

Pennsylvania Department of Agriculture Farmers Market and Farm Stand Inspection and Licensing Guidelines

The Pennsylvania Department of Agriculture is tasked with the licensing and inspection of retail food facilities across the state through the Bureau of Food Safety and Laboratory Services. With the passage of Act 106 of 2010, food safety and inspection services were updated in an effort to ensure that food safety protocols are meaningful and met throughout the entire food chain – from farm to fork.

This guide is designed to help farmers, marketers and food processors prepare for and meet the regulatory requirements that come with participating in farmers markets and/or selling products through a retail farm market or farm stand.

Under Act 106, retail food facilities are required to be licensed and inspected. This includes farmers markets and retail farm markets/stands. Licensing and inspection will be handled by the appropriate authorized agency, typically either the Pennsylvania Department of Agriculture or a local or county health department.

With the 2011 farmers market season, there is one change that will be implemented as a result of Act 106 that has the potential to impact those participating in farmers markets. In previous years, each farmers market had one food safety license that covered all vendors. In reviewing the state's food safety laws, this umbrella license came with a major flaw – if one vendor was found to be in violation of the state food safety laws, the entire market had to be found in violation or shut down until the situation was rectified.

Seeking to ensure that no vendors are unfairly harmed due to the actions of others, Act 106 has a new requirement that each vendor at a farmers market be individually licensed.

PLEASE NOTE – there are exemptions from the licensing requirement for farmers market vendors. These exemptions have not changed from previous years.

Act 106 – Exemptions

- (1) A retail food facility that is exempted from the license requirements under this section shall remain subject to inspection and all other provisions of this requirements of this section subchapter.
- (2) A licensor shall exempt the following retail food facilities from the license
 - (i) A retail food facility in which only prepackaged, non-potentially hazardous food or beverages are sold.
 - (ii) A retail food facility that sells only raw agricultural commodities.

Examples of Exempt/Non-Exempt Farmers Market Stands

A vendor that sells only raw products from the farm – fruits and vegetables that have been harvested but not processed in any way (no value-added work done) **IS EXEMPT**. This would cover vendors selling fresh fruits and vegetables.

A vendor selling pre-packaged, non-potentially hazardous items (this may include baked goods, jams, candy, canned pickled food products, bottled juices, apple cider, honey products, etc.), prepared in a kitchen/facility that is registered, licensed and inspected by the PA Department of Agriculture **IS EXEMPT**.

A vendor selling food that is ready-to-eat*, for example a stand where lunches are served, **IS NOT EXEMPT**. (* The term 'Ready-to-Eat' is defined in Appendix A, as it appears in the Pennsylvania Code.) This includes stands that have added-value to raw products by washing, processing, chopping or offering them in a state that meets the ready-to-eat definition – such as leafy greens that have been washed and chopped to form a salad or fruits/vegetables that have been washed and sliced.

A vendor selling pre-packaged, potentially hazardous foods** (those that are temperature sensitive and must be controlled) such as meats, cheeses, milk or eggs, **IS NOT EXEMPT**. (** The term 'Potentially Hazardous Food' is defined in Appendix A, as it appears in the Pennsylvania Code.)

EXEMPT VENDORS

If your stand meets the requirements to be exempt from licensing, you should register with the Market Master for each farmers market, but do not need to secure licensing from the Pennsylvania Department of Agriculture or a local or county health department.

If your stand sells pre-packaged, non-potentially hazardous food (see the list above), you must still complete a **Retail Plan Review Application and Retail Plan** prior to the start of the farmers market season. This is a one-time form that you must complete prior to opening up for the season. If you operate at more than one farmers market stand, you must complete a Retail Plan Review Application and Retail Plan for each farmers market, unless you are recognized as a mobile unit. If, in later years, you add new products, change ownership or remodel your stand, you or the new owner must submit a new Retail Plan Review Application and Retail Plan.

License-exempt vendors are still subject to annual inspections by the Bureau of Food Safety and Laboratory Services to ensure products comply with the exemption requirements, are properly labeled and are from an approved source.

Please note that stands that are exempt from licenses are also still subject to the requirements of the Food Code. There is potential for the Department's Bureau of Food Safety and Laboratory Services to secure sample products for testing. Vendors are reimbursed for all samples that are secured and testing results are shared with the farm/business.

NON-EXEMPT VENDORS

If your stand does not meet exemption requirements, you must do the following to register with the state:

- 1) Complete and file a Retail Plan Review Application AND conduct a plan review with the Pennsylvania Department of Agriculture/local health officer;
- 2) Secure a license from the Bureau of Food Safety and Laboratory Services or a Local or County Health Department upon passing inspection.

VENDORS PARTICIPATING IN MULTIPLE FARMERS MARKETS

Many vendors have stands at more than one farmers market. The intent of Act 106 is not to put undue regulatory burdens on those who are marketing directly to the consumer, but to help ensure that all farmers market vendors are following proper food safety protocols regardless of product or location.

For those who are selling products at more than one location, an option is available to be considered for licensing as a "Mobile Unit." Typically utilized by food vendors who participate in many of the state's county and community fairs, mobile unit licensing allows vendors to register one time only. When the mobile unit option is selected, the plan review and initial inspection will be conducted to ensure that the unit meets the requirements mandated by law. A mobile unit does not need to be an actual facility or trailer. For farmers market vendors, the review will look for the critical pieces of equipment – a tent/covering, access to appropriate water sources, temperature control for food products, etc. The set-up that is used at the time of the plan review becomes the model that must be followed at each farmers market or event and will be the footprint that is expected during inspections.

A "Mobile Unit" license can cover multiple farmers market stands if the following parameters are met:

- 1) Set-up and tear-down at each farmers market site must include the vendor removing all food products from the stand.
- 2) The actual license (not a duplicate copy) must be present in the stand when the farmers market is open. Note – this means that "Mobile Unit" vendors cannot operate multiple stands on the same day unless they have applied for and received additional licenses.
- 3) Where the Pennsylvania Department of Agriculture does not have food safety jurisdiction, vendors should contact the county or Local Health Department.

To take advantage of this option, check the box marked "Mobile Unit" at the top of the Retail Plan Review Application.

LICENSING FEES

For vendors securing a new license from the Pennsylvania Department of Agriculture, fees are:

- \$103 for retail food facilities that have not been previously licensed.
- \$82 for annual renewals/change in proprietorship/additional farmers market stands on the same day.

If follow-up visits are required to bring a retail food facility into compliance, there is a \$150 fee for the second follow-up and a \$300 fee for the third re-inspection.

Where a county or Local Health Department has jurisdiction over food safety inspections, local licensing fees may apply.

FOOD PRODUCT SOURCE

Those products that are deemed non-potentially hazardous are, in many instances, made in the home. The kitchen where the items are prepared must be registered with the PA Dept. of Agriculture and inspected by the Bureau of Food Safety and Laboratory Services. Non-potentially hazardous foods do not require temperature control to remain safe and may include baked goods, jams, candy, canned pickled food products*, apple cider, and honey products.

Those products that are deemed potentially hazardous may NOT be produced/processed in a personal home kitchen. Potentially hazardous foods are those that require temperature controls to remain safe. This can include meats, cheeses, eggs and milk.

The department is mandated to license and inspect off-site storage facilities for all food, including products sold at farmers markets. This includes coolers, storage lockers and on-farm warehousing. Priority is given to off-site storage facilities for potentially hazardous food products.

* - Only foods that are acidic or pickled can be processed/canned in a home kitchen. Canning of low-acid food is prohibited unless done by an FDA-approved processor.

LABELING OF FOOD PRODUCTS

Raw agricultural products do not have a labeling requirement; however there are certain products that must be appropriately labeled prior to retail sale.

Labeling requirements call for food products, including pre-packaged food items prepared by a home food processor, to be labeled with the name of the product, ingredients, name and address of the manufacturer or distributor and net contents/weight and an allergy warning, if applicable**. This includes pre-packaged candy, honey, nuts, jams, specific acidified foods (approved canned goods) that can be sold at farmers markets, and other such items.

Bakery products made from scratch or mix and sold directly to the public by the producer of the product are exempt from labeling requirements. Items that are termed "bake-off" products (those that are purchased frozen or refrigerated with final preparation/heating at home) are not exempt from labeling requirements.

For all items, a list of ingredients must be available upon request by the consumer.

Shell eggs must be labeled in accordance with the Pennsylvania Egg Refrigeration Law. More details on this law are listed below.

** - For additional information on food allergy labeling requirements contact the Bureau of Food Safety and Laboratory Services at (717) 787-4315 or the U.S. Food and Drug Administration.

SHELL EGG HANDLING/REQUIREMENTS

Egg producers with more than 3,200 laying hens must register with and be inspected by the Pennsylvania Department of Agriculture.

For those producers with less than 3,200 laying hens, the following protocols must be followed for retail sale of shell eggs:

- Eggs must be sold within five (5) days from the date of the lay.
- Eggs must be sold predominately within a 100 mile radius of the production or processing facility.
- Eggs must be maintained at 45 degrees or less from the time of gathering to the time of sale. This includes the period of time when the eggs are at the farmers market.
- Each carton, flat or container of eggs must be labeled with the following:
 - Name and address of producer
 - Date of lay
 - Statement of identity (Eggs)
 - Net contents (in letters at least 3/16 of an inch high)
 - "Keep Refrigerated"
 - Egg handling instructions

If you do not weigh the eggs or if they are mixed sizes and you do not wish to assign a grade, the carton, flat or container must be labeled as "Unclassified."

Dirty, leaking or cracked eggs must be removed prior to sale.

FOOD SAFETY AND HANDLING REQUIREMENTS

Proper handling of food at farmers markets is a critical part of ensuring the safety of consumers.

For foods considered ready-to-eat, all standard food safety protocols apply. No bare hand contact is permitted with the ready-to-eat products; gloves, tongs, spoons, hand papers or other food safety measures should be utilized when handling food products. Employees should not work with food while ill. Hand washing stations must be conveniently available and employees should wash hands frequently and as often as necessary to avoid cross contamination of products.

Food and surfaces within the stand also must be protected from contamination. This may include establishing a roof (non-permeable tents are acceptable) to cover food and surfaces.

Potentially hazardous foods must be maintained at the appropriate temperatures to prevent risk and illness. For cold products, storage must be below 41 degrees. For warm/hot products, the temperature must be 135 degrees or above at all times.

Should the safety of a specific product be called into question, it is the responsibility of the stand operator to prove the product is not potentially hazardous. This may be accomplished through laboratory testing. The department reserves the right to require refrigeration/storage of any potentially hazardous products until testing is completed.

NECESSARY EQUIPMENT

The department is required to take into account items deemed “necessary equipment” for the proper handling and serving of food when issuing retail food facility licenses and performing annual inspections.

This necessary equipment must put in place specific functionality related to the sanitation of food equipment; it does not have to come in the form of permanent facilities or structures.

Vendors Selling All Raw Produce

Sanitizing hand wipes are acceptable for the cleansing of hands and surfaces.

Vendors Selling Pre-Packaged, Non-Potentially Hazardous Product

Sanitizing hand wipes are acceptable for the cleansing of hands and surfaces.

Vendors Selling Pre-Packaged, Potentially Hazardous Product

Stands selling pre-packaged, potentially hazardous products will be evaluated by the department or local health officer based on the products they are selling and the potential for cross-contamination. If there is a low risk of cross-contamination, sanitizing hand wipes will be deemed acceptable necessary equipment. For higher risk stands (for example those that have raw product and higher risk, potentially hazardous products that may come into contact with each other or be handled in a manner that promotes cross-contamination) the vendor may need to have access to a three-compartment sink in which to wash, rinse and sanitize food equipment. The department’s food safety inspector or local health officer can provide insight on what equipment is needed based on the products being sold. All necessary equipment must be designed, constructed, installed and maintained according to the standards outlined in Chapter 46 of the Food Code.

Vendors Selling Ready-to-Eat Product

Must have access to a three-compartment sink in which to wash, rinse and sanitize food equipment. In some instances, a vendor may be approved to utilize a two-compartment sink. The equipment must be designed, constructed, installed and maintained according to the standards outlined in Chapter 46 of the Food Code.

For vendors selling ready-to-eat or some high risk, potentially hazardous food, there is an additional requirement for a handwashing sink to be present for use by employees. This cannot be the sink utilized in the restroom. In some limited situations, and after review/approval by a department inspector, shared hand washing stations may be allowed between two stands. This station must be convenient and accessible to users at all times. Handwashing sinks must be able to reach 100 degrees (Fahrenheit), have soap and towels present, and signage reminding food handlers to wash their hands.

APPENDIX A

DEFINITIONS

Ready-To-Eat Food

Food termed “ready-to-eat” is described in the Pennsylvania Code as:

(i) Food in a form that is edible without additional preparation to achieve food safety, such as raw animal-derived foods that have been cooked in accordance with § 46.361 or § 46.362 (relating to cooking raw animal derived foods; and microwave cooking), or fish that have been frozen in accordance with § 46.364 (relating to parasite destruction in fish other than molluscan shellfish by freezing), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(ii) Food that is raw or partially-undercooked animal-derived food, where the food facility offering the food has complied with § 46.361(d)(1) and the consumer notification requirements of § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(iii) Food that is prepared in accordance with a variance issued by the Department under § 46.361(d)(2) and § 46.1103 (relating to variances), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(iv) Raw fruits and vegetables that are washed in accordance with § 46.285 (relating to washing raw fruits and vegetables).

(v) Fruits and vegetables that are cooked for hot holding in accordance with § 46.363 (relating to plant food cooking for hot holding).

(vi) Potentially hazardous food that is cooked in accordance with the time and temperature requirements for that specific food in §§ 46.361—46.363, and that is cooled as specified in § 46.384 (relating to potentially hazardous food: cooling).

(vii) Plant food with respect to which further washing, cooking or other processing is not required for food safety, and from which rinds, peels, husks or shells (if naturally present) are removed.

Potentially Hazardous Food
(As defined by the U.S. Food and Drug Administration)

(1) "Potentially hazardous food (time/temperature control for safety food)" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

(2) "Potentially hazardous food (time/temperature control for safety food)" includes:

(a) An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(b) Except as specified in Subparagraph (3)(d) of this definition, a food that because of the interaction of its A_w and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

Table A. Interaction of pH and A_w spores in food heat-treated to destroy vegetative cells and subsequently packaged.

A_w Values	pH Values		
	4.6 or less	> 4.6 – 5.6	> 5.6
≤ 0.92	Non-PHF*/Non-TCS Food**	Non-PFH/Non-TCS Food	Non-PHF/Non-TCS Food
$> 0.92 - .95$	Non-PHF/Non-TCS Food	Non-PHF/Non-TCS Food	PA***
>0.95	Non-PHF/Non-TCS Food	PA	PA

* PHF means Potentially Hazardous Food

** TCS Food means Time/Temperature Control for Food Safety

*** PA means Product Assessment Required

Table B. Interaction of pH and A_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged.

A_w Values	pH Values			
	< 4.2	4.2–4.6	> 4.6-5.0	>5.0
< 0.88	Non-PHF*/ Non-TCS Food**	Non-PFH/ Non-TCS Food	Non-PFH/ Non-TCS Food	Non-PFH/ Non-TCS Food
0.88-0.90	Non-PHF/ Non-TCS Food	Non-PHF/ Non-TCS Food	Non-PHF/ Non-TCS Food	PA***
>0.90-0.92	Non-PHF/ Non-TCS Food	Non-PHF/ Non-TCS Food	PA	PA
>0.92	Non-PHF/ Non-TCS Food	PA	PA	PA

* PHF means Potentially Hazardous Food

** TCS Food means Time/Temperature Control for Food Safety

*** PA means Product Assessment Required

(3) "Potentially hazardous food (time/temperature control for safety food)" does not include:

(a) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonella;

(b) A food in an unopened, hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;

(c) A food that because of its pH or A_w value, or interaction of A_w and pH values, is designated as a non-PHF/non-TCS food in Table A or B of this definition;

(d) A food that is designated as Product Assessment Required (PA) in Table A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonable likely to occur in that food is precluded due to:

(i) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients; or

(ii) Extrinsic factors, including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use or temperature range of storage and use; or

(iii) A combination of intrinsic and extrinsic factors; or

(e) A food that does not support the growth of toxin formation of pathogenic microorganisms in accordance with one of the Subparagraphs (3)(a) – (3)(d) of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.