

Frequently Asked Questions

AN ACT
relating to the regulation of cottage food products and cottage food
production operations.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 437.001, Health and Safety Code, is
amended by amending Subdivisions (2-a) and (2-b) and adding
Subdivision (3-b) to read as follows:
(2-a) "Baked good" includes cookies, cakes, breads,
Danish, donuts, pastries, pies, and other items that are prepared

*These FAQ were developed with the assistance of the Farm and Ranch Freedom Alliance.
See FARFA's FAQ on cottage food operations [here](#).*

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Q1. When did the law take effect?

Answer: The original cottage food law went into effect on September 1, 2011. The expanded cottage food law took effect September 1, 2013.

Q2. What kinds of homemade food can I sell?

- Baked goods that do not require refrigeration, such as cakes, cookies, breads, and pastries. (No custards or cream fillings, etc.)
- Candy (including chocolate, chocolate-dipped pretzels, chocolate-dipped Oreos, etc.)
- Coated and uncoated nuts
- Unroasted nut butters
- Fruit butters
- Canned jams and jellies
- Fruit pies (including pecan pie)
- 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

Q3. What is a non-potentially hazardous baked item?

Answer: Non-potentially hazardous foods are foods with a **low water activity and low pH level** that inhibit the growth of dangerous micro organisms. 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 from home.

Q4. What kinds of foods are NOT allowed?

Answer: Fresh fruit dipped in candy or chocolate (for example, chocolate covered strawberries or caramel apples), cheesecake, salsa (or other canned tomato products), kombucha, beef jerky, tamales, homemade vanilla extract, flan, pumpkin pie, cream pies, meringue pies. The list in **FAQ #2** is very specific as to what foods are allowed. To be able to sell a food it must 1) be on this list, and 2) be non-potentially hazardous - in other words, not requiring refrigeration to keep from spoiling.

Q5. Can I sell anything that's pickled, not just cucumber pickles?

Answer: No, the law intends for only the sale of traditional cucumber pickles. See DSHS's item at the bottom of this page called ”

Q6. What kind of fruit butters can I sell?

Answer: While the law does say you can sell fruit butter, it also says you may not sell a potentially hazardous food. Some fruit butters are potentially hazardous. **This document from Illinois** is a great resource. SAFE homemade fruit butters listed are: **apple, apricot, grape, peach, plum, quince, and prune.**

Q7. What kinds of fruit butters are not safe?

Answer: According to **this document from Illinois**, the following homemade fruit butters are NOT SAFE: **pumpkin, banana, and pear.** If you would like to make a fruit butter out of a fruit not listed, it is very strongly recommended that you contact **Food Safety Net Services**, and have a sample of your fruit butter tested for pH and aW. No cottage food operator wants to make someone sick, and botulism can be fatal. Food safety should always be your primary concern.

Q8. Can I sell cheesecake, flan, tres leches cake, pumpkin pie, and lemon meringue pie?

Answer: No, all those items require refrigeration.

Q9. But I've seen pumpkin pies out on tables at Walmart and HEB!

Answer: They contain chemicals which make them shelf-stable. They also don't taste very good.

Q10: Can I sell cake balls?

Answer: Yes.

Q11: Where can I sell my cottage food products?

Answer: You can sell foods on the allowed list at your home, a farmer's market, a farm stand, or a municipal, county, or nonprofit fair, festival, or event. To rephrase, the fair, festival, or event must be sponsored by a municipality (city), county, or a non-profit organization. The law does not allow for sales at privately sponsored public events such as craft fairs or flea markets.

Q12. How can I find out who is sponsoring an event?

Answer: Contact the event organizer.

Q13: What makes a fair, festival, or event "non-profit"?

Answer: A non-profit event is an event sponsored by a legally formed non-profit entity. A few examples of such entities would be: a church, PTA, The American Cancer Society, The Boy Scouts of America, etc. You can participate in a non-profit event and still make a profit yourself. It is important to note that just because an event may be labeled as a "fundraiser", this does not necessarily qualify it as a non-profit event. The entity sponsoring the event must be a legally registered non-profit entity with the State of Texas for their event to qualify as a legal sales location for cottage food operators.

Q14. Can a farmer's market or farm stand refuse to allow me to participate, or impose additional rules for participation in their market?

Answer: Yes. Farmers markets are privately owned and managed, and they may set whatever quality standards they wish.

Q15. Can a farmer's market charge me a fee?

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

Q16. Can a city or county refuse to allow me to sell at a city festival?

Answer: 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 Q55.)

Q17. Can I deliver?

Answer: Yes.

Q18. Do I have to get a license from the Health Department?

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

Q19. Do I have to register with the local Health Department?

Answer: No.

Q20. Can someone call the Health Department and complain about me?

Answer: 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.

Q21. Will my kitchen be inspected?

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

Q22. What should I do if an inspector from the Health Department knocks on my door and wants to come into my kitchen?

Answer: Ask to see their warrant. 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.

Q23. Can the Health Department shut me down?

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

Q24. Do I have to take food handler's training if I operate under the new cottage food law?

Answer: 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.

Q25. The food handler's course I took told me I had to take my card to my local health department for validation, and pay another fee. Do I have to do that?

Answer: No. The law only says you must successfully complete the course in order to operate as a cottage food producer. However, if you wanted to get a job in the foodservice industry, you would be required to register the card with the health department.

Q26. Can I have employees?

Answer: If you wish. Anyone not directly supervised by you, (not including your family) must also obtain a food handler's card.

Q27. Do I have to carry liability insurance if I am operating under the cottage food law?

Answer: 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.**

Q28. Can I have pets in my home?

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

Q29. Can I attend bridal shows to generate business?

Answer: There is nothing prohibiting you from renting a booth and marketing your business to brides. But you will probably need to get a temporary food license and use a commercial kitchen if you want to give out samples at the show. Check with the show director and your local Health Department to find out their policies.

Q30. Can I give out samples?

Answer: Sampling is allowed at farmers markets under a new law passed in 2013. Ask the organizer of your farmers market for details. [More info here on sampling at farmers markets.](#) Sampling at other allowed sales locations, like county, municipal, or non-profit fairs, festivals, or events, is allowed as long as your samples are packaged and labeled with the required [labeling information](#).

Sampling of any kind is not allowed at events or locations where sales are not allowed, for instance, a bridal fair.

Samples given to private parties, like your neighbors, or private offices, are ok.

Q31. Can I advertise?

Answer: Yes, advertising is not restricted in any way.

Q32. Do I have to get a sales & use permit and charge sales tax?

Answer: In Texas, bakery items sold without utensils are typically not subject to sales tax. Some food items, such as candy, 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.

Q33. Do I have to get a DBA or set up an LLC, or something like that?

Answer: 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.

Q34. Do I have to claim my income and pay taxes on it?

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

Q35. 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?

Answer: 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.

Q36. Can my city tell me I can't operate due to zoning?

Answer: 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.

Q37. Do I have to get a zoning permit or business license from my city?

Answer: No. The law prohibits cities and municipalities from regulating you in any way.

Q38. Do HOA restrictions still apply?

Answer: 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. It may be easier to get forgiveness than permission to operate your legal home business.

Q39. Does this new law cover bake sales for my church/school/non-profit group?

Answer: Yes, if the bake sale is sponsored by a non-profit entity. Some examples are: church, PTA, Boy Scouts of America, the American Cancer Society, the Humane Society, or another legal non-profit entity.

Q40. Can I donate my food to for a fundraiser? (Bake sale, silent auction, etc.)

Answer: If the fundraiser is sponsored by a city, municipality, or non-profit organization, then the answer is clearly yes. If it is not sponsored by a city, municipality, or non-profit organization, this falls within a gray area of the law. The easiest thing to do to support the cause would be to donate a gift certificate for your business, redeemable for a certain item, or a certain dollar amount. If you only want to donate a food item, call your local health department and ask their regulations.

Q41. Can I hold a bake sale at my home?

Answer: Yes.

Q42. Can I sell my items on the internet?

No.

Q43. No internet sales? Does this mean I can't have a web site?

Answer: You CAN have a web site, Facebook page, Twitter, etc. You can use whatever method of promoting your business that you want to. You simply can't allow the purchase to take place over the internet, such as setting up a shopping cart and letting customers "click and buy" on your web site, or a shop on Etsy or eBay. This ensures that the spirit of the bill is upheld: local, face-to-face sales, where the customer knows the person who made their food.

Q44. Can I ship my products?

No. Mail order sales are prohibited.

Q45. If there are no internet sales allowed, can I accept payment by Paypal or another online payment service?

Answer: We recommend only taking partial payment (a deposit or retainer) via online payment method, and completing the remainder of the transaction in person to fully ensure that no one can try to claim that you are selling on the internet.

Q46. What happens if I don't follow the rules? What is the penalty?

Answer: 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), 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.

Q47. I just discovered another cottage food operator who is not following the rules. This makes me really mad. What should I do?

Answer: 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. **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.

Q48. Should I call my local Health Department before I begin operations? You know, just to be sure?

Answer: 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.

Q49. Can I make dog treats or pet food under this law?

No. Per DSHS, animal food is regulated by the Office of the Texas State Chemists, Texas Feed and Fertilizer Control Service. [See Q12 on the DSHS FAQ for more info.](#)

Q50. Can I sell my food to a coffee shop or retail bakery, or grocery store (or any licensed food establishment or wholesaler) for them to resell?

Answer: 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, so 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.

Q51. Does my food have to have special packaging?

Answer: Your food must be packaged in a way that prevents contamination. Large or bulky items like wedding cakes, or cupcake bouquets, are not required to be packaged.

Q52. Does my food product have to be labeled?

Answer: Yes. See the [Labeling FAQ](#) for complete labeling information.

Q53. Does the label have to be attached to the package?

Answer: Yes, except in the cases of unpackaged large or bulky items. In those cases your invoice can contain the required labeling information.

Q54. Can I put a kitchen in a separate building on my property and use that for my cottage food operations.

Answer: 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.

Q55. Can I put commercial appliances in my home's kitchen?

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

Q56. Can my kids have a lemonade stand under this law?

Answer: No. This law covers only the foods listed, and it does not include beverages. Lemonade would fall outside the cottage food "umbrella" and would still be governed by your local health department and the Texas Food Establishment Rules. It's important to note that lemonade stands have been "illegal" for decades and that the Cottage Food Law did not change this. But parents, since there are many foods that ARE allowable to sell from home under this law, why not consider a different food that is easy for your kids to prepare: Some examples would be: cookies, popcorn, trail mix, rice krispy treats, or chocolate covered oreos!

Q57. Why isn't honey on the list of allowed foods?

Honey was not included as a cottage food in 2013 due to possible cross-regulation issues. However, honey was the subject of its own successful bill in 2015, **SB 1766**. This bill is basically "cottage foods" for small-scale bee-keepers, allowing them to sell up to 2,500 lbs of their honey directly to consumers at their home, farmers market, farm stand, or at a municipal, county, or nonprofit fair festival, or event. Click the link to read the bill, or visit **FARFA's 2015 legislative update** - you will find Honey under the Good News section!

Q58. What if I am denied my rights under the law?

Answer: **Print the law** and show it 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.

Q59. Who should I call if I have more questions?

Answer: Consult an attorney if you have more questions about this law. The advice on this page is not in any way legal advice, it is simply one person's interpretation of reading the letter of the law. We do not assume responsibility for the way you run your business. Use common sense and consult an attorney if necessary.