

III. Permits and Regulations

Permits and Regulations

Health Permits and Regulations for Retail Food Establishments

All retail food establishments in Texas must meet the minimum standards set out in the Texas Health and Safety Code. In addition, vendors may also be subject to more stringent regulations adopted by municipal and county health agencies and/or public health authorities. It will be important for you to check with each of these agencies to ensure market and vendor compliance with regulatory requirements.

What Is a Retail Food Establishment?

A vendor is considered to be operating a retail food establishment in Texas and subject to regulation if the vendor “stores, prepares, serves or otherwise prepares food for human consumption” at any location, including a farmers’ market, *unless* the vendor:

- sells only whole, uncut fresh fruits and vegetables at a produce stand; or
- sells only prepackaged foods that are not potentially hazardous.¹⁰

Vendors who do not fall into one of these narrow exceptions will need a permit in order to operate.

Because the law requires a retail food establishment to have items such as water, sinks, lavatories, trash cans, concrete or other “non-dust producing” floor and other similar health-related items, the market itself may need to supply some of the amenities required in order for its vendors to be able to obtain the necessary permits.

Farmers’ markets are considered a temporary food establishment as long as they do not operate for more than 14 consecutive days. The Texas Department of State Health Services provides for limited regulation of farmers’ markets if a vendor cuts or alters produce at the time of sale (selling sliced tomatoes instead of whole tomatoes). However, local city and county government, not the state, generally regulate health-related issues and provide the permits for farmers’ markets. It is important to research permit requirements established by local governments.

In addition, it is important to note that “food” is broadly defined to include “a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.” As a result, even a vendor who wishes to sell canned soft drinks with a cup of ice would need to obtain the necessary permits because “ice” is defined as a food.

What Permits Are Required of a “Retail Food Establishment”?

All retail food establishments in Texas are required to obtain a retail food establishment permit from the agency responsible for inspecting such establishments.

In areas where county, municipal or public health authorities regulate food establishments, those authorities are responsible for issuing permits. In all other instances, the vendor will need to contact the Texas Department of State Health Services for a permit. The type of permit a vendor will need depends on the type of set up used by a vendor. Vendors who sell food out of mobile food units will need a mobile food unit permit. Vendors who set up or use temporary market stalls will need a temporary food establishment permit, available either for single or multiple events. Mobile and temporary food establishment permits are discussed below.

Non-profit corporations granted Section 501(c)(3) tax-exempt status by the IRS are exempt for paying permit fees but still must complete and submit registration forms.

Questions about permitting process can be answered by the Texas Department of State Health Services in Austin at 512-713-0246.

What Regulations Apply to Retail Food Establishments?

The Texas Food Establishment Rules set out minimum rules that must be followed by all retail food establishments in the state, even if the establishment is also regulated by a county, a municipal, or a public health authority. These rules contain very specific requirements about how food is to be stored and prepared.

What Are Mobile and Temporary Food Establishments?

Some vendors may want to sell prepared food from a mobile restaurant or a vehicle that contains a retail food establishment. These vendors must comply with the health and safety requirements for a “mobile food establishment,” which are similar to the requirements for a typical retail food establishment but with some modifications to take into account the fact that these businesses are operated from a mobile vehicle.

If a vendor only wants to sell food for a brief period, that vendor may be able to qualify as a “temporary food establishment.” A temporary food establishment is one that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.¹¹ This type of permit would be helpful if you wanted to hold a special event and some of your vendors wanted to afford their customers the chance to sample the products being sold.

How Can I Learn More about the Regulations for Food Establishments?

You should first determine whether the city and county in which your market is located has regulations for food establishments. If not, then the necessary permits may be obtained from the Texas Department of State Health Services. The Field Inspection Manual of the Texas Department of State Health Services provides substantial information that will also help your market and your vendors in determining the requirements for their food establishments. The manual can be found online at <http://www.tdh.state.tx.us/bfds/retail/RFDPDF/FIM.pdf>.

“Organic Products” and Similar Terms

The Texas Department of Agriculture operates the “Organic Certification Program” for all foods grown in Texas. Under this program, the Texas Department of Agriculture inspects and certifies organic farms and processors, distributors and retailers of organic foods. In order to be certified, farms and vendors must comply with the organic growing and handling standards created by the USDA National Organic Program.¹² Once certified, foods may be labeled as “organic” and the seals of the Texas Department of Agriculture and the USDA may be used for organic products.



The Texas Department of Agriculture certifies a variety of Texas grown crops and products made from grains (wheat, corn and rice), beans (soybeans, mungbeans, pintos and many other peas and beans), sesame, peanuts, fruits (blackberries, blueberries, strawberries, citrus, peaches, apples, melons), vegetables, herbs, aloe vera, mushrooms, sprouts and wildflower and grass seeds. The Texas Department of Agriculture also plans to implement certification for livestock, including beef, pork, poultry, exotic game, aquaculture and dairy.

While certification is required in order to use the Texas Department of Agriculture’s seal, the term “organic” may still be used by farms and vendors who are exempt from certification provided that they still comply with the labeling, storage, and record keeping requirements of the USDA’s rules and are truthful and accurate in the description of their products as organic. Certification is optional for the following:

- a producer, processor or distributor who has a gross agricultural income of less than \$5,000 a year from organic products (or, if no actual organic sales have been made yet, then projected sales should be used);
- a distributor who receives organic food products in packaged form and does not process or repackage them in any way;
- a processor or distributor who handles only products whose organic content is 70% or less by total weight of the finished product;
- a processor or distributor who limits use of the word “organic” to the fine-print ingredient label of its products; or
- a processor who processes organic foods on site for resale to the public (i.e., a vendor who makes ready-to-eat salads at his or her market stall).

In Texas, the certification process begins by submitting an application for organic certification to the Texas Department of Agriculture, along with supporting documentation, an application fee of \$25 and minimum certification fee of \$150.00 that is calculated based on the size of the producer’s acreage. <http://www.agr.state.tx.us/forms/index.htm#organics>. Fees and certification procedures for other certifying agents vary.

These rules apply to all food and agricultural products sold in the United States regardless of whether the products were grown within the United States or elsewhere. Persons who knowingly violate the rules (including retailers and distributors) can be fined up to \$500.00 for each violation and barred from selling organic products for up to five years. Each day a violation continues may be considered a separate violation for penalty assessment. The Enforcement Division of the Texas Department of Agriculture and the USDA will determine this penalty. Once certification is granted, all certified business must submit an updated organic management plan each year. Annual updates for producers are due on March 1 of each year. Annual updates for processors, distributors and retailers are due on August 31 of each year. Annual updates received after the due date may be assessed late fees. The Enforcement Division of the Texas Department of Agriculture and the USDA will determine this penalty.

Certification Requirements for Producers and Handlers

While all sellers of organic products must comply with the standards set by the USDA National Organic Program, some producers, secondary handlers and processors of organic foods must also obtain third-party certification from a USDA approved certifying agent before they can hold their products out as being “organic.” In Texas, the Texas Department of Agriculture is a USDA approved certifying agent.

Producers, processors, or distributors whose gross agricultural sales total \$5,000 or less per year do not have to be certified to hold their products out as being “organic.” However, if agricultural sales are more than \$5,000 per year, then certification with the Texas Department of Agriculture is necessary.

To become certified, a producer or handler must submit a detailed organic production and handling plan for review by an approved certifying body that shows that the producer or handler operates its business in a manner consistent with the land-use and storage and handling requirements of the USDA National Organic Standards. Fraudulent statements to a certifying body are criminal offenses punishable under federal law.

As described above, the Texas Department of Agriculture is the agency responsible for certifying Texas-grown fruits and vegetables products. Organic fruits and vegetables grown outside of Texas and organic products not certified under the Texas program must be certified under a certification program approved by the U.S. Department of Agriculture. There are currently 56 approved domestic certifying agents (including the Texas Department of Agriculture) and 43 approved certifying agents located outside the United States. A list of approved certifying agents can be found on the U.S. Department of Agriculture website at www.ams.usda.gov/nop.

Retailer Standards

Under the USDA National Organic Standards, there are five types of products that may be called organic. A summary of the principal standards for these products follows:

Product	Standard
<p>Products claiming to be “100% Organic”</p>	<ul style="list-style-type: none"> • Must be organic or contain 100% organically produced ingredients as defined under the USDA National Organic Standards (excluding salt and water) • May <u>not</u> contain sulfites, nitrates or nitrites • Product label or information statement must identify the approved certifying body granting organic certification
<p>Products claiming to be “Organic”</p>	<ul style="list-style-type: none"> • Must contain at least 95% organic ingredients as defined under the USDA National Organic Standards (excluding salt and water) • May <u>not</u> contain sulfites, nitrates or nitrites • Product label or information statement must identify the approved certifying body granting organic certification and the percentage of organic ingredients in the product
<p>Products claiming to be “Made with Organic (Specified Ingredients or Food Groups)”</p>	<ul style="list-style-type: none"> • Must contain at least 70% organic ingredients as defined under the USDA National Organic Standards (excluding salt and water) • May <u>not</u> contain added sulfites (except as allowed in the case of wines) • Product label or information statement must identify the approved certifying body granting organic certification, the percentage of organic ingredients in the product and each ingredient that is organic • May <u>not</u> use the USDA organic seal
<p>Organic products of exempt producers (i.e. producers selling less than \$5,000 in organic products)</p>	<ul style="list-style-type: none"> • May be labeled and sold as “organic” (so long as the claim is truthful) but may not be called “certified organic” • May not use the USDA organic seal or a certifying agent’s seal or mark
<p>All other organic products</p>	<ul style="list-style-type: none"> • Must limit use of the word “organic” to the product’s ingredient statement • May not use the USDA organic seal or a certifying agent’s mark

Retailers of organic products are also responsible under the National Organic Standards for ensuring that organic products:

- are not commingled with non-organic products;
- are prevented from coming into contact with pesticides and other substances prohibited under the USDA National Organic Standards; and
- are not packaged or stored using materials that contain synthetic fungicides, preservatives and fumigants.

The USDA National Organic Standards require that retailers selling organic products maintain records showing compliance with the labeling and storage requirements of the rules. The rules recommend that records be kept for at least three years.

Texas Registration Requirements for Exempt Growers and Growers Certified Elsewhere

All organic growers who are exempt from certification requirements or who have been certified by another certifying body must register with the Texas Department of Agriculture in order to sell organic products in Texas. There is a \$25 annual fee for registration.

Copies of registration forms and an application packet can be obtained by calling the Texas Department of Agriculture at 512-475-1641 or by emailing the department at: organic@agr.state.tx.us.

Using “Natural,” “Free Range,” and Other Descriptive Words

The USDA National Organic Standards only restrict the use of the word “organic.” Vendors, growers and merchants may use other words such as “natural” or “free range” to describe their products so long as the claim is truthful. The USDA’s Food Safety and Inspection Service is responsible for ensuring the truthfulness and accuracy in labeling of meat and poultry products and have created a list of definitions for many of these terms. While the complete list can be found at <http://www.fsis.usda.gov/oa/pubs/lablterm.htm>, some of the more notable terms and definitions include:

- “Certified” – The term implies that the USDA’s Food Safety and Inspection Service and the Agriculture Marketing Service have officially evaluated a meat product for class, grade or other quality characteristics (i.e., “Certified Angus Beef”). When used under other circumstances, the term must be closely associated with the name of the organization responsible for the “certification” process, i.e., “XYZ Company’s Certified Beef”.
- “Chemical Free” – The term is not allowed to be used on a label.
- “Free Range” or “Free Roaming” – Producers must demonstrate to the USDA that the poultry has been allowed access to the outside.
- “Fresh Poultry” – Poultry whose internal temperature has never been below 26 °F.
- “Kosher” – The term may be used only on the labels of meat and poultry products prepared under Rabbinical supervision.

- “Natural” – A product containing no artificial ingredient or added color and is only minimally processed (a process that does not fundamentally alter the raw product) may be labeled “natural”. The label must explain the use of the term natural (such as - no added colorings or artificial ingredients; minimally processed.)

A product also may state that it has been certified as “organic” under the laws of another country if that claim is truthful.

Finally, vendors should be wary of making nutritional or other claims (i.e. curative properties of a food) without first discussing those claims with the Food and Drug Administration.

Manufactured Foods

It is likely that some vendors will seek to sell prepared foods – such as their family’s salsa, a pie made with a “secret recipe” or maybe even juice produced from fruit grown on the vendor’s farm. Vendors who want to sell these prepared and packaged foods that are intended for consumption offsite must comply with regulations for manufactured foods. As mentioned above, eggs produced by a vendor’s poultry are also considered to be “manufactured foods.”

The laws governing manufactured foods generally require that the labels for the food sold contain certain required information, including:

- the name of the product;
- the name and address of the manufacturer, which would be the vendor if he or she made the food;
- the list of ingredients in descending order of predominance by net weight,
- the quantity; and
- other information as required for the type of food being sold.

In addition, it may also be necessary to include nutritional information concerning the product being sold.

The facilities in which the manufactured food is prepared must also meet the requirements for a food manufacturing facility. Notably, such a facility may not be connected to “living or sleeping quarters.” As a result, a vendor may not use the kitchen in his or her house to manufacture foods. Some of the other requirements for the kitchen in which food is manufactured includes:

- hand wash and 3-compartment sinks with hot and cold running water;
- easily cleanable surfaces that are impervious to moisture including floors, walls and ceilings;
- tightly sealed windows, doors and other entries to prevent the entrance of rodents, pest, vermin, etc.; and
- sufficient lighting and facility suitable in size, construction and design to facilitate maintenance and sanitary operations.

We strongly encourage vendors who want to manufacture foods to contact the Foods Group of the Environmental and Consumer Safety Section of the Texas Department of State Health Services regarding the requirements that apply to the types of food to be manufactured.

Mailing Address:

Department of State Health Services
Environmental and Consumer Safety Section
Foods Group
1100 West 49th St.
Austin, TX 78756

Phone: 512-834-6670

Fax: 512-834-6681

Web: www.tdh.state.tx.us/bfds/foods/default.htm

Making Wine or Beer

The licensing and permitting rules for local wineries and breweries are complex. If making beer (4% alcohol by weight), a Manufacturer's License (BA) is required. If making malt liquor or ale (more than 4% alcohol by weight), a Brewer's Permit (B) is required. If making all three, both a Manufacturer's License and Brewer's Permit are needed. Fees and surcharges for a Manufacturer's License must be renewed every 12 months and vary by the number of establishments: from \$1,027 for one establishment to \$8,677.00 for more than five establishments. Fees and surcharges for a Brewer's Permit are \$1,745.00 and must be renewed every 12 months. Surcharges are subject to annual change.

If a local brewery makes 75,000 barrels or less per year, it can sell the product directly to the retailer (the farmer's market). If the brewery makes more than 75,000 barrels per year, it must go through a distributor to sell the product. The brewery cannot sell directly to the consumer.

A local winery must have a Winery Permit (G). This permit allows for the manufacturing, bottling, labeling, and packaging of wine containing no more than 24% alcohol by volume. Fees and surcharges for a Winery Permit are \$373.00 and must be renewed every 12 months. All Texas wineries can sell directly to the retailer (farmers' market).

Questions about obtaining permits necessary to sell alcoholic beverages can be answered by contacting the Texas Alcoholic Beverage Commission at 512-206-3333. Additional information and materials are also available on the commission's website at: <http://www.tabc.state.tx.us>.

Selling Alcoholic Beverages

Sales of alcoholic beverages in Texas are regulated by the Texas Alcoholic Beverage Commission and often by county and municipal regulations as well.

Alcohol laws in Texas are very complex and can vary greatly even in parts of the same county or city. The process of obtaining approval for alcohol sales also can be highly time-consuming as well as expensive, requiring lengthy notice to residential neighbors and other interested parties in the community and background checks. Once issued, permits closely control the type of alcoholic beverages that may be sold, when they may be sold, to whom they may be sold, and the ways in which beverages may be transported and stored. These restrictions must be closely followed and failure to do so could result in civil damages and criminal penalties for both vendors and market organizers.

It is very important that a market operator consult with the Texas Alcoholic Beverage Commission and county and city authorities before allowing alcoholic beverages of any kind to be sold at a farmers' market. The market manager should not allow a vendor to sell alcohol without proof that the vendor has the appropriate retailer permit, satisfies all of the requirements of the permit and has adequate insurance to cover risks to the market association. Market managers also will want to closely monitor vendors selling alcohol beverages to make sure that the vendor is complying with all applicable alcohol laws.

Temporary wine and beer retail permits are available for the occasional sale of wine and beer at a farmers' market. The cost of a temporary permit is \$210 per use, not to exceed 10 permits per year. Each temporary permit is valid for not more than four days.

For more frequent sale of wine and beer at a farmers' market, an annual wine and beer permit is available for \$410 per year.

Regional and local district Texas Alcoholic Beverage Commission offices can provide both annual or temporary wine and beer licenses. Regional and local district offices locations are available at www.tabc.state.tx.us/contact/Maps.htm.

Selling Fireworks

Texas law restricts the sale of firecrackers, bottle rockets, roman candles and other fireworks classified by the U.S. Department of Transportation as 1.4G Explosives (also previously referred to as Class C Common Fireworks). Fireworks in this category may be sold in Texas only from June 24 through July 4 and from December 20 through January 1. Local and municipal law often further restrict sales and, in most urban areas, prohibit such sales outright.

A vendor who wishes to sell fireworks on a retail basis in an area where sales are permitted under local law must obtain a retail permit from the Texas Department of Insurance (or from the vendor's wholesaler or jobber) in addition to the sales and use tax permit required from the Texas Comptroller of Public Accounts. Retail firework sales in Texas are subject to an additional 2% state sales tax that must be reported and paid separately from the general sales tax. Sales may only be made to persons who are at least 12 years old.

Dealers of fireworks must comply with additional safety restrictions imposed by the Texas Fire Marshal. Depending on the size of a vendor's operations, these could include requirements that the business be operated away from other businesses. Furthermore, fireworks may not be sold from tents or motor vehicles. The structures from which fireworks are sold must conform to specific requirements.

Additional information concerning the licenses and other requirements to sell fireworks in Texas can be obtained from the State Fire Marshal's office in Austin by calling 512-305-7900 or on the web at www.tdi.state.tx.us/fire/fmlifirework.html. Information can also be obtained from local fire authorities.