

TEXAS DEPARTMENT OF STATE HEALTH SERVICES



DIVISION FOR REGULATORY SERVICES ENVIRONMENTAL AND CONSUMER SAFETY SECTION POLICY, STANDARDS, AND QUALITY ASSURANCE UNIT FOOD ESTABLISHMENTS GROUP

COTTAGE FOOD PRODUCTION OPERATIONS FREQUENTLY ASKED QUESTIONS

During the 82nd Legislature, Regular Session 2011, the Texas Legislature enacted Senate Bill 81 that amends the Health and Safety Code (HSC), Chapter 437, by adding provisions for cottage food production operations. This law is effective September 1, 2011.

A cottage food production operation is exempt from the requirements of a food service establishment and does not have to comply with the Texas Food Establishment Rules. Health departments do not have regulatory authority to conduct inspections of a cottage food production operation. Health departments are required to maintain records of all complaints against a cottage food production operation.

A cottage food production operation is defined as an individual, operating out of the individual's home, who produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person's home; has an annual gross income of \$50,000 or less from the sale of the described foods; and sells the foods only directly to consumers. A cottage food product does not include any food that is potentially hazardous that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

A potentially hazardous food (PHF) is a food that requires time and temperature control for safety (TCS) to limit pathogen growth or toxin production. In other words, a food must be held under proper temperature controls, such as refrigeration to prevent the growth of bacteria that may cause human illness. A PHF/TCS is a food that: contains protein, moisture (water activity greater than 0.85), and is neutral to slightly acidic (pH between 4.6 -7.5).

Food produced by a cottage food production operation must be labeled. The label must include the name and address of the cottage food production operation, common or usual name of the product, if a food is made with a major food allergen, such as eggs, nuts, soy, peanuts, milk or wheat that ingredient must be listed on the label, and a statement: "This food is made in a home kitchen and is not inspected by the Department of State Health Services or a local health department." The labels must be legible.

Food produced by a cottage food production operation may not be sold via the Internet.

The Department of State Health Services adopted a new rule concerning cottage food production operations. The new rule, Title 25 of the Texas Administrative Code, Section 229.661, became effective on July 22, 2012.

1. What is a cottage food production operation?

A cottage food production operation means an individual, operating out of the individual's home, who: produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person's home that has an annual gross income of \$50,000 or less from the sale of the food described above; and sells foods produced (baked good, canned jam or jelly, or a dried herb or dried herb mix) only directly to consumers from the cottage food production location.

2. Is a cottage food production operation a food service establishment?

No. A cottage food production operation is not a food service establishment.

3. What is the definition of a baked good?

A baked good is a food item prepared by baking the item in an oven, which includes cookies, cakes, breads, Danishes, donuts, pastries, pies, and other items that are prepared by baking. A baked good does not include a potentially hazardous food (time/ temperature control for safety foods) (PHF/TCS).

4. What are some examples of foods that can be prepared at a cottage food production operation?

The following are examples of non-potentially hazardous foods that may be prepared and sold at a cottage food production operation:

- Breads, rolls, biscuits,
- Sweet breads, muffins
- Cakes (birthday, wedding, anniversary, etc.
- Pastries,
- Cookies
- Fruit pies
- Jams and jellies
- Dry herbs and dried herb mixtures

5. What types of foods are not allowed to be sold at a cottage food production operation?

The following foods are examples of food that can not be produced by a cottage food production operation.

- Fresh or dried meat or meat products including jerky
- Canned fruits, vegetables, vegetable butters, salsas etc.
- Kolaches with meat
- Fish or shellfish products
- Canned pickled products such as corn relish, pickles, sauerkraut
- Fruit and vegetable butters, i.e. pear, plum, peach, sweet potato, pumpkin
- Raw seed sprouts
- 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
- Milk and dairy products including hard, soft and cottage cheeses and yogurt
- Cut fresh fruits and/or vegetables. Juices made from fresh fruits or vegetables
- Ice and/or ice products
- Barbeque sauces, ketchups and/or mustards
- Foccaccia-style breads with vegetables and/or cheeses
- Candy that does not require baking, such as pralines
- Vinegar and infused oils and vinegars
- Dry baking mixes
- Dry dip mixes
- Dry soup mixes
- Dehydrated vegetables or fruits
- Popcorn, cotton candy
- Chocolate covered pretzels, marshmallows, graham crackers, Rice Krispies treats
- Coated or uncoated nuts
- Dried pasta
- Sauerkraut, pickles, relishes, salsas, sorghum
- Roasted coffee beans or ground roasted coffee
- Lemonade, juices, hot chocolate or similar beverages

6. What is a potentially hazardous food/temperature controlled for safety food (PHF/TCS)?

A potentially hazardous food (PHF) is a food requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms, or the growth and toxin production of *Clostridium botulinum*.

7. Where can I sell my cottage food products?

Food produced by a cottage food production operation can only be sold at the individual's place of residence.

8. Can I sell food produced at my cottage food production operation at a farmers market or temporary event?

No. Food produced by a cottage food production operation can only be sold from the individual's home. In order for an individual to sell food (i.e. baked goods, jams or jellies) at a Farmer's market or similar location, the appropriate retail food establishment or manufactured food license must be obtained and compliance with the Texas Food Establishment Rules is required.

9. Can I use the internet to sell my cottage food products?

No. Food produced at a cottage food production operation can not be sold via the Internet.

10. Can I make cottage food products in another building on my property?

No. The law requires cottage food products to be produced in a primary residence that contains a kitchen and appliances designed for common residential usage.

11. Is labeling required on food items produced by a cottage food production operation?

Yes. All foods prepared by a cottage food production operation must be labeled. Effective July 22, 2012, the label must include the following information:

- The name and physical address of the cottage food production operation;
- The common or usual name of the product;
- If a food is made with a major food allergen, such as eggs, nuts, soy, peanuts, milk or wheat that ingredient must be listed on the label; and
- The following statement: "This food is made in a home kitchen and is not inspected by the Department of State Health Services or a local health department."
- Labels must be legible.

12. Do I need a permit or license for my cottage food production operation?

No. You do not need a permit or license from the Texas Department of State Health Services to operate a cottage food production operation.

13. Is there a limit as to how much I can earn from my cottage food production operation?

Yes. A cottage food production operation is limited to an annual gross income of \$50,000 or less from the sale of food produced at the cottage food production operation.

14. Is there a process for submitting a complaint against a cottage food production operation?

Yes. A complaint may be submitted to the Texas Department of State Health Services (DSHS) for cottage food production operations located under DSHS jurisdiction at: <http://www.dshs.state.tx.us/foodestablishments/complaint>. If the cottage food production operation is located under the jurisdiction of a local health authority, that complaint must be registered with the local health authority.

15. Will the Department of State Health Services conduct inspections at cottage food production operations?

No. The Texas Department of State Health Services does not have authority to conduct inspections at a cottage food production operation. However, the Department may investigate a complaint regarding preparation of potentially hazardous food at a private residence.

16. Will I need to comply with local zoning or other laws?

Yes, zoning laws apply as the statute only exempts cottage food production from local health department regulation, not municipal zoning laws.

17. Will the Department be required to write rules concerning cottage food production operations in a separate chapter outside the Texas Food Establishment Rules?

Yes. The department adopted a new rule concerning the regulation of cottage food production operations. Title 25 of the Texas Administrative Code, Section 229.661 provides definitions for cottage food production operations, labeling requirements, complaint database requirements, and sales location requirements.

18. Can a Cottage Food Production Operation deliver food produced by the operation to the customer who purchased the food product?

Since the statute does not address the delivery of foods produced by a Cottage Food Production Operation, the Department will not regulate the delivery of these products. However, the sale transaction for cottage foods must take place at the residence where the food was produced.