

Texas Administrative Code

TITLE 25	HEALTH SERVICES
PART 1	DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 229	FOOD AND DRUG
SUBCHAPTER EE	COTTAGE FOOD PRODUCTION OPERATION
RULE §229.661	Cottage Food Production Operations

(a) Purpose. The purpose of this section is to implement Health and Safety Code, Chapter 437, related to cottage food production operations, which requires the department to adopt rules for labeling of foods produced by cottage food production operations.

(b) Definitions. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Baked good--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.

(2) Cottage food production operation--An individual, operating out of the individual's home, who:

(A) produces at the individual's home:

(i) a baked good that is not a potentially hazardous food, as defined in paragraph (11) of this subsection:

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried beans;

(ix) popcorn and popcorn snacks;

- (x) cereal, including granola;
- (xi) dry mix;
- (xii) vinegar;
- (xiii) pickles, as defined in paragraph (10) of this subsection;
- (xiv) mustard;
- (xv) roasted coffee or dry tea; or
- (xvi) a dried herb or dried herb mix;

(B) has an annual gross income of \$50,000 or less from the sale of food described by subparagraph (A) of this paragraph;

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers at the individual's home; a farmers' market; a farm stand; a municipal, fair, festival, or event; a county fair, festival, or event; or a nonprofit fair, festival, or event; and

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

(3) Department--The Department of State Health Services.

(4) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.

(5) Farm stand--A premises owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods described in paragraph (2) of this subsection.

(6) Farmers' market--A designated location used primarily for the distribution and sale directly to consumers of food by farmers or other producers.

(7) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous (time/temperature control for safety) foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant including those that are located on the premises of a food establishment;

(iv) a kitchen in a private home if only food that is not potentially hazardous (time/temperature control for safety) food is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited establishment as defined in §228.2 of this title (relating to Definitions) concerning food establishments;

(vii) a private home that receives catered or home-delivered food; or

(viii) a cottage food production operation.

(8) Herbs--Herbs are from the leafy green parts of a plant (either fresh or dried) used for culinary purposes and not for medicinal uses.

(9) Home--A primary residence that contains a kitchen and appliances designed for common residential usage.

(10) Pickle--A cucumber preserved in vinegar, brine, or similar solution, and excluding all other pickled vegetables.

(11) Potentially hazardous food (PHF)--A food that requires time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A potentially hazardous food may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, baked goods that require refrigeration, including cream or custard pies or cakes, and ice products. The term does not include a food that uses potentially hazardous food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

(c) Complaints. The department shall maintain a record of a complaint made by a person against a cottage food production operation.

(d) Packaging and labeling requirements for cottage food production operations. All foods prepared by a cottage food production operation shall be packaged and labeled in a manner that prevents product contamination.

(1) The label information shall include:

(A) the name and physical address of the cottage food production operation;

(B) the common or usual name of the product;

(C) 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

(D) 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."

(2) Labels must be legible.

(3) A food item is not required to be packaged if it is too large or bulky for conventional packaging. For these food items, the information required under paragraph (1) of this subsection shall be provided to the consumer on an invoice or receipt.

(e) Certain sales by cottage food production operations prohibited. A cottage food production operation may not sell any of the foods described in this

section through the Internet, by mail order, or at wholesale. No health claims may be made on any of the advertising media of the finished products because they are conventional foods.

(f) A cottage food production operation is not exempt from meeting the application of Health and Safety Code, §431.045, Emergency Order; §431.0495, Recall Orders; and §431.247, Delegation of Powers or Duties. The department or local health authority may act to prevent an immediate and serious threat to human life or health.

(g) Prohibition for Cottage Food Production Operations. A cottage food production operation may not sell potentially hazardous foods to customers.

(h) Production of Cottage Food Products - Basic Food Safety Education or Training Requirements.

(1) An individual who operates a cottage food production operation must have successfully completed a basic food safety education or training program for food handlers accredited under Health and Safety Code, Chapter 438, Subchapter D.

(2) An individual may not process, prepare, package, or handle cottage food products unless the individual:

(A) meets the requirements of paragraph (1) of this subsection;

(B) is directly supervised by an individual described by paragraph (1) of this subsection; or

(C) is a member of the household in which the cottage food products are produced.

Source Note: The provisions of this §229.661 adopted to be effective July 22, 2012, 37 TexReg 5276; amended to be effective August 3, 2014, 39 TexReg 5759; amended to be effective February 18, 2018, 43 TexReg 578