

Texas Cottage Food Law

Everything you need to know about starting your home food business in Texas.



These FAQ were developed with the assistance of the [Farm and Ranch Freedom Alliance](#).

See FARFA's information page on cottage food operations [here](#).

The following information is not legal advice.

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Regulation of Cottage Foods

Q1. When did the law take effect?

The original cottage food law went into effect on September 1, 2011. The law has been expanded twice; once in 2013, and again in 2019.

What kinds of foods can be sold?

Q2. What kinds of homemade food can I sell?

- **Any food, *excluding meat*, that does NOT require Time or Temperature Control for Safety (NTCS).**
- Baked goods that do not require refrigeration (including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, Danishes, cakes, tortes, pies, tarts, muffins, lemon squares, cookies, large pretzels, and tortillas.)
- Candy (including fudge, divinity, peanut brittle, toffee, chocolate, chocolate-dipped pretzels, chocolate-dipped Oreos, marshmallows, rice cereal treats, etc.)
- Coated and uncoated nuts

- Unroasted nut butters
- High acid or acidified fruit butters *see Q10 for more information
- Canned jams and jellies
- Fruit pies (including pecan pie, fruit cobblers, fruit crisps/crumbles, apple brown betty, cooked fruit tarts and tatin, etc)
- Dehydrated fruits and vegetables including dried beans
- Popcorn and popcorn snacks
- Cereal, including granola
- Dry mixes
- Vinegar
- Pickles
- Mustard
- Roasted coffee or dry tea
- Dried herbs or herb mixes
- Canned acidified plant-based foods with a pH of 4.6 or less*
- Fermented vegetables with a pH of 4.6 or less*
- Pickled fruits or vegetables with a pH of 4.6 or less*

* [More information on canning, pickling, and fermenting here.](#)

Q3. What is a “Not Time or Temperature Controlled for Safety” (NTCS) food?

NTCS foods are foods with a low water activity and low pH level that inhibit the growth of dangerous pathogens or toxins. Basically, it means non-perishable foods; foods that you would not normally keep in the refrigerator. Foods that are perishable, such as cheesecakes, or custard fillings, or meringue pies, are not covered in the law. To sell foods that require refrigeration, you must contact your local Health Department and find out how to comply with their requirements. You would not be able to sell those foods if they are made in your home kitchen.

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.

Q5. How can I tell if the food I want to sell is allowed?

With some foods, the answer is obvious. Dried pasta does not require refrigeration, so it is allowed. A casserole would require refrigeration after its preparation in order not to spoil, so it is not allowed. When you think of foods that you are allowed to sell, think of foods that you would normally store in your pantry, not your refrigerator or freezer. Sometimes the answer is not so clear. The factors that determine whether a food is TCS or NTCS are that food's pH, aW (water activity), or a combination of these factors, as laid out in [Texas statute](#). If you are not sure if your food is 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](#).

Not every food you keep in your pantry is allowed as a cottage food, but it is a good way to start thinking about what a NTCS food is!

Q6. Do I have to have my food tested in order to sell it?

Generally, no. [Special requirements apply for canned, pickled, and fermented foods](#). But if you are not sure if your food requires time and temperature control for safety, it is highly advised to have that food tested. No one wants to make a customer sick.

Q7. Does DSHS or a local health department have to approve my recipes before I can sell my food?

No. DSHS has no authority to approve recipes except for [canned, pickled, and fermented foods](#). Local health departments have *no authority at all* to approve or disapprove recipes.

Q8. Why can't I sell homemade beef jerky? It doesn't require refrigeration to keep from spoiling.

The sale of meat products is federally regulated. No state can allow meat as a cottage food. When Maine tried to include meat in its "food freedom" law, the [USDA came down hard on the state](#), and Maine capitulated quickly.

Q9. Why can't I sell kombucha or kefir? They're fermented, and ferments are now allowed, right?

The only fermented products allowed are [fermented vegetables](#). Think sauerkraut and kimchi! Kombucha and kefir are definitely not cottage food products.

Q10. What kind of fruit butters can I sell?

High-acid or acidified fruit butters like apple, apricot, grape, peach, plum, quince, and prune butters, as long as the pH is 4.6 or below.

Q11. What kind of fruit butters are not allowed?

Low acid fruit butters like pumpkin butter, pear butter, or banana butter, are not allowed as a cottage food. These butters carry much higher risk for serious foodborne illness.

Q12. Can I sell canned fruits and vegetables, or canned baby food?

Only **acidified canned foods** that are plant-based with a pH of 4.6 or less are allowed. **Low acid** canned foods like canned green beans or canned baby food are not allowed as cottage foods. Special rules apply to acidified canned foods, fermented vegetables, and pickled fruits or vegetables. [Click here for more information.](#)

Q13. Can I sell cheesecake, flan, tres leches cake, pumpkin pie, and lemon meringue pie?

Not as a cottage (home) food producer. All those items require refrigeration to keep from spoiling. They are "Time and Temperature Control for Safety" (TCS) foods. The State of Texas doesn't have anything against pumpkin pie – you just have to make it in a commercial kitchen if you want to sell it.

Q14. But I've seen pumpkin pies out on tables at Walmart and HEB!

They contain chemicals which make them shelf-stable.

Q15. Can I sell homemade vanilla extract? It doesn't require refrigeration to keep from spoiling.

Yes. Although it was previously regulated by TABC and required an "Industrial Permit" at a cost of \$381 for a two-year permit, the 86th Legislature (2019) eliminated the Industrial Permit. [Click here for more information.](#)

Q16. Can I sell homemade salsa, barbecue sauce, hot sauce, or ketchup?

Yes, assuming these are all plant-based foods that have a pH of 4.6 or less as outlined in the [canning requirements](#).

Q17. Can I sell fruit dipped in candy or chocolate? (Caramel apples, chocolate covered strawberries, etc.)

Yes. Per DSHS: "Whole, uncut fruit, dipped in chocolate or candy coated, is an allowable cottage foods product." Note carefully that the fruit must be whole and uncut. An apple with a stick in it is not allowed, because the apple has been punctured. This is a food safety issue, not just a technicality. Once the skin of a fruit has been punctured, bacteria can enter it. For caramel apples, consider leaving the apple whole and selling a package including the apple and the stick, so the customer can stab the apple themselves.

Q18. Can I sell homemade elderberry syrup?

No. Elderberry "syrup" is actually, depending on the preparation method, a juice or tincture. Both require refrigeration and cannot be a cottage food. Additionally, be aware that state rules prohibit advertising cottage foods as having any health benefits. Cottage foods are conventional foods.

Q19. Is honey a cottage food?

Yes. Because honey does not require time or temperature control for safety, it can be sold as a cottage food. Per the Farm and Ranch Freedom Alliance, other labeling regulations from the [Texas Agriculture Code, Chapter 131, Subchapter E](#), apply.

Q20. Can my kids have a lemonade stand under this law?

Lemonade (and all other beverages) are not cottage foods and may not be sold as such. However, [HB 234 passed in 2019](#) allows minors to sell lemonade and other non-alcoholic beverages on private property or in city parks.

Q21. Can I sell eggs from my chickens under the cottage food law?

Eggs aren't a cottage food, but under Texas Department of Agriculture ([Egg Law](#)) and DSHS regulations, yard egg sales directly to consumers are allowed with a few conditions. [Read more from DSHS here.](#)

Q22. Can I make dog treats or pet food under this law?

No. Animal food is regulated by the [Office of the Texas State Chemists](#), Texas Feed and Fertilizer Control Service. [Here is a link to the rules in PDF format.](#)

Q23. Can I sell cottage foods that include hemp or CBD?

Cottage food producers are not exempt from the rules regulating hemp and CBD products. Please direct all your questions to DSHS. They have a very informative page on this subject here: <https://www.dshs.texas.gov/consumerprotection/hemp-program/default.aspx>

Sales Locations and Delivery Methods

Q24: Where can I sell my cottage food products?

You can sell your food **directly** to the end consumer anywhere in Texas. This is a significant change from the law as it existed from 2013-2019. You can now sell at any type of event, it doesn't matter if the sponsor is for-profit or non-profit. Be aware that local ordinances apply. If a local ordinance says you can't set up a tent by the side of the road in a particular city, then you must follow that law.

Q25. Can I sell my food to a coffee shop, retail bakery, grocery store, or any licensed food establishment or wholesaler for them to resell?

No. There are two reasons. 1) The law says you must sell your food only directly to the consumer, and that you may not sell wholesale. This means you may not sell it to a reseller. 2) Restaurants and

wholesalers are bound by the Texas Food Establishment Rules and/or Food Manufacturers Rules, which do not allow them to sell homemade food, which is considered food from an “unapproved source”.

Q26. Can I leave my cottage food in a shop for the shop to sell on my behalf, like a consignment arrangement?

No. The cottage food law is for direct sales only – you selling directly to the customer. **You must be present** to sell your food.

Q27. Can I sell at a pop-up shop in a retail store?

Yes. Cottage food sales must be directly to the consumer, so **you must be present** selling the food. You cannot leave the food there for the retailer to sell on your behalf. This would cross the line into wholesaling.

Q28. Can I sell at a pop-up shop inside a restaurant with permission of the owner/manager?

Probably not. Restaurants may not sell food from unapproved sources, which includes cottage foods. Check with your local health department.

Q29. Can I have employees? Can those employees sell on my behalf at a pop-up shop or market?

Yes. Any employee not directly supervised by you, (not including your household members) must also obtain a [food handler's card](#).

Q30. Can I sell my food from a truck or trailer?

Yes, as long as the food is made, packaged, and labeled in your home kitchen. Keep in mind that “mobile food units” (food trucks) are licensed through DSHS or local health departments in much the

same way that restaurants are, and those regulations would likely not allow the sale of homemade food from a licensed unit. Also be aware of local regulations; a city may have ordinances in place that

prevent setting up an unpermitted mobile trailer and selling from it. Cottage food sellers are not exempt from local ordinances.

Q31. Can a city tell me I need a city permit to sell in a certain location?

Yes. Although the law precludes local government authorities, including health departments, from regulating the production of food at a cottage food production operation, if a local government has a **general** ordinance — such as you have to get a permit to sell **any** product at some location, that is still valid and applicable. A city cannot make a special ordinance or regulation that only applies to cottage food operations.

Q32. Can a farmer's market or other private event refuse to allow me to participate, or impose additional rules for participation?

Yes. These events are privately owned and managed, and they may set whatever rules or quality standards they wish.

Q33. Can a farmer's market charge me a fee?

Yes, booth fees are a normal cost of doing business at a farmer's market.

Q34. Can a city or county refuse to allow me to sell at a city festival?

They can't disallow your participation simply because you are a cottage food producer. If you are not allowed to participate in such an event, make sure to get the reason in writing. (See the last section of this document.)

Q35. Can I deliver?

Yes.

Q36. Does the law require the customer to visit my home to pay for or pick up the food?

No. This was only a part of the cottage food law from 2011-2013. Since 2013, the customer is never required to come to your home. If you do not want the customer coming to your home, you can

deliver the food or meet the customer at a safe public meeting spot. Many police departments offer safe spaces for internet transactions such as craigslist purchases.

Q37. Can I sell my food on the internet?

You may sell your food on the internet, in Texas, as long as you personally deliver the food to your customer. All the information on your [labels](#), except your home address, must be provided to the customer **BEFORE** the customer pays for the food. You can make this information available to the customer by posting it on your web site, or any other method of communication.

Q38. Can I ship my cottage food products?

[From FARFA](#): "The statute specifically provides that cottage food operators can deliver to their customers in general. Thus, if the transaction is made in person (rather than through the internet or by mail order), it is reasonable to use delivery options such as shipping or hiring a driver. But if the transaction is made remotely, the delivery must be in person, as discussed above."

Additionally, if the above conditions are met, be aware that homemade food can only be shipped within Texas. When a food crosses state lines, the federal government (FDA) has authority over not only the interstate transport, but the whole operation that produced it. No cottage food law in the country allows interstate shipping.

Packaging and Labeling Your Cottage Foods

Q39. Does my food product have to be labeled?

Yes. See the [labeling page](#) for complete labeling information.

Q40. Does my food have to have special packaging?

Your food must be packaged in a way that prevents contamination. Large or bulky items like wedding cakes or

contaminated. Large or bulky items like wedding cakes, or

cupcake bouquets, are not required to be packaged.

Q41. Does the label have to be attached to the package?

Yes, except in the cases of unpackaged large or bulky items.

In those cases, your invoice can contain the required labeling information.

Example of Texas Cottage Food
Label

Q42: Can I advertise the health benefits of my food, or make a health claim on the label?

Prior to 2020, the answer was no. As of 1/1/2020, the [rules](#) state "Advertising media of cottage food products for health, disease, or other claims must be consistent with those claims allowed by the [Code of Federal Regulations Title 21, Part 101, Subparts D and E.](#)" These rules are complex. Please consult with an attorney and make sure you understand the rules completely if you wish to advertise a health claim about your cottage food.

Sampling

Q43. Can I give out samples?

Any location that is NOT a farmers market:

Yes, as long as your samples are packaged and labeled in your home kitchen. The health department cannot impose any fees, permits, or additional restrictions on you as long as your samples are packaged and labeled.

If you want to do open sampling on-site, such as cutting a cake and serving it on a plate at a bridal fair, this would require a permit from the health department, and they may require you to make these samples in a commercial kitchen. The easiest way for a cottage food producer to avoid permits, fees, and expensive commercial kitchen rental, is simply to package and label the samples in your home kitchen.

Hint: [2-ounce disposable containers with lids](#), shown in the example photo, hold a bite-sized amount of food and are extremely inexpensive. They are shown labeled with standard print-at-home labels size 1" x 2-5/8" ([Avery 5260](#)). Don't like the idea of wasting so much plastic? Consider [paper](#) or [glassine](#).

At a farmers market:

Sampling at farmers markets is handled differently and is covered by a different law. Cottage food producers are covered by this law so you do not have to do the individual packaging and labeling at a farmers market. [Read FARFA's explanation of farmers market sampling.](#)

Regulation of Cottage Food Operations

Q44. Do I have to take food handler's training if I operate under the cottage food law?

Yes. There are [many inexpensive courses that can be taken online](#). Your food handler's card is good for two years, and must be kept current as long as you are selling cottage foods.

Q45. Do I have to get a license from the Health Department?

No. The law specifically prohibits the local Health Department from regulating Cottage Food Operations.

Q46. Do I have to register with the local Health Department?

No.

Q47. Should I call my local Health Department before I begin selling? You know, just to be sure it's ok?

It is not required or advised. They have no authority or jurisdiction over you as long as you are following the rules of the cottage food law.

Q48. Can someone call the Health Department and complain about me?

Yes, the Health Department is required to maintain a list of complaints. Customers have the option of calling their local Health Department to check your past complaints, or file a complaint themselves.

Q49. Will my kitchen be inspected?

No. The law specifically prohibits the local Health Department from regulating Cottage Food Operations.

Q50. What should I do if an inspector from the Health Department knocks on my door and wants to come into my kitchen?

They must have a warrant from a judge. Ask to see it. If your Health Department or DSHS has reason to believe that your cottage food operation poses a serious and immediate threat to human life and health, they may get a warrant from a judge and enter your home.

Q51. Can the Health Department shut me down?

Yes, if your operation poses a serious and immediate threat to human life and health.

Q52. Can my city tell me I can't operate due to zoning?

No. HB 970, the cottage food law passed in 2013 specifically prohibits a county or municipality from regulating a cottage food operation, or banning a cottage food operation on the basis of zoning. However, your neighbor still has the right to take action against you if your business becomes a nuisance. In this, and all other things, it is best not to irritate your neighbors.

Q53. Do I have to get a zoning permit or business license from my city in order to have a cottage food business?

No. The law prohibits cities and municipalities from regulating your production of food in any way.

Q54. Do HOA restrictions apply to my cottage food operation?

Yes. Generally, your HOA is more preoccupied with the outside appearance of your home rather than what is taking place inside. Hopefully they would not selectively enforce restrictions on cottage food operators, while allowing Avon, Pampered Chef, day cares, and all other manners of home businesses to operate in peace. Consider keeping a low profile if you have an overzealous HOA.

Q55. Can I have pets in my home?

Yes, but for goodness sake, please keep them out of your kitchen.

Q56. Can I advertise?

Yes, advertising is not restricted in any way. But signage in your front yard may violate city ordinances or HOA rules.

General Business Questions

Q57. Do I have to carry liability insurance if I am operating under the cottage food law?

No, but it is highly recommended, not only to protect your personal assets, but your customers, in case something goes wrong. Some wedding venues require proof of liability insurance from all food vendors, so if you plan on doing weddings, it is well worth the investment. [Here are some reliable sources for insurance.](#)

Q58. Do I have to get a sales & use permit and charge sales tax?

In Texas, most food items are not subject to sales tax. However, some food items like candy and snacks are taxable. The best thing to do is [contact the Comptroller directly](#) to ask if you need a permit, and whether your product is taxable.

Q59. Do I have to get a DBA or set up an LLC, or something like that?

Consult with a tax professional or business attorney to determine the best way to set up your business, whether it be a Sole Proprietorship, LLC, or some other business entity.

Q60. Do I have to claim my income and pay taxes on it?

Yes. The \$50,000 income cap is unrelated to federal taxes. Consult with a tax professional.

Q61. I got a notice from my county that I have to send them a list of my business assets and equipment so that the county can tax me on them. Is this legal?

Yes, it is called the rendition tax. It is not enforced in every county, and it is not enforced on every business, but it is definitely a real and legal tax. Here is a document for [Harris County](#) that explains what the rendition tax is. Although the document is published by Harris County, the rendition tax applies in all 254 Texas counties. For information about your county, search <county name> and <rendition tax> in your browser.

Bake Sales and Donations

Q62. Does the cottage food law cover bake sales for my church/school/non-profit group?

Not exactly. Non-profit or religious bake sales where only non-TCS foods are sold are exempt from licensing in jurisdictions covered by DSHS. Home-rule cities are allowed to set stricter standards, so if you live in a city or municipality, contact your local health department for their rules.

Q63. Can I donate my food for a fundraiser? (Bake sale, silent auction, etc.)

Probably not in your capacity as a cottage food

producer, unless you are there personally selling the food. Contact your local health department for their rules. You may be able to donate food as an individual rather than a cottage food business, if the fundraiser is exempt from licensing.

Q64. Can I hold a bake sale at my home?

Yes. All food must be packaged and labeled per the rules of the cottage food law.

Beyond Cottage Foods

Q65. What happens if I don't follow the rules? What is the penalty?

Think of the rules like an umbrella. As long as you're following the rules, you are covered, and you can't be regulated or inspected by a local Health Department. If you're not following the rules (for instance, selling cheesecakes or shipping your cookies all over the country), you lose your umbrella. You would then be an illegal food establishment, subject to inspections and fines. The rules bind you, but they also protect you.

Q66. I just discovered another cottage food operator who is not following the rules. This makes me really mad. What should I do?

Consider three options: **1)** Try to educate that person about the law. They may be unaware of the cottage food law, and eager to know how to comply. Or, there is at least an equal chance that the person doesn't care and won't appreciate your input. **2)** Ignore them and focus on your own business. You are the only person you can control. Or, in extreme cases, **3)** File a complaint with the health department if they pose a health or safety risk to the public.

Q67. Can I put a kitchen in a separate building on my property and use that for my cottage food business?

No, the law says your cottage food operation must be operated out of your **primary residence**. If you are

in a position to build a separate kitchen, you are better served to contact your local Health Department and find out the requirements to get the kitchen commercially licensed, so that you would be able to operate free of the cottage food restrictions.

Q68. Can I put commercial appliances in my home?

No, the law applies only to people cooking in their own homes with appliances meant for common residential usage.

Q69. I am devastated that I can't have a homemade cheesecake/hot meal/shaved ice/pizza/tamale/cookie-shipping business. What should I do?

I know it's very disappointing. But there are legitimate food safety concerns (and sometimes federal law implications) with these types of foods. And you CAN have this type of business – you just need to work with your local health department and use a commercial kitchen to produce the food. Many metro areas have commercial kitchens for hourly rent for this express purpose.

Questions or Problems?

Q70. What if I am denied my rights under the law?

[Print the law](#) or send a link to the person you have been communicating with. If necessary, escalate the issue to your City Council and your City Attorney. Be sure to get documentation of all conversations in writing. In extreme cases, you may need to obtain legal representation.

Q71. Who should I call if I have more questions?

Hire an attorney or consult with your local health department or DSHS if you have more questions about this law. The information on this page is not legal advice.

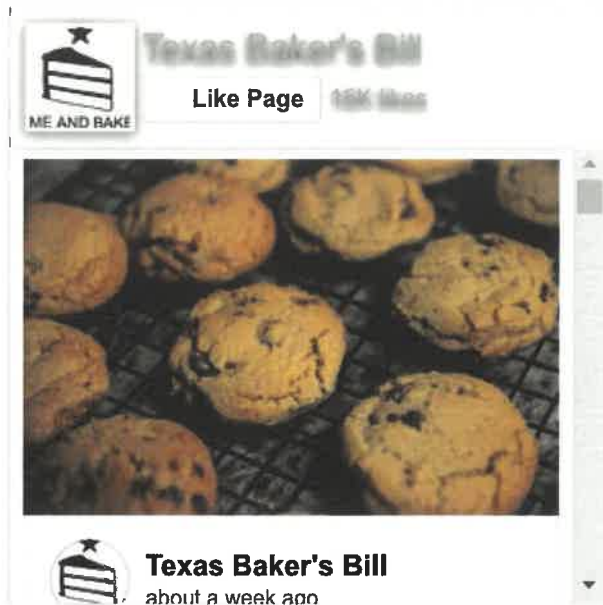
Also, consider joining the [Farm and Ranch Freedom Alliance](#). Memberships start as low as \$35, and once you are a member, you belong to an organization that can provide support if you run into problems with your local health department, or you suspect they are overstepping the boundaries of the law.



Two recipe books every home baker needs: cream cheese frosting, chocolate ganache, lemon curd, and more!



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