



California Conference
of Directors of
Environmental Health

CALIFORNIA HOMEMADE FOOD ACT

FREQUENTLY ASKED QUESTIONS

AB 1616 (GATTO) – COTTAGE FOOD OPERATIONS

1. When does the new law go into effect?

The new law becomes effective January 1, 2013. The law requires the California Department of Public Health to carry out certain tasks associated with implementation, and imposes certain responsibilities on local planning and environmental health jurisdictions. The California Conference of Directors of Environmental Health (CCDEH) is working with other stakeholders to ensure that the law is implemented in an orderly and effective manner. Further information regarding the status of implementation can be obtained from your local environmental health agency.

Note: The information in this FAQ handout is intended to provide a uniform statewide response to questions posed and will be updated as needed. The questions & answers were evaluated by the CCDEH Ad Hoc AB 1616 Implementation Workgroup. This information should not be construed as a legal interpretation.

AB1616 Chaptered Law: http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1601-1650/ab_1616_bill_20120921_chaptered.pdf

2. What is a Cottage Food Operation (CFO)?

A CFO is an enterprise at a private home where low-risk food products are prepared or packaged for sale to consumers.

3. What is meant by “private home?”

“Private home” means a dwelling, including an apartment or other leased space, where individuals reside.

4. Are there limitations on the size of CFO’s sales?

- Class A - seventy-five thousand dollars (\$75,000) or less in gross annual sales
- Class B - one hundred fifty thousand dollars (\$150,000) or less in gross annual sales

5. Can a CFO have employees?

A CFO can have one full-time equivalent employee (not counting family members or household members).

6. What cottage food categories are permitted at a CFO?

Only foods that are defined as “non-potentially hazardous” are approved for preparation by CFO’s. These are foods that do not require refrigeration to keep them safe from bacterial growth that could make people sick. The California Department of Public Health will establish and maintain a list of approved cottage food categories on their website and will establish a process by which new foods can be added to the list and other foods can be challenged and removed. The initial list included in the new law includes:

- 1) Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas
- 2) Candy, such as brittle and toffee
- 3) Chocolate-covered nonperishable foods, such as nuts and dried fruit
- 4) Dried fruit
- 5) Dried pasta
- 6) Dry baking mixes
- 7) Fruit pies, fruit empanadas, and fruit tamales
- 8) Granola, cereals, and trail mixes
- 9) Herb blends and dried mole paste
- 10) Honey and sweet sorghum syrup
- 11) Jams, jellies, preserves, and fruit butter that comply with the standard described in Part 150 of Title 21 of the Code of Federal Regulations (These should be fruit products to assure that they are not potentially hazardous).
- 12) Nut mixes and nut butters
- 13) Popcorn
- 14) Vinegar and mustard
- 15) Roasted coffee and dried tea
- 16) Waffle cones and pizzelles

7. What are the two classifications of CFOs?

- Class A** CFO’s are only allowed to engage in “**direct sale**” of cottage food.
- Class B** CFO’s may engage in both “**direct sale**” and “**indirect sale**” of cottage food.

8. What is meant by “Direct Sale” of cottage food?

“Direct Sale” means a transaction between a CFO operator and a consumer, where the consumer purchases the cottage food product directly from the CFO. Direct sales include, but are not limited to, transactions within the State of California at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified

farmers' markets, or through community-supported agriculture subscriptions, and transactions occurring in person in the cottage food operation.

9. What is meant by “Indirect Sale” of cottage food?

“Indirect Sale” means an interaction between a CFO, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the CFO from a third-party retailer that holds a valid permit issued by the local environmental health agency in their jurisdiction. Indirect sales include, but are not limited to, sales made to retail shops or to retail food facilities where food may be immediately consumed on the premises.

10. Do I need any special Training or Certification to prepare Cottage foods?

A person who prepares or packages cottage food products must complete a Foodhandler Certificate Program course and exam, instructed by ANSI accredited providers.

11. Does a CFO need a permit to operate?

- ❑ **Planning/Zoning:** All CFO's need to obtain approval from their local city or county planning department. The Homemade Food Act gives planning departments several options to consider, so planning department requirements may vary between jurisdictions.
- ❑ **Environmental Health:**
 - For “**Class A**” CFO's (direct sale only), **registration**, renewed annually with the local enforcement agency and submission of a completed “self-certification checklist” approved by the local environmental health agency.
 - For “**Class B**” CFO's (direct and indirect), a **permit**, renewed annually from the local environmental health agency is required.
- ❑ **Other Requirements:** Check on other state or local requirements that may be applicable
- ❑ Registrations and permits are not transferable between:
 - Persons
 - Locations
 - Type of food sales [i.e., direct sales (Class A) vs. indirect sales (class B)]
 - Type of distribution

12. How much will the registration or permit cost the CFO?

Each local jurisdiction will establish fees that are not to exceed the cost of providing the service. Additional fees may be charged for inspection and/or enforcement activities if the cottage food operation is found to be in violation of California food safety laws on cottage food operations.

13. Will my CFO Registration/Permit allow me to sell at other retail venues?

There may be health permits required to sell at other locations, such as Certified Farmer's Markets, Street Fairs or Swap Meets. Please check with your local enforcement agency for

additional permit requirements.

14. How often will a CFO be inspected?

- ❑ **Class A** CFO kitchens and food storage areas (referenced in the law as the “registered or permitted area”) are not subject to initial or routine inspections.
- ❑ **Class B** CFO kitchens and food storage areas are inspected initially prior to permit issuance, and then annually after that.
- ❑ **Class A or B (Other Inspections)** The local environmental health agency may access, for inspection purposes, the registered or permitted area where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation or that the cottage food operation is found to be in violation of California food safety laws on cottage food operations.

15. What are the CFO’s operational requirements

- ❑ All CFOs must comply with the following:
 - No domestic activity in kitchen during cottage food preparation
 - No infants, small children, or pets in kitchen during cottage food preparation
 - Kitchen equipment and utensils kept clean and in good repair
 - All food contact surfaces and utensils washed, rinsed, and sanitized before each use
 - All food preparation and storage areas free of rodents and insects
 - No smoking in kitchen area during preparation or processing of cottage food
 - A person with a contagious illness shall refrain from working
 - Proper hand-washing shall be completed prior to any food preparation or packaging
 - Water used in the preparation of cottage food products must be potable. Cottage food preparation activities include:
 - Washing, rinsing, and sanitizing of any equipment used in food preparation.
 - Washing and sanitizing hands and arms.
 - Water used as an ingredient of cottage food.

16. What would be my food labeling requirements?

- ❑ All cottage food products must be properly labeled in compliance with the Federal, Food, Drug, and Cosmetic Act ([21 U.S.C. Sec. 343 et seq.](#))The label shall include:
 - The words “Made in a Home Kitchen” in 12-point type
 - The name commonly used for the food product
 - Name of CFO which produced the food product
 - The registration or permit number of the cottage food operation which produced the cottage food product and the name of the local enforcement agency that issued the number
 - Product ingredients in descending order by weight

- ❑ In a permitted food facility, cottage food products served without packaging or labeling shall be identified to the customer as homemade on the menu, menu board or other easily accessible location.

17. Do I need to have a DBA?

A DBA (Doing Business As) may be a requirement of your county or local municipality.

18. The farmers market where I want to sell my products says I need a food license, even though I am a Cottage Food business. Can the market require a license?

Yes. Even though an entity may meet the requirements of a Cottage Food Operation and be permitted, some farmers markets or other direct marketing venues may require vendors to have a food establishment license or to meet other requirements. Observe local policies enacted by farmers market boards and local enforcement agencies.

19 Why are some products not allowed to be made and sold under the guidance document?

The Cottage Food guidance document allows food entrepreneurs to operate small food businesses and produce a variety of food products that are low risk from a food safety standpoint, if prepared properly in an unlicensed and uninspected kitchen, while protecting public health to the greatest extent possible. The allowable products list is based on the food safety risk level associated with certain types of food. People who operate a licensed and inspected food processing business have to meet certain requirements for training, food safety and handling. Since Cottage Food businesses are uninspected, it is necessary to limit food products allowed under the law to those that are considered low risk, or non-potentially hazardous.

20. Are pet treats covered in the guidance document?

No. The Cottage Food guidance document applies to human grade food only.

21. Can I produce and sell cooked vegetable products, like salsas, tomato sauces, spaghetti sauces, or focaccia bread with roasted vegetables?

No. Food products made with cooked vegetable products do not qualify under the Cottage Food guidance document. Manufacturers of cooked vegetable products like salsas and tomato sauces must meet significant federal and state training and licensing requirements. Cooked vegetables, whether fresh or canned, usually are made from a combination of low acid and acidified foods, and are considered a Potentially Hazardous Food. Cooked

vegetables must be held either hot (above 135°F) or cold (below 41°F). They can't be stored at room temperature, which makes them ineligible for production in a cottage food operation.

22. Can I bake bread in a wood-fired oven?

Yes, as long as that oven is in your home kitchen.

23. I lease space in a retail building where I operate a small antique shop. As a Cottage Food baker, can I sell my own baked goods from my shop?

Yes, as long as they are labeled correctly and completely, and the label includes any allergens the product may contain. However, you can't sell other people's products (e.g., consignment) nor have other people sell your products (e.g., wholesalers).

24. Can I make and sell sweet breads, muffins or other baked goods made with fresh fruits and vegetables like zucchini, pumpkin, and strawberries?

Yes, as long as the fruits or vegetables are incorporated into the batter and properly baked, labeled and packaged. The baked goods may not be decorated or garnished with fresh fruits or vegetables.

25. Can I use homegrown fruits and vegetables in baked goods?

No. All cottage food ingredients must be obtained from a permitted food facility.

26. I am concerned that some of my product ingredients that are not allergens are “trade secrets” and listing all my ingredients would lead to unfair competition. Do I have to list all of my ingredients or can I protect my trade secrets?

According to federal regulations (*Food and Drug Administration (FDA), 21CFR 101.100g(1)(2)*), exceptions to labeling can be made. In particular, if the Commissioner of Food and Drugs finds that alleged secret ingredients are harmless, an exemption may be granted. You should contact the FDA to discuss and propose an exemption from labeling.

27. If I make and sell wedding cakes, how can I meet the labeling requirements, when I can't stick a label on the cake?

For wedding cakes, birthday cakes and other specialty cakes that are not easily packaged, you must include all labeling requirements on the invoice and deliver the invoice with the cake. Smaller cakes must be boxed, and the label must be included on the box.

28. Can I make and sell products from my secondary residence, my summer home or from someone else's residence?

The Cottage Food guidance document applies only to non-potentially hazardous foods made in the kitchen of your primary residence. Second homes, vacation homes or any other residences do not qualify if they are not your primary residence.

29. Can I make products in a rented kitchen and sell them?

No. The Cottage Food guidance document applies only to non-potentially hazardous foods made in the kitchen of your primary residence. Even if the rented kitchen is a licensed facility, you would need a food establishment license to sell your products.

30. Where can I store ingredients and finished products for my Cottage Food business?

Ingredients and finished Cottage Food products may be stored in your single family domestic residence where the Cottage Food products are made. This includes your kitchen, or dining room that is free of dampness/water, pests or other insanitary conditions. You may not use a garage, shed, other outbuilding, bathrooms or areas used for sleeping as a storage facility for your Cottage Food ingredients, finished products, equipment or utensils.

31. Can nonprofit organizations, or corporations produce and sell Cottage Foods?

No. A cottage food operator is defined as an individual, who operates a CFO) in his or her private home and is the owner of the CFO. Nonprofits, partnerships and corporations are not an individual with a single family domestic residence and, therefore, do not qualify as a Cottage Food business.

32. Can I sell my Cottage Foods over the Internet?

No. While you can advertise your product on the Internet, you cannot take orders over the Internet and then ship directly to consumers. Sales and product delivery must be directly from the producer to the consumer, in a person-to-person transaction, and not delivered by mail.

33. Can I sell my Cottage Foods to a wholesaler, broker or distributor?

No. Under the Cottage Food guidance document, it is not legal for a producer to sell to a wholesaler, broker or distributor who would then resell the product.

34. Can I advertise my Cottage Food products on my website?

Yes. You can use your website to advertise your products or market your business, but cannot take orders or sell products via your website.

35. Can I advertise my Cottage Food business in the newspaper or at trade shows?

Yes. Advertising is allowed; however, the actual sale must be made person-to-person between the producer and the consumer.

36. Can I serve free samples of my Cottage Food Products?

Yes. As long as your product meets the requirements of the Cottage Food guidance document and is a non-potentially hazardous food, sampling is allowed. Samples must be pre-packaged in your home kitchen (e.g., if you sample bread, you can't cut it at the market, but can cut it in your home kitchen and individually wrap or package the bread samples into sample cups with lids). Although you do not need an individual label for each sample, you must have properly labeled packages of your product on display with the samples so your customer can review the ingredient list. Your product cannot be cooked or prepared in a way that makes it a potentially hazardous food/temperature control for safety food (e.g., you can't add a dried dip mix to sour cream or serve anything that can't be kept safely at room temperature - these examples would require a food license).

37. What foods cannot be produced by my cottage food operation?

A cottage food operation is not allowed to produce food items which require temperature control for safety. Other food items which present a food safety risk such as acidified foods, low acid canned foods, garlic in oil, and fresh fruit or vegetable juices are not allowed as well. The following list of foods are examples of products that may not be produced at a cottage food operation. Although not all inclusive, it provides for most types of unapproved cottage food products:

- Fresh or dried meat or meat products including jerky
- Fresh or dried poultry or poultry products
- Canned fruits, vegetables, vegetable butters, salsas etc.
- Fish or shellfish products
- Canned pickled products such as corn relish, pickles, sauerkraut
- Raw seed sprouts
- Bakery goods which require any type of refrigeration such as cream, custard or meringue pies and cakes or pastries with cream cheese icings or fillings
- Tempered and/or molded chocolate or chocolate type products
- Milk and dairy products including hard, soft and cottage cheeses and yogurt
- Cut fresh fruits and/or vegetables
- Food products made from cut fresh fruits or vegetables
- Food products made with cooked vegetable products
- Garlic in oil mixtures
- Juices made from fresh fruits or vegetables
- Ice and/or ice products
- Barbeque sauces, ketchups and/or mustards
- Focaccia-style breads with vegetables and/or cheeses