

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 Legislative Session, the Texas Legislature enacted Senate Bill 81 allowing individuals to produce and sell baked goods, canned jam and jelly, and a dried herb or herb mix in an individual's home kitchen. Cottage food production operations are not licensed or inspected by the Department of State Health Services or local health departments.

A Cottage Food Production Operation is an individual, who operates 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 herb mix) only directly to consumers from the cottage food production location. 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.

This Act goes into effect September 1, 2011.

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 herb mix) only directly to consumers from the cottage food production location.

Is a cottage food production operation a food service establishment?

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

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).

What type of food can be prepared at a cottage food production operation?

A cottage food production operation can only produce non-potentially hazardous baked goods, canned jams or jellies, or dried herbs/herb mixes. 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

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
- 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
- Focaccia-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

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

A potentially hazardous food 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 moisture (water activity greater than 0.85)

Contains protein

Is neutral to slightly acidic (pH between 4.6 and 7.5)

Where can I sell my cottage food products?

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

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.

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

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

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.

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. New rules will be adopted that will provide specific labeling requirements for foods produced. Effective, September 1, 2011, the label information shall include:

The name and physical address of the cottage food production operation;

A statement: "food is not inspected by the department or a local health department."

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. However, you will need to contact the local health department for their requirements in reference to cottage food production operations.

Is there any limit 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.

Can I submit a complaint against a cottage food production operation?

Yes. You may submit a complaint to the Texas Department of State Health Services (DSHS) for cottage food production operations located under DSHS jurisdiction. If the cottage food production operation is located under the jurisdiction of a local health authority, you will need to register your complaint with the local health department.

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

No. The Department does not have authority to conduct inspections at a cottage food production operation. However, the Department may conduct inspections and investigate complaints at food service establishments that are not exempted by this law.

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

Yes. A Cottage Food Production Operation is only exempted from meeting the requirements for a retail food service establishment. You must contact the local governmental agency to determine if there are other laws or ordinances, such as zoning, that will affect your business.

Will the Department have to place rules concerning cottage food production operations in a separate chapter outside the Texas Food Establishment Rules?

Yes. The department is in the process of writing new rules to address the requirements for cottage food production operations. These rules will be in a new Chapter of the 25 Texas Administrative Codes and available in 2012.