

# Oregon's Home Baking Bill

## Residential kitchen exemption for baked goods and confectionary items

Lauren Gwin

### What is the Home Bakery Exemption?

In 2016, the Oregon Legislature passed a law that creates new small-business opportunities for home bakers while providing rural communities access to fresh baked goods.

The Home Bakery Exemption allows people to produce certain baked goods and confectionary items in their home kitchens and sell them directly to consumers without having to obtain a food establishment license or undergo an inspection from the Oregon Department of Agriculture (ODA). Exempt home kitchens must be built and maintained in a clean, healthful, and sanitary manner.

This FAQ was prepared in consultation with ODA Food Safety. If you have additional questions not answered below, contact your local ODA inspector. For a list of ODA inspectors in your area, visit [http://oda.state.or.us/dbs/sanitarian\\_list/search.lasso](http://oda.state.or.us/dbs/sanitarian_list/search.lasso) and enter your county, city, or zip code.

### The basics

#### What types of products are allowed?

Baked goods and confectionary items that are not “potentially hazardous” (definition to follow). Baked goods include bread, rolls, cakes, pies, doughnuts, pastries, cookies, biscuits, crackers and all similar goods made for human consumption. Confectionary items are candy or sweets, such as salted caramels, marshmallow bars, chocolate covered marshmallows, and hard candy.

#### Is there a limit on how much I can sell as a Home Baker?

Yes, you are limited to \$20,000 in annual gross sales. If your gross annual sales exceed that limit, and you still want to bake in your home kitchen, you must be



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inspected and licensed by ODA as a Domestic Home Kitchen (see page 4).

#### What are “potentially hazardous” baked goods that don’t qualify for this exemption?

“Potentially hazardous” baked goods require temperature control (e.g., refrigeration) to prevent the rapid growth of infectious or toxic microorganisms. Examples include:

- Baked goods that require refrigeration after production, such as pies, cakes, or pastries containing cream, custard, meringue, or cream cheese icings or fillings
- Focaccia-style breads containing vegetables or cheese
- Candied fresh fruit products, including caramel and candy apples

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- Baked goods containing fresh, frozen, or dried meat, or fish or shellfish products (e.g., potpies or pastries with those ingredients)

### **Do I need to apply or register with ODA in order to qualify for the Home Bakery Exemption?**

If you meet the qualifications for the Home Bakery Exemption, you do not have to fill out an application form or register with ODA.

You do, however, still have to follow sanitation rules that apply to food establishments in Oregon, which are listed in the Oregon Administrative Rules (OAR) on this page: [http://arcweb.sos.state.or.us/pages/rules/oars\\_600/oar\\_603/603\\_025.html](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_603/603_025.html) under two headings in Division 25: “General standards of food establishment construction and maintenance” and “Food Processing Establishments” (OAR 603-025-0020 and 603-025-0150).

In addition, ODA maintains authority to inspect and require a food establishment license if there are food safety concerns associated with an exempt home kitchen.

### **Are any certifications needed to operate under the Home Bakery Exemption?**

Yes. Each person involved in preparation of home baked goods prepared under this exemption must successfully complete a food handler training program. For more information and to find an approved program in your county, visit: <https://public.health.oregon.gov/HealthyEnvironments/FoodSafety/Pages/cert.aspx>.

## **Other product-related questions**

### **Can I make and sell gluten-free baked goods under the Home Bakery Exemption?**

Yes, if the products qualify as baked goods or confectionary items that are not potentially hazardous. However, you must follow the FDA guidelines for labeling of gluten-free foods. You can find more information here: [fda.gov/food/food-labeling-nutrition/gluten-free-labeling-foods](http://fda.gov/food/food-labeling-nutrition/gluten-free-labeling-foods).

### **Are pet treats included under the Home Bakery Exemption?**

No. The Home Bakery Exemption only applies to food for human consumption. However, pet treats don't require a license at all unless they contain meat.

### **Can I bake bread in a wood-fired oven under the Home Bakery Exemption?**

It depends. Any area or room of a residential dwelling may be used for food preparation, packaging, storage, or handling of permitted food products if it is constructed and maintained in a clean, healthful, and sanitary condition. A residential dwelling is defined as a home or area within a rental unit, in which a person or persons make their primary residence. However, local ordinances may restrict wood-fired oven use.



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### **Can I produce marijuana edibles under the Home Bakery Exemption?**

No. The Home Bakery Exemption explicitly states that foods produced under this exemption do not contain marijuana or marijuana items (cannabinoid products, cannabinoid concentrates, and cannabinoid extracts).

### **Can I use flour produced under the Farm Direct Bill in my Home Bakery Exemption products?**

Yes. As long as the flour is produced in accordance to the rules of the Farm Direct Bill.

## **Labeling requirements**

Any products prepared in an exempt residential kitchen must contain the following statement: “This product is homemade and is not prepared in an inspected food establishment.” The statement must be on the principal display panel.

The principal display label must also include:

1. The business name, phone number, and home address for the food establishment;
2. The name of the product;
3. The ingredients of the product in descending order by weight;
4. The net weight or net volume of the product;
5. Any applicable allergen warnings as specified in the Food Allergen Labeling & Consumer Protection Act of 2004 (FALCPA); and
6. If the label provides any nutrient content claim, health claim, or other nutritional information, add the appropriate product nutritional information as described in Title 21, Part 101 of the Code of Federal Regulations: <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?CFRPart=101>.

### **Do I have to include my home address on my product label, or can I use a post office box number?**

You must include your name, phone number and home address on your product label.

### **How can I meet the labeling requirements if I don't (or can't) package my home baked goods?**

For any Home Bakery Exemption goods that are not easily packaged (for example, a wedding cake), you must inform the end user in writing that the product is homemade and not prepared in an inspected food establishment, and then include all labeling requirements on a receipt or similar document you deliver to that consumer with the product.

In cases where you are selling products as single items—for example, one cookie or muffin at a farmers market stand—there must be a placard at the location that states, “This product is homemade and is not



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prepared in an inspected food establishment.” And you must have all required label information available upon request.

### **What about the federal allergen labeling requirements?**

The federal Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) requires that foods containing any of the eight major food allergens are clearly labeled on the principal display panel of the food. The eight major allergens are:

- Milk (any protein from milk, butter, cream, dry milk, whey, or casein)
- Eggs (e.g., whites, yolks, albumen, or powdered eggs)
- Soy (e.g., soybeans, soy lecithin, soy protein, or soy flour)
- Wheat (includes spelt, semolina, kamut, and triticale)
- Seafood (e.g., salmon, tuna, eel, bass, flounder, or cod)
- Crustacean shellfish (e.g., crab, lobster, or shrimp)
- Peanuts (e.g., peanut butter or peanut meal)
- Tree nuts (e.g., pecans, walnuts, hazelnuts, cashews, coconut, or pine nuts)

### **Does FALCPA provide any specific direction for declaring the presence of ingredients from the three food groups that are designated as “major food allergens” (i.e., tree nuts, fish, and crustacean shellfish)?**

Yes. FALCPA requires the specific type of nut to be declared for tree nuts (e.g., almonds, pecans, or walnuts) and the species to be declared for fish (e.g., bass, flounder, or cod) and crustacean shellfish (e.g., crab, lobster, or shrimp).

### **Where can I learn more about FALCPA?**

On the U.S. Food and Drug Administration website: <http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/allergens/ucm059116.htm>.

### **Selling your home-baked goods**

Foods prepared under the Home Bakery Exemption may only be sold by the producer directly to the consumer at the producer’s home, farmers markets, farm stands, roadside stands, and similar venues. You cannot sell goods produced under the Home Bakery

Exemption to a commercial entity or an institution including, but not limited to, a restaurant, grocery store, caterer, school, day care center, hospital, nursing home, or correctional facility.

### **Can I sell my home baked goods over the Internet?**

No. You may take online and phone orders as long as the cash transaction and delivery of the product are in person. You cannot ship products or have a third party deliver your products.

### **What oversight does ODA have over my home bakery business?**

ODA may require an exempt home bakery business to become licensed and inspected if:

- The home bakery refuses to comply with ODA rules that the food establishment be constructed and maintained in a clean, healthful, and sanitary condition;
- The home bakery is operated outside of the Home Bakery Exemption's parameters; or
- The home bakery is directly linked to a foodborne illness outbreak.

### **Can I sell my home baked goods to a third-party distributor, wholesaler, or broker?**

No. You can only sell goods produced under the Home Bakery Exemption to the end user of the product. The end user is any member of the public who takes possession of the food and is not functioning in the capacity of an operator of a food establishment and does not offer the food for resale.

### **Will I need to meet local zoning or other laws?**

Yes. The Home Bakery Exemption only exempts you from the requirements of licensing and routine inspection by ODA. Contact your local unit of government to determine if there are local regulations that will affect your business.

### **If I do not qualify under the Home Bakery Exemption and want to become a licensed food processor, how do I go about getting a license?**

Anyone who would like to sell food that is made in his or her home kitchen that does not meet the Home Bakery Exemptions must obtain and meet all special requirements for a domestic kitchen bakery or food processing license or both. For more information on domestic kitchen licensing, visit: <https://www.oregon.gov/oda/programs/foodsafety/fslicensing/pages/domestickitchen.aspx>.

### **Where can I read the statute and rules?**

Oregon Revised Statutes: 616.723 [https://www.oregonlegislature.gov/bills\\_laws/ors/ors616.html](https://www.oregonlegislature.gov/bills_laws/ors/ors616.html)

Oregon Administrative Rules: 603-025-0315 through -0330 [http://arcweb.sos.state.or.us/pages/rules/oars\\_600/oar\\_603/603\\_025.html](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_603/603_025.html)

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You can also contact your local OSU Extension Office: <http://extension.oregonstate.edu/ind-us>



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