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Cottage Food Law Statutes:

Texas



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Cottage Food Laws: Texas

Tex. Health & Safety Code § 437.001
Tex. Health & Safety Code § 437.0193 through .0196
25 Tex. Admin. Code § 229.661

Tex. Health & Safety Code § 437.001. Definitions

In this chapter:

(1) “Acidified canned goods” means food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container.

...

(2-a) “Baked good” includes cookies, cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking the item in an oven.

(2-b) “Cottage food production operation” means an individual, operating out of the individual's home, who:

(A) produces at the individual's home, subject to Section 437.0196:

(i) a baked good that is not a time and temperature control for safety food, as defined by Section 437.0196;

(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) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;

(xiv) mustard;

(xv) roasted coffee or dry tea;

(xvi) a dried herb or dried herb mix;

(xvii) plant-based acidified canned goods;

(xviii) fermented vegetable products, including products that are refrigerated to preserve quality;

(xix) frozen raw and uncut fruit or vegetables; or



- (xx) any other food that is not a time and temperature control for safety food, as defined by Section 437.0196;
- (B) has an annual gross income of \$50,000 or less from the sale of food described by Paragraph (A);
- (C) sells the foods produced under Paragraph (A) only directly to consumers; and
- (D) delivers products to the consumer at the point of sale or another location designated by the consumer.

...

(3-b) “Farm stand” means 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 by Subdivision (2-b) (A).

(3-c) “Fermented vegetable product” means a low-acid vegetable food product subjected to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the food to 4.6 or less.

(4) “Food,” “food service establishment,” “retail food store,” “mobile food unit,” “roadside food vendor,” and “temporary food service establishment” have the meanings assigned to those terms by rules adopted under this chapter.

(5) “Home” means a primary residence that contains a kitchen and appliances designed for common residential usage.

(6) “Produce” means fresh fruits or vegetables.

(7) “Small honey production operation” means a beekeeper that:

(A) produces less than 2,500 pounds of honey each year;

(B) sells or distributes the honey or honeycomb that the beekeeper produces either personally or with the help of the beekeeper's immediate family members;

(C) only sells or distributes honey or honeycomb:

(i) that is produced from a hive that is:

(a) located in the state; and

(b) owned and managed by the beekeeper;

(ii) that is pure honey as defined by Section 131.001, Agriculture Code, and that is raw and not blended with any other product or otherwise adulterated; and

(iii) directly to consumers at the beekeeper's home, a farmer's market, a farm stand, or a municipal, county, or nonprofit fair, festival, or event; and

(D) delivers the honey or honeycomb that the beekeeper produces to the consumer at the point of sale or another location designated by the consumer.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, § 1, eff. Sept. 1, 1993; Acts 2011, 82nd Leg., ch. 1317 (S.B. 81), § 5, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 653 (H.B. 970), § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 1275 (H.B. 1382), § 1, eff. Sept. 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1119, 3.1639(79), eff. April 2, 2015; Acts 2015, 84th Leg., ch. 265 (S.B. 1766), § 1, eff. Sept. 1, 2015; Acts 2019, 86th Leg., ch. 590 (S.B. 572), § 1, eff. Sept. 1, 2019.



Tex. Health & Safety Code § 437.0193. Packaging and Labeling Requirements for Cottage Food Production Operations

- (a) Food described by Section 437.001(2-b) (A) sold by a cottage food production operation must be packaged in a manner that prevents product contamination, except that a food item is not required to be packaged if it is too large or bulky for conventional packaging.
- (b) The executive commissioner shall adopt rules requiring a cottage food production operation to label all of the foods described in Section 437.001(2-b) (A) that the operation sells to consumers. The label must include:
 - (1) the name and address of the cottage food production operation; and
 - (2) a statement that the food is not inspected by the department or a local health department.
- (c) For foods not required to be packaged under Subsection (a), the information required to be included on the label under Subsection (b) must be provided to the consumer on an invoice or receipt.
- (d) A cottage food production operation that sells frozen raw and uncut fruit or vegetables must include on the label of the frozen fruit or vegetables or on an invoice or receipt provided with the frozen fruit or vegetables when sold the following statement in at least 12-point font: “SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food frozen until preparing for consumption.”

Credits

Added by Acts 2011, 82nd Leg., ch. 1317 (S.B. 81), § 6, eff. Sept. 1, 2011. Amended by Acts 2013, 83rd Leg., ch. 653 (H.B. 970), § 5, eff. Sept. 1, 2013; Acts 2019, 86th Leg., ch. 590 (S.B. 572), § 2, eff. Sept. 1, 2019.

Tex. Health & Safety Code § 437.0194. Certain Sales by Cottage Food Production Operations Prohibited or Restricted

- (a) A cottage food production operation may not sell any of the foods described in Section 437.001(2-b) (A) at wholesale.
- (b) A cottage food production operation may sell a food described by Section 437.001(2-b) (A) in this state through the Internet or by mail order only if:
 - (1) the consumer purchases the food through the Internet or by mail order from the operation and the operator personally delivers the food to the consumer; and
 - (2) subject to Subsection (c), before the operator accepts payment for the food, the operator provides all labeling information required by Section 437.0193(d) and department rules to the consumer by:
 - (3) posting a legible statement on the operation's Internet website;
 - (4) publishing the information in a catalog; or
 - (5) otherwise communicating the information to the consumer.
- (c) The operator of a cottage food production operation that sells a food described by Section 437.001(2-b) (A) in this state in the manner described by Subsection (b):



- (1) is not required to include the address of the operation in the labeling information required under Subsection (b)(2) before the operator accepts payment for the food; and
- (2) shall provide the address of the operation on the label of the food in the manner required by Section 437.0193(b) after the operator accepts payment for the food.

Credits

Added by Acts 2011, 82nd Leg., ch. 1317 (S.B. 81), § 6, eff. Sept. 1, 2011. Amended by Acts 2013, 83rd Leg., ch. 653 (H.B. 970), § 5, eff. Sept. 1, 2013; Acts 2019, 86th Leg., ch. 590 (S.B. 572), § 3, eff. Sept. 1, 2019.

Tex. Health & Safety Code § 437.0195. Production of Cottage Food Products

- (a) 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 Subchapter D, Chapter 438. 1
- (b) An individual may not process, prepare, package, or handle cottage food products unless the individual:
 - (1) meets the requirements of Subsection (a);
 - (2) is directly supervised by an individual described by Subsection (a); or
 - (3) is a member of the household in which the cottage food products are produced.

Credits

Added by Acts 2013, 83rd Leg., ch. 653 (H.B. 970), § 6, eff. Sept. 1, 2013.

Tex. Health & Safety Code § 437.01951. Requirements for Sale of Certain Cottage Foods

- (a) A cottage food production operation that sells to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods shall:
 - (1) use a recipe that:
 - (A) is from a source approved by the department under Subsection (d);
 - (B) has been tested by an appropriately certified laboratory that confirmed the finished fruit or vegetable, product, or good has an equilibrium pH value of 4.6 or less; or
 - (C) is approved by a qualified process authority; or
 - (2) if the operation does not use a recipe described by Subdivision (1), test each batch of the recipe with a calibrated pH meter to confirm the finished fruit or vegetable, product, or good has an equilibrium pH value of 4.6 or less.
- (b) A cottage food production operation may not sell to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods before the operator complies with Subsection (a).
- (c) For each batch of pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods, a cottage food production operation must:



- (1) label the batch with a unique number; and
- (2) for a period of at least 12 months, keep a record that includes:
 - (A) the batch number;
 - (B) the recipe used by the producer;
 - (C) the source of the recipe or testing results, as applicable; and
 - (D) the date the batch was prepared.
- (d) The department shall:
 - (1) approve sources for recipes that a cottage food production operation may use to produce pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods; and
 - (2) semiannually post on the department's Internet website a list of the approved sources for recipes, appropriately certified laboratories, and qualified process authorities.
- (e) The department shall develop and implement a process by which an individual may request that the department approve an additional source for recipes under Subsection (d). The process must allow an individual to submit with the individual's request documentation supporting the request.
- (f) A source for recipes approved by the department under Subsection (d) must be scientifically validated and may be from a government entity, academic institution, state extension service, or other qualified source with:
 - (1) expert knowledge of processing requirements for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods; and
 - (2) adequate facilities for scientifically validating recipes for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods.
- (g) This section does not apply to pickled cucumbers.
- (h) For purposes of this section, "process authority" means a person who has expert knowledge acquired through appropriate training and experience in the pickling, fermenting, or acidification and processing of pickled, fermented, or acidified foods.

Credits

Added by Acts 2019, 86th Leg., ch. 590 (S.B. 572), § 4, eff. Sept. 1, 2019.

Tex. Health & Safety Code § 437.01952. Requirements for Sale of Frozen Fruit or Vegetables

A cottage food production operation that sells to consumers frozen raw and uncut fruit or vegetables shall:

- (1) store and deliver the frozen fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit; and
- (2) label the fruit or vegetables in accordance with Section 437.0193(d).

Credits

Added by Acts 2019, 86th Leg., ch. 590 (S.B. 572), § 4, eff. Sept. 1, 2019.



Tex. Health & Safety Code § 437.0196. Time and Temperature Control for Safety Food; Prohibition for Cottage Food Production Operations; Exception

- (a) In this section, “time and temperature control for safety food” means 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 time and temperature control for safety 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 time and temperature control for safety food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.
- (b) Except as otherwise provided by this chapter, a cottage food production operation may not sell to consumers time and temperature control for safety foods.

Credits

Added by Acts 2013, 83rd Leg., ch. 653 (H.B. 970), § 6, eff. Sept. 1, 2013. Amended by Acts 2019, 86th Leg., ch. 590 (S.B. 572), § 5, eff. Sept. 1, 2019.

25 Tex. Admin. Code § 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 and production of foods 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) Acidified canned goods--Food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container.
 - (2) 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.
 - (3) Cottage food production operation (operator)--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 time and temperature control for safety food (TCS food), as defined in paragraph (13) 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) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;
- (xiv) mustard;
- (xv) roasted coffee or dry tea;
- (xvi) a dried herb or dried-herb mix;
- (xvii) plant-based acidified canned goods;
- (xviii) fermented vegetable products, including products that are refrigerated to preserve quality;
- (xix) frozen raw and uncut fruit or vegetables; or
- (xx) any other food that is not a TCS food, as defined in paragraph (13) of this subsection.

(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; and

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

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

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

(6) 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 (3) of this subsection.

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

(8) Fermented vegetable product--A low-acid vegetable food product subjected to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the food to 4.6 or less.

(9) 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 TCS 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 TCS 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.
- (10) Herbs**--The leafy green parts of a plant (either fresh or dried) used for culinary purposes and not for medicinal uses.
- (11) Home**--A primary residence that contains a kitchen and appliances designed for common residential usage.
- (12) Process authority**--A person who has expert knowledge acquired through appropriate training and experience in the pickling, fermenting, or acidification and processing of pickled, fermented, or acidified foods.
- (13) Time and temperature control for safety food (TCS food)**--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 TCS 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 TCS 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 an operator.
- (d) Packaging and labeling requirements for cottage food production operations. All foods prepared by an operator 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) disclosure of any major food allergens, such as eggs, nuts, soy, peanuts, milk, wheat, fish, or shellfish used in the product; 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.
 - (4) A label for frozen raw and uncut fruit or vegetables must include the following statement in at least 12-point font when sold: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food frozen until preparing for consumption" on the label or on an invoice or receipt provided with the frozen fruit or vegetables.
 - (5) Advertising media of cottage food products for health, disease, or other claims must be consistent with those claims allowed by the Code of Federal Regulations Title 21, Part 101, Subparts D and E.
- (e) Certain sales by cottage food production operations prohibited or restricted.
 - (1) An operator may not sell any of the foods described in this section at wholesale.
 - (2) An operator may sell a food described in this section in this state through the internet or by mail-order only if:



- (A) the consumer purchases the food through the internet or by mail-order from the operator and the operator personally delivers the food to the consumer; and
- (B) subject to paragraph (3) of this subsection, before the operator accepts payment for the food, the operator provides all labeling information required by subsection (d) of this section to the consumer by:
 - (i) posting a legible statement on the cottage food production operation's internet website;
 - (ii) publishing the information in a catalog; or
 - (iii) otherwise communicating the information to the consumer.
- (3) The operator that sells a food described by subsection (b)(3)(A) of this section in this state in the manner described by paragraph (2) of this subsection:
 - (A) is not required to include the address of the cottage food production operation in the labeling information required under subsection (d)(1)(A) of this section before the operator accepts payment for the food; and
 - (B) shall provide the address of the cottage food production operation on the label of the food in the manner required by subsection (d)(1)(A) of this section after the operator accepts payment for the food.
- (f) Requirements for sale of certain cottage food products.
 - (1) An operator that sells to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods shall:
 - (A) use a recipe that:
 - (i) is from a source approved by the department under paragraph (4) of this subsection;
 - (ii) has been tested by an appropriately certified laboratory that confirmed the finished fruit or vegetable product, or plant-based acidified canned good has an equilibrium pH value of 4.6 or less; or
 - (iii) is approved by a qualified process authority; or
 - (B) if the operation does not use a recipe described by subparagraph (A) of this paragraph, test each batch of the recipe with a calibrated pH meter to confirm the finished fruit or vegetable, product, or plant-based acidified canned good has an equilibrium pH value of 4.6 or less.
 - (2) An operator may not sell to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods before the operator complies with paragraph (1) of this subsection.
 - (3) For each batch of pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods, an operator must:
 - (A) label the batch with a unique number; and
 - (B) for a period of at least 12 months, keep a record that includes:
 - (i) the batch number;
 - (ii) the recipe used by the producer;



- (iii) the source of the recipe or testing results as applicable; and
 - (iv) the date the batch was prepared.
- (4) The department shall:
 - (A) approve sources for recipes that an operator may use to produce pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods; and
 - (B) semiannually post on the department's internet website a list of the approved sources for recipes, appropriately certified laboratories, and qualified process authorities.
- (5) This subsection does not apply to a pickled cucumber preserved in vinegar, brine, or similar solution.
- (g) Requirements for the sale of frozen raw and uncut fruit or vegetables. An operator that sells to consumers frozen raw and uncut fruit or vegetables shall:
 - (1) store and deliver the frozen raw and uncut fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit; and
 - (2) label the frozen raw and uncut fruit or vegetables in accordance with subsection (d)(4) of this section.
- (h) 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.
- (i) Prohibition for Cottage Food Production Operations. A cottage food production operation may not sell TCS foods to customers.
- (j) 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.

Credits

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; amended to be effective January 1, 2020, 44 TexReg 7985.



