ Private Septic System^{*}

^{*} In the event of septic system failure or plumbing problem, you are required to notify Fresno County Environmental Health Division immediately.

8. Food Processor Course:

Initial if you agree to abide by the following: _____



Within 3 months (90 days) of being approved to operate by the Fresno County Environmental Health Division, please provide proof of completion of the required California Department of Public Health (CDPH) food processor course. The website for CDPH is www.cdph.ca.gov. Proof of completion may be faxed to Fresno County Environmental Health Division at 559-600-7629.

Until the State Department of Public Health develops a food processor course as required by law, we will accept [California Food Handler Card](#).

9. Employee:

Initial if you agree to abide by the following: _____

I understand that I may not have more than one full-time equivalent cottage food employee, not including a family member or household member of the cottage food operator, working within the registered or permitted area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers.

10. Gross Annual Sales:

Initial if you agree to abide by the following: _____

I understand that I will lose my CFO status and will need to become permitted in a commercial facility if my CFO business exceeds the following gross annual sales figures for the calendar years in the following table:

Calendar Year	Gross Annual Sales
In 2013.....	\$35,000
In 2014.....	\$45,000
In 2015 and in subsequent years.....	\$50,000

Provide your previous year's gross annual sales: \$ _____

Previous year: ☐ Calendar: _____ ☐ Fiscal (From-To): _____ - _____**11. Delivery Limitations:**

Initial if you agree to abide by the following: _____

I understand that I may accept orders and payments via the internet, mail, or phone. However, all "Class A" and "Class B" CFO products must be delivered directly (in person) to the customer. The CFO products may not be delivered via US Mail, United Postal Service, FedEx, or using any other indirect delivery method as this is regulated/subject to CDPH registration and state and federal requirements.

12. Operating Days/Times:

I am producing and/or packaging my CFO products(s) at my home during the following times (include times with AM/PM):

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
From:							
To:							

13. Distribution of CFO Product (include a separate sheet of paper if necessary):

Describe all of the ways you will distribute your CFO product to the consumer. Write all that apply including ways that may not be in this list. (Examples: sales to customer from home, sales at farmer's markets, sales at community events, sales at swap meets, delivery per order, etc.)

Class B Facilities: List the permitted retail food facilities will you sell your CFO product to for them to resell it to their customers or use in their facility?

14. Owner's Statement:

I, _____, agree to grant access to the local health department to conduct an inspection of my cottage food operation's primary domestic residence (mark one):

☐ **Class A:** In the event of a complaint or reported food-borne illness.

☐ **Class B:** For facility inspections and in the event of a complaint or food-borne illness.

I, _____, agree to notify Fresno County Environmental Health Division in writing prior to modifying my food list, type of operation, and/or method of selling, distributing, or otherwise providing my CFO products to the consumer or retailers regardless of whether or not the product is sold, consigned, or given away.

Signature of Owner: By signing below, I certify under penalty of perjury that all of the information provided above is true and correct to the best of my knowledge and that I understand the above and agree to operate my cottage food business within the scope of the above limits and the provided attached documentation.

Signature *Print Name* *Date*

Assembly Bill No. 1616

CHAPTER 415

An act to add Chapter 6.1 (commencing with Section 51035) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 109947, 110050, 110460, 111955, 113789, 113851, 114021, 114023, 114390, 114405, and 114409 of, to add Sections 113758 and 114088 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

[Approved by Governor September 21, 2012. Filed with
Secretary of State September 21, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, Gatto. Food safety: cottage food operations.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law exempts private homes from the definition of a food facility, and prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. That law also requires food that is offered for human consumption to be honestly presented, as specified. A violation of these provisions is a misdemeanor.

This bill would include a cottage food operation, as defined, that is registered or has a permit within the private home exemption of the California Retail Food Code. The bill would also exclude a cottage food operation from specified food processing establishment and Sherman Law requirements. This bill would require a cottage food operation to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales and would subject a cottage food operation to inspections under specified circumstances. The bill would require a food facility that serves a cottage food product without packaging or labeling to identify it as homemade. The bill would establish various zoning and permit requirements relating to cottage food operations.

(f) At least 32 other states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare, for sale, foods that are not potentially hazardous.

(g) Even some bake sales are currently illegal in California.

(h) It is the intent of the Legislature to enact a homemade food act specifically designed to help address these challenges and opportunities.

SEC. 2. Chapter 6.1 (commencing with Section 51035) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.1. COTTAGE FOOD OPERATIONS

51035. (a) A city, county, or city and county shall not prohibit a cottage food operation, as defined in Section 113758 of the Health and Safety Code, in any residential dwellings, ~~but shall do one or the following~~

(1) Classify a cottage food operation as a ~~business use~~ of residential property for zoning purposes.

(2) Grant a nondiscretionary permit to use a residence as any cottage food operation that complies with local ordinances ~~prescribing reasonable standards, restrictions, and requirements concerning zoning and transportation, traffic control, parking, and noise control relating to these homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan.~~ The permit issued pursuant to this paragraph shall be granted by the zoning administrator, or if there is no zoning administrator, by the person or persons designated by the planning agency to grant these permits, upon the certification without a hearing.

(3) Require any cottage food operation to ~~apply for a permit~~ to use a residence for its operation. The zoning administrator, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits, shall review and decide the applications. The use ~~permit shall be granted if the cottage food operation complies with local ordinances.~~ If any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: ~~zoning and transportation, traffic control, parking, and noise control relating to these homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan.~~ The local government shall process any required permit as economically as possible. Fees charged for review shall not exceed the costs of the review and permit process. An applicant may request a verification of fees, and the city, county, or city and county shall provide the applicant with a written breakdown within 45 days of the request. The application form for cottage food operation permits shall include a statement of the applicant's right to request the written fee verification.

(b) In connection with any action taken pursuant to paragraph (2) or (3) of subdivision (a), a city, county, or city and county ~~shall do all of the following~~

SEC. 5. Section 110460 of the Health and Safety Code is amended to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, ~~except those engaged exclusively in the storing, handling, or processing of dried beans~~. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 6. Section 111955 of the Health and Safety Code is amended to read:

111955. "Food processing establishment," as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. "Food processing establishment" shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 7. Section 113758 is added to the Health and Safety Code, to read:

113758. (a) "Cottage food operation" means an enterprise that has ~~not more than the amount of gross annual sales that is specified in this subdivision~~ is operated by a cottage food operator, and has not more than ~~one full-time equivalent cottage food employee~~, not including a family member or household member of the cottage food operator, within the registered or permitted area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers pursuant to this part. In 2013, the enterprise shall not have more than thirty-five thousand dollar ~~(\$35,000)~~ in gross annual sales in the calendar year. In 2014, the enterprise shall not have more than forty-five thousand dollars ~~(\$45,000)~~ in gross annual sales in the calendar year. Commencing in 2015, and each subsequent year thereafter, the enterprise shall not have more than fifty thousand dollars ~~(\$50,000)~~ in gross annual sales in the calendar year. A cottage food operation includes both of the following:

(1) A "Class A" cottage food operation, which is a cottage food operation that may engage only in direct sales of cottage food products from the cottage food operation or other direct sales venues described in paragraph (4) of subdivision (b).

(2) A "Class B" cottage food operation, which is a cottage food operation that may engage in both direct sales and indirect sales of cottage food products from the cottage food operation, from direct sales venues described in paragraph (4) of subdivision (b), from offsite events, or from a third-party retail food facility described in paragraph (5) of subdivision (b).

(b) For purposes of this section, the following definitions shall apply:

(1) "Cottage food employee" means an individual, paid or volunteer, who is involved in the preparation, packaging, handling, and storage of a cottage food product, or otherwise works for the cottage food operation. An

(8) Vending machines.
(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home, ~~including a cottage food operation that is registered or has a permit pursuant to Section 114365.~~

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

~~SEC. 8.5. Section 113789 of the Health and Safety Code is amended to read:~~

~~113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:~~

~~(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.~~

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

(13) (a) An intermediate care facility for the developmentally disabled as defined in subdivisions (c), (h), and (m) of Section 1250, with a capacity of 25 or less.

(b) A facility described in subparagraph (a) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

SEC. 9. Section 113851 of the Health and Safety Code is amended to read:

113851. (a) "Permit" means the document issued by the enforcement agency that authorizes a person to operate a food facility, ~~or cottage food operation.~~

(b) "Registration" shall have the same meaning as permit for purposes of implementation and enforcement of this part.

SEC. 10. Section 114021 of the Health and Safety Code is amended to read:

114021. (a) Food shall be obtained from sources that comply with all applicable laws.

(b) Food stored or prepared in a private home shall not be used or offered for sale in a food facility, unless that food is prepared by a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 11. Section 114023 of the Health and Safety Code is amended to read:

114023. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant, or from a cottage food operation that produces jams, jellies, and preserves and that is registered or has a permit pursuant to Section 114365.

SEC. 12. Section 114088 is added to the Health and Safety Code, to read:

114088. A cottage food product, as defined in Section 113758, that is served by a food facility without packaging or labeling, as described in Section 114365, shall be identified to the consumer as homemade on the menu, menu board, or other location that would reasonably inform a consumer of its homemade status.

SEC. 13. Chapter 11.5 (commencing with Section 114365) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

(2) (A) A "Class B" cottage food operation shall not be open for business unless it obtains a permit from the local enforcement agency in a manner approved by the local enforcement agency to engage in the direct and indirect sale of cottage food products.

(B) (i) A "Class B" cottage food operation shall comply with the requirements described in clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (1) in addition to the other requirements of this chapter.

(ii) The local enforcement agency shall issue a permit number after an initial inspection has determined that the proposed "Class B" cottage food operation and its method of operation conform to this chapter.

(C) Except as provided in this subparagraph, a "Class B" cottage food operation shall not be subject to more than one inspection per year by the local enforcement agency.

(i) For purposes of determining compliance with this chapter, a representative of a local enforcement agency, for inspection purposes, may access the permitted area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation, or that the cottage food operation has violated this chapter.

(ii) Access under this subparagraph is limited to the permitted area and solely for the purpose of enforcing or administering this chapter.

(D) (i) A "Class B" cottage food operation shall be authorized to engage in the indirect sales of cottage food products within the county in which the "Class B" cottage food operation is permitted.

(ii) A county may agree to allow a "Class B" cottage food operation permitted in another county to engage in the indirect sales of cottage food products in the county.

(b) A registration or permit, once issued, is non-transferable. A registration or permit shall be valid only for the person, location, type of food sales, and distribution activity specified by that registration or permit, and, unless suspended or revoked for cause, for the time period indicated.

114365.2. A cottage food operation that is registered or has a permit issued pursuant to Section 114365 shall be considered a restricted food service facility for purposes of, and subject to, Sections 113953.3, 114259.5, 114285, and 114286. A cottage food operation that is registered or has a permit also shall be subject to Sections 113967, 113973, 113980, 114259.5, 114405, 114407, 114409, 114411, and 114413, and to all of the following requirements:

(a) A person with a contagious illness shall refrain from work in the restricted permitted area of the cottage food operation.

(b) A person involved in the preparation or packaging of cottage food products shall keep his or her hands and exposed portions of his or her arms clean and shall wash his or her hands before any food preparation or packaging activity in a cottage food operation.

(c) Water used during the preparation of cottage food products shall meet the potable drinking water standards described in Section 113869, except

Food contaminated by employee

Use of gloves

Handwashing

Animal Prohibition

Requirements for food

Private home living or sleeping quarters prohibition

Permit required

Notice of Decision

Closure

Interference

living and sleeping area separated from retail

90

Potable water definition = transient noncommunity water systems

(11) Jams, jellies, preserves, and fruit butter that comply with the standard described in Part 150 of Title 21 of the Code of Federal Regulations.

(12) Nut mixes and nut butters.

(13) Popcorn.

(14) Vinegar and mustard.

(15) Roasted coffee and dried tea.

(16) Waffle cones and pizelles.

(c) (1) ~~The State Public Health Officer may add or delete food products to or from the list described in subdivision (b), which shall be known as the approved food products list.~~ Notice of any change to the approved food products list shall be posted on the department's cottage food program Internet Web site, to also be known as the program Internet Web site for purposes of this chapter. Any change to the approved food products list shall become effective 30 days after the notice is posted. The notice shall state the reason for the change, the authority for the change, and the nature of the change. The notice will provide an opportunity for written comment by indicating the address to which to submit the comment and the deadline by which the comment is required to be received by the department. The address to which the comment is to be submitted may be an electronic site. The notice shall allow at least 20 calendar days for comments to be submitted. The department shall consider all comments submitted before the due date. The department may withdraw the proposed change at any time by notification on the program Internet Web site or through notification by other electronic means. The approved food products list described in subdivision (b), and any updates to the list, shall not be subject to the administrative rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The State Public Health Officer shall not remove any items from the approved food products list unless the State Public Health Officer also posts information on the program Internet Web site explaining the basis upon which the removed food item has been determined to be potentially hazardous.

114365.6. (a) The State Public Health Officer shall provide technical assistance, and develop, maintain, and deliver commodity-specific training related to the safe processing and packaging of cottage food products to local enforcement agencies.

(b) Local enforcement agencies may collect a surcharge fee in addition to any permit fees collected for "Class B" cottage food operations. The surcharge fee shall not exceed the reasonable costs that the department incurs through the administration of the training described in subdivision (a) to protect the public health. The surcharge fees collected shall be transmitted to the department in a manner established by the department to be deposited in the Food Safety Fund. The department shall use the surcharge fees only to develop and deliver the training described in subdivision (a) to local enforcement agency personnel on an ongoing basis.

SEC. 14. Section 114390 of the Health and Safety Code is amended to read:

revoked. A written request for a hearing shall be made by the permitholder within 15 calendar days after receipt of the notice. A failure to request a hearing within 15 calendar days after receipt of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the permit suspension or revocation process.

(c) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the permitholder, the hearing officer may postpone any hearing date, if circumstances warrant the action.

SEC. 16. Section 114409 of the Health and Safety Code is amended to read:

114409. (a) If any imminent health hazard is found, unless the hazard is immediately corrected, an enforcement officer may temporarily suspend the permit and order the food facility or cottage food operation immediately closed.

(b) Whenever a permit is suspended as the result of an imminent health hazard, the enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, specifying the pertinent code section, and informing the permitholder of the right to a hearing.

(c) At any time within 15 calendar days after service of a notice pursuant to subdivision (b), the permitholder may request in writing a hearing before a hearing officer to show cause why the permit suspension is not warranted. The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. A failure to request a hearing within 15 calendar days shall be deemed a waiver of the right to a hearing.

SEC. 17. Section 8.5 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2297. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2297, in which case Section 8 of this bill shall not become operative.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.