

# Cottage Food Laws in Mississippi: *Key Guidelines and Policy Implications*



Many states have cottage food laws that allow the sale of specific types of foods made in an individual's home kitchen. These laws vary across the United States. In 2013, the Mississippi Legislature enacted the original version of the **Cottage Food Bill**, which allows private citizens to sell certain food products made in their home kitchen without having to follow Mississippi State Department of Health permitting requirements. This permitting exception applies only under the circumstances outlined in the law. In 2020, the Mississippi Legislature enacted a bill (HB 326) that increased the annual gross sales upper limit for Mississippi cottage food businesses from \$20,000 to \$35,000 and allowed them to advertise (but not sell) over the Internet, including through social media. To support Mississippi's cottage food industry, this publication gives a brief explanation of the state's cottage food laws, including the recent amendments to the Cottage Food Bill, and highlights a few implications for policymaking.

## **Types of Cottage Food Products Allowed**

Cottage food products must be non-potentially hazardous foods as defined by the Mississippi State Department of Health. When prepared properly, these are low-risk foods from a food-safety standpoint. They do not require time and/or temperature control for safety (also known as non-TCS foods), can be safely kept at room temperature, do not require refrigeration even after opening, and have not been found by the U.S. Food and Drug Administration (FDA) to support the growth of pathogenic microorganisms or the formation of toxins.

The Mississippi State Department of Health provides a list of allowed foods that includes: baked goods without cream, custard, or meat fillings, such as breads, biscuits, cookies, pastries, and tortillas; candy; chocolate-covered nonperishable foods, such as pretzels, nuts, and fruit (except for melons); dried fruit (except for melons); dried pasta; dried spices; dry baking mixes; granola, cereal, and trail mixes; dry rubs; fruit pies; jams, jellies, and preserves that comply with the standard described in part 150 of title 21 of the U.S. Code of Federal Regulations; nut mixes; popcorn; vinegar and mustard; waffle cones; and acidified foods that meet the definition as stated in part 114 of title

21 of the U.S. Code of Federal Regulations. Acidified foods have a specific acidity level (expressed as pH) and water activity. They may be called or purport to be "pickles" or "pickled products." These include, but are not limited to, beans, cucumbers, cabbage, artichokes, cauliflower, peppers, and tropical fruits, singly or in any combination.

## **Types of Cottage Food Products Not Allowed**

The Mississippi Department of Health also provides a list of foods that are not allowed to be made and sold under the Cottage Food Bill. Foods in this list include, but are not limited to, meat, fish, poultry, dairy products (including custard pies), eggs (other than air-dried, hard-cooked eggs with intact shell), cooked vegetables, raw seed sprouts, sliced melons, garlic and other fresh herbs in oil, cooked potatoes, legumes, beans, nut butters, fruit/vegetable juices, and rice. It also includes low-acid canned foods (vegetables, meats and seafood, and others with pH > 4.6), smoked fish, and pasteurized and pre-cooked foods.

## **Where Cottage Food Products Can Be Sold**

Different states have defined venues where cottage food products can be sold and different requirements to do so. In Mississippi, cottage foods must be sold in person directly from the cottage food producer to the end consumers and cannot be sold over the Internet, by mail order, or at wholesale or to a retail establishment; however, this does not prohibit the advertising of cottage food products over the Internet, including through social media. In addition, cottage foods made in Mississippi may be sold only in Mississippi. Cottage foods made in other states may not be sold in Mississippi.

Many cottage food entrepreneurs start by selling their products out of their primary residence to friends, friends of friends, and by word-of-mouth advertising. To grow their clientele, some may choose to sell their products in person, directly to consumers, at venues such as farmers markets, county fairs, and roadside stands. The number of farmers markets has grown considerably in Mississippi, which has allowed cottage food producers to capitalize on the growth of the "buy local" movement. However, these markets tend to be seasonal venues.

## Required Registration, Licenses, and/or Permits for Operators

Anyone who follows the appropriate guidelines can become a cottage food producer in Mississippi. A cottage food producer in Mississippi is not required to apply for a permit to operate and, unlike in other states, is not required to obtain food-safety training or certification. The Mississippi State Department of Health, however, highly encourages food-safety training and certification to learn general food-safety education and the correct process to produce acidified canned foods.

Training and certification are especially encouraged for anyone making acidified or pickled food products. Improperly acidified/processed foods are the source of most foodborne illness outbreaks linked to cottage foods and can lead to botulism, an illness with a very high fatality rate. At Mississippi State University, the Department of Food Science, Nutrition, and Health Promotion offers regular trainings on acidified canned foods and general food safety.

The home kitchen where the food is produced does not need a license to operate, nor does the cottage food producer need to register with the Mississippi State Department of Health. In addition, cottage food producers are not required to provide or upgrade to commercial grade equipment (e.g., stove or refrigerator) in their home kitchens.

## Limits on Total Sales

A bill to increase Mississippi cottage food businesses' sales limit from \$20,000 to \$35,000 was enacted by the Mississippi Legislature (HB 326) in 2020. After the new \$35,000 limit, the operation is considered a regular food establishment and must abide by the requirements of one. This threshold limits the income that a cottage food entrepreneur can receive yearly, but it also limits the scale of operations that are allowed to sell food without having to follow the more stringent training, food safety, handling, and inspection standards required of commercial operations. This rule minimizes the harm that may occur from any potential foodborne illness outbreak.

## Required Labeling

Almost all states that allow cottage food sales have labeling requirements for cottage foods. Though requirements are limited to contact information and/or disclaimer in some states, Mississippi follows the typical labeling requirements. That is, the food must be prepackaged for sale and have a label that contains the following information:

- Name and address of the cottage food operation.
- Name of the cottage food product.
- Ingredients of the cottage food product, in descending order by predominance of weight.
- Net weight or net volume of the cottage food product.
- Allergen information as specified by federal labeling requirements:
  - Any ingredients made from one of the following food groups must be specified: milk, eggs, wheat, peanuts, soybeans, fish, shellfish, and tree nuts. If the food product contains an ingredient made from these food groups, then:
    - The allergen can be included in the ingredient list. For example, white bread with an ingredient listing of "whole wheat flour" meets the requirement of federal law.
    - An allergen statement such as "Contains ..." can also be included after the ingredient list. For example, white bread may have an ingredient list of "whole wheat flour, water, sodium caseinate, salt, and yeast" followed by the statement, "Contains wheat and milk."
    - If the cottage food has tree nuts as an ingredient, the type of tree nut must be identified. For example, if the product is nut bread, an acceptable ingredient list may be: "Ingredients: wheat flour, water, almonds, salt, yeast." An ingredient list of "flour, water, nuts, salt, yeast" would not be acceptable because the type of tree nut is not identified.
- If any nutritional claim is made, the label must contain appropriate nutritional information as specified by federal labeling requirements.
- The label must also contain the statement "Made in a cottage food operation that is not subject to Mississippi's food safety regulations" in at least 10-point type size and in a color that provides clear contrast to the background of the label.
- Cottage food operators are typically not required to send their products to a laboratory to obtain an official ingredient list, but the Mississippi State Department of Health strongly encourages acidified food processors to send food samples for laboratory analysis and consultations.

## Storage

Cottage foods must be made in a home kitchen and stored in a domestic residence following the safe food handling guidelines outlined in the Retail Food Code to prevent adulteration caused by insects, household chemicals, water damage, unsanitary conditions, and so forth. All storage rooms must be free of insects and

rodents, dirt, dampness/water, and other environmental sources of contamination. This includes the home's kitchen as well as the attached rooms within the home that are used exclusively for storage of the ingredients and finished cottage food products. Cottage food products cannot be made in an outbuilding, like a shed or a barn.

## Mississippi State Department of Health Oversight

The Mississippi State Department of Health oversees cottage food operations in the state and has the authority to investigate any complaints about the operations. The Mississippi State Department of Health may only enter and inspect a cottage food operation upon receipt of a complaint that adulterated or otherwise unsafe food has been produced by the operation, or any complaint that alleges a violation of the rules set in the Cottage Food Bill. For example, it may investigate if it receives a complaint regarding the accuracy of the ingredients listed. If laboratory testing is required, it is likely that the cottage food business will be responsible for the cost of this testing.

## Summary and Policy Implications

Cottage food laws in Mississippi support local business development, create jobs for cottage food entrepreneurs, and strengthen the local economy. Compared to other states' laws, Mississippi's cottage food laws allow the sale of a variety of food products, follow the typical labeling requirements, and do not impose cost-prohibiting registration, licensing, or permitting fees.

Recent legislation that increased the upper annual gross sales limit for Mississippi's cottage food businesses from \$20,000 to \$35,000 and allowed them to advertise (but not sell) over the Internet, including through social media, will benefit the state's cottage food entrepreneurs. Because the sales limit remains below the state's \$43,567 median household income (in 2018 dollars; U.S. Census Bureau), it can still be hard for cottage food entrepreneurs to earn a living from a cottage food operation alone. Future legislation that further increases the sales limit while protecting the safety of consumers could be beneficial. In the United States, 22 states do not place a yearly sales limit on cottage food operations; 15 states and the District of Columbia place a sales limit (ranging from \$50,000 to \$10,000 or less); and 12 states place sales limits on selected types of cottage food operations but no limits on other types. New Jersey, the only state without a cottage food law, proposed rules this year for establishing a "cottage food operator permitting process" in that state, placing a \$50,000 limit in gross sales. Sales limits vary by state, and a state may have a fixed sales limit (as Mississippi has) or

a sales limit that varies depending on the specific cottage food item, sales venue, or other factors such as food-safety training and permitting requirements. An important consideration is that, while Mississippi's cottage food law highly encourages cottage food producers to receive food safety training, they are currently not required to.

Mississippi also has defined outlets where cottage food producers may sell cottage food products, and cottage food producers must make all sales in person and directly to the end consumer. Cottage food producers may not sell via Internet platforms, mail orders, or retail or wholesale venues. Legislation that allows cottage food entrepreneurs to sell some or all their products at non-direct-to-consumer outlets while protecting the safety of consumers could also be beneficial. While most states do not allow indirect sales at restaurants or in retail or wholesale venues, 12 states allow producers to sell cottage foods at non-direct-to-consumer platforms under certain circumstances or added requirements to protect consumers, such as food sampling conducted by the state or extra licensing.

Cottage food laws in a few states (such as Mississippi) prohibit Internet sales. Other states have allowed Internet sales at online farmers markets or if the product is low-risk and the producer delivers it to the end consumer in person within the state. In Mississippi, the existing limits on annual gross sales and selling outlets may be challenging for cottage food entrepreneurs, but they also limit the scope of operations selling food without following the more stringent food-safety standards required of a typical food establishment and the harm from any foodborne illness outbreak.

Mississippi currently has one category of cottage food production and does not impose different regulations on different categories of cottage food producers. In the nation, 13 states have developed tiered systems of cottage food production. In a tiered system, different tiers or categories of food producers have different opportunities (e.g., sales limit or venue) depending on what they produce and the different permitting, inspection, food-safety training, and other requirements they are subject to. But a tiered system also generates more regulation, making it crucial to provide producers and consumers with clear guidance on how to follow it so they can control for any risk. In the end, the appropriate cottage food policy for a state will depend on the specific characteristics of the state's cottage food industry and any opportunities to grow this industry while accounting for the safety of consumers.

It is important to note that the cottage food guidelines outlined here do not apply to businesses operating under a food permit. Depending on whether they retail or manufacture food, those businesses must follow different

requirements outlined by the Mississippi State Department of Health. Moreover, a cottage food operation must still abide by any other federal tax laws, rules, regulations, certificates, or local government requirements that apply to all cottage food operations. Individuals interested in operating a cottage food business should contact the Mississippi State Department of Health for the latest information and/or consult an attorney familiar with the relevant federal, state, city, and county laws. **Disclaimer:** *This publication is not meant to be legal advice or an offer for legal services.*

## Additional Training Information

The MSU Extension Service offers a variety of training programs that support the cottage food industry, including Food as a Business, Acidified Canned Foods, and General Food Safety Training, as well as educational materials to help those interested in cottage food industries. Extension publications can be found at [extension.msstate.edu/publications](http://extension.msstate.edu/publications).

### *Acidified Canned Foods and General Food Safety Training*

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### *Food as a Business Training*

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