



Farm and Ranch Freedom Alliance  
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Rejena Bolton, CP-FS  
Health Inspector/Manager, CPO  
1135 Redwood Street  
Kountze, Texas 77625  
[By email: rejena.bolton@co.hardin.tx.us](mailto:rejena.bolton@co.hardin.tx.us)

Dear Ms. Bolton:

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 the Hardin County Health Department that violate state law and the rights of cottage food producers.

Gina Isakson is a cottage food baker in the Hardin County area operating under the business name Bee's Breads. Her menu includes sweet breads "guaranteed better than your grandma's!" On August 10, the Hardin County Health Department required her to purchase a "Temporary Food Establishment Season Pass Permit" for \$50.00 to participate in a farmer's market in Lumberton.

In an email with Haley Fregeau, another cottage food producer earlier this year, you stated, *"Cottage food production is sold from home or in person. When you come to an event that is a public event and we require permits for food you will have to purchase a permit. At your home you may do as you like per the CF law but at temporary events we require a permit for food. We try to keep our prices low and give you the option of a season pass that gives you the ability to sell at all events held in Hardin County for a full year. I hope this helps."* Upon pushback from the cottage food producer, you replied *"A cottage food production operation is exempt from the requirements of a food service establishment and does not have to comply with the Texas Food Establishment Rules. Health departments do not have regulatory authority to conduct inspections of a cottage food production operation. So, with that being said we have no jurisdiction over your operation, that is your home. We do however have the right to charge a permit fee for temporary events and if you sell food there you are required to pay the fee."*

This is a fundamentally incorrect interpretation of the cottage food law.

Additionally, Ms. Isakson has a practice of chilling her sweet breads prior to bringing them to market in the summer heat, to preserve their quality. On August 10, The Hardin County Health Inspector, upon determining that some of Ms. Isakson's breads were chilled, began performing temperature checks, and claimed that by refrigerating the product, the product had now become a Time and Temperature Control for Safety (TTCS) food and had to remain refrigerated. This assertion has no basis in food science; the bread did not turn into a TTCS food because it was chilled. This was an incorrect application of both food science and the law.

Finally, guidance for cottage food producers published on the Hardin County Health Department's website appears to have not been updated since July 6, 2015: <https://newtools.cira.state.tx.us/upload/page/3707/docs/2015-7%20Cottage%20foods%20operation.pdf>. The document indicates that dried pasta, Rice Krispy treats, chocolate covered graham crackers, fresh fruits dipped in chocolate, and cream cheese frosting are not allowed to be sold as cottage foods, even though these are all non-TTCS foods that have been allowed since the passage of the 2019 cottage food bill. This is outdated, incorrect information.

### **I. Requiring a health or food establishment permit of a cottage food operator (CFO)**

The 2017 FDA Model 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.” FDA 2017 Food Code 6-202.111.

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.**

The statute continues: Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL GOVERNMENT AUTHORITIES PROHIBITED; COMPLAINTS. (a) A local government authority, including a local health department, may not regulate the production of food at a cottage food production operation.

The meaning and intent of the law is clear: cottage food operators are not food establishments, and must be allowed to operate free of fees, permits, or other regulations. Requiring a permit of a cottage food operator to participate in an event effectively regulates their operations in contradiction of state law.

## **II. Refrigeration of a Non-Time and Temperature Control for Safety (Non-TTCS) Food**

The FDA Model Food Code contains a chart that sets out the pH and  $A_w$  necessary for a food to be considered non-TTCS. Whether or not a food is TTCS depends on its  $A_w$  value and pH combined. An  $A_w$  of less than 0.88 means the food is non-TTCS irrespective of its pH, while an  $A_w$  of between 0.88 and 0.90 means the food is non-TTCS so long as its pH is 5.0 or lower.<sup>1</sup>

Chilling a sweet bread that is a non-TTCS does not alter its pH or  $A_w$ . Guidance from the K-State Research Extension<sup>2</sup> on freezing and thawing baked goods makes no mention of having to take special steps to thaw a quickbread in the refrigerator or store it in the refrigerator after being thawed. It specifically advises that quick breads, muffins, and coffee cakes should be thawed, wrapped, at room temperature; in contrast, it recommends that TTCS foods like custard pies be thawed in the refrigerator. Indeed, freezing or chilling baked goods is an excellent way to preserve their freshness and extend their shelf life. The inspector's baseless claim that refrigerating the non-TTCS breads somehow transformed them into TTCS bread is contrary to well-established food science and undermines public confidence in the department.

## **III. Providing obsolete and incorrect guidance to the public**

The district's guidance needs to be updated to reflect the law. First, cream cheese frosting has never been disallowed as a Texas cottage food; many cream cheese frosting recipes have been lab tested and found to fall within the thresholds laid out in Section II above. Moreover, foods such as Rice Krispy treats and dried pasta have been allowed since the passage of SB 572 in 2019. The Department of State Health Services (DSHS) issued an Official Determination on July 24, 2019, that "whole, uncut fruit, dipped in chocolate or candy coated, is an allowable cottage foods product." Hardin County should update its documentation to accurately reflect the law.

Your department should immediately refund permit fees to any cottage food operators who have been illegally required to purchase permits to sell at events in Hardin County's jurisdiction. Additionally, your department should immediately discontinue the practice of performing temperature control checks on cottage food products, which, by definition, are not subject to temperature controls.

We are very concerned that Hardin 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 and around Hardin County, the County should post written clarification that cottage food operations are not required to apply for health permits.

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<sup>1</sup> See FDA 2017 Model Food Code, Annex 3, Table B. Available at <https://www.fda.gov/media/110822/download> at p.345.

<sup>2</sup> [https://cottonwood.k-state.edu/documents/fcs-docs/Freezing\\_Baked\\_Goods.pdf](https://cottonwood.k-state.edu/documents/fcs-docs/Freezing_Baked_Goods.pdf)

Sincerely,

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

Kelley Masters  
President  
Homemade Texas

Attachments: Emails between Haley Fregeau and Rejena Bolton  
Photo of Temporary Food Establishment Permit issued to Bee's Breads  
DSHS Official Determination dated July 24, 2019

Cc: State Representative Ernest Bailes  
State Senator Robert Nichols  
State Senator Lois Kolkhorst  
Hardin County Judge Wayne McDaniel  
Hardin County Precinct 1 Commissioner, L.W. Cooper, Jr.  
Hardin County Precinct 2 Commissioner, Chris Kirkendall  
Hardin County Precinct 3 Commissioner, Amanda Young  
Hardin County Precinct 4 Commissioner, Ernie Koch