

# Selling Foods Made at Home: Texas Cottage Food Law

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The Texas Cottage Food Production Operation Law (referred to as the Texas Cottage Food Law) allows for the sale of certain foods that are prepared in the home. A cottage food operation can also be operated out of the home by a director or officer of a non-profit organization for the purpose of the non-profit organization. Annual gross sales may not exceed \$150,000.

A cottage food operation may not be regulated by a local health department or the Texas Department of State Health Services (DSHS). This means that your kitchen will not be inspected by a health inspector, unless there is concern about the public's health, if there is concern that someone is trying to operate a retail food establishment out of their home by serving meals, or if they are conducting a large-scale food manufacturing operation for wholesale to someone who is NOT a cottage food vendor. For those wanting to start a cottage food business, the following information may be helpful.

## Allowed Foods

Foods that can be produced and sold under the current Texas Cottage Food Law include jams, jellies, cakes, pies, breads, and other baked goods as long as they do not contain any meat. Other allowable foods include fresh and frozen fruits and vegetables (both cut and whole), nuts, dry mixes, and dried herbs. High-acid foods, plant-based acidified foods,

and fermented vegetable products are also allowed, provided the pH of the final product is 4.6 or lower.

If the food has not been explicitly forbidden under S.B. 541, it is considered allowable under the current Texas Cottage Food Law. These foods listed below, which are classified as "TCS" (time/temperature control for safety), include:

- ▶ Meat and meat products,
- ▶ Poultry and poultry products,
- ▶ Seafood and seafood products,
- ▶ Fish and fish products,
- ▶ Shellfish and shellfish products,
- ▶ Ice or ice products,
- ▶ Ice cream,
- ▶ Frozen custard,
- ▶ Popsicles or gelato,
- ▶ Low-acid canned foods,
- ▶ Products containing cannabidiol or THC, and
- ▶ Raw milk and raw milk products.

## TCS Foods and the Texas Cottage Food Law

Foods that are labeled TCS can support the growth of pathogens or the production of toxins by pathogens. These foods contain protein and have a high available water content and a pH that is neutral to slightly acidic. These foods must be held at certain temperatures to prevent the growth of pathogens or toxins that can cause a foodborne illness.

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Some types of TCS foods can be sold under the Texas Cottage Food Law. These include cheesecake, cream pies, pumpkin pie, cakes with homemade icing, and low-acid fruit butters, such as a pear or pumpkin. TCS foods must be kept in a refrigerator or cooler that has an ambient air temperature of 41 degrees Fahrenheit (F) or lower. Additional labeling requirements are needed.

If a cottage food operation is selling any product classified as TCS, the operation must be registered with DSHS.

## Selling Your Foods

Foods sold under the Texas Cottage Food Law can be sold almost anywhere, as long as the product is sold directly and delivered to the consumer at the point of sale or another designated location. Foods that are not classified as TCS can be sold wholesale to a cottage food vendor.

A consumer can purchase the product through the internet or by mail order, but the product must be delivered to the consumer by the cottage food operator, person-to-person. Before the operator accepts payment, they provide labeling information, excluding their address, by posting on a website, publishing in a catalog, or otherwise communicating information to the consumer. After payment is received, the operator will provide the address of the operation. Products cannot be shipped or mailed to consumers when purchased in this manner.

## Samples Are Allowed

Sampling is allowed at any location provided basic sanitation requirements are met. Cottage food operators can provide samples of food they can legally sell. They can also provide a sample of a prepared mix to demonstrate the product they are selling.

When preparing food samples, the following sanitary conditions/practices must be present:

1. There must be potable water available.
2. A person who prepares the samples on-site must either wear clean, disposable plastic gloves while preparing the samples or must observe proper handwashing techniques immediately prior to sample preparation.

3. Any produce that is made available for samples must be washed in potable water to remove any soil or other visible material.
4. Any TCS food that is made available for sampling must be held at 41 degrees F or lower, with any leftovers disposed of within 2 hours of cutting or preparing.

## Cottage Food Vendor

A cottage food vendor is an individual who has a contractual relationship with a cottage food production operation and sells the cottage foods on behalf of the cottage food operator.

Cottage food vendors can only sell foods that are not TCS. They can sell at farmers markets, farm stands, food service establishments, or any retail store.

A cottage food vendor must register with the Texas DSHS and must prominently display a sign where the food is offered for sale that states:

**THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE THAT IS NOT SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION.**

## Labeling and Packaging

Foods must be packaged to prevent contamination. Bulky items (e.g., wedding cakes) are exempt from being packaged; however, common sense should be used to keep them safe.

Foods sold under the Texas Cottage Food Law must be labeled with the following information (Fig. 1):

- ▶ The name and physical address of the operation. Addresses are not required on the label if the cottage food operator registers their business with DSHS.
- ▶ The common or usual name of the product.
- ▶ Any major food allergens that are present in the food (e.g., eggs, nuts, soy, peanuts, milk, wheat, fish, shellfish, or sesame).
- ▶ The following statement: THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE THAT IS NOT SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION.

- ▶ If a TCS food is being sold, the label must contain this additional statement: **SAFE HANDLING INSTRUCTIONS:** To prevent illness from bacteria, keep this food refrigerated or frozen until the food is prepared for consumption.
- ▶ If the operator sells pickled fruits or vegetables, fermented vegetable products, or plant-based acidified canned goods, the label must also include a unique batch number.



**Figure 1.** Food label examples.

Food labels must be attached to the package unless the item is too large or bulky to be packaged; otherwise, the label should be added to the sales receipt.

Any advertising or marketing of cottage food products for health, disease, or other claims must be consistent with those allowed by the Code of Federal Regulations.

## Labeling Foods Purchased Over the Internet

Consumers can purchase cottage food products over the internet. The operator, operator’s employee, or household member must personally deliver the product to the consumer. The cottage food operator must provide labeling information of the products without including the operator’s address before payment is taken. This can be done by posting a legible statement on their website or otherwise communicating the information to the consumer. However, after payment is received, the operator will be required to provide the address unless they have registered their operation with DSHS.

## Pickling, Canning, and Fermenting Recipes

A cottage food operator that sells acidic, pickled fruits or vegetables, fermented vegetable products, or plant-based acidified canned goods must use a recipe that:

- ▶ Is from a source approved by DSHS,
- ▶ Has been tested by an appropriately certified laboratory that confirms the finished product has an equilibrium pH value of 4.6 or less, or
- ▶ Has been approved by a qualified process authority.

If the operator chooses not to use a recipe as discussed above, then they must test each batch of the recipe with a calibrated pH meter to confirm the finished product has an equilibrium pH value of 4.6 or less.

The operator must label each batch of pickled fruits or vegetables, fermented vegetable products, or plant-based acidified canned goods with a unique number, and for 12 months, keep a record (Fig. 2) that includes:

- ▶ The batch number,
- ▶ The recipe used by the producer,
- ▶ Source of the recipe or testing results, and
- ▶ The date the batch was prepared.

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*Example - Cottage Foods  
Preparation Log*

**FOOD SAFETY  
EDUCATION**

**Recipe Description (or attach):**  
Texas Salsa

- 5 lbs tomatoes (as purchased)
- 2 lbs chile peppers (as purchased)
- 1 lb onions (as purchased)
- 1 cup vinegar (5 percent)
- 3 tsp salt
- 1/2 tsp pepper

**Yield:** 6 to 8 pints

Wash and dry chilies. Slit each pepper on its side to allow steam to escape. Peel peppers by Oven or broiler method: Place chilies in oven (400°F) or broiler for 6-8 minutes until skins blister. Wash tomatoes and dip in boiling water for 30 to 60 seconds or until skins split. Dip in cold water, slip off skins, and remove cores. Coarsely chop tomatoes and combine chopped peppers, onions, and remaining ingredients in a large saucepan. Heat to boil, and simmer 10 minutes. Fill jars, leaving 1/2-inch headspace. Adjust lids and process accordingly – Pints, Hot Pack, 15 minutes for 0-1000 ft altitude.

Batch No.	Date Prepared	pH Test Results OR Recipe Source	Notes
11	2/5/2020	So Easy to Preserve Georgia Coop. Ext.	N/A

**Figure 2.** Example of a cottage food preparation log.

## Source Requisites

The sources for recipes approved by the DSHS are scientifically validated and may be from a government entity, academic institution, state Extension service, or another qualified source with expert knowledge of processing requirements for pickled fruits and vegetables, fermented vegetable products, or acidified canned goods.

Sources of tested recipes include:

- ▶ *USDA Complete Guide to Home Canning* (current version)
- ▶ *So Easy to Preserve, 6th Edition*, University of Georgia Cooperative Extension
- ▶ Ball Corporation guides:
  - *Ball Blue Book Guide to Preserving, 37th Edition*, by Ball Corporation
  - *The All New Ball Book of Canning and Preserving: Over 350 of the Best Canned, Jammed, Pickled, and Preserved Recipes*, May 31, 2016, by Ball Home Canning Test Kitchen
  - *Ball Canning Back to Basics: A Foolproof Guide to Canning Jams, Jellies, Pickles, and More*, July 4, 2017, by Ball Home Canning Test Kitchen

## Use Safe Food Handling Practices When Preparing Cottage Foods

Each year, nearly 1 in 6 people gets sick from foodborne illnesses. Everyone is at risk for a foodborne illness; however, pregnant women, young children, older adults, and individuals with chronic diseases or compromised immune systems have a higher risk than others do. Reduce the risk of foodborne illness by:

- ▶ Practicing good personal hygiene,
- ▶ Preventing germs from spreading from one surface or food to another (cross-contamination),
- ▶ Cooking food to a proper temperature, and
- ▶ Storing food properly.

If you are making shelf-stable food products (e.g., jams, jellies, pickled fruits and vegetables, plant-based acidified canned products, and fermented

vegetable products), be sure to use tested recipes and process them correctly in a boiling-water bath canner. If not processed, these products should be refrigerated.

## A Food Handler Card is Required

The owner of a cottage food business is required to have a food handler card from a state-accredited program (Fig. 3).



**Figure 3.** Sample food handler certificate.

Earn your food handler card through Texas A&M AgriLife. Our course is accredited by the Texas DSHS and will help you learn basic food safety practices that can help assure the food you prepare and sell is safe. Check with your local county Extension agent or complete the course online at <https://agrilifelearn.tamu.edu/>.

**For more information about the Cottage Food Law or earning your food handler card, contact your county Extension agent or visit our website at <http://foodsafety.tamu.edu>.**

**For more information about the Texas Cottage Food Law or to register your operation, visit: <https://www.dshs.texas.gov/retail-food-establishments/texas-cottage-food-production>**