



Texas Baker's Bill 2013
HB 970

TEXAS COTTAGE FOOD LAW
Presentation by Chauncy Williams
Director of Health Service Department



The Texas State Legislature Passed HB 970

Amended the Health and Safety Code to Allow
for Cottage Food Operation

This law became effective September 1, 2013

Before

The sale of foods from private home kitchens was not allowed.

After

The bill allows individuals to prepare and/or package certain non-potentially hazardous foods in private-home kitchens for sale to the public referred to as “cottage food operations”.

HB 970, 83rd Legislature, Regarding Cottage Food Production Operations

- A cottage food production operation is defined as an individual, operating out of the individual's home, who:
 - Produces certain **low-risk food** products that do not require refrigeration that are made and/or packaged for sale to consumers.
 - Has an annual gross income of **\$50,000** or less from the sale of the foods allowed; and
 - Sells the foods produced directly to consumers at the **individual's home, a farmer's market, a farm stand, or a municipal, county, or nonprofit fair, festival or event.**
 - The producer must deliver the products to the consumer at the point of sale or another location designated by the consumer.
 - **No sells allowed via Internet, mail order or at wholesale.**

Frequently Asked Questions

Part 1: Getting Started

Part 2: Product / Production Related Questions

Part 3: Cottage Food Labeling Requirements

Part 4: Selling Cottage Foods

Part 5: Sampling Cottage Foods

Part 6: Other Information

Cottage Foods: Frequently Asked Questions

- **Part 1:**

- **Getting Started**



Who can operate a Cottage Food Operation?

- The Cottage Law allows **residents** to make and package “non-potentially hazardous foods that do not require time/temperature control for safety” (*Refrigeration/ Heat*) without licensing and inspection from the Health Department.
- The baked goods, i.e. jams, jellies, popcorn, candy, cereal, granola, dry mixes, vinegar and dried herbs, must be created in the residents kitchen and stored in the residence.

Can I make and sell products from my motor home kitchen, or cottage or summer home under the Cottage Food Law?

No. The Cottage Food Law applies only to non-potentially hazardous foods made in the **kitchen of your primary residence.**

- Second homes, vacation homes or motor homes do not **qualify if they are not your primary residence.**

Can I make food products in a rented kitchen and sell them under the Cottage Food Law?

No. The Cottage Food Law applies only to non-potentially hazardous foods made in the kitchen of your primary residence. Even if the rented kitchen is a licensed facility, in this case you would need a Temporary Food Services Establishment Permit to sell your products.*

***A Temporary Food Service Establishment Permit** allows a persons to prepare and serve a wide variety of food products that are not allowed under the New Cottage Food Law at a fixed location for a limited period of time in conjunction with an event or celebration **while following established food safety guidelines.**

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.

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

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

- **A cottage food production operation is not considered a food service establishment.**

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

No. The cottage food law specifically prohibits a county or municipality from banning a cottage food operation on the basis of zoning.

- However, your neighbor still has the right to take action against you if your business becomes a nuisance.

How do I sell my Cottage Foods?

- At the producer's home
- A Farmers' Market
- A farm stand (at premises owned or controlled by person)
- A municipal, county, or non-profit fair, festival, or event
- A negotiated point of sale or designated location by the consumer
 - **No sales are allowed by internet, mail order, or wholesale**

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.

Do I have to claim my income and pay taxes on it?

Yes. The \$50,000 income cap is unrelated to taxes. The City of Ennis will not require you to present income tax records. Consult with a tax professional.

Do I have to take food handler's training if I operate under the new cottage food law?

Yes. There are many inexpensive courses that can be taken online. Your food handler's card is good for two years, and must be kept current as long as you are selling cottage foods.

Can I have employees?

Yes. If you wish. Anyone not directly supervised by you, *(not including your family)* must also obtain a food handler's card.

- *(can be taken online, usually costs about \$10 -\$20 and takes 2 hours or less)*
- **For a listing of approved providers contact:**
- Texas Department of State Health Services – Phone: (512) 834-6753 or
- website at - <https://www.dshs.state.tx.us/foodestablishments/>

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

No. The Health Department will not conduct inspections at a cottage food production operation.

- **The Department has the authority to act to prevent an immediate and serious threat to human life or health through emergency order, recall orders and delegation of powers or duties.**

The farmers market where I want to sell my products says I need to pay a booth fee, even though I am a Cottage Food business. Can the market require a booth fee?

Yes. Even though you meet the requirements of a Cottage Food Business, some farmers markets may require vendors to pay a booth fee or to meet other requirements.

The City of Ennis Farmers Market will not charge a booth fee.



Required Permits and Fees

All vendors must receive a “Market Vendor Permit” to participate in the Ennis Farmers Market. Some food vendors must meet additional Health Department requirements and submit an additional fee. *

Market Vendor Permit

– (No Charge - includes Cottage Food Producers)



***Temporary Food Establishment Permit - Only required for vendors selling food not listed as Approved for Cottage Food Operations**

– (\$50 - covers the entire market season)

Cottage Foods: Frequently Asked Questions

- **Part 2:**
 - **Product / Production Related Questions**



Why are some products not allowed to be made and sold under the Cottage Food Law?

The Cottage Food Law allows food entrepreneurs to operate small food businesses and produce a variety of food products that are low risk from a food safety standpoint, if prepared properly in an unlicensed and uninspected kitchen, while protecting public health to the greatest extent possible.

The allowable products list is based on the food safety risk level associated with certain types of food.

People who operate a licensed and inspected food processing business have to meet certain requirements for training, food safety and handling. Since Cottage Food businesses are unlicensed and uninspected, it is necessary to limit food products allowed under the law to those that are considered low risk, or non-potentially hazardous.

What are Cottage Foods?

- Cottage Foods are specific types of foods that you make in the unlicensed kitchen of your single family domestic residence.
- Not all food products can be sold as Cottage Foods. They must be **non-potentially hazardous foods** that do not require time/temperature controls for safety (*refrigeration*).

What are Potentially Hazardous Foods (PHF)?

Potentially Hazardous Food is a term used by food safety organizations to classify foods that require time-temperature control to keep them safe for human consumption.

A PHF is a food that:

- Contains protein
- Contains moisture - usually regarded as a water activity greater than 0.85
- Is neutral to slightly acidic - typically having a pH between 4.6 and 7.5

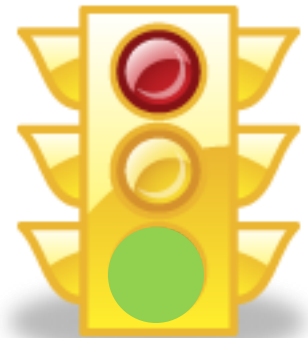
What are Potentially Hazardous Foods (PHF)?

The (FDA) Food Code identifies the following examples of PHF's:

- Meat (beef, pork, lamb)
- Poultry (chicken, turkey, duck)
- Fish
- Shellfish and crustaceans
- Eggs
- Milk and dairy products
- Heat-treated plant food (cooked rice, beans, or vegetables)
- Baked potatoes
- Certain synthetic ingredients
- Mushrooms
- Cut Tomatoes (when pH is 4.6 or above)
- Cut Leafy Greens
- Raw sprouts
- Tofu and soy-protein foods
- Untreated garlic and oil mixtures
- Cut melons, including watermelon, cantaloupe, and honeydew.

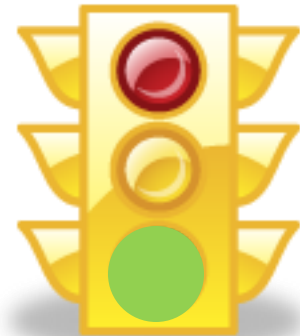
HB 970 – Approved Foods

- **Foods that fall under the provision of H.B. 970 include:**
 - **Non-potentially hazardous baked goods (cookies, cakes, breads, etc.)**
 - **Candy (hard and soft --pralines, fudge, etc.)**
 - **Coated and uncoated nuts**
 - **Unroasted nut butters (Almond, peanut, walnut, etc.)**
 - **Fruit butters**
 - **Canned jams or jelly**



HB 970 - Approved Foods, cont.

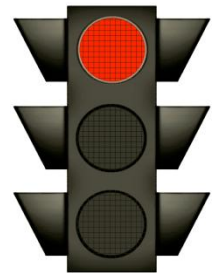
- **Foods that fall under the provision of H.B. 970:**
 - **Fruit pie**
 - **Dehydrated fruit or vegetables**
 - **Popcorn and popcorn snacks**
 - **Cereal including granola**
 - **Dry mix**
 - **Vinegar**
 - **Pickles**
 - **Mustard**
 - **Roasted coffee or dry tea**
 - **Dried herb or dried herb mix**



HB 970 - Unapproved Foods

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

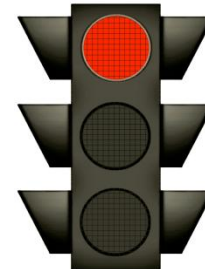
- **Fresh or dried meat or meat products including jerky**
- **Canned fruits, vegetables, vegetable butters, salsas etc.**
- **Kolaches with meat**
- **Fish or shellfish products**
- **Canned pickled products such as corn relish, pickles, sauerkraut**
- **Raw seed sprouts**



HB 970 - Unapproved Foods

Food that cannot be produced by a cottage food production operation, continued:

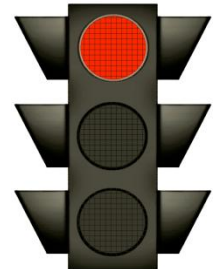
- **Bakery goods which require any type of refrigeration such as cream, custard or meringue pies and cakes or pastries with cream cheese icings or fillings**
- **Milk and dairy products including hard, soft and cottage cheeses and yogurt**
- **Cut fresh fruits and/or vegetables. Juices made from fresh fruits or vegetables**
- **Ice or ice products**
- **Barbeque sauces and ketchups**



HB 970 - Unapproved Foods

Food that cannot be produced by a cottage food production operation, continued:

- Focaccia-style breads with vegetables or cheeses
- Chocolate covered pretzels, marshmallows, graham crackers, Rice Krispy treats
- Dried pasta
- Sauerkraut, relishes, salsas, sorghum
- Roasted coffee beans or ground roasted coffee
- Lemonade, juices, hot chocolate or similar beverages



Are pet treats included under the Cottage Food Law?

No. Per Texas Dept. of State Health Service, animal food is regulated by the Office of the Texas State Chemists, Texas Feed and Fertilizer Control Service.



Can I roast coffee beans in my home kitchen and sell them under the Cottage Food Law?

Yes. You can roast and sell whole bean coffee or ground coffee, as long as you meet all of the provisions of the Cottage Food amendments (labeling, storage, etc.); however, since **beverages are not allowed under the Cottage Food Law**, you may not sell ready-made coffee.

- **In order to sell open beverages you would need to obtain a temporary health permit.**

Can I produce and sell cooked vegetable products, like salsas, tomato sauces, spaghetti sauces, or foccacia bread with roasted vegetables?

No. Food products made with cooked vegetable products do not qualify under the Cottage Food Law. Manufacturers of cooked vegetable products like salsas and tomato sauces, must meet significant federal and state training and licensing requirements. Cooked vegetables, whether fresh or canned, usually are made from a combination of low acid and acidified foods, and are considered a Potentially Hazardous Foods.

- Under the Texas Food Code, cooked vegetables must be held either hot (above 135°F) or cold (below 41°F). They can't be stored at room temperature, which makes them ineligible for production in an unlicensed kitchen under the Cottage Food Law.

Can I make and sell apple butter, pumpkin butter or other fruit butters?

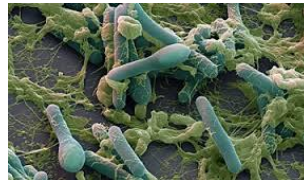
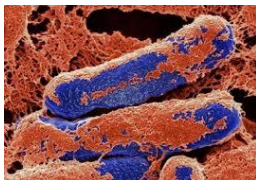


No. Fruit butters have significantly less sugar than a traditional jam or jelly. It's the combination of acid, sugar, pectin and heat that assures the safety of jams/jellies.



In fruit butters, the combination of sugar and pectin is not high enough to assure that the butter is safe.

- Additionally, with lower sugar and pectin levels, spoilage organisms are more likely to survive the cooking process, which would allow for a perfect environment to develop and allow for the growth of *Clostridium Botulinum*.



Can homegrown produce be canned and used for making baked goods, like sweet breads, at a later date?

No, but you can use commercially canned products for baked goods, like canned pumpkin, cherry pie filling, etc.



- Most home-canned products are not approved for production under the Cottage Food Law, with **the exception of jams and jellies.**



Does my chocolate fountain business qualify as a Cottage Food business? I deliver and set up the fountain, and provide chocolate dipping sauce and items to dip (cut up fruit, pretzels, etc.) that I have prepared in my home kitchen.

No. This type of business is considered a catering service or food service business and is not eligible to operate under the Cottage Food Law.

- **Cottage Food products must be prepackaged and properly labeled prior to sale.**



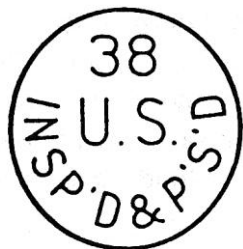
Can raw milk be sold at a farmers' market?

No. Raw milk cannot be sold at a farmers market.

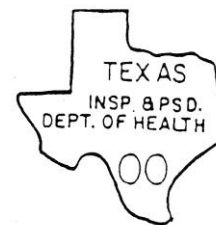


May I sell my own cattle or poultry that I have slaughtered at a licensed and inspected facility?

Yes. Meat or poultry products must come from animals processed in compliance with the regulations for livestock processing (Texas Health & Safety Code Chapter 433) and **a temporary food establishment permit is required.**



Red Meat



Texas Equivalent



Poultry

May I sell fish and other aquatic species at a farmers' market?

Yes. Commercial fishermen must possess a license from the Texas Parks Wildlife Department or the fish and other cultured species must be produced and raised in a facility that has an aquaculture license from Texas Department Agriculture and **a temporary food establishment permit is required.**



Can I sell yard eggs at a farmers market?

Yes. To sell farm eggs at a farmers market the following is required:

- You must obtain a Temporary Food Establishment permit; and
- The eggs must be maintained at an ambient temperature of 45°F or below; and
- The eggs must be properly labeled as “**ungraded**” with safe handling instructions:
 - **SAFE HANDLING INSTRUCTIONS:** To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly.

May I sell honey at a farmers' market?

- **Yes.** Honey for sale must be processed and properly labeled by an entity that has a Texas Department of State Health Service food manufacturer's license.

Contact:

Texas Department of State Health Services
P. O. Box 149347
Austin, Texas 78714-9347

TELEPHONE: (512) 834-6626

FAX: (512) 834-6618

EMAIL: foodslicensinggroup@dshs.state.tx.us

Cottage Foods: Frequently Asked Questions

- **Part 3:**
 - **Cottage Food Labeling Requirements**



Do I have to include my home address on my product labeling or is a post office box sufficient?

- **You must use the physical address of your home kitchen on your product label, not a post office box.**
 - The purpose of including an address on product labels is to be able to locate the business in case of a recall or traceback associated with a foodborne illness complaint or outbreak.

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

Yes. Foods sold by a cottage food production operation must be **packaged and labeled**. The food must be packaged in a manner that prevents product contamination, except for foods that are too large and or bulky for conventional packaging.

- The labeling information for foods that are not packaged must be provided to the consumer on an invoice or receipt.

The label must include the following information:

- The name and 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
- 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.

Can I make a blanket statement that my product MAY contain all of the allergens listed in the labeling requirements?

No. You must actually list which allergens are present.



Example Cottage Food Label

Name and physical address of the cottage food production operation

Best Home Bakery in Texas
123 Random Street
Anytown, TX 78777

Common or usual name of the product

Chocolate Chip Cookies

This could be handwritten if you are buying labels in large quantities for various products.

List of major allergens.

Contains the following allergens:

Listing all major allergens and then circling the ingredients present is one option if you have pre-printed labels.

Eggs Nuts Soy Peanuts Milk Wheat

This food is made in a home kitchen and is not inspected by the Department of State Health Services or a local health department.

Statement of non-inspection. This is the required language.

Cottage Foods: Frequently Asked Questions

- **Part 4:**
 - **Selling Cottage Foods**



May a Cottage Food Operator sell products anywhere else, such as at a state fair or federal event?

No. Privately organized special events and other locations are not allowed under the statute.

- The law does not allow for sales at privately sponsored public events such as craft fairs or flea markets.

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

No. Food produced at a cottage food production operation cannot be sold through the Internet, by mail order or at wholesale.



Why can't I sell my Cottage Foods to my favorite restaurant or grocery store?

No. The Cottage Food Law does not allow this. Because your home kitchen is unlicensed and not inspected, the safe food handling practices are not evaluated by any food safety official.

- Since the safe food handling practices are not being evaluated, the food is not considered an approved source for use in a restaurant or grocery store.



Can I advertise my Cottage Food products on my website?

Yes. You can use your website to advertise your products or market your business, but cannot take orders or sell products via your website.

Can I take orders for my Cottage Food products over the phone?

Yes. You can take orders for your Cottage Food products over the phone; however, the actual money transactions and delivery of your products must be made face to face, in a person-to-person transaction.

Can I advertise my Cottage Food business in the newspaper or at trade shows?

Yes. Advertising is allowed; however, the actual sale must be made person-to-person between the producer and the consumer.

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

Yes. A Cottage Food Production Operation may deliver products to the consumer at the point of sale or another location designated by the consumer.



Cottage Foods: Frequently Asked Questions

- **Part 5:**
 - **Sampling and Demonstrations**



Sampling

To provide samples of food at a farm or farmers' market, you must:

- Distribute the samples in a sanitary manner
- Have potable water available
- Wash any produce intended for sampling with potable water to remove any visible dirt or contamination
- When preparing the samples, either wear clean, disposable plastic gloves or observe proper hand washing techniques immediately before preparation;
- Use smooth, nonabsorbent, and easily cleaned (i.e. metal or plastic) utensils and cutting surfaces for cutting samples, or use disposable utensils and cutting surfaces;
- Samples of cut produce and other potentially hazardous foods shall be maintained at a temperature of 41°F or below and discarded within two hours after cutting or preparation.
- A permit is not required to provide samples at a farmers' market.

Can I serve free samples of my Cottage Food Products?

Yes. As long as your product meets the requirements of the Cottage Food Law and is a non-potentially hazardous food, sampling is allowed.

- Samples must be pre-packaged in your home kitchen (i.e., if you sample bread, you can't cut it at the market, but can cut it in your home kitchen and individually wrap or package the bread samples into sample cups with lids).
- Although you do not need an individual label for each sample, **you must have properly labeled packages of your product on display with the samples** so your customer can review the ingredient list.
- Your product cannot be cooked or prepared in a way that makes it a potentially hazardous food/temperature control for safety food (i.e., you can't add a dried dip mix to sour cream or serve anything that can't be kept safely at room temperature - **this examples would require a Temporary Food Permit**).

Cooking Demonstrations at Farmers Markets

- For a Farmers Market to hold a cooking demonstration, it must:
- Comply with the requirements for a temporary food establishment permit. **However; cooking demonstration are exempted from the usual fees for a Temporary Food Establishment permit,** if the cooking demonstration is conducted by a Farmers Market for a “bona fide educational purpose,” intent to instruct and educate.
- If the market wishes to distribute samples as part of the cooking demonstration:
- You can provide samples only **(bite size portions),** not full servings **(i.e. you can't serve a meal and call it a cooking demonstration);**
- The **samples must be disposed of within 2 hours of the beginning of the demonstration.**

Cottage Foods: Frequently Asked Questions

- **Part 6:**
 - **Other information**



Does my food have to have special packaging?

- Your food must be packaged in a way that prevents contamination.
- Large or bulky items like wedding cakes, or cupcake bouquets, are not required to be packaged.

What are pickles?

- Pickles are made from cucumbers that have been preserved in vinegar, brine, or a similar solution.
 - **Only pickled cucumbers are allowed under the Cottage Food Law.**
 - All other pickled vegetables are prohibited. Federal requirements have been established for production of **acidified** foods such as pickles.
 - If foods are sold across state lines, then the federal requirements would definitely apply.
 - Under the FDA's interpretation of "interstate commerce," the federal requirements might also apply to cottage food producers who purchase supplies from out-of-state.
 - As a precautionary measure, you may wish to take the federal course if you intend to sell pickles under the cottage foods law.

Summary

What is required to sell under the cottage foods law?

- Sell only the specified, non-potentially hazardous foods
- Sell directly to consumers
- Foods must be prepared in your home kitchen (i.e. not in a separate building or facility), using appliances meant for residential use
- Sell no more than \$50,000 of such foods annually
- Sell at an allowed location
- Have a current food handler's card
- Package the food so as to prevent contamination, unless the item is too large or bulky to fit conventional packaging, such as a wedding cake
- Label the food



Questions

City of Ennis

Department of Health Services

500 Lake Bardwell Road

Ennis, TX 75119

Ph # (972) 875-1234

Fx # (972) 875-6107

Email: healthdept@ennistx.gov