

# Selling Food Prepared at Home: Texas' Cottage Food Law

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If you want to open a business selling food you make, you will usually need to use an inspected commercial kitchen to prepare the food and comply with the zoning laws. However, in Texas, there is a "Cottage Food Law" that allows entrepreneurs to prepare certain types of food at home for sale to the public.

## ***How can I qualify as a cottage food production operation?***

Operate out of your home and: 1) produce a food on the cottage food list; 2) have an annual gross income of less than \$50,000 from the sale of cottage foods; and 3) sell or deliver the foods directly to customers at your home, or at a nonprofit farmer's market, farm stand or a municipal market or fair.

## ***What foods are on the cottage food list?***

- baked goods
- candy
- coated and uncoated nuts
- jams or jelly
- apple, apricot, grape, peach, plum, quince, or prune fruit butters
- fruit pies
- dehydrated fruit or vegetables, including dried beans
- popcorn snacks
- cereal, including granola
- cucumber pickles
- mustard
- roasted coffee or dry tea
- dried herbs or herb mix

## ***What are the special rules for cottage food operators?***

Cottage food operators are not required to obtain a permit from the local health department, prepare food in a commercial kitchen or have their home kitchen inspected. They must attend a food handler's training, (online or in-person) and obtain a food handler's card from a state-authorized training provider. Employees not directly supervised by the cottage food operator (except for family members) must also have a food handler's card, which is good for 2 years.

## ***Can I give out samples?***

Maybe. You can give out samples at private parties, farmer's markets, or festivals or fairs sponsored by a nonprofit or local government. Samples must be properly packaged and labeled. *Sampling is not allowed at events or locations where sales are not allowed.*

## ***What types of food are NOT allowed to be sold at a cottage food production operation?***

You may not sell foods that are not on the cottage foods list. You may not sell a final product that requires refrigeration, such as:

- snow cones
- barbeque sauces and ketchups
- lemonade, juices, hot chocolate
- salsa, relishes, sauerkraut
- dried pasta
- dog food or treats
- tamales

***Is labeling required on cottage food items?***

Yes, all food (including samples) must be packaged in a manner that prevents product contamination, unless it is too large and bulky for conventional packaging (such as a wedding cake or cupcake bouquet). The label must contain:

- The name and address of the cottage food operation.
- The common or usual name of the product.
- If a food is made with a major food allergen (eggs, nuts, soy, peanuts, milk, or wheat) that ingredient must be listed on the label.
- The statement: “This food is made in a home kitchen and is not inspected by the Department of State Health Service or a local health department.”

***Can I use the internet to sell cottage food products or ship products?***

No. Cottage foods cannot be sold through the internet. You **CAN** have a web site and promote your business on the internet, but the sale must take place face-to-face.

***Do I have to charge sales tax?***

It depends. 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 Texas Comptroller directly at (800) 252-5555 to ask whether your product is taxable.

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***Important:** The information in this document may not reflect the most current legal developments. Specific fact situations may result in different outcomes, conclusions, or answers. It is important to consult with an attorney to ensure that the laws described in this guide are appropriately applied to your organization’s specific legal circumstances.*

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