

Tennessee's Food Freedom Act – 2022

Homemade Foods Allowed under the "Cottage Food Laws"

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BACKGROUND

Foods manufactured for sale may be regulated by a state agency, such as the Tennessee Department of Agriculture (TDA), the United States Food and Drug Administration (FDA) and/or the United States Department of Agriculture (USDA). State regulations can have more influence over requirements for many food products only sold within state lines. Some states have laws allowing homemade food producers to process products with limited or no regulatory oversight, provided the products are only sold within the individual state, i.e. intrastate commerce. These laws are typically referred to as cottage food laws.

Most food products sold across state lines, i.e. interstate commerce, fall under federal laws giving the Food and Drug Administration (FDA), or USDA more jurisdiction. FDA regulations are in place to be sure products in interstate commerce meet the same requirements for food safety and are not adulterated when sold across the U.S. Meat, poultry and egg products are regulated by the USDA and must be processed in licensed facilities.

Tennessee's cottage food laws have gone through several changes over the years, with the most significant changes occurring July 1, 2022 with the implementation of the Tennessee Food Freedom Act (FFA). This change to the Tennessee cottage food laws allows essentially any food product that is considered non-TCS (not Time/Temperature Controlled for Safety), or commonly referred to as shelf stable, to be produced at a private residence without a license, inspection, or permit and sold within the state. Meat, poultry, fish, dairy and egg products¹ as well as TCS foods are excluded from this law and require a commercial facility and food manufacturing permit for production and sale. This publication describes the components of the Tennessee Food Freedom Act, explains TCS and non-TCS foods, and gives some examples of products and the properties or processes that make them non-TCS and shelf-stable.

¹Find regulatory requirements for Tennessee producers raising, packing and selling eggs from their own flocks of fewer than 3,000 laying hens as well as suggested practices for cleaning, sanitizing, packaging and storing shell eggs to reduce food safety risks in this publication: Egg Sales in Tennessee: Requirements and Suggested Practices for Producers with Small Flocks - <https://extension.tennessee.edu/publications/Documents/PB1898.pdf>



SECTION 1 – DEFINITIONS

Definitions of key terms used in this fact sheet are provided below:

Adulteration: The contamination of a food product with any poisonous, deleterious or contaminated substance that may be injurious to health or has been produced, prepared or packaged in unsanitary conditions that could result in contamination with filth. No laws allow the sale of adulterated foods.

Allergens: Eight major allergenic foods according to the Food and Drug Administration (FDA) are considered chemical hazards if not properly listed on any product's packaging: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat and soybean. These ingredients must be included in the ingredient list using these names (and for fish and tree nuts must include the species of fish or type of nut). Common ingredients missed are "whey," which is considered milk and "lecithin," which may be from either egg or soy. Improperly labeled products containing allergens can be life-threatening to those with a severe allergy. Most food product recalls are due to improper listing or omission of allergens on the label. A ninth allergen requiring labeling starting in 2023 is sesame

Canning Process (or Canning): A method of food preservation by sealing in an airtight container (can, jar, or plastic container) and heat processing to produce a product free of microorganisms capable of growing under normal, non-refrigerated conditions of storage and distribution. Low acid canned foods (pH > 4.6) are typically heated to 250 °F (121 °C) to eliminate spore-forming bacteria like *Clostridium botulinum* using a pressure canner. High acid canned foods (pH < 4.6) are typically heated to 212 °F (100 °C) or less, to kill only vegetative microorganisms using a hot-fill-invert-hold process or water bath canner.

Code of Federal Regulations (CFR): includes the laws enforced for food safety by the FDA (Title 21), USDA (Title 9), or EPA (Title 40).

Cross Contamination: The transfer of microorganisms or allergens from one surface or food to another. Many food recalls can be attributed to cross contamination, either between raw and processed products or from residue on equipment surfaces to a food product.

Current Good Manufacturing Practices (cGMP): (21 CFR part 117, subpart B); describes in detail regulatory requirements for personnel, production facilities, sanitary operations, equipment, processes and warehousing for producing safe foods. All food manufacturers must comply with these cGMP laws. These are the minimum sanitary standards and practices typically required to make unadulterated foods. Find the cGMP at www.ecfr.gov.

Food and Drug Administration (FDA): The federal government agency that regulates most processed/manufactured foods and non-meat products in the United States. FDA has jurisdiction over foods in interstate commerce. FDA now has the ability to seize foods, force a product recall, or stop production by a food manufacturer when it considers the product to be hazardous to public health.

Hazards: Any microbiological, chemical, or physical contaminant that may cause injury or illness. All food manufacturers must identify and try to prevent hazards which are reasonably likely to occur in their products/processes.

Homemade Food Item: Homemade food item means a food, including a non-alcoholic beverage, which is produced and (if) packaged at the private residence of the producer.

Pathogenic Microorganism: As related to food safety, includes any bacteria, virus, fungi, or protozoa that causes disease/illness in humans.

Major Food Allergens requiring labeling in the

- milk
- eggs
- fish
- crustacean shellfish
- tree nuts
- peanuts
- wheat
- soybean
- sesame (beginning 2023)

pH: pH is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral. Typically, “low” pH/acidic foods (pH < 4.6) are less likely to cause foodborne illness because they prevent the growth of many pathogenic microorganisms.

Time and Temperature Control for Safety Food (TCS): A food that requires time and temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

Non-Time and Temperature Control for Safety Food (non-TCS): A food that does not require time and temperature control for safety to limit the rapid and progressive growth of infectious or toxigenic microorganisms. Most shelf stable foods, i.e. those adequately preserved and stored under non-refrigerated temperatures, are considered non-TCS. However, these definitions may vary slightly by state, especially when applied to cottage food production.

United States Department of Agriculture (USDA): The USDA is a federal government agency that regulates red meat, poultry, egg products and products containing meat.

Water Activity (Aw): A measure of the availability of water for microbiological growth. Aw ranges from 0 (a completely dried product) to 1.0 (pure water). Water activity is related to the equilibrium relative humidity of air around the food product if sealed within a package. Aw values < 0.85 can be used to prevent the growth of most microorganisms.





SECTION 2 – REGULATORY REQUIREMENTS

The 2022 Tennessee Food Freedom Act changed the cottage food laws allowing homemade, non-Time and Temperature Control food products to be produced at a private residence and sold within the state without a food manufacturing license or permit from the Tennessee Department of Agriculture. The FFA includes the following allowances and restrictions:

1. **Products must be processed at a private residence.** Producers using a location other than a private residence such as a community kitchen, restaurant, church or commercial facility are required to obtain a food manufacturing license from the Tennessee Department of Agriculture regardless of whether the food is TCS or non-TCS.
2. **Products may be sold only within the state of Tennessee.** No sales are allowed across state lines. Products sold across state lines are required to be manufactured in a commercial facility under a food manufacturing license and follow all applicable state and federal regulations.
3. **Products may be sold in person, remotely, by an agent of the producer or by/ through a third-party vendor.** Example sale venues include internet, phone, farmers market, roadside stand, grocery stores and other retail stores.
4. **Products must be delivered by the producer to the consumer, an agent of the producer, third-party vendor or third-party carrier to the consumer.**
5. **Products must be non-TCS foods.** (Refer to section 3 for more information.)
6. **The producer must allow the Tennessee Department of Health to access the food processing facility** (kitchen and storage areas, etc.), if necessary, to ensure public safety. This would likely occur if there were a foodborne illness that was possibly linked to the products.
7. **Specific labeling requirements are included as part of the new FFA which applies to all homemade food items for sale in Tennessee.** Products allowed to be produced and sold prior to the 2022 FFA, i.e. non-potentially hazardous foods, now must include these new labeling requirements. Specific information must be provided to the consumer as described in Section 4.

SECTION 3 – TCS vs Non-TCS

Some foods allow bacteria to grow (and multiply) more easily and quickly than others when held at specific temperatures and times. These foods are referred to as time and temperature control for safety (TCS) foods. By controlling the time and temperature at which TCS foods are held, pathogenic microorganism growth and/or toxin formation can be slowed or limited. Some foods considered to be TCS include:

- animal-based products that are raw or heat-treated (e.g. meat, poultry, fish, egg and dairy products);
- plant-based product that have been heat-treated (and not canned) or consist of raw seed sprouts; cut melons, cut leafy greens or cut tomatoes
- fresh garlic-in-oil mixtures
- products in Tables A & B below designated as Product Assessment Required (PA) due to pH and Aw
- foods requiring temperature control (refrigerated or frozen products)

Bacteria that are capable of growing in foods are referred to as vegetative cells and many foods are heat treated, or cooked, prior to packaging to kill these vegetative cells. Since very few foods are “sterile”, if the conditions are conducive to bacterial growth, the bacteria can double in a food every 20-30 minutes. This rapid growth of bacteria will certainly spoil the food. If pathogenic bacteria are present and grow, they will cause a foodborne illness.

Some bacteria species can produce spores that protect them from heat (spores can survive up to 10 hours in boiling water) and allow them to start growing (as vegetative cells) after the heat is removed. These spore-forming bacteria are one of the main concerns in TCS foods that were previously heated to kill only vegetative cells whether packaged or not. Other TCS foods may not even be heated or packaged so time and temperature control (usually continuous refrigeration) is used to prevent rapid growth of any bacteria that are in the raw ingredients or final food product.

As shown in the tables below, the interaction of water activity (A_w) and pH in many foods can be used to categorize them as non-TCS. Certain values, or combinations, of pH and water activity will limit the growth of spores and/or vegetative cells in a food product. These products are suitable for homemade products under the FFA. However, those that have a pH and A_w combination that is listed as PA must be evaluated by a Process Authority (expert on safe food manufacturing) to determine if they require time and temperature control for safety to prevent growth or toxin formation of pathogenic microorganisms.

Table A. Interaction of pH and A_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged.

A_w values	pH: 4.6 or less	pH: > 4.6-5.6	pH: > 5.6
≤ 0.92	non-TCS food*	non-TCS food	non-TCS food
> 0.92-0.95	non-TCS food	non-TCS food	PA**
> 0.95	non-TCS food	PA	PA

*TCS Food means Time/Temperature Control for Safety Food

**PA means Product Assessment required

Table B. Interaction of pH and A_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged.

A_w	pH: <4.2	pH: 4.2-4.6	pH: >4.6-5.0	pH: >5.0
<0.88	non-TCS food*	non-TCS food	non-TCS food	non-TCS food
0.88-0.90	non-TCS food	non-TCS food	non-TCS food	PA**
>0.90-0.92	non-TCS food	non-TCS food	PA	PA
>0.92	non-TCS food	PA	PA	PA

*TCS Food means Time/Temperature Control for Safety Food

**PA means Product Assessment required



The table below includes some examples of commonly accepted non-TCS and TCS products along with explanations why they are categorized either non-TCS or TCS. This list is not exhaustive and some products in the non-TCS category may have pH and water activity that require product assessment as designated in the tables above.

Non-TCS examples/ products allowed	Why these are non-TCS	TCS Examples/ products not allowed without product assessment	Why these are TCS/ not allowed
Dry goods: pastas, spice blends, rice, roasted coffee, etc.	Low Aw	Cooked rice, pasta, vegetables and other foods ready to eat	High Aw after cooking
Canned fruit, jams, jellies, and preserves, etc. pH < 4.6	Low pH and canning process required to make shelf-stable	Fresh cut fruits	High Aw
Baked Goods: breads, cookies, pastries, muffins, cakes, brownies, etc. without custard or cream filling or frosting	Low Aw	Cakes or other baked goods with cream filling or buttercream frosting Recommend Aw testing	High Aw Aw may be lowered by formulation*
Candy, chocolate, fudge, hard candy, caramels, peanut brittle, praline, and gummies <i>Caution: Placing sticks in apples can create a potentially hazardous product</i>	Low Aw <i>Listeria has been found to grow around sticks in caramel apples</i>		
Acidified canned foods: salsas, pickles, pickled vegetables, chow chow, relish, etc. with pH < 4.6	Low pH and canning process required to make shelf stable	Pickled, canned, or preserved eggs	Excluded from FFA
Low Acid canned foods: canned vegetables, beans, vegetable broth, pepper jelly, etc. with pH > 4.6	Pressure canning required to kill spores and make shelf stable	Refrigerated slaw, fresh salsa, freshly cut vegetables; fresh salads such as bean, pasta, chicken, pimento cheese, egg	High pH and/or high Aw Neither parameter controls growth of pathogens
Bottled Condiments: mayonnaise, ketchup, mustard, BBQ sauce, hot sauce, marinade, etc.	Low Aw and/or low pH and canning process required to make shelf-stable	Freshly made condiments	pH or Aw may allow bacteria to survive if not heat processed
Dried foods: air- or freeze-dried fruits, vegetables, candy, etc.	Low Aw and proper drying process required to make shelf-stable	No dried meats including jerky allowed	All meat and meat products are excluded from FFA
Canned, fermented foods: sauerkraut, kimchi, kombucha, etc.	Low pH achieved by proper fermentation and canning process	Alcoholic beverages and food products containing more than 0.5% alcohol	These are regulated by the TN Alcoholic Beverage Commission
No Dairy products allowed		Milk, cheese, ice cream, cottage cheese, butter	Can support the rapid growth of pathogens if not refrigerated
Beverages acidified and canned with pH < 4.6	Low pH and canning process, required to make shelf-stable	Pasteurized beverages: lemonade, fruit drink, teas, etc. stored refrigerated	Drinks cold filled into bottles require refrigeration to slow growth of pathogens

*increasing sugar content of frostings and fillings can lower water activity to make products non-TCS. UT Food Science Department can test products for Aw.

SECTION 4 – LABELING REQUIREMENTS

The 2022 FFA requires specific information to be provided to the consumer. In most cases, the information must be on the label attached to the product packaging, although there are other options for bulk packaging as described later in this section. **All** homemade food products sold under the cottage food laws **must** include the following information as directed in the FFA:

1. Producer contact information including:
 - Producer’s name
 - Home address
 - Telephone number
2. Common/usual name of the homemade food product
3. Ingredients of the food item in descending order of predominance by weight
4. The following statement: ***“This product was produced at a private residence that is exempt from state licensing and inspection. This product may contain allergens.”***

The information required must be provided in the following forms/formats depending on packaging and sale:

- On a label attached to the product packaging. Any product that is packaged, regardless of the method of sale, must include the above information on the packaging label.
- On a label attached to the bulk container if the product is being sold out of a bulk container.
- On a placard or sign displayed at the point of sale if the product is not packaged or sold from a bulk container.
- On the website where the product is sold if the item is sold on the internet. If packaged, the product’s package must also include the required label information.
- If the product is sold by telephone or custom order, the seller does not need to display the information required above, but the seller has to disclose to the consumer that the product is produced at a private residence that is exempt from state licensing and inspection, and may contain allergens. If packaged, the product’s package must also include the required label information.



SECTION 5 – ADDITIONAL CONSIDERATIONS

Homemade food producers should note that the Tennessee Food Freedom Act does not exempt them from providing a safe, unadulterated product to consumers; food safety liability; or following other business regulations. Homemade food producers should take care to process, store and transport foods safely and develop a comprehensive risk management plan that includes food safety education, familiarity with GMPs, good production/ process recordkeeping, development of a recall plan, and choice of a business structure with product liability insurance. Producers should determine how other business regulations such as those for business licenses, business taxes and sales tax apply to their specific situation.

Homemade food producers should also recognize that some markets or retailers may not allow or purchase products produced in unlicensed facilities due to regulatory limitations or as part of their own risk management strategies. For instance, the Tennessee Department of Health does not allow restaurants or other food service establishments to use homemade products in their menu items. This prevents restaurants from using homemade products such as sauces, condiments or ingredients in products served to customers by their establishment.

Producers who choose to make homemade food products at their private residence and sell them must comply with *all* requirements of the law. There are no exemptions for TCS products or the labeling requirements, including the requirement to list the manufacturer's name, home address and telephone number on the label attached to each packaged product (regardless of how it is sold).

SECTION 6 – SUMMARY

The Tennessee Food Freedom Act allows homemade food producers to process many non-TCS foods at their private residence for sale to the public within Tennessee. This law significantly expanded the types of food products allowed to be produced, including three notable types: low acid canned foods, acidified canned foods and dehydrated foods. Producing these three types of foods comes with a significantly higher risk than previously allowed foods. Also, labeling requirements now apply to all homemade foods sold under the cottage food laws including producer information and a disclosure statement.

The FFA limits homemade food producers without a license or permit to operate only at a private residence. Those operating under the previous law in community kitchens will need to decide whether to switch their operations to their own private residence or obtain a food manufacturing permit from the Tennessee Department of Agriculture (TDA).

Finally, this document outlines only the minimum requirements needed to legally produce and sell non-TCS foods in Tennessee without a license or inspection by the TDA. Many of the products allowed under the FFA require carefully controlled processing procedures and sanitary practices to make them shelf-stable and safe for consumers. Future guidelines will cover some of the standard practices for these higher risk products.



SECTION 7 – ADDITIONAL RESOURCES AND REFERENCES

For more information on processing, producing or testing any homemade food products, contact:

University of Tennessee

Food Science Department

2510 River Drive

Knoxville, TN 37996

Phone: 865-974-7331

Email: Foodsci_ext@utk.edu

Website: foodscience.tennessee.edu

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Tennessee Department of Agriculture

Consumer and Industry Services, Food Safety Section

Ellington Agricultural Center

436 Hogan Road

Nashville, TN 37220

Phone: 615-837-5193

Email: NewFood.Business@TN.gov

Website: www.tn.gov/agriculture

More information about business regulations, marketing and risk management may be found from the following sources:

UT Extension Center for Profitable Agriculture - cpa.tennessee.edu

Tennessee Small Business Development Center - tsbdc.org

References for information given in this document:

2009 Food Code - <https://www.fda.gov/food/fda-food-code/food-code-2009>

State of Tennessee Public Chapter No. 862, Senate Bill No. 693, By Niceley, Bowling, Crowe - <https://publications.tnsosfiles.com/acts/112/pub/pc0862.pdf>



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