

# Law Bulletin



OSU EXTENSION AGRICULTURAL &amp; RESOURCE LAW PROGRAM

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## Selling Foods at the Farm: When Do You Need a License?

*Peggy Hall, Asst. Professor & Ellen Essman, Law Fellow  
OSU Extension Agricultural & Resource Law Program*

With spring in full swing, many producers may be considering selling produce, meats, cottage foods and baked goods directly to consumers at the farm property. A question we often hear from farmers thinking about these types of farm food sales is, “do I need some type of license or inspection to sell food from the farm?” The answer to this question depends upon the type of food offered for sale:

- Sales of foods such as fresh produce or cottage foods do not require a license.
- Sales of certain types of baked goods require a home bakery license.
- Sales of multiple types of foods or higher risk foods require a farm market registration or a retail food establishment (RFE) license.
- The home bakery license, farm market registration, and RFE license involve inspections of the production or sales area.

It is important for a producer to carefully assess the food sales situation and comply with the appropriate licensing or registration requirements. To do so, a producer should identify the type and number of food products he or she will sell and whether the food poses low or high food safety risk. The following explanations will help producers assess their situations and determine their needs for appropriate licensing, registration, or inspections.

### 1. Sales of a single “low risk” food: the roadside stand and cottage food facility

Many producers sell a food product that presents low food safety risk, such as eggs, maple syrup or fresh vegetables. Selling only one “low risk” type of food typically defines the producer as a “roadside stand” or “cottage food” facility under Ohio law. Food sales in this situation do not require

either farm market registration or an RFE license. As long as a producer is selling only one type of low risk item, the producer is not subject to RFE licensing or farm market registration requirements.

The following are types of “low risk” food items:

- Fresh, unprocessed fruits and vegetables.
- “Cottage foods,” if sold directly to the consumer from the site where the foods are prepared. Cottage foods include non-potentially hazardous bakery products, jams, jellies, certain candies, certain flavored honeys, fruit chutneys, fruit butters, granola, granola bars, certain maple sugar, popcorn, unfilled baked donuts, waffle cones, pizzelles, seasoned dry cereal and nut snack mixes, roasted coffee, dry baking or cookie mixes, dry herbs or herb blends, certain dry soup mixes, dry seasoning blends, and dry tea blends. See the detailed list of cottage foods at <http://codes.ohio.gov/oac/901:3-20-04v1>.
- Maple syrup, sorghum, or honey products, if the producer used at least 75% of his or her own sap, sorghum juice or honey in the final product and sells the goods directly from the processing site.
- Eggs, if sold directly from the location where the hens are raised and the producer annually maintains 500 or fewer birds.
- Dressed chickens, if offered directly to the consumer from the location where the chickens are raised and slaughtered and the producer annually raises 1,000 or fewer chickens.
- Non-amenable meats, if offered directly to the consumer from the location where the meat is processed. Non-amenable meats include bison, domestic rabbits, captive deer, pheasant, quail, captive wild turkey and other species listed at <http://codes.ohio.gov/orc/918.12>

### 2. Sales of multiple “low risk” foods: the farm market

Selling more than one type of low risk food removes a producer from the roadside stand or cottage foods

categories. A producer who sells multiple types of low risk foods must obtain an RFE license unless the producer instead registers as a “farm market” with the ODA. The farm market registration is voluntary, but registering as a farm market exempts the producer from the mandatory RFE license.

It is important to clarify that Ohio law allows farm market registration only where a producer operates a facility that sells only the foods in the list below. A producer who sells foods in addition to the following products cannot register as a farm market. A farm market differs from a “farmers market,” which is a location where several producers congregate to offer many food items for sale.

A producer selling two or more of the following low risk foods may voluntarily register with ODA as a farm market or, if not registered as a farm market, must obtain an RFE license:

- Fresh unprocessed fruits or vegetables.
- Cottage foods (described earlier).
- Maple syrup, sorghum, or honey from a processor who used at least 75% of his or her own sap, sorghum juice or honey in the final product.
- Commercially prepackaged foods that are not “potentially hazardous,” (i.e., below 4.6 pH level, water activity value less than 0.85 and do not require temperature control) as long as the food display is less than 100 cubic feet.
- Cider and other juices manufactured on site at the farm market.
- Eggs produced at the farm market location, as long as the producer annually maintains 500 or fewer birds.
- Dressed poultry raised and slaughtered at the farm market location, as long as the producer raises and slaughters less than 1,000 birds per year.
- Raw non-amenable meat (described earlier), as long as the meat is processed at the farm market location.

Farm market registration requires submitting an annual application to ODA, available on ODA’s website at [http://www.agri.ohio.gov/public\\_docs/forms/foodsafety/Food\\_3800-02.pdf](http://www.agri.ohio.gov/public_docs/forms/foodsafety/Food_3800-02.pdf). There is no fee for the registration. The Food Safety Division of ODA will conduct an inspection of the farm market, but a completed inspection is not necessary prior to conducting food sales. In the inspection, the ODA will ensure that the farm market meets the following food safety standards required by the [Ohio Administrative Code](#):

- Food must be obtained from sources that comply with law.
- Food must be labeled as specified in law, and shall be honestly presented in a way that does not mislead or misinform the consumer.
- Eggs must be clean and sound.
- Ice used as a cooling medium must be made from water that complies with rule [901:3-6-06](#) of the Administrative Code (from a municipal water supply or if from another source, tested annually for coliform).
- All food products must be safe, unadulterated, and honestly presented. Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.
- Food must be protected from contamination.
- Eggs shall be maintained at an ambient air temperature of 45 degrees Fahrenheit or less.
- Poultry and non-amenable meats must be maintained frozen or at an internal temperature of 41 degrees Fahrenheit or less.
- Food that is unsafe, adulterated, or not honestly presented must be discarded.
- Except for whole and intact raw agricultural products, foods must not be displayed or stored on the ground.
- Cider and other juices manufactured on site of a farm market must be processed in accordance with the good manufacturing practices established in Chapter 901:3-1 of the Administrative Code.

### 3. Sales of “higher risk” baked goods: the home bakery

While low risk baked goods such as cookies fall under the “cottage food” category explained above, other baked goods fall into the higher risk “potentially hazardous” category because they require temperature controls such as refrigeration to ensure that they do not create a food safety risk. Higher risk baked goods include cream pies, cheesecakes, cream filled donuts, custard pies, pumpkin pies and any other potentially hazardous baked goods. Ohio law requires a “home bakery” license for these types of higher risk home baked goods.

Note that the home bakery license is only available to a person who produces higher risk baked goods in the kitchen of his or her primary residence. The kitchen must contain only one single or one double non-commercial oven. If a producer is creating higher risk baked goods in other situations, such as from a second kitchen at the home, a kitchen that is not in the home, or by using a commercial oven, the producer must either obtain a

“bakery” license from ODA, if selling the higher risk bakery products primarily to wholesale buyers, or an RFE license from the local health department, if selling the products directly to consumers.

Obtaining a home bakery license involves submitting an application with a \$10 fee to ODA and passing an inspection. To pass an inspection, the home bakery must meet the following requirements:

- Walls, ceilings and floors are clean, easily cleanable and in good repair.
- Kitchen does not have carpeted floors.
- There are no pets or pests in the home.
- Kitchen, equipment and utensils are maintained in a sanitary condition.
- Kitchen has a mechanical refrigerator capable of maintaining 45 degrees and equipped with a thermometer.
- If the home has a private well, proof of a negative test result for coliform bacteria from a well test completed within the past year.
- Food product labels for the baked goods comply with food labeling requirements.

#### 4. Sales of other “higher risk” foods: the retail food establishment

Due to food safety concerns, a producer selling other higher risk foods must have an RFE license from the local health department. The RFE license requirement also applies if an operator meets the definition of a farm market but fails to register as a farm market with the ODA, as explained earlier.

“Higher risk” foods that require an RFE license include:

- Eggs from a producer with more than 500 birds or eggs that are not sold directly from the farm where the hens are raised.
- Dressed poultry from a producer with more than 1,000 birds or not sold directly where the birds are raised and slaughtered.
- Meat from cattle, sheep, swine, goats and other animals not listed as “non-amenable” (described earlier).
- Prepared foods not listed as [cottage foods](#) (described earlier).
- Dairy products.
- Potentially hazardous baked goods not produced in a home bakery or under a bakery license and sold directly to consumers.

A producer must obtain the RFE license from the local health department prior to selling higher risk foods, a requirement intended to reduce the transmission of foodborne illnesses. Each health department determines its fee for an RFE license and inspects the operation for compliance with Ohio’s [Uniform Food Safety Code](#), available at <http://codes.ohio.gov/oac/3717-1>. A producer should work closely with the local health department to prepare for the RFE inspection, as many departments provide checklists and other resources to help the producer understand and follow the standards required by the Uniform Food Safety Code.

#### Other laws also apply to farm food sales

Note that other laws in addition to state or local licensing and registration might also apply to the sales of farm food products. For instance, many of the foods listed above such as eggs and cottage foods must be labeled in accordance with law. See ODA’s [Division of Food Safety](#) and our other law bulletins and blog posts on <http://farmoffice.osu.edu> for labeling requirements that apply to specific food products.

The federal Food Safety Modernization Act’s (FSMA) Produce Safety Rule could apply to the growing, harvesting, packing and holding of larger quantities of fresh produce. Learn about who is subject to [FSMA](#) on the website of the U.S. Food and Drug Administration at <https://www.fda.gov/downloads/Food/GuidanceRegulation/FSMA/UCM472499.pdf>. Many small produce growers selling directly to consumers are exempt from FSMA, but should still utilize the good agricultural practices contained in FSMA for risk management purposes.

While most agricultural land uses in Ohio are exempt from local zoning regulation, a handful of food sale situations could require compliance with zoning requirements. Examples include selling food products within an incorporated area or from a “farm market” building that houses many other types of products offered for sale. See our zoning information to learn more about Ohio’s agricultural zoning exemption.

#### For additional resources and information from the OSU Agricultural & Resource Law Program:

- Visit our website at <http://farmoffice.osu.edu>.
- Sign up to receive our blog postings by e-mail at <http://farmoffice.osu.edu/blog>.
- Contact us by e-mail at [aqlaw@osu.edu](mailto:aqlaw@osu.edu).