



Farm and Ranch Freedom Alliance  
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David Jefferson  
Environmental Consumer Health Manager  
Environmental Health – Tarrant County Public Health  
1101 S. Main Street, Suite 2300  
Fort Worth, Texas 76104

Dear Mr. Jefferson:

Our nonprofits work with cottage food producers across the state, and we were deeply involved in the passage of the bills in 2011, 2013, and 2019 that established the Texas Cottage Food Law. We are writing today because we have become aware of actions by Tarrant County Public Health that violate state law and the rights of cottage food producers.

Isabel Shrouder is a home baker in Tarrant County who operates a cottage food business under the name of "Do Goodies". Each month, Ms. Shrouder chooses a person, organization, or family to donate a percentage of her proceeds to. In June of this year, Ms. Shrouder was hoping to participate in several local markets.

Raj Chauhan, one of Tarrant County's Environmental Consumer Health Supervisors, informed her that she was required to submit her recipes to the Tarrant County health department. After reviewing the recipes, he then informed her, "Per Cottage Food Code, cheesecake, certain creams and pumpkin related products are not approved for cottage food sales. You would need to discuss this with the State DSHS department and provide evidence from them that states that the particular items you intend to provide is [sic] approved under this law."

Furthermore, after informing Ms. Shrouder that foods made with cream cheese are not allowed under the cottage food law, he required her to purchase two Temporary Food Establishment (TFE) Permits for two separate events at a total cost of \$70.00, knowing that she was still preparing these items in her home kitchen. She was then allowed to prepare her foods at home, including cream cheese frosting, and sell them at the events.

These actions directly conflict with the state laws and regulations. A cottage food operation is not required to submit recipes to local health departments, obtain approval from DSHS for specific items, or apply or pay for permits from the local health department. Moreover, it is illegal for a health department to issue a permit to an individual to prepare foods in their home.

**This has been established law for over a decade, since the passage of the first Texas Cottage Food Law in 2011.**

## **I. Allowed cottage foods**

The question of whether or not a food qualifies as a non-time or temperature control for safety (TCS) food depends on the final food product, rather than an isolated test on the ingredients. As the statute clearly states, a TCS food “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.”<sup>1</sup> In other words, a food may contain ingredients such as pumpkin or cream and still be non-TCS, and thus allowed under the cottage food law.

It is well known that sugar and salt are ancient methods of inhibiting microbial growth by drawing available water from within the food. “The result is a reduction of the so-called product water activity ( $A_w$ ), a measure of unbound, free water molecules in the food that is necessary for microbial survival and growth. The  $A_w$  necessary to inhibit growth of most bacteria is roughly 0.91.”<sup>2</sup>

The FDA Model Food Code contains a chart that sets out the pH and  $A_w$  necessary for a food to be considered non-TCS. An  $A_w$  of less than 0.88 means the food is non-TCS irrespective of its pH, while an  $A_w$  of between 0.88 and 0.90 means the food is non-TCS so long as its pH is 5.0 or lower.<sup>3</sup>

Ms. Shrouder provided your department with documentation that one of her products had an  $A_w$  of 0.83, and the other had an  $A_w$  of 0.90 and a pH of 4.69. Thus, under the FDA’s Model Food Code, which has been adopted by the Texas Department of State Health Services, both items are non-TCS and allowed under the Texas Cottage Food Law. She has a legal right to prepare these foods and sell them directly to consumers, in accordance with the Cottage Food Law, without any further involvement of the state or local health departments.

## **II. Approval of recipes**

The Texas Cottage Food Law lists the types of foods that can be made and sold in an individual’s home kitchen.<sup>4</sup> **Absent from the statute is any provision for DSHS or local health departments to require the submission and approval of recipes.** There is one very limited exception: DSHS is directed to post approved sources for recipes for pickled, acidified canned, or fermented foods. The absence of any requirement to submit recipes in general, combined with the specific requirement to use recipes from approved sources for pickled foods, makes it

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<sup>1</sup> See Texas Health & Safety Code § 437.0196(b).

<sup>2</sup> <https://www.scientificamerican.com/article/how-do-salt-and-sugar-pre/>

<sup>3</sup> See FDA 2017 Model Food Code, Annex 3, Table B. Available at <https://www.fda.gov/media/110822/download> at p.345.

<sup>4</sup> See Texas Health & Safety Code § 437.001(2-b).

abundantly clear that, for most foods, neither DSHS nor the local health departments have any involvement in reviewing a cottage food operator's recipes. Indeed, the statute specifically provides that as long as the cottage food operator is acting within the scope of the law, neither DSHS nor the local health department can require inspections or otherwise regulate their activities (absent an immediate and serious threat to human life or health).<sup>5</sup>

As such, Tarrant County's demand to pre-emptively review Ms. Shrouder's recipes, or require her to have the recipes approved by DSHS, is contrary to the state statute.

### **III. Requiring a food establishment permit of a cottage food operator (CFO)**

Texas Health & Safety Code § 437.0191 states: "EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) A cottage food production operation is not a food service establishment for purposes of this chapter." Thus, **by definition**, a CFO **cannot** be issued a food establishment permit, temporary or not.

As discussed above, Ms. Shrouder is not required to submit her recipes for approval, but even so provided proof in the form of lab test results that her frosting had a water activity low enough to inhibit bacterial growth and qualify as a non-TCS food allowed under the cottage food law. Yet your department stated that if she wanted to sell the cream cheese frosting, she was required to buy a food establishment permit.

The 2017 FDA Food Code, incorporated by reference into the 2021 Texas Food Establishment Rules, states: "**Private Homes and Living or Sleeping Quarters, Use Prohibition.** A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting FOOD ESTABLISHMENT operations."<sup>6</sup>

Your department required Ms. Shrouder to purchase a food establishment permit to prepare her cream cheese frosting at home and sell it at the markets; a permit which she, preparing her food at her home, was not eligible to purchase in the first place. In the end, she prepared exactly the same food at home and sold it at the festivals that she was entitled to do under the cottage food law; the only difference was that she had to pay a fee to do it. Disturbingly, it appears that the primary motivation in Tarrant County's actions was not genuine concern for public health, but rather to generate revenue.

Your department should immediately refund to her the two \$35 permit fees she was illegally assessed (\$70 total).

Furthermore, your department should immediately discontinue the practice of requiring cottage food producers to submit recipes for review, as the Texas Legislature has not granted this authority to local health departments or DSHS.

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<sup>5</sup> Texas Health & Safety Code §§ 437.0191 & 437.0192.

<sup>6</sup> FDA 2017 Food Code 6-202.111.

We are very concerned that Tarrant County residents are being deprived of their legal rights under state law. Given this breach of state law and the confusion it has caused for cottage food operations in Tarrant County, the County needs to post written clarification that cottage food operations are not required to submit their recipes nor apply for food establishment permits.

Sincerely,

Judith McGeary, Esq.  
Executive Director  
Farm and Ranch Freedom Alliance

Kelley Masters  
President  
Homemade Texas

Attachments: Emails between Isabel Shrouder and Raj Chauhan  
Do Goodies Temporary Food Establishment Application  
Do Goodies Payment Receipts (2)  
Recipes with Test Results  
Do Goodies Temporary Food Establishment Inspection Form

Cc: Isabel Shrouder  
Tarrant County Judge B. Glen Whitley  
Tarrant County Commissioner Roy Charles Brooks  
Tarrant County Commissioner Devan Allen  
Tarrant County Commissioner Gary Fickes  
Tarrant County Commissioner J.D. Johnson  
Senator Lois Kolkhorst  
Senator Kelly Hancock  
Senator Beverly Powell  
Senator Jane Nelson  
Representative Stephanie Klick  
Representative Ramon Romero, Jr.  
Representative Jeff Cason  
Representative Matt Krause  
Representative Tony Tinderholt  
Representative Nicole Collier  
Representative David Cook  
Representative Craig Goldman  
Representative Giovanni Capriglione  
Representative Charlie Geren  
Representative Chris Turner