



Farm and Ranch Freedom Alliance  
P.O. Box 809  
Cameron, TX 76520



Homemade Texas  
1841 S. Lakeline Blvd.  
Ste. 101 Box 192  
Cedar Park, TX 78613

September 13, 2022

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

## Homemade Texas

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**From:** Isabel Shrouder <dogoodiesgiveback@gmail.com>  
**Sent:** Monday, August 22, 2022 1:05 PM  
**To:** Homemade Texas  
**Subject:** Fwd: FW: Do Goodies cottage recipes requested  
**Attachments:** image001.jpg

With Gratitude,  
Isabel Shrouder  
Do Goodies

----- Forwarded message -----

From: **Raj K. Chauhan** <[RKChauhan@tarrantcounty.com](mailto:RKChauhan@tarrantcounty.com)>  
Date: Tue, Jun 28, 2022, 3:41 PM  
Subject: RE: FW: Do Goodies cottage recipes requested  
To: Isabel Shrouder <[dogoodiesgiveback@gmail.com](mailto:dogoodiesgiveback@gmail.com)>  
Cc: Elena M. Ortega <[EMOrtega@tarrantcounty.com](mailto:EMOrtega@tarrantcounty.com)>

Good Afternoon,

I can't advise you on the lab result or testing unfortunately. You would need to discuss this with the State and provide evidence of approval from them. I provided a link for them in my last email. Apologies, I thought you had requested a refund. In regards to the report, my inspector left an inspection report with a gentlemen on the day of the event.

Thank you,

Raj Chauhan, RS, MBA-HM

Environmental Consumer Health Supervisor

Environmental Health - Tarrant County Public Health

1101 S. Main Street Suite 2300

Fort Worth, TX 76104

P: 817-321-4970 F: 817-321-4961

[RKChauhan@TarrantCounty.com](mailto:RKChauhan@TarrantCounty.com)



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**From:** Isabel Shrouder <[dogoodiesgiveback@gmail.com](mailto:dogoodiesgiveback@gmail.com)>  
**Sent:** Tuesday, June 28, 2022 3:27 PM  
**To:** Raj K. Chauhan <[RKChauhan@tarrantcounty.com](mailto:RKChauhan@tarrantcounty.com)>  
**Cc:** Elena M. Ortega <[EMOrtega@tarrantcounty.com](mailto:EMOrtega@tarrantcounty.com)>  
**Subject:** Re: FW: Do Goodies cottage recipes requested

**EXTERNAL EMAIL ALERT! Think Before You Click!**

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Hi thank you for your response,

From your response I'm understanding that you did not read my email and skimmed the recipes I sent over.

I'm not making cheesecake nor am I making anything pumpkin. I am making frostings with the lab testing results and pH levels, date tested attached.

What report are you referring to? I'm not asking for a refund either I was simply sending in recipes as requested out of curiosity of the stability of my lab tested recipes.

Thank you for your time

Isabel Shrouder

On Tue, Jun 28, 2022, 3:11 PM Raj K. Chauhan <[RKChauhan@tarrantcounty.com](mailto:RKChauhan@tarrantcounty.com)> wrote:

Good Afternoon,

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 approved under this law.

How to do this: For food allowed, you can [request a determination from DSHS](#). They may advise you to have your food tested in a lab for pH and aW. [DSHS has published a list of approved labs here](#).

#### **Q4. What kinds of foods are NOT allowed as cottage foods?**

No meat products and no foods that require refrigeration. Some specific examples of foods not allowed are: **cheesecake**, kombucha, kefir, any beverage, hot meals, pizza, casseroles, tacos, beef jerky, tamales, flan, **pumpkin** pie, cream pies, meringue pies, ice cream, or popsicles.

Unfortunately, we cannot issue a refund as an inspection service from a health inspector was performed and a report given to you on the day of the scheduled event.

Please let me know if you have additional questions.

Thank you,

Raj Chauhan, RS, MBA-HM

Environmental Consumer Health Supervisor

Environmental Health - Tarrant County Public Health

1101 S. Main Street Suite 2300

Fort Worth, TX 76104

P: 817-321-4970 F: 817-321-4961

[RKChauhan@TarrantCounty.com](mailto:RKChauhan@TarrantCounty.com)

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use of the information is prohibited. If you have received this information in error, make the sender aware by returning an email and also by deleting this information from your system.

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**From:** Isabel Shrouder <[dogoodiesgiveback@gmail.com](mailto:dogoodiesgiveback@gmail.com)>  
**Sent:** Saturday, June 25, 2022 1:30 PM  
**To:** Public Health Information <[PH\\_Information@tarrantcounty.com](mailto:PH_Information@tarrantcounty.com)>  
**Cc:** Elena M. Ortega <[EMOrtega@tarrantcounty.com](mailto:EMOrtega@tarrantcounty.com)>  
**Subject:** Do Goodies cottage recipes requested

**EXTERNAL EMAIL ALERT! Think Before You Click!**

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Hey there I wanted to shoot this over to you really quick. The "cheesecake" we are referring to is the pumpkin roll filling, we add Oreos to one filling and the marshmallow one is used in the banana pudding one. Both have cream cheese but falling In the appropriate pH levels for non temperature controlled foods. I also sent our cottage labels just in case you needed those as well.

Thanks,

Isabel Shrouder - Do Goodies





**Tarrant County Public Health  
 Environmental Health Promotion  
 1101 S. Main Street, Room 2300  
 Fort Worth, Texas 76104  
 Phone: (817) 321-4960 Fax: (817) 321-4961  
 Email: PH\_Information@tarrantcounty.com  
 Temporary Food Establishment Permit Application**

PLEASE COMPLETE & RETURN THIS FORM WITH FEE FOR EACH STAND AT LEAST 10 DAYS BEFORE THE START OF THE EVENT.

**Fee Information:** (submit one of the following)

- 1) \$35.00 for each stand or unit. We are unable to accept credit/debit cards by phone or online.
- 2) IRS 501 (c) (3) official recognition documentation for tax exempt charitable organizations.

**General Event Information:**

- 3) Name of Event: Summer Celebration
- 4) Date(s) of Event: June 25th
- 5) Hours of Operation: 4:30 - 10:00pm
- 6) Location of Event: Veterans Park 8901 Clifford St
- 7) Event Coordinator:

Name: Evelyn Spurlock Phone: \_\_\_\_\_

Address: \_\_\_\_\_

**Applicant Information:**

- 8) Your Organization/Business Name: DO Goodies
- 9) Applicant's Name: Isabel Shröder

Address: 333 Shadowgrass Ave.

City: Fort Worth State: TX ZIP: 76120

Business Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Mobile Phone: 469-432-6974 Fax: \_\_\_\_\_

Email: dogoodiesgiveback@gmail.com

- 10) Does this business have a current mobile food unit or pushcart permit from Tarrant County Public Health?  Yes  No

If yes, what is the permit type and site number? \_\_\_\_\_

**Note:** Vendors with these types of health permits are not required to pay the permit fee for a temporary food service establishment.

**Menu Information**

- 11) List full menu to be served at the event:

<u>chocolate chip cookies</u>	<u>Red velvet Cheesecake Cookie</u>
<u>cookies N cream cookie</u>	<u>Funketti oreo Cheesecake frosting cookie</u>
<u>chocolate peanut butter cookie</u>	<u>Peach cobbler Cheesecake cookie</u>
<u>lemon blueberry Cheesecake cookie</u>	

12) Where will the food be purchased/obtained from: home bakery

13) Will any foods be prepared prior to the start of the event?  Yes  No  
If yes, where will the food be prepared? at home

If answering yes to question 14, all foods prepared prior to the event are required to be made in an approved and permitted facility. A copy of the Food Establishment Permit and signed Commissary Agreement (attached) are required for approval of this application. Applications submitted without this information will be returned.

Has a copy of the Food Establishment Permit and signed Commissary Agreement been included with this application?  Yes  No  N/A

14) Will frozen foods be thawed at the event? [ ] Yes  No  
If yes, describe process/method to be used: \_\_\_\_\_

15) How will any leftovers of cooked food be handled at the end of the day?  
\_\_\_\_\_

### Equipment Information

16) How will food temperatures be checked during the event?

17) Describe equipment used at the event for:

- a) Cold holding: N/A
- b) Hot holding: N/A
- c) Cooking/Reheating: \_\_\_\_\_

18) Describe hand washing facilities inside your temporary food establishment: N/A  
 Plumbed Sink  Gravity Flow Set-up

19) Describe utensil washing facilities inside your temporary food establishment: N/A  
 3 Compartment Sink  3 Basin Set-up

20) How will hot water be made available for the hand wash and utensil washing stations? N/A

21) What type of sanitizer will be used at the event? N/A

22) How will potable water be obtained during the event? N/A

23) How will waste water from hand & utensil washing be disposed? N/A

Form completed by: Isabel Shrover - owner June 23, 2022  
Name/Title Date

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TARRANT CO, TX- CON HL,  
FORT WORTH, TX

-\$35.00

07/03/2022

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TARRANT CO, TX- CON HL,  
FORT WORTH, TX

-\$35.00

06/25/2022

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TARRANT CO, TX- CON HL,  
FORT WORTH, TX



### Marshmallow Cream Cheese Frosting

pH 4.61  
aW 0.83

NTCS food per Texas statute

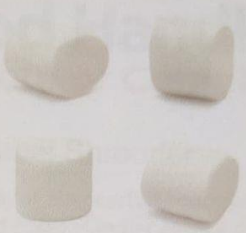
Tested by an accredited lab  
07/31/2018

Adapted from [Genius Kitchen](#)

Ingredients

6-oz cream cheese  
 ¼ cup salted butter, softened to room temperature  
 2 ½ cups powdered sugar  
 4 tablespoons marshmallow creme (tested with Kraft Jet-Puffed)  
 1 teaspoon vanilla extract

1. Cream butter and cream cheese together until well blended.
2. Add remaining ingredients and beat until creamy.



AW values	pH: < 4.2	pH: 4.2 - 4.6	pH: > 4.6 - 5.0	pH: > 5.0
< 0.88	NTCS food*	NTCS food	NTCS food	NTCS food
0.88 - 0.90	NTCS food	NTCS food	NTCS food	PA**
> 0.90 - 0.92	NTCS food	NTCS food	PA	PA
> 0.92	NTCS food	PA	PA	PA

\* TCS FOOD means TIME/TEMPERATURE CONTROLLED FOR SAFETY (TCS) FOOD  
 \*\* PA means Product Assessment required

### Pumpkin Roll Filling

pH 4.69  
aW 0.90

NTCS food per Texas statute

Tested by an accredited lab  
08/06/2018

Adapted from [Very Best Baking](#)



*Note: This filling recipe calls for only 1 cup powdered sugar, which creates a filling that's creamy and just slightly sweet. I felt skeptical that this was enough sugar to render the product NTCS, but its pH and aW place it in the green section of the chart! Feel free to add more sugar to your taste.*

#### Ingredients

- 8-oz cream cheese
- 1 cup powdered sugar
- 6 tablespoons salted butter
- 1 teaspoon vanilla extract

1. Cream butter and cream cheese together until well blended.
2. Add remaining ingredients and beat until creamy.

AW values	pH: < 4.2	pH: 4.2 - 4.6	pH: > 4.6 - 5.0	pH: > 5.0
< 0.88	NTCS food*	NTCS food	NTCS food	NTCS food
0.88 - 0.90	NTCS food	NTCS food	NTCS food	PA**
> 0.90 - 0.92	NTCS food	NTCS food	PA	PA
> 0.92	NTCS food	PA	PA	PA

\* TCS FOOD means TIME/TEMPERATURE CONTROLLED FOR SAFETY (TCS) FOOD  
 \*\* PA means Product Assessment required

**TEMPORARY FOOD ESTABLISHMENT INSPECTION FORM  
TARRANT COUNTY HEALTH DEPARTMENT  
817/321-4960**

Event 2022 4TH OF JULY PICNIC Date 07/04/2022 Time 03:50 PM  
 Establishment Name & Owner DO GOODIES Booth# TF-1-2694

\* Items circled below identify health violations and must be corrected within specified time. Failure to comply may result in cessation of your food service operation.

Food Protection

	1. Source, sound condition, labeled, potable water used
	2. PHF meets temperature requirements, facilities to maintain, thermometer: provided, accurate
IN	3. Protection during storage, preparation, display, service, transportation, dispensing, packaging

Sanitation Protection

	4. Handwashing facilities: provided, used; soap, paper towels, good hygienic practices
	5. Three step method of dishwashing: provided, operated
	6. Equipment, utensils, clean, sanitized, stored
	7. Single-service items; used, stored
	8. Wastewater, garbage disposal; provided, maintained. Toilet facilities; provided, accessible, clean

Stand Construction

IN	9. Floors, roof, walls, windows, doors, attached equipment; constructed, good repair, clean
IN	10. Animals, small children; excluded

Comments

comments:

Cottage food vendor. Permit issued due to TCS food product in use with non-certified recipe at this time. Certification is pending at the State level. All items are pre-packaged only.

Inspected by  Received by   
 Jennifer Thomas Randell Shrouder